

IS THE APPROXIMATION RULE IN THE CHILD'S BEST INTERESTS? A Critique from the Perspective of Attachment Theory

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In an effort to develop clear and uniform standards for the allocation of custodial responsibility, the American Law Institute has proposed a number of reforms. For example, under the approximation rule, the proportion of time parents spent with their children performing direct caregiving functions prior to the divorce would be reflected in the proportion of custodial time allotted to each parent after divorce. Much of the rationale used to justify the approximation rule is explicitly or implicitly based on attachment theory (Bowlby, 1969, 1973, 1980). This article discusses the assumptions and implications of the approximation rule from the standpoint of attachment theory.

Keywords: *attachment; child custody; divorce; approximation rule*

Last year, the American Law Institute (ALI) released its 1,200-page *Principles of the Law of Family Dissolution* (hereinafter referred to as *Principles*), in which a number of reforms for family and divorce courts were proposed. Although recent years have seen some meeting of the minds between mental health professionals and legal professionals on the topic of divorce and custody arrangements, the ALI proposals make little reference to, and at times contradict, the accumulated social science evidence (Braver, 2003). For example, in an effort to replace the “best interests of the child” standard and develop clear and uniform standards for the allocation of custodial responsibility, the ALI proposed the approximation rule, which suggests that physical custody arrangements should be based on the time each parent devoted to caretaking prior to separation. Much of the rationale put forth to justify the approximation rule is explicitly or implicitly based on the concept of parent–child attachment originated by Bowlby (1969, 1973, 1980).

Kelly and Ward (2002) recently reviewed the attachment literature and concluded that attachment theory was consistent with and seemed to support the approximation rule based on three key areas of conformity: (a) recognition of the importance of caregiving, (b) the ability to form attachments to multiple caregivers, and (c) consistency of attachment relationships. By comparison, the present discussion critiques the approximation rule based on inconsistencies between what the current state of the attachment literature and research can tell us, and the stated justifications for the approximation rule that are grounded in the attachment theory. Although the approximation rule may hold some advantages over current standards, this review argues that it is based on erroneous assumptions that are not supported by the developmental literature. The following review of attachment literature expands upon the earlier overview (Kelly & Ward, 2002) and concentrates on the qualitative differences in behavior and outcome associated with secure attachment

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relationships versus the three types of insecure relationships identified in the research literature. Subsequently, three hypotheses used to validate the approximation rule are discussed from the perspective of attachment theory. Specifically, supporters of the approximation rule assume without sufficient evidence or theoretical backing that (a) time equals parenting ability and strength of emotional attachment, (b) caretaker presence equals security of attachment, and (c) gender bias will be reduced by concentrating on parenting arrangements prior to the divorce.

REVIEW OF ATTACHMENT THEORY

CORE CONCEPTS

John Bowlby (1969, 1973, 1980) presented attachment theory in a three-volume series entitled *Attachment and Loss*. Bowlby believed that humans, like other animal species, are biologically wired to seek out relational experiences that satisfy an instinctual need for security. The biological function of the attachment bond between parent and child is protection; attachment relationships contribute to the survival of the individual and species via the reciprocal motive in parent and child to maintain proximity to one another (Bowlby, 1980). Typical infant attachment behaviors, such as crying, smiling, and following, are designed to accomplish this goal. These strategies for keeping the attachment figure nearby are particularly likely to appear when the child feels tired, ill, or afraid and consequently is in greater need of comfort and protection.

By acting as a “secure base” (Ainsworth, Blehar, Waters, & Wall, 1978) characterized by the provision of sensitive and consistently reliable care, parents foster a sense of security in the child, which in turn promotes exploration, curiosity, and adaptive strategies for the regulation of emotion. Conversely, insensitive and/or inconsistent care engenders anxiety and distrust. Behavioral and emotional regulation strategies developed in early parent–child attachment relationships are internalized in the form of mental representations of the self and other people, which provide the rules for evaluating the behavior of others and determining how to respond (Bowlby, 1980). These mental representations, which are called “internal working models,” translate into (a) personality characteristics in the form of predictable attitudes, expectations, feelings, thoughts, and behavior across different contexts, and (b) strategies for relating to other people which influence individual behavior in later relationships.

SECURITY AND INSECURITY OF ATTACHMENT

John Bowlby laid the theoretical foundation for a comprehensive theory of human development. However, it was one of his research assistants at the Tavistock Clinic, Mary Ainsworth, who provided the empirical frame for over 30 years of productive research supporting the major tenets of attachment theory. After working with Bowlby in England, then traveling to Uganda where she conducted an ethnographic exploration of infant behavior in natural settings, Ainsworth returned to the United States and set about creating an empirical method for testing Bowlby’s theory. In the mid-1960s, Ainsworth and her students developed and conducted an intensive naturalistic study designed to observe 23 mothers and their infants throughout the first year of life at home, amassing 66–80 hours of observations for each dyad.

For the second phase of the study, the Ainsworth team developed a controlled laboratory situation intended to elicit theoretically predictable attachment behaviors from one-year-old infants in response to a stressful condition involving separation from the mother in an unfamiliar setting. The Strange Situation (Ainsworth et al., 1978) involves a series of eight brief (3 minutes or less) but increasingly stressful episodes alternating maternal separation from and reunion with the infant. In this procedure, infants whose mothers had been sensitive and responsive to infant signals at home displayed the expected attachment behaviors in the laboratory situation. Specifically, infants whose mothers were attuned to infant communication at home actively explored the new environment in their mother's presence and showed signs of missing the mother in her absence, greeting her actively upon her return. Distress was readily terminated by the mother's comfort-giving and exploration quickly renewed. In contrast, infants whose mothers had been unpredictable in their responses, or rejecting of their infants at home, did not display the expected behavioral patterns.

