

Is “Best Interest of the Child” Best for Every Child?

The Long-Term Implications of Gender-Neutral Custody Laws

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Extended Abstract

Numerous studies have examined the implications of divorce on children’s educational attainment and labor supply (see, for example, Krein & Beller 1988, Amato & Keith 1991, Zill, Morrison & Coiro 1993). The general consensus is that children with divorced parents tend to have lower academic performance, are more likely to drop out of school, less likely to attend or complete college, and are more likely to be unemployed and on welfare. In recent years, research in divorce has also extended the analysis from children directly affected by divorce to all children, including those in intact families. For example, Gruber (2004) examined the implications for children of growing up in a unilateral divorce environment which makes divorce easier. He found that adults exposed to unilateral divorce regulations as children have lower levels of education. However, very few researchers have looked into another important component that affects the outcome of children after divorce, and may even influence the children who do not experience divorce: child custody arrangements.

In the United States, the assignment of child custody is governed by the custody laws of each state. For the most part of the last century, the “tender years” doctrine—a legal doctrine that presumes the mother is the preferred custodian for young children in the case of parental separation—was the primary determining factor in the resolution of custody disputes between parents (Klaff 1982). Legal practice changed in the 1970s and the 1980s. Most states discarded the tender years doctrine in their custody laws and mothers were no longer automatically favored in custody arrangements. Instead, courts adopted the “best interests of the child” (BIC) doctrine, which consists of several criteria to determine which parent is the more suitable parent, and which makes no reference to the gender of the parent. The change in legal doctrine was swift and dramatic. By 1990, at least 39 states had completed the

transition in both state statutes and court practice. Importantly, the movement away from the “tender years” doctrine to the BIC in each state was independent in time of the movement to unilateral divorce, another major change in divorce laws around the same time.

As the legal transition occurred across states, the percentage of father custody increased significantly. Calculations based on the U.S. census data confirm that only about 9% of the divorced single-parent households were headed by father in 1970. This number has risen to around 23% since 2000, a more than two-fold increase.

Despite the significant changes in both custody laws and living arrangements, there has been little empirical analysis of the impact of such changes on children. Custody assignment plays an important part before, during and after the divorce process in many aspects of the life of children. Changes in legal doctrine will not only result in more father custody after divorce, but more importantly, they also change the relative bargaining power between husbands and wives *ex ante*.

In other words, the effects that we have previously attributed to divorce may in fact be due to changes in the circumstances surrounding marital dissolution, which include child custody arrangements. Indeed, models of household bargaining predict that changes in the prospect of child custody arrangements would affect the likelihood of divorce and the provision of resources to children *whether divorce occurred or not*. As such, the analysis of divorce and children’s development would not be complete without examining the laws governing custody assignment.

This paper is the first to assess the impact of changes in legal doctrines regarding custodial arrangements on children’s educational attainment and labor supply outcomes. To do so, I make several innovations:

First, I code the specific year of custody law changes for each state. Due to the heterogeneity between divorce statutes and court practice, there has been no uniform coding of child custody law changes across states in the legal literature. I examine the custody cases between the 1960s and 1990s, and establish two criteria to code the law changes. I am able to

determine the specific year of transition for 37 states. Key for the following empirical work, I also show that the transition to the BIC was independent in time of the adoption of unilateral divorce in divorce legislations.

Second, I develop a simple Nash-bargained household decision model, in the spirit of McElroy & Horney (1981). In the model, a spouse stays married if the utility gain from marriage is higher than the external threat point – each party's best option outside marriage. The couple chooses the optimal resource allocation to maximize the product of their utility gain from marriage. The comparative statics of the model gives straightforward empirical predictions: the introduction of the BIC doctrine increases the external threat point for the husband, and decreases that for the wife, which will increase the husband's share of resources in the household.

Previous studies (Strauss & Thomas 1995, Lundberg, Pollak & Wales 1997) have shown that mothers tend to devote more resources to children when they own the same amount of resources as fathers. As the theory predicts that fathers are unambiguously more empowered by the BIC, we would expect that children living in *intact families* would have fewer resources devoted to them under the new gender-neutral custody regime. Indeed, children from intact families are still the majority in the population. According to the statistics from the Survey of Income and Program Participation (SIPP), in 2009, 60% of the children being surveyed lived with both biological parents.

The impact of the BIC for children who experience divorce is somewhat ambiguous: they may be assigned to a more appropriate parent, but the overall resource allocation to children may suffer. While the children who experience divorce may or may not be better off, the theory predicts that the effects will be negative for the children whose parents do not divorce. As such, the overall effect is likely to be negative. Children may be worse off, on average, after the introduction of the BIC. The model therefore predicts that, although the BIC doctrine was adopted in order to serve the best interest of the children in the process of their parents' divorce, it may, in fact, hurt those children whose parents remain married, which is a negative impact that has been overlooked.

In my empirical estimation, I exploit the variation across states in the timing of adopting the BIC to measure its long-term impact on children. I use the Census data from 1960 to 1990 and the American Community Survey (ACS) data from 2000 to 2010 for adult outcomes. The long time span allows me to obtain information about cohorts of adults before and after the legal doctrine transition. I am also able to track each person's date and place of birth, which, matched with the legal coding, gives me information about each person's exposure to custody regulations during childhood. Since the BIC is not well correlated with changes in the divorce legislation, I am able to identify the effects of the BIC independent of the impact from divorce.

I estimate the effect of growing up in the new custody law settings on the long-run education and labor supply outcomes of the children when they become adults, controlling for demographic characteristics. My source of identification comes from the time difference in adopting the BIC doctrine across states. I find that, growing up in the gender-neutral custody regime is associated with fewer years of education and a lower probability of graduating from high school and college. Furthermore, exposure to the BIC decreases the labor supply of females. Therefore, my empirical analysis supports the theoretical prediction that living in the BIC regime has negative implications for the majority of the children.

To formally test if the effects of the BIC are independent of the impact of divorce legislation changes, I estimate a specification that includes divorce. I incorporate Gruber (2004)'s analysis about childhood exposure to unilateral divorce law, by controlling for whether one lived in the unilateral divorce law regime as a child. I find that all my results from above are robust to the addition of the unilateral divorce law controls. That is, child custody law regimes have an effect on children that is independent of divorce legislations. The results suggest that negative effects that may have been attributed to divorce may in fact be due to changes in child custody arrangements, which have impacts on children in both intact and divorced families.

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