

JOINT CUSTODY: RATIONALIZING DIVORCE DISCREPANCIES IN FAMILY LEGISLATION

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Abstract: *Research in recent years in Europe and internationally has highlighted the growing need to review paternal role and the growing importance of fathers' continued involvement in the upbringing of their children through new parental care arrangements, such as the joint custody, so that the well-being of both the fathers themselves and their children is ensured. The purpose of this research is to investigate the joint custody and paternal role in divorce in Greece. During the research process, which started in January 2015 and is still ongoing to date, data were collected from 2,638 people, through a semi-structured questionnaire. According to the results of the research, it is a common request of both women and men to maintain the father's quality participation in the lives of children after divorce.*

Key words: divorce; joint custody; joint physical custody; children's well-being.

1. Introduction

Fathers' increasing participation in the daily lives of their children (Westphal, Poortman, and Van der Lippe, 2014) and the number of working mothers in recent years (Hook, 2006), as well as fathers' rights movements, who have been fighting for more equal childcare responsibilities after separation or divorce (Spruijt and Duindam, 2009), have contributed to the revision of custody laws (Juby, Le Bourdais and Marcil-Gratton, 2005), in several western countries, emphasizing/undelining the importance of continued parental involvement.

Joint custody refers to the regulation/arrangement that includes the joint legal and / or physical custody of children after parental divorce (Bender, 1994). The term joint physical custody (JPC) means that a child lives alternately and equally with both parents, moving between their respective homes (Melli, Brown, 2008; Spruijt and Duindam, 2009), whereas joint legal custody provides only for joint decision-making by parents on matters concerning their children.

Factors such as the number of women in the workforce, family law and cultural views on gender roles regarding fertility are some of the reasons attributed to transnational differences in publications regarding custody after divorce (Kelly, 2007).

In Wisconsin (USA), the proportion of divorced parents who had a joint parenting program increased from about 12% in 1989 to about 50% in 2010, 40% in Belgium and Sweden, about 30% in Norway, about 20% in Denmark, 40% in Quebec (Canada), 16% in Australia, 15% in Spain and 12% in the United Kingdom (Steinbach, 2019).

It is noteworthy, however, that neither of the new legal regulations on residence arrangements makes joint physical custody mandatory, but obliges the courts to seriously consider this arrangement, if one or both parents request for it. Thus, in most European countries, as well as in the United States, the most common regulation for the cohabitation of children with divorced parents is still single parental care (Bjarnason and Arnarsson, 2011).

2. Impact of joint physical custody on children's well-being

There is a strong consensus among researchers, professionals and lawyers that joint custody arrangements after parental separation or divorce benefit most children if the parents work together and have low levels of conflict (Amato, 2010; Härkönen, Bernardi and Boertien, 2017).

However, there is disagreement about the effect of children's joint physical custody if parents do not cooperate or have ongoing conflicts. On the one hand, proponents of joint physical custody believe that this arrangement always works in the child's best interests (Kruk, 2012; Warshak, 2014), even if the separated or divorced parents have ongoing conflicts. On the other hand, it is argued that ongoing parental conflict is extremely detrimental to children's well-being (Emery, 2016; McIntosh, Pruett, and Kelly, 2014; Pruett, McIntosh, and Kelly, 2014), as it exposes them to inconsistent parenting, and sometimes leads to underestimation of one parent by the other (Kalmijn, 2016; Vanassche, Sodermans, Matthijs and Swicegood, 2013).

As far as the latest results of empirical studies are concerned, joint physical custody after parental separation or divorce has a neutral to positive effect on children's well-being.

Several studies, which focused on mental health as a measure of child well-being, have showed that children in nuclear families had lower rates than children of divorced or divorced parents, but that children in joint physical custody settings had lower rates than those children in sole custody arrangements (Bergström et al., 2014; Bergström et al., 2018; Bergström et al., 2015; Fransson et al., 2016; Hagquist, 2016; Jablonska and Lindberg, 2007; Nilsen et al., 2017).

