

Joint Custody: Research, Theory, and Policy

Class 7

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A majority of states have now enacted legislation addressing the issue of joint custody of children after divorce. This article examines current research on the subject, explores its implications for family theory, and attempts to draw some empirically based conclusions regarding policy. The literature would seem to support a structuralist view of the family and to undermine normative theories of the family life cycle. The author concludes that policy should not be aimed at developing a presumption of joint legal custody alone, but, rather, of joint physical custody with specified limitations.

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SINCE the mid-1970s, some 32 states have enacted legislation addressing the issue of the joint custody of children after divorce (31). A number of these, of which California was the first, have established a legal presumption of joint custody in cases where both parents have agreed to the arrangement, and a few have even mandated joint custody as the preferred arrangement irrespective of parental agreement (27).

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This virtual flood of new law represents a marked departure from past legislation, which for at least 50 years has consistently dictated sole maternal custody except in the most adverse circumstances. Yet, until recently, there was little or no research and certainly nothing that could be seen as conclusive—to support the idea that such a change was justified. In an extensive review of the relevant literature completed in early 1981, Clingempeel and Repucci (8) concluded: "... we can offer no generalizations about the effects of joint custody or its advantages and disadvantages vis-à-vis sole custody arrangements. The available studies are egregiously inadequate, and for the most part the debates have been nourished solely by opposing ideologies" (p. 124).

At the conservative end of the ideological spectrum were theorists such as Goldstein, Freud, and Solnit (13) arguing essentially for universal sole custody with no legally mandated visitation rights. Contact with the noncustodial parent was seen as inevitably conflict-ridden, resulting in confusion, loyalty conflicts, and, ultimately, maladjustment for the child. At the other end of the spectrum, Grote and Weinstein (15) and Roman and Haddad (28) advocated widespread adoption of legal presumption of joint custody—again, "in the best interests of the child."

If, since then, the ideological battle appears to have been won by joint-custody advocates, the research has been somewhat more equivocal. Despite the largely posi-

tive findings of early descriptive studies, problems can and do appear in joint custody, and current research has begun to delineate them. Nonetheless, it is now clear that joint custody does not pose the kind of threat foreseen by Goldstein et al. (13), and in many cases it clearly offers substantial benefits to both children and parents. The essential questions are no longer those of whether such custody arrangements *can* work, but of how and under what circumstances they *do* work; how the courts, clinicians, and parents themselves can make them work better; and what the criteria for their proscription should be. Recent research has addressed all of these concerns in some measure and, based upon our current level of understanding, some empirically based policy recommendations can now be made.

Current research on joint custody has implications for family theory as well. This is particularly true for the study of interactions between the family and institutions such as the courts, but it also offers new support for a structural account of family relations. Finally, the escalating divorce rate in general and the joint-custody literature in particular seem to call into question the validity of any normative theory of the family life cycle.

CURRENT RESEARCH

At the outset, it should be noted that despite widespread attention in the popular media and in professional journals, joint custody in the popular sense of "coparenting" remains uncommon (12). This discrepancy would appear to arise from the legal distinction between joint *legal* custody and joint *physical* custody. Joint legal custody means that both parents are to share in major decisions and responsibilities related to the child. Such an award does not necessarily entail joint physical custody—the shared residency and/or daily care of the child. In at least some cases, the content of joint legal custody

arrangements is essentially the same as that found in those made under sole custody awards. While joint legal custody has become relatively common (30% of all custody awards in one study), joint physical custody is quite rare, constituting under 2% of all awards (24).

The earliest and most enthusiastic studies have been descriptive in nature and concerned primarily with successful joint physical-custody arrangements (1, 14, 29, 31). Although this research suffers from methodological flaws (small convenience samples, reliance solely upon interview data), it does generate a picture of how such arrangements *could* work, and it has opened a number of possible avenues of research. Furthermore, despite their weaknesses, a number of these studies' more important observations have held up in the face of more methodologically sophisticated work. Several characteristics of these "binuclear" families (2) recur throughout the literature and are noted as contributing to the success or failure of "coparenting" relationships.

