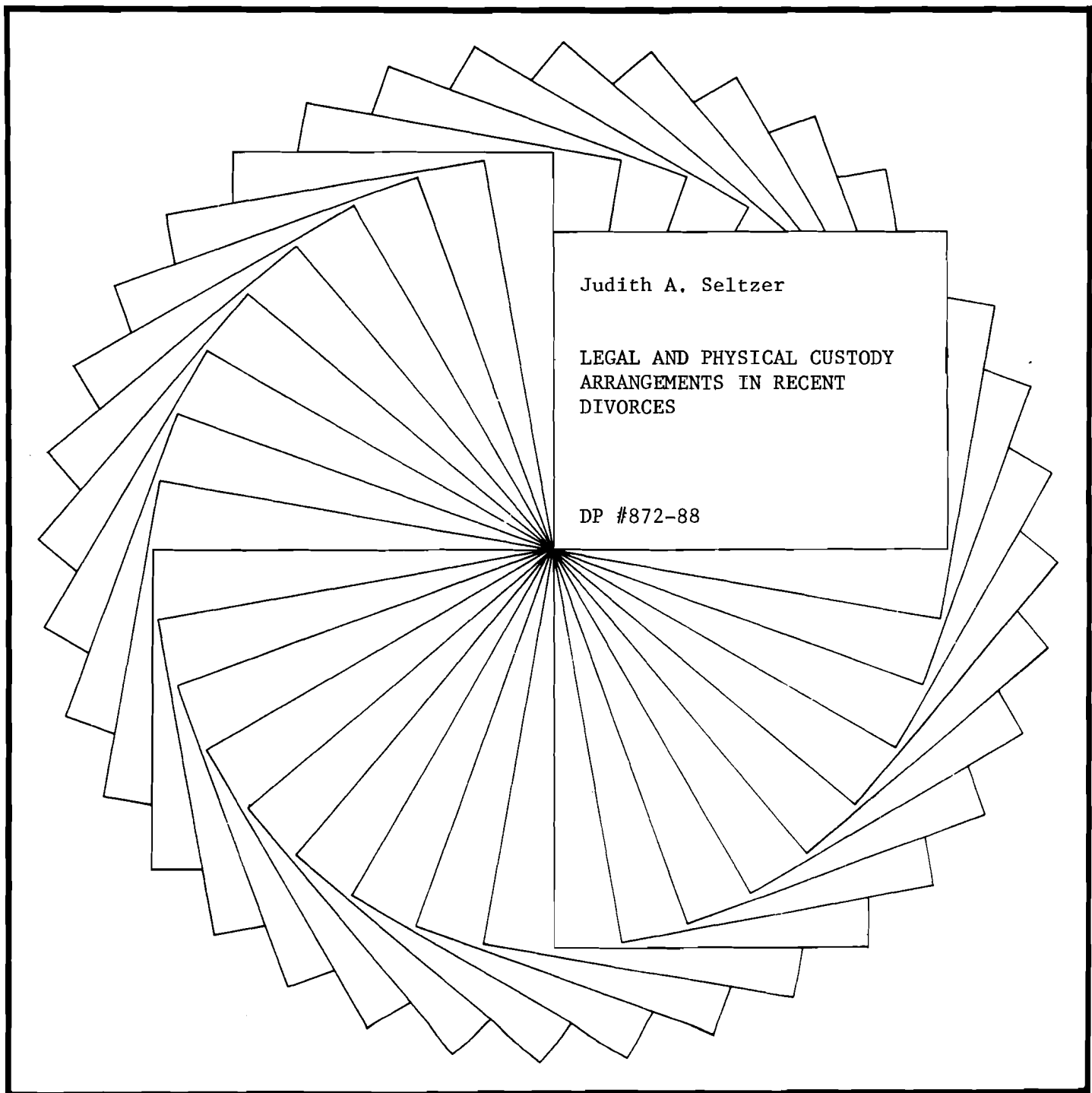




Institute for Research on Poverty

Discussion Papers



Judith A. Seltzer

LEGAL AND PHYSICAL CUSTODY
ARRANGEMENTS IN RECENT
DIVORCES

DP #872-88

Legal and Physical Custody Arrangements in Recent Divorces

Judith A. Seltzer
Institute for Research on Poverty
University of Wisconsin-Madison

December 1988

This research was supported by Contract No. 144W857 between the Wisconsin Department of Health and Social Services and the Institute for Research on Poverty, as well as the Center for Demography and Ecology, which receives core support from the Center for Population Research of the National Institute for Child Health and Human Development (HD-5876). The analyses were also supported by a grant from the University of Wisconsin Graduate School. Opinions expressed here are my own. I am grateful to Larry Bumpass, Irwin Garfinkel, and Robert Mare for helpful comments on an earlier draft of this paper, to Wendy Manning for research assistance, and to Elizabeth Uhr for editorial advice.