A three-way classification procedure was developed to categorize individual differences in behavioral responses during the Strange Situation. One category is considered optimally secure and the two other categories represent different patterns of behavior thought to reflect insecure attachment. *Secure* infants display classic attachment behavior, engaging in active exploration of the environment in the mother's presence, but protesting and becoming distressed at her departure. Upon reunion with the mother, these infants actively approach and seek contact with her, responding to her comforting with a reduction in distress and a return to exploration. Ainsworth and her colleagues (Ainsworth, Bell, & Stayton, 1971; Ainsworth et al., 1978) proposed that these infants are able to utilize their caregivers as a "secure base," flexibly balancing exploration in unfamiliar territory with attachment behavior designed to achieve proximity to the caregiver when they perceive the threat of separation.

If, however, the caregiver places restrictions on proximity-seeking or exploratory behavior, the infant may develop a lack a balance between attachment and exploration. Mothers who rejected infant attachment behavior at home tended to have *insecure-avoidant* infants, who actively explored their environment, but demonstrated little affect or signs of distress during any part of the procedure. These infants were characterized by little or no protest at the mother's departure and avoidance of contact with the mother during reunion. Interestingly, while the observable behavior of these infants suggests that they do not experience stress when separated from their mother, physiological studies (Sroufe & Waters, 1977; Spangler & Grossmann, 1993) showing elevated heart rates during separation and cortisol level increases pre-to-post procedure appear to contradict this conclusion.

Whereas insecure-avoidant infants seem to minimize attachment behaviors in favor of exploration, the opposite is true for *insecure-ambivalent* (also called *insecure-resistant*) infants. Exploration among this group is limited or interrupted by frequent proximity-seeking to the mother. In response to their mother's departure, insecure-ambivalent infants appear overwhelmed by distress. These infants typically approach the mother on reunion, but are inconsolable upon her return, engaging in dramatic displays of anger toward the mother or passive, weak resistance. Empirical studies have repeatedly demonstrated that mothers of insecure-ambivalent infants demonstrate inconsistent responding in the home setting (Ainsworth et al., 1978) and interview narratives that would suggest an overly intrusive, possibly role-reversing, style of parenting (Main & Goldwyn, 1998).

As research using the Strange Situation proceeded and began utilizing atypical populations, however, it was noted that some infants did not fit the three-way classification system devised by Ainsworth. Crittenden (1985) and Main and her colleagues (Main & Hesse, 1990; Main & Solomon, 1986) identified a fourth group of infants which did not conform

to any of the three original attachment categories and had been considered “unclassifiable” in previous studies. This group of infants has been described as *disorganized/disoriented* because they demonstrate an unusual mixture of avoidant and ambivalent behaviors and/or are characterized by contradictory or disjointed behavior patterns (e.g., approaching the attachment figure by walking backwards or with face averted, falling prone during approach, appearing dazed or disoriented, stereotypies, walking with an uneven gait), implying the absence of a coherent strategy for coping with the stress of separation.

This pattern of attachment has been correlated with infant maltreatment (e.g., Carlson, Cicchetti, Barnett, & Braunwald, 1989), parent–child affective miscommunication and lower levels of conversational skill in parents (Lyons-Ruth, Bronfman, & Parsons, 1999; Spieker & Booth, 1988), frightened/frightening behaviors by parent (Jacobvitz, Hazen, & Riggs, 1997; Lyons-Ruth & Jacobvitz, 1999), and maternal lack of resolution with respect to loss or trauma (e.g., Ainsworth & Eichberg, 1993; Main & Hesse, 1990). Not surprisingly, the disorganized/disoriented category is overrepresented in high-risk and maltreatment samples (Carlson et al., 1989; Crittenden, 1985; Spieker & Booth, 1988).

Ainsworth’s original finding that the quality of infant attachment was related to prior infant–caregiver interactions at home has been replicated a number of times. Mothers of secure infants are consistently rated as more sensitive, responsive, accessible, and cooperative than mothers of insecure infants during the first year of life (Belsky, Taylor, & Rovine, 1984; Egeland & Farber, 1984; Grossman, Grossmann, Spangler, Suess, & Unzer, 1985; Main, Tomasini, & Tolan, 1979). A meta-analysis of almost 2,000 infant–caregiver dyads in 39 studies reported a worldwide distribution of infant attachment classifications, which is almost identical to Ainsworth’s original sample (van IJzendoorn & Kroonenberg, 1988). Approximately two-thirds (65%) of the dyads were assigned to the secure classification, 21% to the insecure-avoidant classification, and 14% to the insecure-ambivalent classification. The distribution of the disorganized/disoriented classification is less stable, ranging from 10–13% in middle-class, low-risk samples (see Main & Solomon, 1986, for review) to almost 82% in maltreatment samples (Carlson et al., 1989; see Lyons-Ruth & Jacobvitz, 1999, for review). Although significant variation in the distributions of low-socioeconomic status and high-risk samples have been noted, Spieker and Booth (1988) found that when known cases of child maltreatment and inadequate care are removed, the proportion of each infant attachment classification in these samples is similar to middle-class, low-risk populations.

CONTINUITY

According to Bowlby (1979), although attachment behavior is most obvious in early childhood, it appears throughout the life cycle, particularly in stressful or threatening situations. Bowlby (1988) emphasized the need to think of personality as “moving through life along some developmental pathway, with the particular pathway followed always being determined by the interaction of the personality as it has so far developed and the environment in which it then finds itself” (p. 6). To the extent that environmental factors activate different attachment patterns formed in important early relationships, they will substantially impact a child’s subsequent development and continue to influence his/her relationship patterns throughout the life cycle.

