

JOINT CUSTODY: THE INTEREST OF THE CHILD IN DIFFERENT FAMILY STRUCTURES

The current position regarding assignment of domicile of the children of separated couples

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FIRST ITALIAN SCIENTIFIC ARTICLE ON ASSIGNMENT OF CHILDREN'S DOMICILE WHEN PARENTS DIVORCE.

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Abstract:

Despite the promulgation, six years ago, of law no. 54/06 which introduced joint custody (see below for definition), in Italy (as in almost all Europe) it is still common, when couple separate that custody is granted to just one of the parents, usually the mother. This has serious psychological and physical consequences for the children involved.

This article by Italian pediatrician and author of a book on divorce "*Nel nome dei Figli*" ("*In the Name of the Children*", www.nelnomedeifigli.it) Vittorio Vezzetti, reviews the international medical literature on this disputed topic in order to define the best option for the affected children, taking into account all possible sociological biases.

The article examines the most important international statistically-validated research, including Sarkady (22,300 children), Bauserman (2,660 children), Jablonska-Lindbergh (15,428 children), Children's Society (184,496 children) and finally official reports of Australian government (over 70,000 families).

This article can constitute a statistically validated scientific submission to the courts, social services and psychological assistance consultancies to support the concept of joint alternating custody and in order to achieve the best outcome for children in family assessments.

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INTRODUCTION

In February 2006, after a long and intense debate, the Italian parliament passed the shared-custody law (no.54/06). This was initially seen by many as a real step forward in the protection of children and a proper execution of the United Nations Convention on the Rights of the Child (New York 1989) as regards the right of the child to both parents. However the last six years has shown it to be inadequate to achieve its objectives. In fact six different bills aimed at modifying the legislation have since been presented to parliament.

Senator Emanuela Baio, a member of the Childhood Commission, and co-presenter of the bill, writes in the preface of the book *In the Name of the Children*: "For people like myself, a co-presenter of the law, who truly believed deeply in the shared-custody law and supported it in 2006, at the end of the 14th Legislature, it is even more painful to have to admit this failure "(1).

Even today, a parent who asks the Court for an equal number of days and nights as the other parent may find their application rejected and be awarded only two nights per month by the magistrates on the grounds that "shared custody does not mean equal time at each of the parent's homes "

In a similar vein Dr. Fiorella Buttiglione commented, "I do not think then that the provision of dual domicile can achieve the best interests of the child. It is almost as if the son were a prize, constituted of hours, that parents should divide equally between them" (CSM document March 2011). The court of Varese commented "[t]he court's case-law does not agree with a division of time that actually requires a genuine change of domicile every few days as it would be dangerously destabilizing."

As a result of this one parent approach and the priority given to the stability of the home over that of the children's affective links combined with the inefficiency of the judicial system in enforcing its custody orders, 25,000 Italian children (about one in every three), according to ISTAT data, lose contact with one of the parents after separation.

The consequences are significant both in terms of biomedical and social cost.

Firstly, there are important consequences of emotional deprivation and stress which appear in neurological and psychological assessment: (Battaglia, Pesenti, Medland et al., 2009, show that “genetically predisposed children subjected to the trauma of parents separating (through death or difficult marital dissolutions) at an early age, have a high probability of suffering from adult panic for a modifying action on the bulbar centers of respiration”; Anna Sarkadi et al. highlight how paternal involvement as measured by time of cohabitation, commitment and responsibility - has a positive influence on the development of the offspring. Researchers have retrospectively analyzed 24 longitudinal studies, carried out on four different continents and involving 22.300 minors. They conclude that the father’s involvement improves cognitive development, reduces “psychological” problems in young females, reduces delinquency in both young males and females and reduces the frequency of “behavioural” problems.

Psychological stress and affection deprivation can even cause hormonal problems (psychosocial dwarfism, abnormal secretion of oxytocin and vasopressin), and chromosome damage. A study in *Psychosomatic Medicine* shows that abuse or affection deprivation (acting on telomere length and the production of pro-inflammatory substances) increase sensitivity to stressors in adult life leading to increased risk of psychiatric disorders. (2,3,4,5).