In the only longitudinal study of divorcing couples attempting to negotiate joint custody arrangements, the authors found successful maintenance of those arrangements to correlate positively with low anger and high self-control, mild depression and guilt vis-à-vis the divorce, basic self-trust, the ability to tolerate emotional ambiguity, a rational approach to problem-solving, and, finally, valuing the other parent as the child's parent though not as a spouse. Failure was associated with physical abuse, alcohol and drug abuse, intense anger directed at the spouse, a lack of guilt,¹ and

¹ This would appear to be in conflict with Irving, Benjamin, and Trocme (20) who found a high degree of guilt among the least satisfied joint-custody parents. Granting that satisfaction is not necessarily related to success, it may also be that there is a curvilinear relationship between guilt and success in joint custody. It may also be that what parents inter-

low self-esteem. Involvement of the courts was also associated with joint-custody failure (32).

A number of these factors are generally congruent with those of cross-sectional studies of parents already in joint-custody arrangements. A firm belief that the other parent was both competent and important to the child reappears consistently as does the need and ability to be flexible (1, 2, 20, 31, 37). Other variables frequently associated with successful coparenting under joint legal custody include geographic proximity (1, 37), relatively high compliance with child-support awards (14, 22), and a relatively low level of relitigation (3, 11, 19, 22), though one study by Phear and colleagues (24) found no significant relationship between joint versus sole custody on this variable.

Phear's sample was also different in other respects—for example, the mean age at divorce was nearly a decade lower than that of most other studies of joint custody. There would seem to be some likelihood that the more-or-less equal rate of relitigation of joint- and sole-custody parents observed by Phear could be age-related. Another possibility is that, with the increase in joint-custody awards, we are witnessing a regression effect, implying that the movement toward joint custody may be approaching the point of diminishing returns. Yet, the fact that even among a group of joint-custody couples, with one party initially opposing the arrangement, there was no more relitigation than among sole-custody couples (19) would seem to militate against this. In any event, most of the studies dealing with relitigation may

preted as guilt on the Irving questionnaire might in fact have been the same thing Steinman and colleagues (32) interpreted clinically as anger in the absence of guilt. Such clinical distinctions are difficult to make at best, and the clinical situation itself could well have influenced parents away from an "admission" of guilt.

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well have suffered from a great deal of sampling error, and the available data on relitigation are less than conclusive.

How many joint-custody arrangements actually succeed? Steinman et al. (32) estimate that the "success" rate for one year post-separation is 27%, with an additional 42% maintaining the arrangement despite substantial conflict; 31% had abandoned the arrangement by that time. Frankel (11) found a 66% "failure" rate among those expressing an "intent to share custody." Both these studies, however, deal with clinical populations in which there presumably would be a greater proportion of high-conflict, high-risk relationships. This is particularly true of Frankel's work, which consists of a chart review of the patients of two child psychiatrists over a 7-year period. Unfortunately, there have not yet been any longitudinal studies of nonclinical populations that could provide a definitive answer.

Those features associated with long-term success in the maintenance of joint-custody agreements have yet to be determined—the phenomenon is simply too new and not prevalent enough to attract sufficient research. Steinman et al. (32) are continuing their longitudinal investigation but have no plans to extend that research beyond 3 years; most other studies have examined couples who have been separated less than 5 years.

Nonetheless, parents who are involved in joint custody, legal or physical, demonstrate high levels of satisfaction, which would seem to indicate at least the potential for long-term maintenance of joint custody. Ahrons (3) found 84% of her sample to be satisfied over all, as were 77% of Irving et al.'s (20) subjects and 67% of Rothberg's (29). Ahrons (4) also found that most men (63%) and women (52%) were satisfied with their level of sharing in child rearing. These relatively high figures are likely to decline over time as the legal presumption of joint custody becomes

more widespread and entrenched, and as more couples who might not have chosen this option in the past begin to do so.

Given the fact that the principal concern of both the courts and professionals is the "best interests of the child," it is surprising that so little research has been done on children themselves in joint custody situations. Much of what has been written has been based on parental reports rather than directly addressing the children involved (14, 20, 29). A few studies have attempted to address this issue, but, before dealing with these, it would perhaps be useful to touch briefly on the literature relating to fathers' influence on children in divorce.