The Discussion Papers series of the Institute for Research on Poverty is designed to describe, and to elicit comments on, work in progress. Its papers should be considered as working drafts.

Abstract

Demographic studies of family relationships frequently equate household composition with family membership. High rates of divorce and parent-child separation challenge this assumption. Parental rights and responsibilities may continue even when parents and children live apart. This paper describes the legal and physical custody arrangements adopted by a representative sample of recent divorce cases. These data show that legal and physical custody do not coincide in a substantial minority of cases. The most common arrangement, however, is still to assign both legal and physical custody to mothers. The paper also examines the social and demographic factors that predict legal and physical custody arrangements. The analysis shows that parents' income is a more important determinant of legal custody, whereas children's ages predict physical custody.

Introduction

Demographic studies of families focus almost exclusively on those who live together, although family membership transcends co-residence. Parents who divorce but maintain contact with their children after moving to separate households are an increasingly common instance in which family and household membership do not coincide. Both family relationships and living arrangements affect children's life chances. Yet most studies treat children's well-being as a function solely of household rather than family characteristics because the latter are rarely observed in census and survey data on children.

Children's living arrangements also receive more attention than family relationships because of the rapid growth in the number of children living in single-parent households. Between 1940 and 1980, the proportion of children living with only one parent almost doubled, to 19.3 percent (Sweet and Bumpass, 1987). Recent estimates suggest that nearly half of children will live with a single mother because of divorce (Castro and Bumpass, forthcoming). Justification for the emphasis on living arrangements or physical custody comes from studies showing the importance of shared residence for children's emotional and economic welfare. Living together provides regular opportunities for the intimate interaction between children and their primary caretakers that is necessary for children's adjustment (Rutter, 1981). Co-residence also facilitates parental supervision and child-rearing practices that affect children's high school graduation (McLanahan, Astone, and Marks, 1988). Perhaps most important, living arrangements indicate the physical setting and economic resources to which children have direct access. In short, children's immediate and longer-term well-being depends, to a large extent, on where they live and with whom.

Considerably less attention is paid to the question of who has legal custody of children after divorce. Legal custodians have the formal authority to make major decisions about childrearing (e.g., types of schooling, nature of health care provided). While legal custody and physical custody often coincide, there are important exceptions. Children whose parents hold joint legal custody often live with their mothers (Maccoby, Depner, and

Mnookin, n.d.). How parents divide the legal rights and responsibilities of parenthood may affect children's lives in a variety of ways. When legal and physical custody differ, as when parents share legal custody but the mother is the sole physical custodian, the nonresidential father may use his formal authority to constrain the mother from moving their children to another state (Schepard, 1985). Legal custody may also affect the allocation of child support responsibilities. Weitzman (1985) and Fineman (1988) for example, argue that nonresidential fathers sometimes use joint legal custody to avoid or reduce the amount of child support that they owe the residential mother. While evidence supporting this claim is largely anecdotal, it is probably true that parents negotiate legal custody and child support awards at the same time and that decisions about one may affect the other (Mnookin and Kornhauser, 1979; Weitzman, 1985. Arendell, 1986).

Laws governing child custody have been changing rapidly, in general increasing opportunities for joint legal custody. By 1987, thirty-five states had joint custody laws (Freed and Walker, 1987).¹ Despite major changes in custody statutes, we know very little about the consequences of different legal and physical custody arrangements for children and their parents (Furstenberg, 1988; Kelly, 1983). Most previous studies focus on either physical *or* legal custody. When data on both aspects of custody are available, they are not always combined in the same analysis (Weitzman and Dixon, 1979). In addition, previous research provides limited information about family characteristics associated with custody choices because studies use small (e.g., Luepnitz, 1982; Ambert, 1985; Warshak and Santrock, 1983; Bowman and Ahrons, 1985), purposive (e.g., Chesler, 1986; J. Grief, 1979; G. Grief, 1985) samples. Other studies examine selective subpopulations such as families who contest custody disputes (Pearson, Munson, and Thoennes, 1982). Even more methodologically sound studies are hampered by small numbers of cases in crucial categories (e.g., joint legal and physical custody), an absence of information on key variables such as socioeconomic status (Phear et al., 1984), and lower than optimal response rates (Maccoby, Depner, and

¹Recent debates in California's state legislature may augur a reversal of legislation favoring joint custody legislation (California Senate Bill 1306 1988 memoranda).