The negative social consequences are clearly demonstrated by unwanted pregnancies, smoking, alcoholism and early school dropout. (6,7,8)

The author has frequently participated in Senate Judiciary Committees and has noted that one of the main reasons for friction between the various stakeholders has been the debate as to which of the different forms of family structure should be considered the gold standard for the good of the child. Simplifying, we have formed two parties; one group (composed mainly of lawyers and judges), holds that priority should be given to the seat of the affections and the stability of the home, even at the expense of the quantitative relationship with the other parent; the second group (composed mainly of scientists) maintains that priority should be given instead to the relational continuity and stability of affection at the expense of the stability of home. This article, while conscious of the influence of sociological factors, aims to clarify the current position, as per international scientific literature, on the controversial issue of which family structure best serves the interests of the child.

ORIGINS OF THE DEBATE

The research highlighted some well recognized issues that arise in the children of separated couples although these issues do not necessarily or automatically become clinically relevant. Since the beginning of 1970’s an intense debate has continued, especially in the U.S, about the benefits or harmfulness of joint custody (physical and / or legal). It is important to note that this debate began in the U.S. (where divorce has existed since 1906), France (since 1789) and Sweden (since 1913). In Italy divorce was introduced more recently (the relevant law was rejected by the Senate as late as October 1970) and this may explain in part a cultural lag in addressing the issue.

The positions for and against the equal sharing of the parental role can be compared by analyzing the “benefits of [the] ongoing relationships with both parents versus the damage due to greater exposure to parental conflict and instability in the home.”

The battle within the scientific community has been intense, with some strongly contrary to joint alternating custody (Goldstein, Freud & Solnit, 1973 and Kuehl 1989) and others strongly in favor (Roman and Haddad 1978 and Bender 1994). (9,10,11,12)

After more than 40 years since the debate began, we can now substitute the theoretical and ideological debate with a more concrete and practical approach based on research findings (especially meta-analysis). This allows for the evaluation of the experience of countries that have, unlike Italy, an established history of joint alternating custody. Even if not extensive the history still permits sufficiently robust statistical inferences to draw valid conclusions. These conclusions have been unequivocally favourable and have resulted, albeit very slowly, in changes being implemented in many jurisdictions.

BAUSERMAN STUDY

This important study published in 2002 by a psychiatrist in the Department of Government of the United States introduced the meta-analytic approach¹. Bauserman argues that real research should not only examine the differences between the outcomes of the two types of custody but it should also examine how the factors identified clinically related to each outcome. (13)

Bauserman makes it clear that this cannot be lead to the establishment of a single absolute cause but does establish a statistically validated correlation between the variable examined best type of custody.

¹ (Journal of Family Psychology 2002, Vol. 16, No. 1-91-102)

This meta-analytic approach enables the integration of research findings from the available literature in a more systematic way. Quantitative statistical results can be converted to a metric and thereby the quantitative effects can be systematically analyzed.

Bauserman, an American psychiatrist, favours this approach as it avoids some systematic bias such as in sample selection for instance.

Bauserman selects two objectives to examine: first, the analysis of meta-analytic reports that compare outcomes of children in shared custody to children in single-parent custody; and, secondly, how secondary variables can influence the different outcomes. For example: as judiciaries internationally tend to assign custody to the mother when custody is granted to one parent a system with a greater tendency to balance the parental roles would mean that more male children would benefit from closer relations with the male parent and then they could, in theory, derive greater benefits than females.

Bauserman analyzes 33 studies (of which 22 unpublished) previously selected so as to be standardized: in 4 the researchers compare alternating with single-parent custody; in 21 the researchers compare single-parent custody with custody which allows cohabitation time with the second parent of between 25 and 50%; six studies compare single-parent with joint custody based on a liberal definition of the parental couple; and, finally, 2 separate studies that compare the same sample of children in a single-parent custody group to in "alternate" custody (where a child spends fifty percent of the time with each parent) and a group in joint custody (children living 25% to 49% of time with second parent).

The study looked at a number of measures of health: general psychic wellbeing, behavior, emotions, self-esteem, relationships with families and school assessment. It included the analysis of a mental health questionnaire relating to the period up to the time of divorce and a checklist of the level of conflict, both past and present, which measured 140 quantitative effects.

The analysis covered 1,846 children in sole custody and 814 in joint custody and ranged over periods between 1982 and 1999.

Several external factors likely to influence outcomes were analyzed. It was found that these were not modified by the sex of the original author of the study or by the age of the children at the time of divorce. Similarly neither the prevalence of the female parent in the "sole custody" group nor the type of measure were found to have any effect. (Dedicated DSTA software was used to eliminate extreme results to ensure statistical homogeneity).