There is considerable agreement among attachment theorists that internal working models function as the mechanism through which continuity in the organization of attachment is achieved (McMillen, 1992; Rothbard & Shaver, 1994). Working in reference to the internal working model, the child seeks and explores new relationships, often recreating aspects

of the relationship systems previously experienced (Sroufe & Fleeson, 1986). Due to certain expectations and attitudes, individuals will often behave in ways that successfully elicit behavior from others which satisfy their expectations and recreate patterns of attachment formed early in life. Thus, the child's interaction with the environment becomes part of a self-perpetuating model, which increases the likelihood that early patterns will be repeated.

Secure attachment is characterized by a balance between attachment and independence, which promotes adaptive functioning throughout the life span; in contrast, insecure attachment is characterized by high anxiety and/or high avoidance, such that an imbalance between attachment and independence develops and generates maladaptive strategies for interacting with others and regulating emotion (Brennan & Shaver, 1998; Carlson & Sroufe, 1995). Longitudinal evidence links infant attachment behavior to a wide variety of later outcomes.

In general, secure attachment is associated with indices of positive adjustment and mental health (e.g., empathy, social competence, flexibility, coping skills, self-esteem). In contrast, insecure attachment appears to be a risk factor for maladaptive functioning and mental illness due to distorted representations of self and other, skewed interpretations of events, dysfunctional responses to stress, irregular emotional regulation, and rigid relational strategies (Carlson & Sroufe, 1995). Follow-up studies have shown that children classified as insecure as infants were more likely than secure children to demonstrate poor peer relations, moodiness, behavioral disturbance, and symptoms of depression and aggression (Lyons-Ruth, Alpern, & Repacholi, 1993; Troy & Sroufe, 1987; see Greenberg, 1999, for review). Similarly, insecure attachment assessed in adolescence and adulthood has been associated with less adaptive personality traits (e.g., Bartholomew & Horowitz, 1991; Onishi, Gjerde, & Block, 2001; Riggs, Jacobvitz, & Hazen, 2002; Shaver & Brennan, 1992) and emotional disturbance (Fonagy et al., 1996; Riggs & Jacobvitz, 2002; Rosenstein & Horowitz, 1996; see Dozier, Stoval, & Albus, 1999, for review).

Although internal working models are relatively flexible and responsive to the changing environment in early childhood, repeated interactions with the caregiver(s) serve to structure and strengthen the emerging model, rendering it increasingly resistant to change (Rothbard & Shaver, 1994). Long-term stability of attachment classification from 12 to 18 months of age through 5 years of age is high (82%) (Main & Cassidy, 1988). Secure/insecure attachment in infancy has also shown substantial continuity in measures of attachment at age 6 (Main, Kaplan, & Cassidy, 1985), through adolescence (Hamilton, 2000) and young adulthood (Waters, Merrick, Treboux, Crowell, & Albersheim, 2000). However, continuity has not been demonstrated in high-risk samples (Weinfield, Sroufe, & Egeland, 2000) and evidence indicates that attachment patterns can change in association with alterations in the family environment that affect the caregiving relationship, making flexibility, rather than determinism, the general rule of attachment development (Erikson et al., 1985; Thompson, 1991). For example, changes in attachment from security to insecurity are associated with negative life events, such as socioeconomic stress on the family, transitions in caregiving arrangements, low social support, parental loss or divorce, psychopathology in parents or other family members, and family dysfunction (Bretherton, Walsh, Lependorf, & Georgeson, 1997; Cummings & Davies, 1996; Egeland et al., 1988; Lyons-Ruth et al., 1984; Ricks, 1985; Thompson, Lamb, & Estes, 1982; Vaughn et al., 1979; Waters et al., 2000).

Shifts from insecure to secure attachment are also possible. However, because internal working models function largely outside of awareness to provide the basis for anticipating and interpreting the behavior of others, positive changes in the model are likely to occur only when a conflict between the model and reality becomes extremely apparent (Bretherton,

Ridgeway, & Cassidy, 1990). Consequently, repeated interactions which explicitly highlight a contradiction with established working models, such as those encountered with a healthier, more mature caregiver (Egeland & Farber, 1984), an empathic teacher (Sroufe, 1983), a secure relationship with a partner in adulthood (Egeland, Jacobvitz, & Sroufe, 1988), or an insightful therapist (Bowlby, 1979; Bretherton, 1990) may account for shifts in attachment patterns.

THE APPROXIMATION RULE: STRENGTHS AND LIMITATIONS

RATIONALES AND STRENGTHS

Under the approximation rule, the proportion of time parents spent with their children performing direct caregiving functions prior to the divorce would be reflected in the proportion of custodial time allotted to each parent after the divorce. Among the many rationales for the approximation rule, the ALI *Principles* explicitly state that the recommendations for the allocation of custodial responsibility are based on widely accepted concepts of child welfare, such as the need to maintain parent–child attachment bonds because of their importance to the child’s well-being. Elizabeth Scott (1992), who first proposed the rule, argued that it provides continuity for the child by maintaining predivorce caregiving practices and attachment experiences in a time of potentially harmful disruption in the family.

Advocates of the approximation standard also cite the benefits of greater predictability of custody outcomes, as well as reliance on the parents’ past caretaking arrangements and their active involvement in developing a future-oriented parenting plan (Bartlett, 2002). In theory, the reduction of uncertainty about custody determination and the demonstration of respect for parental autonomy in child-rearing decisions will prevent escalating conflict, strategic bargaining, as well as prolonged and expensive litigation (Bartlett, 2002; Kelly & Ward, 2002). All of these, in turn, may ease parents’ financial and emotional burdens, ultimately lessening their distress and decreasing the potential for the development of serious emotional difficulties that can negatively impact family functioning and child well-being. Finally, Bartlett (2002), one of the reporters for the *Principles*, asserts that “the likelihood of gender bias is reduced by focusing courts’ attention on actual caretaking patterns rather than qualitative issues of parenting” (¶18).