Mnookin, n.d.). While these studies provide valuable insight into the variability of postdivorce custody arrangements and suggest potential consequences of custody choices, they leave unanswered basic questions about the demographic characteristics associated with legal and physical custody.

The allocation of legal and physical custody may depend on different factors. Legal custody has a symbolic importance to parents and children in addition to its judicial significance. Joint legal custody, for example, symbolizes *both* parents' formal commitment to their children. It also implies a more egalitarian division of childrearing responsibilities than does sole-mother custody.² Because education is associated with egalitarian gender-role attitudes (Cherlin and Walters, 1981), one might expect more highly educated parents to prefer joint legal custody over the traditional assignment of sole legal custody to the mother, regardless of where children actually live. Joint legal custody may also occur more frequently among high-income families if their higher child support awards³ motivate nonresidential fathers to seek the legal role of father to justify their continuing role as an economic provider.

In contrast, physical custody - children's living arrangements - depends largely on the parents' actual rather than symbolic division of labor before divorce. Children typically remain with their primary caretaker when parents separate. In the vast majority of cases, mothers provide most childcare (Geerken and Gove, 1983: Table 4.1; Hill, 1985: Table 7.3). When both parents participate in childrearing, fathers' contributions relative to mothers' increase as children get older (Pleck, 1985: Tables 2.5, 2.6). Census data on living arrangements are consistent with this time-use evidence; older children are more likely to live in households with single fathers than younger children (Sweet and Bumpass, 1987, Table 7.2). The number of children may also affect physical custody arrangements.

Whether joint legal custody actually increases equality between fathers and mothers is a separate, and hotly debated, issue (See Weitzman, 1985; Fineman, 1988; and Schulman and Pitt, 1982.)

Beller and Graham (1986) show a positive association between nonresidential father's income and the size of the child support award.

Parents with larger families may have a longer history of following a traditional division of labor in which mothers provide full-time childcare than those with smaller families, controlling for other factors. Thus, because family size and composition correspond to the predivorce division of childcare, these factors probably have a stronger impact on physical than legal custody.

This paper investigates the social and demographic correlates of custody arrangements for a representative sample of recent divorce cases. The analysis distinguishes between legal and physical custody and uses a large sample to assess the net effects of socioeconomic status and family structure on custody outcomes. The paper describes the prevalence of various combinations of legal and physical custody and examines the correspondence between the the legal and physical custody arrangements that parents adopt at divorce. A multivariate analysis addresses the question: what characteristics predict custody type?

Description of the Data

The analysis uses data from a representative sample of Wisconsin divorce cases involving minor children. The dataset, the Court Record Database (CRD), includes detailed information about the legal aspects of divorce for a sample of approximately 4,300 divorce and legal separation cases with child-support-eligible children. The database includes abstracts from the record of the initial court contact, parents' financial records filed at the time of divorce, returns to court during the one to three years after the initial settlement, and records of payments that noncustodial parents make to the Clerk of Courts. The unit of data collection and analysis is the family or case. The sample of families analyzed here represents nearly 7,200 children.

The CRD sample design reflects the organization of the family court system in Wisconsin, which is administered at the county level. Within counties, the sample frame for the CRD includes child-support-eligible family court cases (i.e., those with minor children who have two living parents). This paper uses data from five cross-sectional samples of legal separation and divorce cases who entered the court system between July 1980 and

June 1985. The cases were sampled from 22 counties.⁴ (For a more detailed discussion of sample design, see Garfinkel et al., 1988.)

The pooled cross-sectional sample includes 4,327 cases. From these, I exclude 270 cases because parents adopted a split custody arrangement in which siblings live with different parents or custody was not assigned. These cases are dropped from the sample because the small number of cases of each custody type limits the reliability of estimates and hampers the multivariate analysis. An additional 19 cases were deleted because of errors or missing information on other variables in the analysis. The results reported here use a sample of 4,038 cases.