In summary, the results were:

- 1 - Children in joint physical and legal custody fare better than those in "sole custody" independently of their age;
- 2 - the presence and participation of non-cohabiting fathers was positively associated with behaviour, emotions and education outcomes;
- 3 - the results did not vary depending on who compiled the forms (mothers, fathers, teachers, psychologists or doctors).

Bauserman found that, generally, children in joint custody were children of lower-conflict couples. The author did not overlook a possible problem of self-selection of cases but also observed that the lower conflict in the joint custody children was not a predictor of best outcome. However, other conflict research studies (Gunnore & Braver 2001) where this variable was eliminated by a statistical control showed benefits for children. (14)

Bauserman concluded that to eliminate any doubts studies should compare children in joint custody ordered by the courts with young children in joint custody decided independently by the separated parents. The comparison between single-parent paternal custody and shared custody showed slight NON statistically significant advantage in favor of the first. (Results of many previous studies which tended to find in favor of maternal parenting may be problematic due to an issue of small sample size where the data are derived from legal cases, as the number of paternal custody cases are few since the courts in almost all the western world privileges the maternal custody, rarely the alternating custody, almost never the paternal custody.)

The outcomes of Bauserman study (available in full, as with many of the other studies cited here, at www.figlipersempre.com) are:

- 1 – A definitive correlation, but not a causal relationship exists between joint custody and improved mental status;
- 2 - the claim that the joint custody exposes children with two homes to serious conflict is rejected. Joint custody is beneficial;
- 3 - joint custody is not suitable where parents are abusive, neglecting or mentally ill etc.;
- 4 - some of the research examined showed that joint custody reduces conflict;
- 5 - dissemination of these findings to stakeholders is required. (Author's note: Pediatricians, communicating with parents of their patients who are in the process of separation should inform them that the dual home solution is positive as it offers relational and educational continuity);

6 - the overall conclusion is that joint custody can certainly be beneficial as it avoids some of the recognised and well defined disadvantages specific to sole custody.

SOME EXPERIENCES ABROAD

In many countries shared custody is more established than here in Italy. This does not mean that joint custody is the solution in the majority of cases. The theory of shared parental responsibility is not matched by practice.

Bauserman considers custody to be genuinely shared where the child spends not less than 25% of the time with the less favoured parent. This cut off would eliminate almost all Italian cases that are currently considered shared/joint. In Italy the average time spent with the second parent is theoretically 17%. In reality it is actually lower. (See "The son of divorced parents," Ripps, 3-4 2009). (15)

Shared custody has been a requirement of Italian law since 2006. It has been law in Sweden, Greece and Spain since 1981, in Great Britain since 1991, France since 1993, and Germany since 1998.

In California and Canada, the judge often must give the reasons in any cases where they do not grant shared custody with equal time.

Belgium is about to promulgate a law which provides making shared custody the rule. Sweden is the European country with the highest percentage of shared custody (30%, compared to 16.9% in France and less than 1% in Italy).

Generally, however, even those without shared custody can share time on substantially equal terms by adjusting holidays and midweek nights with the least favoured parent. This approach reduces conflict to a great degree. Custody is no longer a tool of emotional or economic blackmail against the former partner. Judicial cases in Sweden were almost entirely eliminated with the adoption of this approach as the child is maintained directly rather than by monthly payments to the ex-partner. Currently, 95.7% of couples agree to terms at the first hearing and a further group agree at the second hearing.

Few cases go to the courts which also has the effect of reducing the workload of the judicial system.

Consequently those cases that do end up in court last about only six months.

The introduction of the law in Belgium in 2006 led to very positive results. The introduction of the law on shared parenting in Australia in 2006 produced a significant result. Whereas the number of general cases had increased from 76,807 to 79,442, in the previous two years, referrals to Family Court (roughly corresponding to Italian judicial cases) fell from 27,313 to 18,633.

In France, the current law provides joint alternating custody but any conflict, even if it emanates from just one of the parties, gives the court the option to set this rule aside. This is creating a lot of discontent. The practice of alternating custody has never been taboo in France. While it is not widespread the numbers have allowed for some studies to be carried out. Findings largely supported joint custody as a solution.