The effects of father absence have been studied in too great a depth to cover satisfactorily here. This presentation, therefore, will cover only a few of the more pertinent findings. Although some of this research has been faulted for failing to distinguish between fathers absent through death and those absent through divorce (6), at least one study found not only that father absence was associated with long-term deficits in male (but not female) cognitive performance, but also that there was no significant difference between those whose fathers were dead and those whose fathers were absent due to divorce (7), indicating that such methodological concerns may be less than fully justified. Again in the long term, Kulka and Weingarten (18) did find significant effects of childhood divorce on adult adjustment, though these effects were relatively minor. There is some evidence that any type of absence, including psychological distance without actual physical separation, is ultimately detrimental to children. As Lamb (21) concludes in his review of the relevant literature: "One general comment appears in order: Nurturant, competent accessible fathers facilitate the psychosocial development of *both* sons and daughters, whereas hostile, distant, or inaccessible fathers (whether absent or present) inhibit the

process of sociopersonality development" (p. 169).

But perhaps the most dramatic findings have been the more immediate effects of parental absence. While it is difficult to separate absence effects from those related to intrafamilial conflict, children of divorce do suffer significant adjustment problems. Again, these seem to be greater in boys than girls. Hetherington, Cox, and Cox (16) found that while girls had adjusted 2 years after the divorce, the disruptive effects of the breakup had persisted in boys. Furthermore, even those boys whose behavior had improved remained stigmatized by peers and teachers, pointing to a possible connection between some of the short- and long-term effects of parental absence.² Wallerstein and Kelly's series of articles document in detail the adverse effects of divorce on children of different age groups (17, 35, 36).

In contrast with these findings, those few studies of true coparenting relationships have consistently found only minimal adjustment problems on the part of children. Steinman (31) found that children in coparenting situations were not troubled by the loyalty conflicts predicted by Goldstein et al. (13), but that a small number of these children felt a strong need to be "fair" to both parents and were meticulous about dividing their time equally between them. Perhaps even more important, while these children did perceive their parents' divorce as undesirable, and in some cases harbored fantasies of reconciliation, they did not experience the overwhelming sense of rejection found in children in the more usual maternal-custody/father-absent post-divorce arrangement (1, 31).

Whereas none of the studies found sig-

²The sex differentials observed in these studies would seem to have been at least partly accounted for by Santrock and Warshak (30) who found that custody by the parent of the same sex was positively correlated with adjustment.

nificant maladjustment problems among coparenting families, Leupnitz (22) found adjustment to be independent of custody arrangement. Poor adjustment was related to high levels of parental conflict, however. This is congruent with Steinman's finding that parental conflict over child-rearing and fundamental philosophical differences troubled joint-custody children greatly, as well as with some of the earlier literature on child adjustment. Several studies (7, 12, 30) have suggested, however, that additional caretakers are also correlated with improved childhood adjustment, and it is possible that this additional variable has confounded Luepnitz's outcome—if, for instance, all her sole-custody mothers had remarried.

Perhaps the most important aspect of joint-parenting arrangements is that they allow—even mandate—that fathers become *more* involved with their children on a daily basis than before divorce (20). Furthermore, recent research has lent support to the idea that sex roles related to parenting are structurally maintained, and that men, when placed in the position of primary caregiver, tend to "mother" much as women do (26). A potential benefit of this role acceptance by men is that children raised in coparenting situations—where fathers "mother"—may be less inclined to wholesale adoption of sex-role stereotypes.

There is also direct evidence that fathers with joint custody are, in fact, more involved with their children than are those with sole custody. Bowman and Ahrons (5) found that joint-custody fathers spent more time with their children and took part in more activities with them than did non-custodial fathers, and that they also had more input into decision making regarding their children.

One last potential consequence of the increased father involvement found in coparenting is that both parents seem less likely to suffer from the "burnout" frequently associated with full-time single-

parenting (22). It seems self-evident that children would benefit from having two well-rested, attentive parents on a half-time basis more than they would with a frazzled, overwhelmed, full-time one. This issue has not yet been investigated systematically.