The main strength of the approximation rule is its acknowledgement of the importance of the parent–child attachment bond and its focus on caregiving as a critical feature of this relationship. From a developmental perspective, the provision of functional care is essential to the survival and healthy development of the child. Clearly then, the rule’s consideration of caregiving is in line with attachment theory’s emphasis on the biological importance of the attachment relationship and the protection it provides. Based on the empirical evidence, parental stability, consistency of caregiving, and the absence of negative events, such as loss or other trauma, are predictors of secure attachment. Thus, to the extent that the approximation rule encourages the continuance of attachment bonds and predivorce living conditions, and at the same time averts parental distress and conflict, it remains consistent with attachment theory and research (Kelly & Ward, 2002).

LIMITATIONS FROM THE PERSPECTIVE OF ATTACHMENT THEORY

In spite of the appearance of agreement, the approximation rule is at odds with the attachment literature in several crucial ways. The most glaring obstacle is the assumption

that the amount of time devoted by a parent to caretaking responsibilities corresponds directly with parenting ability and the strength of emotional attachment in the parent–child relationship. Kelly and Ward (2002) argue that even in the absence of empirical support, it is reasonable and sensible to assume that time spent in direct caretaking functions is highly correlated with attachment security. While it is true that there is no research evidence to suggest that time is not related to attachment, there are two major problems with this assumption. First, although time is clearly an important aspect in the development of attachment relationships, there are other factors that are, in fact, more important than the time a child spends with an attachment figure. Specifically, time may foster the formation of an attachment bond, but it does not necessarily foster the formation of a *secure* bond. Similarly, the family law literature repeatedly makes the mistake of referring to the *level* of attachment or the *strength* of the attachment bond (e.g., Bartlett, 2002; Gardner, 1999; Kelly & Ward, 2002), rather than the *quality* or *security* of those bonds when discussing custody and visitation issues. Attachment does not equal security. In other words, it is not how strongly attached the child is to the parent, but rather whether the child feels secure in his/her attachment to the parent that is associated with better child outcomes. These are fundamental flaws that render the approximation rule unreasonable and unworkable.

Qualities of Attachment Figures

When considering factors that play a key role in the formation of secure attachment relationships, it is important to first explore the question of who or what attachment figures are. Bowlby (1980) conceived of an attachment figure as any person perceived by the child as stronger and better able to cope with the world, and someone who provides consistent protection and care. Ainsworth (1991) further distinguished an attachment figure as someone who has a “relatively long-enduring tie” to the child, who is “important as a unique individual, interchangeable with none other,” and toward whom the child expresses “a need to maintain proximity, distress upon inexplicable separation, pleasure or joy upon reunion, and grief at loss.” Several researchers have proposed the following criteria for use in the determination of who qualifies as an attachment figure: (1) provision of physical care, (2) provision of emotional care, (3) the quality of care provided, (4) time spent with the child, (5) continuity or consistency in a child’s life, and (6) the caregiver’s emotional investment in the child (Colin, 1996; Cassidy, 1999; Howes, Hamilton, & Althusen, as cited in Howes, 1999).

The approximation rule considers only some of these criteria, namely the provision of physical care, time spent, and continuity. Oddly enough, if these were the most critical issues in the development of attachment bonds with caregivers, given the prevalence of dual-earner families in our society, the courts would be awarding visitation and custody of many children to daycare workers, babysitters, and teachers. The ALI’s misguided focus on the strength of the parent–child relationship and its lack of attention to “qualitative issues of parenting” seems to have led to an unfortunate disregard for 30 years’ worth of research findings. As Bartlett (2002) so succinctly phrased it, “the ALI past-caretaking standard . . . is *indifferent to the nature of the past caretaking arrangements.*”

Indeed, upon close examination, it appears that the characteristics of attachment figures ignored by the approximation rule (i.e., provision of emotional care, caregiver’s emotional investment, and quality of care) are precisely those factors that research has consistently shown to be significantly correlated with the security or insecurity of the child’s attachment to his/her caregiver(s). In contrast, neither provision of physical care nor time spent with a child have been empirically linked to attachment security. Further, while continuity is

certainly essential to the development of a relationship, there is little evidence to suggest that it is directly related to the type or quality of relationship formed, nor is it absolutely necessary as the child matures. Advocates might argue that provision of physical care, time spent, and continuity are likely to be correlated with provision of emotional care, emotional investment, and quality of care. However, this assumption has not been empirically tested, perhaps because from a theoretical standpoint, the first three elements may contribute to the formation of relational bonds, but it is the latter three that are more likely to reliably discriminate attachment relationships that are secure from those that are insecure.

Studies have repeatedly demonstrated that the quality of parental and family functioning and the quality of the caregiver–child relationship are among the strongest predictors of children’s adjustment to parental separation and divorce (Buchanan, Maccoby, & Dornbusch, 1992, 1996; Hetherington, Bridges, & Insabella, 1998; Johnston, 1995; Wallerstein, 1998). The mere presence of a caregiver or even the existence of a strong attachment to a caregiver is not sufficient in and of itself to produce positive child outcomes. Although many parents remain home for the purpose of providing the best care to their children, some parents may be at home and ostensibly “caring” for the children most of the day due to many other factors, including unemployment, disability, physical or mental illness, reliance on criminal activity for income, or even pure laziness. A caregiver’s presence in the home does not guarantee better parenting per se nor does it preclude neglect or maltreatment. As many judges, attorneys, psychologists, and case workers have seen, it is an unfortunate fact that children do become attached to and may even cling fiercely to abusive or neglecting parents, who may appear emotionally uninvested in the child, but will nevertheless fight bitterly against the removal of the child from their authority (Carlson et al., 1989). An unhealthy attachment to an abusive parent, which severely distorts the internal working models of self and other, can severely damage the child’s developing sense of self and seriously hamper his or her ability to function adaptively in the world.