The sample definition restricts the analysis to families who were recently separated. The analysis, therefore, provides information about parent-child relationships during the critical period after separation when children's lives are restructured. However, families establish a wide variety of relationships immediately after separation, and significant changes in parent-child relationships occur in the first year or two after separation (Hetherington, Cox, and Cox, 1982; Furstenberg et al., 1983). Children may move from one parent's household to the other's as they adjust to their new circumstances. Some families return to court to renegotiate legal custody (Ilfeld, Ilfeld, and Alexander, 1984). Thus the CRD does not provide a picture of the longer-term variation in custody arrangements.

Using data from a single state to study custody has both advantages and disadvantages. On one hand, relying on data from one state controls for the legal and social environment affecting divorce decisions. There is wide national variation in the laws governing custody and child support (Beller and Graham, 1987; Freed and Walker, 1987).

⁴The sample includes observations from 22 counties for the years 1980 through 1984, and a subset of 20 counties for the years 1984 and 1985. Two counties, La Crosse and Milwaukee, were only sampled in the early years of data collection because of changes in counties' willingness to participate in the study and elements of the design affecting the project's larger goal, evaluating the Wisconsin child support reforms. These elements are not relevant to the substantive issues addressed here. I included cases from all 22 counties when pooling the cross-sectional samples to increase the number of joint custody cases in the analysis sample.

Estimates of the prevalence of custody types from the Wisconsin data do not apply to custody in other states, although, as noted above, over two-thirds of all states are similar to Wisconsin in allowing joint legal custody.⁵ However, results from the multivariate analysis predicting custody may be useful for understanding custody decisions in the national population. The Wisconsin CRD has the additional advantage that it includes cases sampled throughout the state rather than restricted to one or two counties, as is common in most state-based analyses of divorce processes (e.g., Weitzman, 1985; Maccoby, Depner, and Mnookin, n.d.; McLindon, 1987).

On the other hand, using data from Wisconsin may be a disadvantage, because Wisconsin has few large urban areas, and child support practices, a possible component of custody decisions, may vary depending on the size of the community (Chambers, 1979). I address this problem where possible by contrasting Milwaukee, the state's largest urban area, with smaller counties. Wisconsin also has a much smaller percentage of blacks and Hispanics than the United States as a whole. Thus the data are more appropriate for generalizing about the factors that predict custody type in the U.S. white population than for generalizing to minority populations.

Two types of data are abstracted from court record documents. The first is demographic data for the parents at the time of the divorce petition, including both parents' incomes, number and ages of children, and date of marriage. Second, data on court actions are recorded: the dates and reasons for going to court, the terms of custody agreements, financial aspects of divorce settlements, and whether attorneys are involved. By relying on data from official records, the analysis avoids biases common to survey samples that require participation by both parents as a condition for sample inclusion (Bowman and Ahrons, 1985). The combination of information about both legal and physical custody allows a more thorough analysis of these aspects of postdivorce family life than has been possible for the nation as a whole.

⁵For the period covered by the CRD, Wisconsin statutes allowed joint legal custody when it was in the best interest of the child (Wisconsin Statutes, 1985).

Measuring Custody

The CRD abstracts of divorce petitions and outcomes include reliable information about legal custody arrangements because legal custody is a major component of parents' divorce negotiations (Mnookin and Kornhauser, 1979). Documentation of physical custody arrangements, that is, where children actually live after the divorce, is considerably less complete. In part, this is because parents and the courts assumed, until recently, that children would live with their legal custodian; therefore there was no reason to obtain additional information about physical custody. In addition, living arrangements and children's visits with a nonresidential parent are usually the result of informal agreements that depend on the size of each parent's house or apartment, the parents' proximity, and parents' and children's preferences. The complexities of coordinating schedules for two households and the difficulty of allowing for many short-term arrangements mean that it is easier for parents and courts to leave physical custody unspecified in legal agreements. More recently, physical custody has become important for attempts to improve equity in the child support system. When children live with a parent they automatically share that parent's income. Thus a concern with increasing equity in the child support system requires information about *de facto* custody as well as legal custody.

Physical custody is indicated by responses to the item in the data abstraction form: "Number of children living primarily with each parent." The court records and data forms permit only a crude assessment of physical custody. The data indicate the parent who is the primary physical custodian at the time of the final divorce decree. This information is part of the formal record to which parents (and their attorneys) attest. The data abstraction form indicates joint physical custody only when children spend equal time in each parent's household. Information about unequal part-time residence (e.g., two-thirds of the time with the mother, one-third with the father) is not available in the court documents. Nevertheless, these data provide better information about the correspondence between legal and physical custody than is generally available. For a valuable exception,

see Maccoby, Depner, and Mnookin (n.d.).]

