

The alienated child: Responding to cases of post separation parental rejection

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Abstract:

A child's vehement rejection of a parent after divorce or separation can present the courts with a number of challenges. These can be exacerbated when children or parents make allegations of harm or abuse against the parent who is being rejected. Whilst there is no settled definition of parental alienation in psychology, it is a term that has meaning within England and Wales case law and is something that magistrates and judges are increasingly required to deal with in both private and public law cases. Drawing on established psychological and psychoanalytic constructs, as well as international research into the phenomenon of children's post-separation rejecting behaviours, this paper will offer insights into the complex dynamics that can lead to alienation and the developmental harm that these may cause to children.

The term parental alienation is nothing if it is not controversial. In recent years, the public debate around the phenomenon has become increasingly polarised, often raising strong emotions. Whilst some campaigners argue that allegations of parental alienation are a tool used by fathers to deflect attention from domestic abuse, others argue that domestic abuse is alleged by mothers to deflect attention from parental alienation. It is, perhaps, self-evident that there will be cases in which either of these propositions is true. The task before the courts is to sift through the conflicting personal and public narratives in order to determine the best interests of the child. Family court judges will, typically, encounter children's vehement rejection of a parent in contested s.8 private law cases, or public law cases brought by a local authority. The child's rejection is often accompanied by allegations of harm that are made by the child, or the parent they have become aligned to, against the rejected parent.

Parental alienation is not defined in primary legislation. Nevertheless, there is a substantial and growing body of case law that sets precedent and guides judicial interpretation. Indeed, as long ago as 2010, HHJ Bellamy (sitting as a deputy High Court Judge) argued that the concept of alienation may be regarded as mainstream (*Re S (Transfer of Residence)* [2010] 1 FLR 1785). More recently, the Honourable Mr Justice Keehan, sitting in the High Court, ruled that parental alienation is very harmful to a child, skews the child's ability to form any and all sorts of relationships and is not limited to the failed relationship with the other parent' *Re H (Parental Alienation)* [2019] EWHC 2723 (Fam). Cafcass (n.d.) defines alienation as 'a child's resistance/hostility towards one parent [that] is not justified and is the result of psychological manipulation by the other parent.' Its guidance also refers to behaviours it labels 'active' or 'persistent' that one parent uses to undermine a child's relationship with its other parent.

Within the field of psychology, definitions of parental alienation vary. The psychoanalyst, Wilhelm Reich, referred to one divorcing parent engaged in denigrating behaviour as 'a means of alienating the child' from the other parent (1990, p. 521) as far back as the 1940s. However, current discourse around the phenomenon can typically be traced back to an article published by Gardner (1985) in the journal of the American Academy of Psychoanalysis and Dynamic Psychiatry, in which he described the 'conscious (...) subconscious and unconscious factors within one parent that contribute to a child's alienation' from their other parent. Gardner also identified eight behavioural signs in children that he labelled Parental Alienation Syndrome. Kelly and Johnston (2001), in their theoretical reformulation of Gardner's work, argued that alienation was not a syndrome or a mental disorder of the child and, instead, focussed on the 'systemic array of contributing factors' that can cause alienation in children, including the child's capacities and vulnerabilities.

Whilst the intervening decades have seen a growing body of research around the phenomenon of children's post-separation rejection of a parent, much of the literature has focussed on developing diagnostic criteria to determine the presence or otherwise of parental alienation; typically, in cases before the court (see, for example, Baker, 2020; Lorandos & Bernet, 2020). However, practitioners in Europe are increasingly rejecting such diagnostic approaches and are, instead, recognising alienation as a relational problem in which a child unconsciously utilises the maladaptive defence of psychological splitting in response to a relational landscape that has become frightening and overwhelming (Woodall, Roje Đapić, Woodall and Buljan Flander, 2020). Such an approach recognises each case as having its own unique dynamics and employs a differential assessment process to identify the specific and particular causes of the child's rejection, together with a treatment route that responds to the individual needs of the family.

Recognising the problem as a maladaptive response in the child to unmanageable psychological pressure in the post-separation landscape requires those charged with determining the best interests of the child with looking beyond the narrow confines of care and contact and, instead, treating alienation as a child protection issue. Whilst alienation may, on the surface, look like a problem of a child not spending time with one of their parents, the more serious problem for the child is the unconscious mechanism that enables a child to act counter to the evolutionary imperative to remain in relationship with, and in proximity to, their attachment figures.