While the ALI proposal allows family court judges some flexibility in cases of domestic violence and requires consideration of expressed preferences by older children, it does not acknowledge the potential harm that can be inflicted by emotional or psychological mistreatment by parents. Insecure parent–child attachment is theoretically and empirically linked to parental behaviors that are not legally considered abusive and would not be recognized by the approximation rule as harmful, such as rejection, role-reversal or over-involvement, and emotional neglect. These types of behaviors would not necessarily be apparent to the court, nor would they necessarily influence child preferences in the expected manner. For example, role-reversal or parental over-involvement often is characterized by an enmeshed relationship, which might appear to be simply a very close parent–child relationship, but in reality might interfere with the child’s development of autonomy and self-esteem. In cases where age permits consideration of the children’s wishes, children may express custodial preferences based on their deep desire to please rejecting, over-involved, or neglecting parents or alternatively based on the belief that they need to take care of a role-reversing parent.

Furthermore, once an attachment is formed and the child is capable of holding an internal mental representation of the attachment figure, a healthy attachment bond can be maintained in spite of separations. Children do remain attached to working parents with whom they spend little time on a daily basis. Also, while not ideal by any means, an older child can sustain an established attachment to a parent who is required to leave the family for days, weeks, months, even more than a year because of various life circumstances (e.g., military, business, politics, imprisonment). On one hand, it is quite possible for children to form an

insecure attachment to a parent who spends proportionately more time providing functional care for them but also does not sensitively respond to the needs of the children and may, in fact, behave in ways that could be considered emotional abuse (e.g., rejection, over-involvement, neglect). Conversely, it is also quite possible for children to form secure attachments to a parent who spends relatively less time with them but is sensitively responsive and emotionally supportive when interacting with them. It is, therefore, critical to attend to the quality of the attachment relationship, not the time commitment or strength of the attachment.

Gender Bias

Another major difficulty with the approximation rule is that despite claims that gender bias will be reduced, the reality is that among heterosexual couples in Western society, it is much more common for a woman than a man to remain home for the purpose of child rearing. This decision conforms to traditional gender roles, which may be desirable for some couples. However, other reasons, such as earning power, may figure prominently into the decision of whether and who should stay home. In the year 2000, women in full-time wage and salary positions earned 76% of the median salaries of their male counterparts (U.S. Department of Labor, 2001). For couples in this financial position who agree that one parent will stay home to raise the children, the logical decision based on pure economics may be for the mother to quit her job when the children are born and for the father to continue working, even if he would prefer to stay with his children and she may actually prefer to continue working. In fact, to then base a court decision regarding custodial responsibility on a family decision that may have been distasteful for both parents may only compound the resentment of the working parent, who has given up time with his/her children in order to provide the best quality of life for the whole family. Although the ALI recommends a minimum, guaranteed allocation of custodial responsibility regardless of predivorce caretaking time, because the working parent in contemporary society is most often the father, the approximation rule may be unfairly biased against fathers and end up resembling little more than the maternal preference standard of the past.

CONCLUSION

During the past 20 years, the family courts' traditional preference for biological relatedness and protection of parental rights in custody decisions has been displaced by a growing recognition that the maintenance of attachment bonds is crucial to the healthy development of children. In order to comply with the mandate to prevent harm and protect the best interests of the child, family courts have increasingly relied on a substantial body of psychological research demonstrating that the formation of a child's attachment bond is not determined by biological ties *per se*, but is instead determined by the consistent attention and comfort provided by a caring adult.

However, the best interests standard has been criticized for a number of reasons, the most prominent being (a) the reliance on judges to evaluate scientific evidence and psychological assessments when they may not be qualified to make these types of abstract decisions, which consequently may be influenced by personal biases involving moral, religious, cultural, ethnic, or sexist attitudes, and (b) the vagueness of the standard which complicates divorce negotiations and likely increases the time and expense of litigation (Mnookin, 1975; Pearson & Ring, 1982–1983; Sorenson & Goldman, 1990; Thompson, 1986).

The ALI's proposal to replace the best interests standard with the approximation rule responds to all of these criticisms. By providing determination criteria that are observable and identifiable, the approximation rule removes the potential for bias or incompetence among judges and reduces the complexity of divorce negotiations because both lawyers and parents understand exactly what the court will consider in making a custody determination. The approximation rule accomplishes these things while continuing to prioritize the significance of the caregiver-child relationship. However, when the rule is examined in light of the literature upon which it is purportedly based, the attention to attachment relationships appears superficial and clearly disregards much of the current psychological research. In the quest for determinacy, objectivity, and quantification in custody guidelines, the ALI ignored the reality of unpredictability, subjectivity, and qualitative differences in human behavior and emotion, which make all interpersonal relationships unique, including the parent-child attachment relationship.

While the best interests standard undoubtedly has problems, the approximation rule's attempt to measure the parent-child attachment relationship by calculating the time a parent spent with a child prior to a divorce is seriously flawed and is unfair to many working parents. Strict standards for custody decisions and visitation awards, such as the approximation rule, would clearly make the jobs of attorneys and judges much easier.