According to another Swedish study (ULF), it was found that there has been a significantly lower likelihood of subjective stress in children living in joint physical custody settings than in children living in sole custody (Turunen, 2016). In addition, Bjarnason and Arnarsson (2011) and Bjarnason et al. (2012) found that children in joint physical custody settings have the same or fewer problems with communicating with their parents, as well as the same or higher levels of life satisfaction compared to those children who live in single-parent families.

Other Swedish studies focusing on risky behavior (alcohol, illegal substances, smoking) have concluded that adolescents living under joint physical custody did not have or had slightly higher rates of risky behavior than adolescents who live in nuclear families, but significantly lower rates than those come from single-parent families (Carlsund et al., 2013; Jablonska and Lindberg, 2007)

According to Bauserman's (2012) meta-analysis, children under joint custody show better adjustment (general adjustment, emotional adjustment, behavioral adjustment, self-esteem, family relationships, academic performance, and adjustment to divorce) than children under exclusive (mainly maternal) custody regime.

Poortman (2018) concluded that the relationship between father-child contact and child well-being depends to a large extent on fathers' involvement in children's upbringing/rearing before separation/divorce.

In general terms, the controversy over whether or not joint physical custody is in all circumstances considered the best custody arrangement is reflected in conflicting empirical results. Some studies have found no or only minimal negative impact of conflict on children's well-being in joint physical custody settings (Spruijt and Duintam, 2009), while others have found that conflict increases the likelihood of negative outcomes for children (Cashmore et al., 2010; McIntosh, 2009; Vanassche et al., 2013).

Similarly, Sobolewski and Amato (2007), Kalmijn (2016) and Vanassche et al. (2013) have showed that adult children raised in high-conflict families or children of divorced parents did not have higher well-being when they had a close relationship with both parents, compared with those who had only a positive relationship with one parent. Several other studies have confirmed that it is not the total time spent with the child that is associated with better

outcomes, but the quality of parental care (Hagquist, 2016; Sandler, Wheeler and Braver, 2013; Spruijt, de Goede and Vandervalk, 2004).

The age of the child is another controversial issue regarding the choice of the less harmful custody arrangement. On the one hand, proponents of joint physical custody argue that infant-father attachment is just as important to the child as the infant-mother attachment. Thus, they emphasize the high importance of continuity in both relationships for the child's social, emotional, personal and cognitive development (Kelly and Lamb, 2000; Kruk, 2005; Warshak, 2014; McIntosh, Smyth and Kelaher, 2015).

On the other hand, other research has revealed that frequent overnight stays of very young children in two homes are associated with attachment insecurity and less regulated behaviors (McIntosh, Smyth and Kelaher, 2013; Tornello et al., 2013).

The best care cycle, depending on the age of the child, is an additional issue of controversy among experts, as some argue that it is very stressful for infants and toddlers to switch between two homes (Tornello et al., 2013), while others consider that even infants and toddlers can live in arranged joint physical custody settings (Millar and Kruk, 2014). Usually, preschoolers can change homes every 3-4 days, at the age of eight, every 5 to 7 days (Kelly and Lamb, 2000), and teens tend to be bothered by this alteration, since it disrupts their social life.

Overall, there are several relational and structural conditions that seem to favor beneficial joint physical custody arrangements (Gilmore, 2006: 26), such as geographical proximity, parents' ability to work together without (high) conflict, family-friendly working hours, the degree of financial independence, flexibility and high degree of response to children's needs, including the willingness to change arrangements to meet children's changing needs as they grow up (Cashmore et al., 2010; Fehlberg et al., 2011b ; Gilmore, 2006; Skjærten and Barlundhaug, 2007).