These include Ripps study, "The son of divorced parents" noted above. Solint (1980) found that joint custody mode of co parental care boosts confidence in parents; 20% of parents wanted more frequent alternation (ie.g. instead of one week per parent, they wanted 3 days per parents) and 30% wanted periods longer than the 7-day week). A study by Jacquin-Fabre showed good results for both parents and children. Raschetti 2005 reviewed a series of studies of both French-speaking and the English-speaking world and concluded:

- 1 - Alternating custody does not negatively affect children as they are, by nature, endowed with great adaptability;

- 2 - this is the case even when relations between the parents are bad (although neither does it contribute to improved relations);

- 3 - where logistics permit and there is the will, alternating custody does not create problems even for very small infants (where suitable arrangements are made to suit the breastfeeding schedule);

- 4 - in general it was possible to infer from the follow-up that single-parent children have lower cognitive development and are less sociable than joint custody children. (16, 17, 18).

A major study in 3,000 French secondary school children led by Poussin-Martin (and cited by the National College of the Order of Italian Psychologists in hearings before the Senate Judiciary Committee) found that children living alternately with both parents have higher levels of self-esteem and hold themselves to be more confident when compared with those who live with a single parent. (19)

In the important hearing on 8 November, the National College of Psychologists maintained: "... the model that includes only one (prevalant) parent as the permanent point of reference for children, who provides for all their needs and who takes every decision and all responsibility for their care, while the other parent is merely forced to give money has only sporadic contact with his children is not suitable to the needs of children. In general, the changes in the bill DDL 2454 do nothing but promote the possibility that the principle of dual parenting (fostering core) does not remain mere principle but it fits in to the facts of daily life and is strictly applied as a principle, so as to maintain the evolutionary process of the child. The foresting core can include two parents (with their different points of view and habits) which would guarantee greater impartiality in the educational and developmental processes of the child.

The factor to be evaluated is whether, in terms of the health of the child, it is better for a little time to be sacrificed in order to spend time at both parent's houses rather than lose the opportunity to have both parents as points of reference "

LIFE SATISFACTION IN CHILDREN

A notable study has just been published on *Children & Society*. It was conducted by researchers from the Universities of Bethesda, Greenland, Stockholm, Yvaskula (Finland), Copenhagen, Akureyri (Iceland) and Gothenburg. It analyzed 184,496 children (divided into three age groups: eleven, thirteen and fifteen year-olds) in 36 western societies (Italy included) with no less than 1,536 students in each country by age group. (20)

The purpose of this study was to examine only the differences in life satisfaction and perception of family well-being among children in different family structures over a very wide variety of cultural situations. A large sample drawn from 36 countries made it possible to compare more common life situations including; families that were not separated, families with single mothers, and families with mothers and stepfathers with less common situations such as families with single fathers, families with fathers and stepmothers and joint custody dual home families.

The analysis was based on data from 2005/2006 HBSC (Health Behaviour in School-aged Children) studies, a collaborative inter-nation study by the World Health Organization.

The international standard questionnaire consisted of a number of central questions used in all participating countries and additional focal questions that allowed each participating country to emphasize particular areas of national interest. The measures in this study were used in 36 western industrialized countries (Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and the United States). Ethical approval, as per national law, for was obtained for each national survey.

The dependent variables of life satisfaction were measured using Cantril's (1965) classical measure. Each respondent was asked to indicate where they felt they currently were that time on a visually represented scale on which 0 represented the worst possible life and 10 the best possible life.

To avoid the potentially confounding effect of economic wealth on individual life satisfaction a measure of perceived economic status was included. The participant was asked how well he thought his/her family rated from 1 (not at all good) to 5 (very good). This subjective measure was preferred to other objective measures of well-being such as the HBSC scale for family well-being - life satisfaction is more likely to be influenced by perceptions of well-being rather than the amount of actual assets owned by the family compared to other families .

Briefly summarised the results were:

1 - Children living with both biological parents reported higher levels of life satisfaction than children living with a single parent or with a biological parent and an acquired parent. **So children living in intact families fare better.**

2 - Children who live under genuine (i.e. equal division of time) joint custody arrangements reported a higher level of life satisfaction than any other arrangement for separated families. Only a quarter (0.26) rank themselves lower than children in intact families.

3 – When the specific parameter of perceived family well-being is controlled for, the difference between joint custody families and single mothers, or between joint custody families and mother and stepfather families becomes statistically insignificant.