However, it is just as clear that these types of strict standards also have disadvantages. First, exceptions will inevitably arise because human behavior is never entirely predictable, yet rigid, quantified guidelines make it less likely that exceptions will be recognized and that new research will be incorporated to modify the guidelines (Waters & Noyes, 1983-1984). The ALI's emphasis on the parent-child relationship is appealing and represents a positive step toward an integration of social science research and family law. However, the approximation rule is flawed and incomplete. Until a better alternative that is more consistent with the developmental research is developed, the best interests standard may be the courts' only reasonable guideline. After all, the imprecise nature of the best interests standard accurately reflects the complex nature of the human family, which is always unique and ever changing, making it highly unlikely that a universal standard can be developed that will be appropriate for all cases at all points of time in the individual and family life cycles (Riggs, 2003).

REFERENCES

- Ainsworth, M. D. S. (1991). Attachments and other affectional bonds across the life cycle. In C. M. Parkes, J. Stevenson-Hinde, & P. Marris (Eds.), *Attachment across the life cycle* (pp. 33-51). New York: Routledge.
- Ainsworth, M. D. S., Bell, S., & Stayton, D. (1971). Individual differences in Strange Situation behavior of one-year-olds. In H. R. Schaffer (Ed.), *The origins of human social relations* (pp. 17-57). New York: Wiley.
- Ainsworth, M. D. S., Blehar, M., Waters, E., & Wall, S. (1978). *Patterns of attachment*. Hillsdale, NJ: Erlbaum.
- Ainsworth, M. D. S., & Eichberg, C. (1993). Effects on infant-mother attachment of mother's unresolved loss of an attachment figure or other traumatic experience. In C. M. Parks, J. Stevenson-Hinde, & P. Marris (Eds.), *Attachment across the life cycle* (pp. 160-183). New York: Routledge.
- American Law Institute. (2002). *Principles of the law of family dissolution: Analysis and recommendations*. Newark, NJ: LexisNexis.
- Bartholomew, K., & Horowitz, L. M. (1991). Attachment styles among young adults: A test of a four-category model. *Journal of Personality and Social Psychology*, 61, 226-244.
- Bartlett, K. T. (2002). U.S. custody law and trends in the context of the ALI Principles of the Law of Family Dissolution. *Virginia Journal of Social Policy and the Law*, 10, 5-53.
- Belsky, J., Taylor, E., & Rovine, M. (1984). The Pennsylvania Infant and Family Development Project II: Origins of individual differences in infant-mother attachment: Maternal and infant dyad. *Child Development*, 55, 706-717.

- Bowlby, J. (1969). *Attachment and loss: Vol. I. Attachment*. New York: Basic Books.
- Bowlby, J. (1973). *Attachment and loss: Vol. I. Separation*. New York: Basic Books.
- Bowlby, J. (1979). *The making and breaking of affectional bonds*. New York: Routledge.
- Bowlby, J. (1980). *Attachment and loss: Vol. III. Loss: Sadness and depression*. London: Hogarth Press.
- Bowlby, J. (1988). Developmental psychiatry comes of age. *American Journal of Psychiatry*, *145*, 1–10.
- Braver, S. L. (2003). The “News” about divorce for family psychologists. *The Family Psychologist*, *19*, 4–8.
- Brennan, K., & Shaver, P. R. (1998). Attachment styles and personality disorders: Their connections to each other and to parental divorce, parental death, and perceptions of parental caregiving. *Journal of Personality*, *66*, 835–878.
- Bretherton, I. (1990). Communication patterns, internal working models, and the intergenerational transmission of attachment relationships. *Infant Mental Health Journal*, *11*, 237–252.
- Bretherton, I., Ridgeway, D., & Cassidy, J. (1990). Assessing internal working models of the attachment relationship: An attachment story completion task for 3-year-olds. In M. T. Greenberg, D. Cicchetti, & E. M. Cummings (Eds.), *Attachment in the preschool years* (pp. 273–308). Chicago: University of Chicago Press.
- Bretherton, I., Walsh, R., Lependorf, M., & Georgeson, H. (1997). Attachment networks in postdivorce families: The maternal perspective. In L. Atkinson & K. J. Zucker (Eds.), *Attachment and psychopathology* (pp. 97–134). New York: Guilford.
- Buchanan, C. M., Maccoby, E. E., & Dornbusch, S. M. (1992). Adolescents and their families after divorce: Three residential arrangements compared. *Journal of Research on Adolescence*, *2*, 261–291.
- Buchanan, C. M., Maccoby, E. E., & Dornbusch, S. M. (1996). *Adolescents after divorce*. Cambridge, MA: Harvard University Press.
- Bureau of Labor Statistics. (2001). *Highlights of women's earnings in 2000* (Report 952). Washington, DC: U.S. Department of Labor.
- Carlson, V., Cicchetti, D., Barnett, D., & Braunwald, K. (1989). Disorganized/disoriented attachment relationships in maltreated infants. *Developmental Psychology*, *25*, 525–531.
- Carlson, E. A., & Sroufe, L. A. (1995). Contribution of attachment theory to developmental psychopathology. In D. Cicchetti & D. J. Cohen (Eds.), *Developmental psychopathology, vol. 1: Theory and methods* (pp. 581–617). New York: Wiley.
- Cassidy, J. (1999). The nature of the child's ties. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment: Theory, research, and clinical applications* (pp. 3–20). New York: Guilford.
- Colin, V. L. (1996). *Human attachment*. New York: McGraw-Hill.
- Crittenden, P. M. (1985). Maltreated infants: Vulnerability and resiliency. *Journal of Child Psychology and Psychiatry*, *26*, 85–96.
- Cummings, E. M., & Davies, P. (1996). Emotional security as a regulatory process in normal development and the development of psychopathology. *Development and Psychopathology*, *8*, 123–139.
- Dozier, M., Stoval, K. C., & Albus, K. E. (1999). Attachment and psychopathology in adulthood. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment: Theory, research, and clinical applications* (pp. 497–519). New York: Guilford.
- Egeland, B., & Farber, E. A. (1984). Infant-mother attachment: Factors related to its development and changes over time. *Child Development*, *55*, 753–771.
- Egeland, B., Jacobvitz, D., & Sroufe, L. A. (1988). Breaking the cycle of abuse. *Child Development*, *59*, 1080–1088.
- Fonagy, P., Leigh, T., Steele, M., Steele, H., Kennedy, R., Mattoon, G., et al. (1996). The relation of attachment status, psychiatric classification, and response to psychotherapy. *Journal of Consulting and Clinical Psychology*, *64*, 22–31.
- Gardner, R. A. (1999). Assessment for the stronger, healthier psychological bond in child-custody evaluations. *Journal of Divorce and Remarriage*, *31*, 1–14.
- Greenberg, M. T. (1999). Attachment and psychopathology in childhood. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment: Theory, research, and clinical applications* (pp. 469–496). New York: Guilford.
- Grossman, K., Grossmann, K. E., Spangler, G., Suess, G., & Unzer, L. (1985). Maternal sensitivity and newborn orienting response as related to quality of attachment in Northern Germany. In I. Bretherton & E. Waters (Eds.), *Growing points of attachment theory and research* (pp. 233–256). *Monographs of the Society for Research in Child Development*, *50* (1–2, Serial No. 209).
- Hamilton, C. E. (2000). Continuity and discontinuity of attachment from infancy through adolescence. *Child Development*, *71*, 690–694.