3. Dimensions of fathers' parental role in different family structures and children's well-being

According to Thomson et al. (1994), parents offer their children two basic resources, money and time. Time gives parents the opportunity to show support (love and warmth) to their children and control (supervision) (Baumrind, 1991). Divorce and the subsequent transitions and changes in the course of fathers and children's life are associated with reduced parental resources (King and Sobolewski 2006; McLanahan and Sandefur 1994; Thomson et al. 1994) and the creation of stress that negatively affects the provision of parental care on the behalf of fathers (Degarmo and Forgatch, 1999).

From the one hand and from the perspective of the family system, divorce is defined as a stressful process with negative effects on the child's well-being (Amato, 2000), which can be offset through high support and high control (Bronte-Tinkew et al., 2010; Campana et al., 2008; Carlson 2006; Dunlop et al., 2001; King and Sobolewski 2006; Lansford 2009).

On the other hand, according to the theory of social capital (Coleman 1988), maintaining contact between the parent and the child is a necessary condition for the transfer of social capital, which exists in the relationship between the parent and the child, and both the quantity (i.e., contact) and the quality (i.e., parental care) of parental involvement have been measured (Furstenberg and Hughes 1995). According to the research by Bastais, Ponnet and Mortelmans (2012), fathers who did not have the custody were less supportive and exercised less control than fathers in nuclear families and those who exercised joint physical custody, a fact that may be due to in the reduction of parental resources after a divorce (McLanahan and Sandefur 1994; Thomson et al., 1994).

4. Self-esteem and parenting

During childhood and adolescence, self-esteem lies in the close relationship with significant others, such as parents (Zakeri and Karimpour, 2011; Breivik and Olweus, 2006).

High levels of parental support have been found to be associated with higher self-esteem in adolescents (Bastaitis, Ponnet and Mortelmans, 2012; Birkeland et al, 2012) and secure attachment.

Mean differences in self-esteem in the Swedish study by Turunen, Fransson and Bergström (2017) produced non-significant results and therefore no generalizations could be established, proving that children in joint physical custody differed from those living in one parent families and those in nuclear families.

Furthermore, the parental control that fathers exercise is not significantly associated with children's self-esteem (Kakihara et al., 2010; Bastaitis, Ponnet and Mortelmans, 2012), since research has revealed contradictory results. In the study by Zakeri and Karimpour (2011) a positive relationship was found between parental control / support and children's self-esteem, whereas other researchers found a negative relationship (Plunkett et al. 2007; Siffert et al., 2012).

As far as the Greek survey carried out by Papanis (2004 - 2006) is concerned, there was no statistically significant difference in the average self-esteem of the general population and those of divorced parents, a fact that may have been due to the stronger adjustment and flexibility mechanisms that people with divorced parents had to develop. In addition, a differentiating factor in self-esteem was the form of divorce (separation or formal divorce) and the relationship between the parents later. In other words, drastic solutions seemed to be preferable to feedback on a relationship that has ended, thus perpetuating the conflicts and tensions that arise as a result of poor communication between spouses.

5. Research methodology

5.1 Purpose

The purpose of the present study is to investigate joint custody and paternal role after divorce or separation. More specifically, it was examined the way in which individuals' views on the father's parental role are formed after a divorce.

5.2 The Methodological Tool

A quantitative questionnaire was developed, which incorporated a series of scales of views which, according to the theoretical framework, seem to shape individuals' attitudes towards the father's role after divorce. These scales were developed as 5-point Likert scales (with matching 1 = strongly disagree, 2 = disagree, 3 = have no opinion, 4 = agree, 5 = strongly agree). The results of the analysis of the collected data are shown below.