First and foremost, alienation in a child must be recognised as an attachment trauma. Attachment is the psycho-biological connection that develops between infants and their primary caregivers and provides the relational template for the child as it grows and reaches adulthood (Bowlby, 1988). Initially, the attachment bond provides the infant with a safe haven in which it can rely on his or her primary caregivers for comfort at times whenever she or he feels threatened. It also provides the child with a secure base that provides a foundation from which she or he can develop their own coping skills. In the early part of their lives, infants will maintain physical proximity to their attachment figures. However, in time, the child will begin to explore the world around them but return to proximity with an attachment figure if they feel insecure or threatened. Typically, children will become unhappy and sorrowful when they are separated from a caregiver. In response to the attentiveness and quality of the care that

parents provide, each child develops a somewhat different attachment style (Howe, 2011).

Bowlby (1988, p. 135) proposes that attachment theory ‘emphasizes (...) the primary status and biological function of intimate emotional bonds between individuals, the making and maintaining of which are postulated to be controlled by a cybernetic system situated within the central nervous system’ and Baker, Creegan, Quinones, and Rozelle (2016, p. 177) note that ‘regardless of the quality of the parent-child relationship, children are biologically hard-wired to form and maintain an attachment relationship with their caregivers.’ Given the instinctual nature of the attachment process, any breach in an attachment relationship or in the attachment confirming behaviours in the child must be regarded as being maladaptive and, therefore, harmful for the child.

Although children will, typically, develop separate and unique attachment bonds to each of their parents, in the intact family the child will have what may be described as a unified attachment experience where shifts in the child’s attachment focus are fluid and do not stimulate psychological stress. However, in the post separation family, the child must find ways to maintain their attachment bonds in a fractured, rather than unified, relational world. Woodall and Woodall (2017) refer the psychological task of shifting attachment focus as ‘crossing the transition bridge.’ When the post separation dynamics within the family do not present significant obstacles, the child is usually able to switch its attachment focus with only minimal impairment. However, when the post separation dynamics put pressure on the child’s attachment system, transition may become difficult and, in some circumstances, impossible for the child to achieve. It is in these circumstances that the child may become psychologically split and, as a consequence, alienated. It is the splitting defence that poses the greatest threat to the child’s wellbeing and development.

Splitting is a schizoid defence mechanism that protects the ego when it is confronted with competing and irreconcilable feelings. Rycroft (1995, p. 173) describes splitting as a ‘process by which a mental structure loses its integrity and becomes replaced by two or more part-structures.’ He notes that, ‘typically only one resulting part-ego is experienced as “self”, the other constituting a (usually)unconscious “split-off” part of the ego.’ In alienation cases, the child who can no longer find a way to integrate the experience of its attachment to both parents is unconsciously compelled to split-off and deny the attachment bond to one of its parents. This is primarily an internal process but is witnessed in the external world through the child’s rejection of one of its parents. Fromm (1963) describes alienation as an estrangement from the self, which corresponds with Winnicott’s theories on the development of the false self (1990).

Alienation cases will typically come before a court in the context of a parent seeking to restore a relationship with a child who is rejecting them. The intuitive response is to seek to identify the problem in the child’s relationship with the parent that they are rejecting and, in most cases, the child will offer a list of complaints or allegations to justify their rejection. These justifications will range from the trivial to far more serious allegations such as physical and sexual abuse. The court is, therefore, tasked with determining whether the allegations have veracity and, if so, whether they might justifiably be considered to be a reason for the child’s behaviours. Cases can easily become mired in untested allegations and an early determination of the issues through a fact-finding hearing can help to prevent this (Wiley, 2019).

A case in which a child's rejection of a parent has a justifiable cause cannot be said to be a case of alienation. However, where no demonstrable and justifiable cause may be found and, more importantly, where the child is showing signs of psychological splitting, it is highly likely that the rejection lies not in any dysfunction in the child's relationship with the parent that they are rejecting, but in their relationship with the parent to whom they have become aligned. This is a case that may be described as alienation. Genuine cases of alienation should, therefore, be recognised primarily as being a problem of hyper-alignment rather than a problem of rejection.