- Hetherington, E. M., Bridges, M., & Insabella, G. M. (1998). What matters? What does not? Five perspectives on the association between marital transitions and children's adjustment. *American Psychologist*, *53*, 167–184.
- Howes, C. (1999). Attachment relationships in the context of multiple caregivers. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment: Theory, research, and clinical applications* (pp. 671–687). New York: Guilford.
- Jacobvitz, D., Hazen, N., & Riggs, S. (1997). Disorganized mental processes in mothers, frightening/frightened caregiving and disoriented, disorganized behavior in infancy. Paper presented at the biennial meeting of the Society for Research in Child Development, Washington, DC.
- Johnston, J. R. (1995). Research update: Children's adjustment in sole custody compared to joint custody families and principles for custody decision making. *Family and Conciliation Courts Review*, *33*, 415–425.
- Kelly, R. F., & Ward, S. L. (2002). Allocating custodial responsibilities at divorce: Social science research and the American Law Institute's approximation rule. *Family Court Review*, *40*, 350.
- Lyons-Ruth, K., Alpern, L., & Repacholi, B. (1993). Disorganized infant attachment classification and maternal psychosocial problems as predictors of hostile-aggressive behavior in the preschool classroom. *Child Development*, *64*, 572–585.
- Lyons-Ruth, K., Bronfman, E., & Parsons, E. (1999). Atypical maternal behavior and disorganized infant attachment strategies. In J. Vondra & D. Barnett (Eds.), *Atypical patterns of infant attachment: Theory, research, and current directions. Monographs of the Society for Research in Child Development*.
- Lyons-Ruth, K., Connell, D., Grunebaum, H., Botein, S., & Zoll, D. (1984). Maternal family history, maternal caretaking, and infant attachment in multiproblem families. *Journal of Preventive Psychiatry*, *2*, 403–425.
- Lyons-Ruth, K., & Jacobvitz, D. (1999). Attachment disorganization: Unresolved loss, relational violence, and lapses in behavioral and attentional strategies. In J. Cassidy & P. R. Shaver (Eds.), *Handbook of attachment: Theory, research, and clinical applications* (pp. 520–554). New York: Guilford.
- Main, M., & Cassidy, J. (1988). Categories of response to reunion with the parent at age six: Predicted from attachment classifications and stable over a one-month period. *Developmental Psychology*, *24*, 415–426.
- Main, M., & Goldwyn, R. (1998). Adult attachment scoring and classification system. Unpublished manuscript, Department of Psychology, University of California at Berkeley.
- Main, M., & Hesse, E. (1990). Parents' unresolved traumatic experiences are related to infant disorganized attachment status: Is frightened and/or frightening parental behavior the linking mechanism? In M. T. Greenberg, D. Cicchetti, & E. M. Cummings (Eds.), *Attachment in the preschool years* (pp. 161–182). Chicago: University of Chicago Press.
- Main, M., Kaplan, N., & Cassidy, J. (1985). Security in infancy, childhood and adulthood: A move to the level of representation. In I. Bretherton & E. Waters (Eds.), *Growing points of attachment theory and research* (pp. 66–104). Chicago: University of Chicago Press.
- Main, M., & Solomon, J. (1986). Discovery of a new, insecure-disorganized/disoriented attachment pattern. In T. B. Brazelton & M. Yogman (Eds.), *Affective development in infancy* (pp. 95–124). Norwood, NJ: Ablex.
- Main, M., & Solomon, J. (1990). Procedures for identifying infants as disorganized/disoriented during the Ainsworth strange situation. In M. T. Greenberg, D. Cicchetti, & E. M. Cummings (Eds.), *Attachment in the preschool years* (pp. 121–160). Chicago: University of Chicago Press.
- Main, M., Tomasini, L., & Tolan, W. (1979). Differences among mothers of infants judged to differ in security of attachment. *Developmental Psychology*, *15*, 472–473.
- McMillen, J. C. (1992). Attachment theory and clinical social work. *Clinical Social Work Journal*, *20*, 205–218.
- Mnookin, R. H. (1975). Child-custody adjudication: Judicial functions in the face of indeterminacy. *Law and Contemporary Problems*, *39*, 226–293.
- Onishi, M., Gjerde, P. F., & Block, J. (2001). Personality implications of romantic attachment patterns in young adults: A multi-method, multi-informant study. *Personality and Social Psychology Bulletin*, *27*, 1097–1110.
- Pearson, J., & Luchesi Ring, M. A. (1982–1983). Judicial decision-making in contested custody cases. *Journal of Family Law*, *21*, 703–724.
- Ricks, M. H. (1985). The social transmission of parental behavior: Attachment across generations. In I. Bretherton & E. Waters (Eds.), *Growing points of attachment theory and research* (pp. 211–230). *Monographs of the Society for Research in Child Development*, *50*, (6, Serial No. 209).
- Riggs, S. A. (2003). Response to Troxel v. Granville: The implications of attachment theory for judicial decisions regarding custody and third-party visitation. *Family Court Review*, *41*, 39–53.
- Riggs, S. A., & Jacobvitz, D. (2002). Expectant parents' representations of early attachment relationships: Associations with mental health and family history. *Journal of Consulting and Clinical Psychology*, *70*, 195–204.
- Riggs, S. A., Jacobvitz, D., & Hazen, C. (2002). Adult attachment and history of psychotherapy in a normative sample. *Psychotherapy*.