5.3 Characteristics of the Sample

Data were collected from 2,638 people between January 2014 and December 2020. Regarding the demographic characteristics of the sample, they are as follows: In terms of gender, 27.6% are men, while the remaining 62.4% are women. In relation to marital status, 43.5% are single, 9.4% married without children, 20.7% married with children, 17.9% divorced, 7.6% divorced and 0.8% widowed. The average age of the participants in the research is 36.71 years. Finally, in terms of educational level, 0.2% are primary school graduates, 1.2% high school graduates, 16.2% high school graduates, 10.7% students, 49.2% holders of Vocational Education / Higher Education degrees and 22.5 % holders of a master's or doctoral degree

6. Statistical Data Analysis

The frequency distributions of the participants’ views are presented in the Tables below. As far as the view that “the paternal role is more social than biological”, most participants (57.2%) state that they disagree (Table 1).

Table 1: The paternal role is more social than biological

	Average
I Strongly disagree/I Disagree	57.2%
I have no opinion	4.3%
I agree/I strongly agree	38.5%
Total	100,0%

Regarding the view that “Children’s custody after divorce should be entrusted to the mother, as is the case law to date”, most participants (60.3%) state that they disagree, as shown in Table 2.

Table 2: Children’s custody of children after divorce should be entrusted to the mother, as is the case law to date

	Average
I Strongly disagree/I Disagree	60.3%
I have no opinion	8.4%
I agree/I strongly agree	31.2%
Total	100,0%

As far as the opinion that “The father should co-decide with the mother on child-rearing issues after divorce”, the vast majority of participants (92.2%) say they agree, as shown in Table 3.

Table 3: The father must co-decide with the mother on child-rearing issues after the divorce

	Average
Strongly disagree/Disagree	3.6%
I have no opinion	1.2%
I agree/I strongly agree	92.2%
Total	100,0%

Regarding the view that “The status of simple communication between the father and the children, as determined by the case law, without the right to make decisions for their upbringing, should be maintained as it is”, most of the participants (44.6%) state that they disagree, as shown in Table 4.

Table 4: between the father and the children, as determined by the case law, without the right to make decisions for their upbringing, should be maintained as it is

	Average
Strongly disagree/Disagree	44.6%
I have no opinion	24.3%
I agree/I strongly agree	31.1%
Total	100,0%

As far as the question: “Which are, you think, the dominant feelings and situations that the father experiences after the physical removal from home and the place of residence of his

children?" is concerned, most of the participants (30.1%) consider that the feeling of sadness prevails, followed by the feeling of failure, because the paternal role is canceled. The results are presented in detail in Table 5.

Table 5: Which are, you think, the dominant feelings and situations that the father experiences after the physical removal from home and the place of residence of his children?

	Average
Guilt	8.8%
Sadness	30.1%
Indifference	2.5%
Revenge	2.8%
Release from responsibilities	9.2%
Deterioration of quality of life	5.6%
Financial bleeding	3.8%
Feeling of failure because the paternal role is canceled	28.4%
Deterioration of self-esteem	4,0%
Other	4.7%
Total	100,0%

Regarding the view that "The state should enact laws on joint custody", most participants (86%) state that they agree, as shown in Table 6.

Table 6: The state should enact laws on joint custody

	Average
I strongly disagree/I disagree	7.5%
I have no opinion	6.5%
I agree/I strongly agree	86,0%
Total	100,0%

Concerning the view that "The resolution of parental disputes in a divorce should be done out of court through the institution of mediation, if it is also applicable to Greece", most participants (77.4%) state that they agree, as it seems in Table 7.

Table 7: The resolution of parental disputes in a divorce should be done out of court through the institution of mediation, if it is also applicable to Greece

	Average
I strongly disagree/I disagree	6.5%
I have no opinion	15.8%
I agree/I strongly agree	77.4%
Total	100,0%

Regarding the view that "The establishment of a family court should be established immediately, because the judicial system has neither the time nor the expertise to resolve family disputes", the majority of participants (87.4%) say they agree, as it seems in Table 8.

Table 8: The establishment of a family court should be established, because the judicial system has neither the time nor the expertise to resolve family disputes

	Average
I strongly disagree/I disagree	4,0%
I have no opinion	8.6%
I agree/I strongly agree	87.4%
Total	100,0%

Regarding the opinion that “Parents entering divorce and child custody process must visit specialized social services, since they cannot decide wisely themselves”, the vast majority of participants (92.2%) say they agree, as shown in Table 9.