Independent Variables: Family and Divorce Characteristics

The analysis considers the effects of socioeconomic status and family composition on custody.

Socioeconomic Status. Socioeconomic status is measured by each parent's annual income at the time of the final judgment. The multivariate analysis treats each parent's income separately rather than combining the incomes to measure socioeconomic status. In this way, the analysis takes into account the individual economic resources that parents are able to use to influence custody. The more money each parent has, the more likely that the parent will gain control over the couple's children, all else equal.

Incomes may also affect custody decisions because incomes reflect the parents' household division of labor prior to the divorce. Mothers with little or no income may be those who played the traditional homemaker role, whereas mothers with higher incomes may have combined paid work and childcare. If the predivorce division of labor is continued after divorce, mothers who were full-time homemakers may be more likely to receive sole legal and physical custody than mothers who were not homemakers. In addition, parents with higher incomes also have more education and are more likely to be in professional jobs that compete with children for parents' time and attention. Highly educated parents may be more likely to share legal custody because each has invested more material and nonmaterial resources per child than less educated parents (Leibowitz, 1974). Thus more highly educated parents may be more likely to compromise by agreeing to joint legal custody so that neither parent loses their investment. In addition, fathers with higher levels of education may be more involved in childcare before the divorce than fathers with less education, given the effects of education on egalitarian gender-role attitudes (Cherlin and Walters, 1981; Rubin, 1976). The greater the father's involvement with children before divorce, the more likely parents may be to seek joint custody. Mothers in professional occupations may seek joint legal and physical custody if they think it will encourage fa-

thers to spend more time with their children. Sharing childrearing tasks provides mothers with the opportunity for more career-oriented activities. Unfortunately, the court record data on education and mother's employment have extremely high rates of missing data, so that investigations of socioeconomic status effects must be restricted to analyses of income effects.

Approximately a third of the cases in this sample had missing information on either the mother's or father's income. These cases were assigned the mean sample income for mothers and fathers respectively. Cases with missing information on income are identified by dummy variables. Missing information on income may be correlated with one parent's absence from the divorce proceedings, as in the case of desertion. Absent parents, obviously, are not likely to be awarded custody.

Family Characteristics. The analysis also includes several measures of family characteristics: the number of children 18 or younger in the family, the age of the youngest child, and duration of the couple's marriage.⁶ These variables indicate parents' involvement in childrearing and their investments in the predivorce family. Previous studies suggest that having older children increases the father's chances of seeking custody (Weitzman, 1985), perhaps because fathers and older children already have a history of sharing their lives. Fathers may also be more interested in sharing custody of older children, who do not need the intense physical care that infants and pre-school children require.

Legal Representation. Aspects of the divorce process also affect custody outcomes. When both parents are represented by attorneys, it is somewhat more likely that they will seek joint custody. First, divorce cases in which only the mother is represented are more likely to be cases in which the father has deserted the family than cases in which both parents have legal representatives. Second, parents who are concerned about maintaining an equal division of joint investments, including investments in children, are likely to seek legal advice as a way of insuring their rights.

⁶Unfortunately, this analysis cannot investigate the effects of children's sex on custody arrangements. The CRD does not include information on child's sex

Other Factors. Increased public attention to joint custody and the parental rights of fathers suggests that recent divorces are more likely to include joint custody awards. The analysis also identifies cases heard in Milwaukee County, because evidence from previous analyses suggests that the family court system works somewhat differently there than in the smaller Wisconsin counties (Danziger and Corbett, 1986).

Results

Prevalence of Legal and Physical Custody Types

Table 1 shows the percentage of cases of each custody type. Awarding legal and physical custody to the mother is still the favored arrangement in most divorce cases. Slightly more than 73 percent of the sample adopt this arrangement at the time of divorce. Another 15 percent agree to joint legal custody, but identify the mother as the physical custodian. Thus, 88 percent of the divorced families in this sample arrange for the children to live with their mothers most of the time. In contrast, 9 percent of the families arrange for children to live with their fathers; of these, over half award legal custody to the father while the remainder have joint legal custody. Only 2 percent share their children equally in the sense that the children are members of each parent's household. Even though more than one-fifth of the sample share the legal right to make decisions about the children's lives, fewer than 11 percent of families with joint legal custody also adopt joint physical custody.