Children also stand to benefit economically from joint custody, especially joint physical custody. There is a substantial body of literature documenting women's decreasing and men's increasing income after divorce, independent of whether either have dependent children (9). From the child's economic standpoint, *ceteris paribus*, it is better to spend half one's time with a relatively well-off father than all of one's time with a poverty-stricken mother. And again, most of the studies of joint-custody relationships of both the legal and physical variety have found relative equity in the way child-care expenses are divided, and extremely high compliance rates with child-support agreements.

Despite this apparently rosy picture, the issue has not yet been entirely resolved. At least part, and perhaps a substantial part, of the high child-support compliance rate reported in these cases is due to self-selection by a relatively small group of highly committed fathers into both joint-custody arrangements and into research examining those arrangements. The widespread use of simple convenience samples, and "snowball" samples in particular, would lend support for the latter assumption; but it is also likely that, given the relatively short existence of joint custody as an option, only the most dedicated men were likely to have pursued it to the extent necessary to achieve it.

Nonetheless, there is absolutely no evidence that an award of joint custody *decreases* the likelihood of compliance with child-support awards. What is clear is that compliance is abominable in sole-custody arrangements (38). Given this situation, widespread adoption of joint custody

can be expected to offer at least some improvement: surely, at least *some* men who would not have complied under sole custody could be expected to contribute if given the opportunity to be fathers to their children in more than a purely biological sense.

Geographic distance troubled some of the children in Steinman's (31) study, but for others it was not a problem. Insofar as increasing geographical separation of former spouses translates into longer uninterrupted periods at each coparent's residence (in some cases as long as a year), this could pose problems in terms of continuity, particularly for small children. Distance is, in addition, correlated with increasing parental withdrawal post-divorce (12), and the relevance of this particular factor to the long-term viability of joint-custody arrangements and to the children's development in those arrangements remains to be resolved.

Another potential benefit to children of joint custody may be a decrease in parental conflict over time. Aside from the relitigation data, parents generally report increased satisfaction with joint custody as time goes on (20). Parents involved in active coparenting also report low levels of conflict. Some studies have found a lower tendency among joint-custody parents to use children as weapons against their spouses. Though sampling error may play a large part in these findings, it is plausible that a more substantial and profound relationship of children with both parents would undermine the ability of one parent to portray the other in an unduly negative light.

There are anecdotal reports of joint-custody parents attempting to use their children against their former spouses. Volgy and Everett (34) and Steinman et al. (32) found that among those couples who failed to maintain joint-custody relationships, using the child for purposes of manipulation was a significant feature.

Yet, insofar as Steinman et al.'s "failure" couples tended to move toward arrangements approximating sole custody, this particular problem would appear in some measure to be self-correcting. This kind of manipulation is also, of course, extremely common in sole-custody arrangements, and there is as yet no evidence whatsoever that joint custody exacerbates it.

There has also been concern in the past that continued involvement of a former spouse would lead to strife within stepfamilies. While this is clearly not the case with outside fathers, it may be true of outside mothers, though this remains to be fully documented (12). Just what the impact of stepparent/stepchild conflict on those children might be in the context of an active relationship with an outside parent, particularly in joint physical custody, also remains to be explored. It would seem plausible that although this conflict might be harmful in some ways, it would be more than compensated for by the continuing presence of an actively involved mother or father.

Finally, joint custody, insofar as it allows them to continue their relationship with both parents, is what children want (1, 22). Each of the studies dealing with children indicates that while they would prefer an intact family of origin, they are satisfied with joint custody and value the opportunity to continue their relationship with both parents. The high prevalence of reconciliation fantasies among children in sole-custody arrangements would also seem to indicate a strong desire for continued involvement of both parents in children's lives.

There have been several objections raised recently to the widespread adoption of a presumption of joint custody, not so much from conservative quarters as, oddly enough, from one of the groups that stands to gain the most from such a presumption: feminists. Leupnitz (22), for instance, after completing a comparative study of joint

and sole custody and finding virtually nothing negative to say about the former, rejects the idea of *mandatory* joint custody based on her concern for the protection of wives from abusive husbands. Certainly, this situation is at least of hypothetical concern.