There are no specific parental behaviours that will necessarily lead to what may be termed a justified rejection. Rather, a justified estrangement may be identified through the quality of the rejection and the child's presentation. Most importantly, a child who is rejecting a parent on justifiable grounds is one that continues to demonstrate psychological integration and perspective in the relationship with both of their parents. Research suggests that alienated children lack relational perspective and articulate highly polarised views about their parents; one parent being the embodiment of everything that is good and safe and the other being the embodiment of all that is bad and dangerous. Counterintuitively, this is in contrast to children who are found to have been maltreated, who typically perceive the abusive parent in an ambivalent manner (Bernet, Gregory, Reay & Rohner, 2017).

In understanding what may lead to a child to become hyper-aligned to one of its parents, we must look at the inter-psychoic relationship between the child and the parent to whom they have become pathologically aligned. Whilst some cases feature what Baker and Eichler (2016) describe as 'strategies' by the aligned parent, at least as many are rooted in the inter-personal and unconscious relationship between the child and the parent that they have become bound to. Overt strategies may include making a child believe they have been harmed by the other parent, causing the child feel that they are unsafe in the other parent's care, undermining the other parent's role, involving the child in a hostile narrative about the other parent and their wider family, involving the child in the adult relationship, or encouraging the child to make false or fabricated allegations. Inter-psychoic signals that may cause a child to become hyper-aligned include inducing abandonment threat, shunning (Linehan & Koerner, 1993), psychological terrorisation (Frankel, 2002), emotional dysregulation and psychological decompensation, enmeshment (Kerig, 2005), role corruption (Boszormenyi-Nagy & Spark, 1973; Minuchin, 1974), and leakage of unresolved trauma (Haley, 1977; Hesse & Main, 1999; Salberg, 2015).

Alienation cases often feature the presence of pathological personality traits such as narcissistic, emotionally unstable (borderline), histrionic, paranoid, obsessive, compulsive, and sociopathic personality disorders. Nevertheless, it should be recognised that whether the alienating behaviours of a parent might be conscious and deliberate or whether they are unconscious and rooted in the parent's own psychological difficulties, the harm to the child will be the same. As Lord Justice McCombe, Lady Justice King and Lord Justice Peter Jackson, sitting in the Court of Appeal (Civil Division) note, 'the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive' (Re S (Parental Alienation: Cult) [2020] EWCA Civ 568).

Key to the resolution of alienation cases is the interlock between the legal and mental health interventions. At the heart of every alienation case are asymmetric power relationships. This means that therapeutic interventions are highly unlikely to be effective until the power of the aligned parent is negated. This can only be done through the greater power of the court. Similarly, legal interventions that do not provide for therapeutic input may offer structural change but risks leaving the child psychologically split and, in doing so, will fail to address the underlying problem for the child. At its most effective, the legal and mental health interlock produces the conditions in which dynamic change for the child becomes possible through the implementation of a structured intervention based on immediate relief of splitting in the child.

It is often helpful for the court to receive expert opinion under Family Procedures Rules, Part 25. Assessments that observe family dynamics over a period of time rather than provide a snap-shot are most likely to enable the court to understand best how the family system functions, and assessments that require the parties to do what they least want to do helps to bring the problematic dynamics to the surface. Whilst there may be familiar patterns between cases, each child and each family is unique, and each case must be forensically assessed to understand the severity of the reaction in the child and identify the causal dynamics. It is not possible to identify the appropriate treatment route until this work has been done. Assessments should seek to illuminate the individual and family dynamics that are causing the child's reaction, the degree to which those dynamics may be ameliorated to relieve the child of the need to split, the degree to which the aligned parent is able to develop insight and change, and the capacity of rejected parent to provide the child with the therapeutic care required to heal the splitting defence (Woodall & Woodall, 2020).