Table 9: Parents entering divorce and child custody process must visit specialized social services, as they cannot decide wisely themselves

	Average
I strongly disagree/I disagree	3.8%
I have no opinion	4,0%
I agree/I strongly agree	92.2%
Total	100,0%

As far as the view that “Fathers usually use their children to blackmail or exploit their ex-wife” is concerned, the participants appear divided; 42% of participants say they disagree, while 35.9% say they agree.

Table 10: Fathers often use their children to blackmail or exploit their ex-wife

	Average
I strongly disagree/I disagree	42,0%
I have no opinion	22,0%
I agree/I strongly agree	35.9%
Total	100,0%

Concerning the view that “Mothers usually use their children to blackmail or exploit their ex-husband”, most of the participants (56.9%) say they agree, as shown in Table 11 below.

Table 11: Mothers usually use their children to blackmail or exploit their ex-husband

	Average
I strongly disagree/I disagree	23,0%
I have no opinion	20.1%
I agree/I strongly agree	56.9%
Total	100,0%

Regarding the view that “Alimony is unfair and should be amended by law”, most participants (44.6%) state that they agree, as shown in Table 12.

Table 12: Alimony is unfair and should be amended by law

	Average
I strongly disagree/I disagree	31.1%
I have no opinion	24.3%
I agree/I strongly agree	44.6%
Total	100,0%

Concerning the view that “The financial crisis and the inadequacy of the welfare state do not allow mothers who exercise custody mothers to raise their children properly”, most of the participants (72.7%) say they agree, as it seems in Table 13.

Table 13: The financial crisis and the inadequacy of the welfare state do not allow mothers who exercise custody mothers to raise their children properly

	Average
I strongly disagree/I disagree	16.2%
I have no opinion	11.2%
I agree/I strongly agree	72.7%
Total	100,0%

As far as the view that “the father is not as capable of taking care of the children as the mother is”, most participants (74.2%) state that they disagree, as shown in Table 14.

Table 14: The father is not as capable of taking care of the children as the mother is

	Average
I strongly disagree/I disagree	74.2%
I have no opinion	5.8%
I agree/I strongly agree	20,0%
Total	100,0%

Regarding the question: “How often do you think the father should communicate with the children after the divorce?” most participants (76.4%) state “Daily”, as shown in Table 15.

Table 15: How often do you think the father should communicate with the children after the divorce?

	Average
Daily	76.4%
3-4 times a week	17.7%
3-4 times a month	1.3%
Other	4.6%
Total	100,0%

Concerning the view that “Divorced fathers often fall victim to lawyers, about the expectations they may have regarding child custody”, most participants (45.7%) appear to have no opinion, as shown in Table 16.

Table 16: Divorced fathers often fall victim to lawyers about their expectations of child custody

	Average
I strongly disagree/I disagree	14.3%
I have no opinion	45.7%
I agree/I strongly agree	40,0%
Total	100,0%

7. Conclusions

The present study, which is still ongoing, is one of the first attempts to capture a phenomenon that has taken on enormous proportions with significant psychological, social and economic consequences, as it relates to the rapid increase in divorce in Greece and the development of new family formations.

Similar to research conducted in Europe and worldwide, there is an urgent need for the paternal role to be reviewed and his involvement in children's upbringing after separation or divorce to be expanded so that the well-being of both children and fathers themselves is promoted.

According to the results of the present study, it is a common request of both women and men to maintain the father's quality participation in the lives of children and the continued provision of high support and control, even after separation or divorce, for children's harmonious development.

Another key conclusion from the present study is the need to reorganize family law and upgrade the psychological and counseling services of the state in order to prevent disputes and a climate of conflict between parents, through the development of appropriate forms of communication and cultivation of their communication skills.

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