It is unclear, however, whether Luepnitz is referring to judicially mandated joint custody over the objections of one or both parties, or some sort of immutable, legislatively mandated joint custody; but, as no one is arguing for the latter, it would appear that she would like individual litigants to retain veto power rather than allowing the courts to impose joint custody upon one or both unwilling parents. There are several problems with this: 1) it places the interests of the parents ahead of the best interests of the child; 2) it would tend to predispose litigants to lengthy, bitter court battles; 3) it is likely that the vast majority of ensuing court battles would result in maternal custody regardless of the merits of the father; 4) it does not guarantee that custody would go to the "better" parent; and 5) it is unlikely that judges would award joint custody in a battering situation.

Brown (6) argues that the evidence for detrimental effects of father absence upon children has yet to be documented, insofar as such evidence concentrates on the effects of long-term intellectual development and adjustment to the exclusion of simple human grief and the copiously documented association between object loss and clinical depression. Brown goes on to advocate a sort of pre-divorce contract dictating what the post-breakup childcare arrangements should be, which could then be modified during the course of the marriage to reflect the current situation. At first glance, this would appear a viable alternative to court-mandated joint custody.

Unfortunately, this plan is based upon some unfounded assumptions about hu-

man nature, not the least of which is the belief that people in stable relationships will be aware of how strongly they feel about their children when they are in no danger of losing them. There are also the problems of drafting such a document and perhaps introducing strife into a marriage (not to mention the continuing financial drain of updating such a document), and of determining just which draft should apply when the marriage finally does dissolve. The "latest amicable draft" solution proposed in Brown's (6) article is likely to generate a fair amount of litigation over which draft was really "amicable" and which was coerced.

CONCLUSIONS

Divorce is perhaps one of the most emotionally traumatic events in our cultural repertoire. Not only does it entail the abandonment of a spousal relationship once seen as the single most important commitment of one's life, but, for the last 60 years, it has also meant, for men, the state-sanctioned destruction of father-child relationships. The situation was no better prior to this when the tradition of English common law dictated that women routinely be denied custody (10). With the rise of the "tender years" doctrine, based in theoretical psychology, the latter tradition fell, and women became the automatic recipients of virtually all custody awards.

With the meteoric increase in divorce over the past 20 years, empirical research began at last to focus on this aspect of family relations, and the idea that men were inherently incapable of functioning in the kind of nurturing role necessary for normal child development was gradually eroded. At the same time, men began to demand greater participation in the care of their children. With the increasing number of women entering the work force, women's groups also began to push for increased male involvement in childrearing, both during marriage and after divorce. One

facet of this "fathering movement" has been the drive for joint-custody legislation.

Yet, despite widespread legislative changes, at least one study found no differences between joint and sole custody in the percentage of children living with their mothers alone—70% (24). In California, one estimate placed the proportion of court-ordered joint-custody arrangements that actually involved sole maternal custody at 95% (25). While it is likely that some of this imbalance is a reflection of paternal preference, there is some evidence that a large majority of judges (88% in one investigation) continue to consider keeping the child, especially the young child, with the mother to be the best course of action. Furthermore, in cases where parents' custody desires were at odds, 28% responded that they routinely favored mothers and none favored fathers (23), this despite several higher-court rulings that anything less than a presumption of joint custody violates the constitutional guarantee of equal protection under the law (27). Apparently, the idea that divorced fathers are somehow inherently less qualified as parents dies hard.

In the face of such overwhelming judicial prejudice, the only viable solution (as has been rediscovered many times in the past) is the legislative limitation of judicial discretion. But just what form should that limitation take? Clearly, the answer is a legal-presumption joint custody and, as we shall see, joint physical custody.