The voice of the child is, of course, a critical factor in alienation cases. The child's right to be heard is enshrined in Article 12 of the UN Convention on the Rights of the Child and is incorporated into family law in England and Wales through the Children Act 1989 s.1 (3) (a) as ascertainable wishes and feelings. However, the Children Act 1989 s.1 (1) states that 'when a court determines any question with respect to (...) the upbringing of a child (...) the child's welfare shall be the court's paramount consideration.' The court must, therefore, determine the balance between the welfare of the child and the child's right to have its views taken into consideration in determination of outcomes. Children's wishes and feelings in such circumstances are reported to be highly unreliable (Weir, 2013) and Mr Justice Williams (Neutral Citation Number: [2020] EWHC 1940 (Fam)) notes that, whilst it was clear that the child's expressed views were that she wished to remain living with the mother, all of her views had 'to be assessed having regard to the fact that they are distorted by the prism of alienation.' Warshak (2003) argues that, although alienated children may be outspoken in their custodial preferences, their wishes may not reflect their best interests, and notes that 'giving children's wishes and feelings paramount weight in determining the outcome of such cases burdens children with the terrible responsibility and impossible task of managing the adult world around them.'

Unadapted traditional therapies, such as systemic family therapy, are widely reported to be contraindicated in alienation cases (v. Boch-Galhau, Dijkstra, Buljan Flander, Hellblom Sjögren, Woodall & Woodall, 2019). Analysis based on 1,000 cases, undertaken by Clawar & Rivlin (2013), identified that 'even under court order, traditional therapies are of little, if any, benefit in regard to treating this form of child

abuse' and Fidler, Bala and Saini (2013) argue that 'therapy in more severe cases, which may include some moderate cases, may be associated with the alienation becoming more entrenched.' Critically, Andritzky (2002) notes that 'there are no reports of successful treatment of mild/medium level [alienation] that do not include the re-establishment of contact between child and alienated parent.' It is important to recognise that any intervention that requires the child's acceptance is doomed to fail because the child is caught in a dynamic that compels them to resist.

The purpose of any treatment intervention must primarily be the healing of the splitting defence in the child. The first principle of treatment, therefore, is to heal the child's internal split through therapeutically managed exposure to the split-off object (the rejected parent) in order to activate the suppressed attachment bond. This should be done without delay. However, treatment can only be carried out in conditions where the court takes responsibility for management of the dynamics around the child and ensures constraint of, or protection from, the aligned parent's problematic behaviours. In this regard, the judge acts as a 'super parent' who establishes a functioning family hierarchy through its powers to compel. Critical to the success of any intervention aimed at restoring a child's relationship with a parent they have been rejecting is the team around the child. Close case scrutiny and management is crucial to success and the role of the judge in keeping all of the professionals, as well as the parents, to any reunification plans is vital as any plan is only as strong as the weakest link in the chain of professionals.

Where progress towards restoration of the child's natural relationship with a rejected parent becomes stalled, the court may wish to consider whether a change of residency is required in order for the child's maladaptive defences to drop. A change of residency is not enacted to punish a recalcitrant parent, but to aid the restoration of the child's psychological integration. However, removal of the child from one parent into the care of the other does not automatically move the child back to a position of integration and should not, therefore, be seen an end in itself. It is sometimes argued that a change of residence is draconian or even harmful to the child but, with the correct therapeutic support, removing a child from harm and placing them with a safe and good enough parent offers the child relief from psychological distress in the short term and provides protection from longer term harm. Nevertheless, any intervention that restores the child's relationship with the previously rejected parent but does not honour and attend to the child's attachment relationship to the previously favoured parent may be considered to be a failed intervention. Whilst a child may need to be protected from the harmful behaviours of a parent, a successful intervention allows and supports a child to retain a positive relationship with their internalised object relationship to that parent.

Research suggests that at least six major areas of functioning are affected in adults who were alienated as children, including low self esteem, lack of trust in themselves and others, depression, drug-alcohol problems, alienation from their own children, and divorce (Baker, 2005; Novković, Buljan Flander & Hercigonja, 2012) and v Boch-Galhau (2018) notes that alienation can lead to long-term traumatic psychological and physical difficulties. In the face of this evidence, the need to treat cases of alienation in the same way as other child protection cases appears to be undeniable. In the words of Mr Justice Williams (Neutral Citation Number: [2020] EWHC 1940 (Fam)), 'the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and

wherever possible to uphold the child and parent's right to respect for family life before it is breached.'

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