Table 1 also shows that legal and physical custody do not coincide for a substantial minority of cases. In approximately one-fifth of divorce cases, the legal custodian differs from the physical custodian. Most discrepant cases have joint legal custody with the mother as the physical custodian. These data suggest that studies that equate joint legal custody with shared parenting greatly overestimate the proportion of families in which parents contribute equally to postdivorce childcare.

Table 1

Legal and Physical Custody Arrangements.
 Wisconsin Court Record Database,
 Cases Entering 1980-1985.

Custody Type (Legal/Physical)	Percentage
Mother/Mother	73.2%
Father/Father	5.3
Joint/Mother	15.2
Joint/Father	4.0
Joint/Joint	2.3
TOTAL	100.0
Unweighted N	4038

Note: Statistics calculated using sample weights.

Characteristics Predicting Custody Choices

To investigate the effects of socioeconomic status and family composition on custody type, I estimated a multinomial logit model in which the dependent variable is the five-category variable cross-classification of legal and physical custody described in Table 1. The analysis treats the category, mothers have legal and physical custody, as the reference category. The reference category is the most common custody arrangement and is the traditional standard against which alternatives are commonly compared. The analysis estimates the effects of the independent variables on the log odds of each custody type compared to the reference category, mother is legal and physical custodian (Aldrich and Nelson, 1984).⁷ Models are estimated in LIMDEP using maximum likelihood procedures (Greene, 1986).⁸

Descriptive statistics for the independent variables are presented in Table 2. Socioeconomic status varies widely across custody types. Table 2 shows that parents with joint legal custody have higher mean incomes than families in which mothers have sole legal custody. The difference by custody type is larger for father's income than for mother's income. Father's annual income at divorce is approximately \$3,700 less for cases in which mothers have legal and physical custody than for those in which parents share legal custody but the children live with their mother. The difference for mother's income is less than \$300 a year. The pattern of income variation across custody types is similar for both

⁷The explanatory variables in this model may be considered family or divorce case characteristics. Because none of the variables is a function of the alternate custody outcomes, I use multinomial rather than conditional logit models. (See Hoffman and Duncan, 1988.)

⁸This analysis is a reduced form model of the association between family characteristics and custody types. It does not consider the joint determination of custody and child support awards. Preliminary investigations show that when the amount of child support awarded and custody type are modeled simultaneously, the results follow the same pattern as reported below. Because of the computational difficulty of jointly modeling the polytomous custody type variable and child support awards, these preliminary analyses examined only the contrast between joint legal custody and mother sole custody for the subsample of children who live with their mothers.

Table 2
Means and Standard Deviations by Custody Type.
Wisconsin Court Record Database, Cases Entering 1980-1985.

	Custody Type (Legal/Physical)					All Cases
	Mother/ Mother	Father/ Father	Joint/ Mother	Joint/ Father	Joint/ Joint	
Family Characteristics at Divorce						
Father's annual income (thousands of dollars)	15.60 (12.08)	16.81 (10.72)	19.31 (19.50)	19.51 (9.06)	20.67 (20.58)	16.50 (13.65)
Father's income missing (1 if yes)	.28 (.45)	.20 (.40)	.19 (.39)	.12 (.33)	.23 (.42)	.26 (.44)
Mother's annual income (thousands of dollars)	8.21 (5.04)	6.92 (3.91)	8.46 (6.10)	8.87 (5.00)	10.82 (7.25)	8.26 (5.25)
Mother's income missing (1 if yes)	.19 (.40)	.41 (.49)	.16 (.37)	.24 (.43)	.24 (.43)	.20 (.40)
Number of minor children	1.77 (.88)	1.87 (.97)	1.77 (.82)	1.70 (.82)	1.74 (.72)	1.77 (.88)
Age of youngest child (years)	5.02 (4.48)	6.42 (5.29)	5.11 (4.17)	7.34 (4.73)	5.65 (3.94)	5.22 (4.51)
Marital duration (years)	9.50 (6.62)	11.23 (7.27)	9.86 (6.02)	12.25 (6.26)	10.55 (5.92)	9.78 (6.57)
Divorce Case Characteristics						
Both parents have lawyers (1 if yes)	.50 (.50)	.53 (.50)	.56 (.50)	.64 (.48)	.59 (.50)	.52 (.50)
Final divorce action in 1984 or more recently (1 if yes)	.22 (.41)	.21 (.41)	.35 (.48)	.32 (.47)	.43 (.50)	.24 (.43)
Case heard in Milwaukee County (1 if yes)	.28 (.45)	.19 (.39)	.20 (.40)	.15 (.36)	.15 (.36)	.25 (.43)

Notes: Statistics calculated using sample weights. Unweighted number of cases for each custody type: 2855, mother/mother; 244, father/father; 672, joint/mother; 160, joint/father; 107, joint/joint; 4038, total.

