American Law Institute’s *Principles of the Law of Family Dissolution, Eight Years After Adoption: Guiding Principles or Obligatory Footnote?*

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The American Law Institute's *Principles of the Law of Family Dissolution: Analysis and Recommendations (Principles)* arguably represent the most sweeping attempt at family law reform in the last quarter century. The *Principles* consider many of the foundational questions in family law surrounding divorce, cohabitation, same-sex relationships, and parentage. Adopted in 2000, the *Principles* were published in 2002 to great fanfare. One author praised the project for bringing to “domestic relations law an increased measure of uniformity and fairness.” The *New York Times* predicted that the *Principles* “are likely to have a major impact.”

This Article presents the first comprehensive, empirical study of the *Principles'* impact since their adoption in 2000. Unlike the ALI’s *Restatements of the Law*, which have been directed mainly at the courts, the *Principles* were directed at state legislatures as well. Thus, we examined the state code and legislative history databases in Westlaw and LexisNexis for any legislation referencing the *Principles* since the project’s inception in the early 1990s. Although one state, West Virginia, borrowed from the *Principles* in enacting child custody legislation, no state code section or proposed legislation has referenced the *Principles* since 1990. Even in the custody realm, no legislature appears to have followed West Virginia in adopting the *Principles*’ custody proposals and neither has any legislature enacted legislation to effect the *Principles*’ parent by estoppel proposals. While we cannot say definitively that the *Principles* have not had some legislative influence somewhere, if legislatures are borrowing from the *Principles*, they are certainly not tipping their hands.

The *Principles* have had more success with the courts, yet even this impact is slight and mixed. A mere 100 cases have cited to the *Principles* since 1990, less than half the number of cases that cite to two treatises published contemporaneously with the *Principles*. While the cases citing the *Principles* come from twenty-nine states and the U.S. Supreme Court, courts in six New England states account for almost half (48) of those citations.

How the courts use the *Principles*’ recommendations tells an even starker story. Courts reject the *Principles*’ recommendations more often than they accept them, by a ratio of 1.5 to 1. But by far and away, courts use the *Principles* most often to “pile on”—that is, to bolster the court’s holding in a case that would have come out the same way in the absence of the *Principles*. Thus, in nearly a quarter of cases (24.24%), the *Principles* serve as an obligatory footnote—used by judges, as Judge Robert Sack once quipped, “like drunks use lampposts, more for support than for illumination.” The shrinking relevance of the ALI, as measured by the *Principles*’ impact, is hardly unique to the ALI. As academic work has become more theoretical and less practical in recent decades, judges have increasingly dismissed its importance.

While it remains to be seen what will ultimately come of the *Principles*, it is evident that the *Principles* are not having a significant effect with the two groups at which they directed.