- Rosenstein, D. S., & Horowitz, H. A. (1996). Adolescent attachment and psychopathology. *Journal of Consulting and Clinical Psychology, 64*, 244–253.
- Rothbard, J. C., & Shaver, P. R. (1994). Continuity of attachment across the life span. In M. B. Sperling & W. H. Berman (Eds.), *Attachment in adults: Clinical and developmental perspectives* (pp. 31–71). New York: Guilford.
- Scott, E. S. (1992). Pluralism, parental preferences, and child custody. *California Law Review, 80*, 615.
- Shaver, P. R., & Brennan, K. A. (1992). Attachment styles and the “Big Five” personality traits: Their connections with each other and with romantic relationship outcomes. *Personality and Social Psychology Bulletin, 18*, 536–545.
- Spangler, G., & Grossmann, K. E. (1993). Biobehavioral organization in securely and insecurely attached infants. *Child Development, 64*, 1439–1450.
- Spieker, S. J., & Booth, C. L. (1988). Maternal antecedents of attachment quality. In J. Belsky & T. Nezworski (Eds.), *Clinical implications of attachment* (pp. 95–135). Hillsdale, NJ: Erlbaum.
- Sroufe, L. A. (1983). Infant-caregiver attachment and patterns of adaptation in preschool: The roots of maladaptation and competence. In M. Perlmutter (Ed.), *Minnesota Symposia in Child Psychology: Vol. 16: Development and policy concerning children with special needs* (pp. 41–83). Hillsdale, NJ: Erlbaum.
- Sroufe, L. A., & Fleeson, J. (1986). Attachment and the construction of relationships. In W. Hartup & Z. Rubin (Eds.), *Relationships and development*. Hillsdale, NJ: Erlbaum.
- Sroufe, L. A., & Waters, E. (1977). Heart rate as a convergent measure in clinical and developmental research. *Merrill Palmer Quarterly, 23*(1), 3–27.
- Thompson, R. A. (1986). Fathers and the child’s “best interests”: Judicial decision-making in custody disputes. In M. E. Lamb (Ed.), *The father’s role: Applied perspectives* (pp. 61–102). New York: Wiley.
- Thompson, R. A. (1991). Attachment theory and research. In M. Lewis (Ed.), *Child and adolescent psychiatry: A comprehensive textbook* (pp. 100–108). Baltimore: Williams & Wilkins.
- Thompson, R. A., Lamb, M. E., & Estes, D. (1982). Stability of infant-mother attachment and its relationship to changing life circumstances in an unselected middle-class sample. *Child Development, 53*(1), 144–148.
- Troy, M., & Sroufe, L. A. (1987). Victimization among preschoolers: The role of attachment relationship history. *Journal of the American Academy of Child and Adolescent Psychiatry, 26*(2), 166–172.
- U.S. Department of Labor, Bureau of Labor Statistics. (2001). *Highlights of women’s earnings in 2000* (Report 952). Washington, DC: Author.
- van IJzendoorn, M. H., & Kroonenberg, P. M. (1988). Cross-cultural patterns of attachment: A meta-analysis of the Strange Situation. *Child Development, 59*, 147–156.
- Vaughn, B., Egeland, B., Sroufe, A. L., & Waters, E. (1979). Individual differences in infant-mother attachment at 12 and 18 months: Stability and change in families under stress. *Child Development, 50*(4), 971–975.
- Wallerstein, J. S. (1998). Children of divorce: A society in search of a policy. In M. A. Mason, A. Skolnick, & S. D. Sugarman (Eds.), *All our families: New policies for a new century* (pp. 66–94). New York: Oxford University Press.
- Waters, E., Merrick, S. K., Treboux, D., Crowell, J., & Albersheim, L. (2000). Attachment security in infancy and early adulthood: A twenty-year longitudinal study. *Child Development, 71*, 684–689.
- Waters, E., & Noyes, D. M. (1983–1984). Psychological parenting vs. attachment theory: The child’s best interests and the risks of doing the right things for the wrong reasons. *New York University Review of Law and Social Change, 12*, 505–515.
- Weinfield, N. S., Sroufe, L. A., & Egeland, B. (2000). Attachment from infancy to early adulthood in a high-risk sample: Continuity, discontinuity, and their correlates. *Child Development, 71*(3), 695–702.

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