Standard deviations are in parentheses.

Income data are reported as constant dollars using 1980 as the base.

father's and mother's income except when fathers have legal and physical custody. In these cases, mother's income is nearly \$1,300 less per year than in any other custody type. For combined incomes, the most striking contrast is between families with joint legal and physical custody, in which parents' combined incomes are more than \$31,000, and families with other custody arrangements. Cases in which fathers have both legal and physical custody also lack information about mother's income in more than 40 percent of the cases. Mother-custody cases have higher rates of missing data on father's income than any of the joint legal custody cases because the former are more likely to include parents who divorce because the father deserts the family.

Table 2 also shows that children who live primarily with their fathers are older than children in other custody arrangements. When fathers have physical custody, youngest children are, on average, between 6.4 and just over 7 years old, whereas when mothers have physical custody, youngest children have a mean age of 5. Families with shared physical custody are more similar to families in which mothers have sole legal and physical custody than to those in which fathers have sole custody. Number of children involved in the divorce case does not vary by custody type.

The results of the multinomial analysis of custody choices are presented in Table 3. The net effects of the independent variables are generally consistent with the patterns in Table 2. When fathers have higher incomes, the odds of joint legal custody are higher compared to mother legal custody, regardless of where children live. The effect of mother's income varies by custody type. As mother's income increases, the odds of father/father⁹ custody compared to mother/mother custody decrease. In contrast, mother's income increases the odds of joint/joint custody relative to mother/mother custody, perhaps because mothers with higher incomes have professional occupations and are more likely to have had marriages that involved shared parenting before divorce than mothers with lower incomes. Predivorce co-parenting facilitates joint legal and physical custody after divorce as well

⁹To simplify the presentation I follow the convention of specifying legal custody type above the diagonal (/) and physical custody below it

Table 3

Multinomial Logit Analysis of Legal and Physical Custody Arrangements.
 Wisconsin Court Record Database, Cases Entering 1980-1985.

	Custody Contrasts			
	Father/Father vs. Mother/Mother	Joint/Mother vs. Mother/Mother	Joint/Father vs. Mother/Mother	Joint/Joint vs. Mother/Mother
Family Characteristics at Divorce				
Father's annual income (thousands of dollars)	.007 (.006)	.019* (.004)	.016* (.005)	.021* (.005)
Father's income missing (1 if yes)	-.911* (.177)	-.558* (.114)	-1.25* (.252)	-.568* (.260)
Mother's annual income (thousands of dollars)	-.101* (.021)	.001 (.008)	.006 (.015)	.039* (.012)
Mother's income missing (1 if yes)	1.25* (.159)	.113 (.119)	.790* (.202)	.652* (.245)
Number of minor children	.092 (.081)	-.036 (.054)	-.019 (.104)	-.132 (.133)
Age of youngest minor child (years)	.109* (.025)	-.010 (.017)	.099* (.029)	.001 (.038)
Marital duration (years)	-.022 (.018)	.014 (.012)	.008 (.020)	.005 (.027)
Divorce Case Characteristics				
Both parents have lawyers (1 if yes)	.114 (.141)	.166 (.091)	.110 (.172)	.216 (.209)
Final divorce action in 1984 or more recently (1 if yes)	-.183 (.150)	.588* (.090)	.596* (.170)	.853* (.205)
Case heard in Milwaukee County (1 if yes)	-.543 (.293)	-.224 (.178)	-.469 (.382)	-.410 (.478)
Constant	-2.47* (.258)	-1.98* (.155)	-4.05* (.312)	-4.27* (.346)
-2*log likelihood		7199.6		
number of parameters		44		

- Table Continued -

Table 3, Continued

Notes: Custody arrangements are indicated by legal custody type above the "/" and physical custody below the "/".

The model is estimated with unweighted data.

Standard errors are in parentheses.

* Indicates coefficient twice its standard error.

(Lowery, 1986). Mother's income does not affect the odds of joint legal custody when one parent, either the father or the mother, is the physical custodian.