4 – Communications difficulties with parents are strongly associated with lower life satisfaction, but do not affect the relationship between family structure and life satisfaction.

5 - Children in the Nordic countries characterized by a strong welfare system reported significantly higher levels of life satisfaction on every metric compared to other countries, except in the category of children living in single parent's fathers house. In particular, the researchers observed that the lowest level of life satisfaction occurred in situations of single father or father and stepmother. It seemed therefore that not living with the mother had a greater impact on life satisfaction compared to not living with the father. However, given the strong tendency of the courts to grant custody of children to the mother is also possible that the few children in the custody of their father are more likely, on average, to have social and psychological problems.

At a more pragmatic level, moreover, the need for very large data sets to make solid inferences about very small subgroups of the population has severely restricted the possibility to statistically validate research on

children living with single fathers or fathers and stepmothers. The results suggested that living all or most of the time with his mother was not crucial in this respect. Children living approximately half the time with their mother and half the time with their father are equally satisfied as those who live with the mother or with the mother and stepfather most of the time. Joint custody has never been found to be a disadvantage.

6 - Economic differences between countries affect the correlation between some family structures, perceived family well-being and life satisfaction.

CONCLUSIONS

The last study which could be interpreted as finding against shared custody dates back to 1999. It was a small case study and the variable assessed was attachment to parental figures. The results it should be noted were below the level of statistical significance. (21)

That genuine shared custody is preferable to single parenthood was confirmed in another area by an extensive study of 15,428 Swedish teenagers. It focused exclusively on behavioral risks: drugs, alcohol, smoking, exposure to bullying and physical violence, and mental distress (22). Particularly good results were found on measures of mental distress.

The ritual question of "...what do the children of separate families think?" received some very interesting responses in research by Fabricius and Hall in 2000. (23)

These two American psychology teachers elicited responses from more than 800 young people (students of their universities), who grew up with divorced parents. Participants were asked to indicate their perceptions on the central issue of how much time children currently involved in divorce should spend with each parent. Boys clearly indicated that they had always wanted to spend more time with their fathers while growing up and the perceived best arrangement was joint equally shared custody. This was chosen by 93% of children who had experienced shared custody and 70% of those who did not have the opportunity to try it.

It is clear that joint custody cannot and should not be imposed unquestionably as the custody arrangement for all children. However it does represent the gold standard for children and should not be excluded *a priori* as it is today in Italy. It should be the first option to be considered and should be incentivized. Contrary behaviour such as forcibly deportation of children away from the other parental figure should be discouraged. As is currently the case in Canada, California and Sweden precise documented reasons should be required in order for any exception to this rule to be considered.

The words of professor Turchi, (Professor of Applied Psychology at the University of Padua) indicate that some effort is still required to the distance is still the way to overcome prejudice, ideology. He concluded his speech to the Senate as follows:

-The main criticism against a fully and authentically dual parent model, such as the one proposed in this bill, is the inevitable division of the children's interests between two equally important parental references. **with the consequence of the child fluctuating between 2 different houses.** The terminology used to express this disagreement uses strongly negative, language such as "tossing about", posting like a "parcel", cutting into wedges "like an orange", "nomad" and "suitcase child".

It is a criticism that may sound appealing and might seem convincing but only to the ill informed.

Such criticism that does not take account of scientific studies and is not informed by scientific progress. It is the same as denying antibiotics to those afflicted with pneumonia to avoid the inevitable gastro-intestinal side effects. The analyses of longitudinal studies demonstrate that no negative effects result from shared custody divided between two homes or from differing non-consistent educational models. As noted above the findings indicate the contrary.

In contrast where the main tasks of education are allocated to just one of the parents reliable scientific evidence from numerous studies demonstrate **peaks of discomfort for the child.**

It should be noted that the positive outcomes apply to the entire family group. Mothers in joint custody arrangement also benefit. In younger mothers psychological issues caused by feelings of guilt towards their children resulting from the separation are reduced.

The concept of the dual home, far from being injurious should be seen as a key tool to protect the child's balanced development.

It can be concluded that for the overall budget in the health of the child certainly for him it's not sacrifice to lose a little 'time to attend two households that lose the ability to have a reference to both parents. Which means conclude in favor of the abolition of the practice of appointing a "prevalent domicile parent" -.

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