The positive effects of what is broadly termed joint custody arise from the heightened involvement of both parents. As we have noted, however, much of what is called "joint" custody is, in actuality, sole maternal custody. The failure of many investigators to make this distinction clear and to disaggregate their data accordingly would seem to explain at least a part of the ambiguity decried by reviewers like Brown. Nonetheless, those studies in which it is

possible to look at coparenting (*de facto* joint physical custody) alone seem to support the contention that joint custody does have significant advantages for both parents and children. Moreover, these studies have a number of implications for our understanding of families in general. Clarifying just where these positive effects come from and what these theoretical implications might be should provide at least the beginnings of a useful approach to policy.

The Family Life Cycle

Surely, the time has come to think twice about any theory of the family life cycle that purports to be normative. Cross-cultural data and the currently evolving pattern of serial monogamy in Western family life itself both point to a kaleidoscopic array of successful family structures and to the incredible flexibility of family processes. Joint custody is but one of these arrangements. At this point, in this culture it would appear to be the most fair and humane solution to a particularly painful problem for a large enough proportion of divorcing families that it can be recommended as the solution of first resort. Just why this is the case requires a closer look at the structural features of family life.

Structural Theory and Child Custody

Recent research has pointed strongly to a structural theory of family-role development. One of these studies is Risman's (26) work on single fathers, mentioned above. Fathers who are forced into the role of primary caretaker of children adapt to that role. For years, divorced men have been portrayed as shiftless and uncaring where their children were concerned. This view now appears to have been called into question. Stewart and colleagues (33) found that noncustodial fathers suffered significantly greater depression and anxiety, and had more adjustment problems than did custodial and married fathers. In her study

of divorced fathers, Greif (14) found that men frequently expressed great sadness and depression over the loss of their children, and felt that withdrawal was the only way they could cope with those feelings. Further evidence is provided by Furstenberg and Nord (12). In this study, it was noted that both men and women who lost custody were likely to withdraw from their children, though women were slightly less likely to do so. This would appear to undermine sharply the notion that men's withdrawal was somehow the inevitable result of their sex-role socialization, and it certainly precludes any sex-based, sociobiological explanation.

If it is true that men's structural position is what has dictated their aggregate behavior toward their children, then the courts, besides once again demonstrating the folly of following the dictates of pure and untested social theory, clearly have been creating bad fathers. More to the point, they are continuing to do so through the granting of joint legal custody without joint physical custody. Joint legal custody alone is doomed as a remedy for the ills of absent parenting because it does not change the structures that must be changed to keep those parents in the kind of loving relationships children want and need.

Research

In light of the preceding discussion, what research recommendations can be made? I offer the following for consideration:

1. Cross-cultural comparison studies would at least alert theorists to the great variety of possible ways of perceiving "the family," and would perhaps head off some of the more rash theoretical recommendations.

2. Further study of relitigation in custody cases is important for two related reasons. First, we can perhaps refine our predictors of joint-custody failure; second, if relitigation is lower among those with joint custody, a presumption of joint cus-

tody would be justified on two grounds. (a) less parental conflict and (b) diminished caseloads.

3. Further study is needed on the effects of geographic distance in joint custody both in terms of the continued workability of such arrangements and its effects upon children in those arrangements.

4. Finally, we need more research on the characteristics of children who do well and those who fare poorly in joint custody.

Policy

Also based on the preceding discussion, it is now possible to make some broad policy recommendations. While acknowledging that these are flawed, I hope that they will serve as a focus for future debate.

1. Nonadversarial mediation should be made available and required of all parents considering divorce for the limited purpose of working out mutually satisfying custody arrangements prior to the granting of a court date.

2. A limited hierarchy of custody presumptions should be established wherein joint physical custody be accorded highest priority, followed by joint legal custody, and, finally, by sole custody.

3. The objections of parents based on a desire to prevent the other from sharing custody must not be considered unless it is also based upon genuine concern for the child's welfare. Possible criteria for the rejection of joint physical custody might include but not be limited to:

- inability to care for the child, whether mentally, emotionally, or physically
- significant substance abuse
- physical abuse of spouse or child
- expressed desire of a parent not to participate in joint custody
- great geographical distance in the case of very small children when frequent changes of residence are unmanageable
- intractable overt hostility over time between spouses despite mediation (even

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