Missing data on father's income decreases the chance of any custody type other than mother/mother custody. As noted above, missing information on father's income may be more common in cases when the father does not appear at the divorce hearing than when both parents are present. When fathers desert, the children are already in the mother's physical custody. Similarly, missing information on mother's income increases the odds of both custody types in which fathers have physical custody compared to mother/mother custody. That missing information on mother's income increases the odds of joint legal and physical custody may reflect greater informality in cases when parents expect to share childrearing after divorce. These families are probably more likely to arrange custody and child support outside of court, and judges are less likely to require that they document their financial affairs than in other divorce cases. Missing information on mother's income may also indicate the mother's uncertainty about her income. Those who have recently increased the number of hours that they work for pay as a result of their impending divorce may not have reliable information about their monthly income at the time of final judgment. Mothers in families seeking joint/joint custody may be more uncertain about their earnings because their job search takes longer; the mothers must find employment near their former spouses to facilitate child-sharing.

Fathers are more likely to have physical custody the older their youngest child. Age of youngest child does not affect the odds of joint/mother or joint/joint custody relative to mother/mother custody. Other family characteristics, including number of children involved and marital duration, do not affect legal and physical custody.¹⁰ As expected, recent divorce cases are more likely to be awarded joint legal custody regardless of where

¹⁰Analyses not shown here indicate that being a one-child family does not affect custody choices, nor does the age of the couple's eldest minor child. In addition, custody type is not affected by the age difference between the eldest and youngest minor children (among families with at least two children), although age differences may affect the consequences of custody arrangements (See Clingempeel and Reppucci, 1982.)

the children live than they are to have sole legal and physical custody awarded to the mother.

The contrasts suggest that legal and physical custody are different dimensions of child-rearing. The relative odds of joint legal custody compared to mother sole custody increase with socioeconomic status, although the results are more consistent for father's income than mother's income. Joint legal custody is also more common among recent divorce cases than is the traditional assignment of sole legal and physical custody to mothers. Legal custody type does not depend on the number and ages of children involved. In contrast, when physical custody is awarded primarily to one parent, children's age is an important factor. The younger the children, the more likely the mother is to receive physical custody. Use of lawyers and having the divorce hearing in an urban county do not affect custody arrangements, although the pattern of effects suggests that cases heard in Milwaukee County are consistently more likely to have mother/mother custody than any other custody type. This difference is not, however, statistically significant.

Conclusion

This study shows that although children are still more likely to live with their mothers after divorce, families are increasingly likely to adopt some type of joint custody arrangement. Most families with joint legal custody, however, allocate physical custody to mothers. While the roles of legal and physical custodian are usually played by the same parent, approximately 20 percent of recent divorces show discrepancies between legal and physical custody. The most common instance of this is when parents share legal custody but children live primarily with their mothers.

My findings also show that family characteristics that predict legal custody differ from those predicting physical custody. Economic factors influence legal custody while family composition is more important for physical custody. Joint legal custody is more common among high-income families, regardless of where the children actually live. Father's income has a consistent positive effect on both father-legal custody and joint-legal custody rela-

tive to mother-legal custody. Mother's income also increases her chance of legal custody compared to father-legal custody. When parents do not share physical custody, my results suggest that legal and physical custody choices perpetuate couples' predivorce division of labor. For most families, mothers continue to be responsible for younger children, who require physical care and full-time supervision while fathers get custody of older children. That both parents' incomes increase the likelihood of joint legal and physical custody and the lack of an age-of-child effect on joint legal and physical custody are consistent with the notion that parents who share breadwinning and childcare responsibilities before divorce continue to do so in the early period after divorce.

Although the CRD measure of joint physical custody probably understates the extent to which children divide their time between the households of their parents, joint legal and physical custody is still an extremely rare phenomenon. Even in California, the first state to adopt no-fault divorce, most children still live with their mothers at divorce, even if their parents share legal custody (Maccoby, Depner, and Mnookin, n.d.). Despite the absence of reliable information about the consequences of joint legal custody, family law increasingly favors it. Advocates of these reforms support their views using data from studies that show that joint custody improves children's postdivorce welfare. That socioeconomic status and joint custody are correlated raises the question of whether those who argue that joint custody improves children's economic welfare (e.g., Salkind, 1983) confuse income effects with the effects of custody arrangements. Without answers to questions like this one, the rapid adoption of joint custody laws may be premature.

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