

# THE GROWTH IN SHARED CUSTODY IN THE US: PATTERNS AND IMPLICATIONS\*

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We document the dramatic decline in the United States of mother sole-custody arrangements following divorce. Our empirical analysis uses Wisconsin Court Records data spanning more than two decades (1988–2010). Updating earlier analyses that showed significant increases in shared custody, we estimate that shared custody (where children spend at least 25% of time with each parent) has now replaced sole-mother custody as the most common post-divorce parenting arrangement – accounting for just over half (50.3%) of all cases in the most recent cohort available. We discuss the institutional context for these changes in custody in the United States, the socio-demographic factors associated with custody outcomes, and the implications for policy and practice.

## Key Points for the Family Court Community

- Shared custody has increased markedly so that it is now the most common custody outcome in recent Wisconsin divorces, according to court records.
- It has also become more common across a diverse range of demographic groups.
- Equal-shared custody is twice as likely as unequal-shared custody (mostly mother primary-shared custody) in recent cohorts – reflecting the growing involvement of fathers in their children’s lives after separation.
- In contrast to previous research, shared custody is now unrelated to child age and gender.
- Income remains an important predictor, with shared custody more likely among those with higher incomes.
- With shared custody becoming more common and demographically diffuse, it is increasingly important for the Family Court Community to help parents understand the benefits and risks of this rapidly expanding family form.

**Keywords:** *Shared Custody, Co-Parenting, Divorce, Single Parents, Father Involvement*

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## I. INTRODUCTION

Patterns of family formation in the United States have changed dramatically over the last 50 years. In 1960, 88 percent of children lived with both their biological parents. By 2016, the growth in nonmarital births, cohabitation and divorce reduced this figure to 69 percent (U.S. Census Bureau, 2017). These changes in family organization coincide with related changes in economic relations and the gendered division of labor. The labor force participation rate of married mothers with young children rose dramatically – from 30.3 percent in 1970 (Waldman, 1983) to 64.2 percent in 2015 (Bureau of Labor Statistics, 2016). Working wives increasingly have earnings roughly comparable or exceeding their husbands' (Bureau of Labor Statistics, 2014) and while mothers continue to have more responsibility for child care than fathers, married fathers' time with children has increased significantly (Sandberg & Hofferth, 2001; Sayer et al., 2004). Moreover, father involvement is increasingly seen as a positive factor in children's development (Cabrera & Tamis-LeMonda, 2013; Lamb, 2000).

Changes in family formation and economic roles have had implications for policy and practice related to where children live when their parents divorce. Divorce decrees typically specify living arrangements – referred to as “physical custody” – and the arrangements for decision-making regarding parenting – referred to as “legal custody.” Although most divorces are based on private agreements that are presented to a judge (Kelly, 1994), these negotiations are generally done in “the shadow of the law” (Mnookin & Kornhauser, 1979) and many include formal mediation. In the United States, divorce law is set by the states rather than at a national level. While there has historically been, and continues to be, some variation across states, there have been nationwide developments in the general principles for awarding physical custody across all states. Early in the 20<sup>th</sup> century, the primary principle for deciding where a child was to

live when parents divorced was the “tender years” doctrine, in which children, especially young children, were thought to most need their mother’s care (Emery, 1994). In fact, an explicit preference for maternal custody was enshrined in some statutes (Kelly, 1994). Although the data on physical custody outcomes are limited, for most of the last century, when parents divorced, physical custody was awarded to the mother.<sup>1</sup>

However, in the 1960s and 1970s, as married mothers increasingly joined the workforce and thus less frequently stayed home to focus primarily on child care; and as married fathers’ roles extended beyond that of breadwinner, policies in most states were reformulated and explicit gender preferences were overturned in favor of a more general and flexible guiding principle of the “best interest of the child” (Buehler & Gerard, 1995; Kelly, 1994). Regardless of the change in principle though, nearly all children still lived with their mother, although there was some movement toward explicit “visitation” arrangements, precursors to today’s parenting plans that provide precise prescriptions for where the child is to live, when, and how transitions will occur (Kelly, 2007).

In the 1970s, a new custody arrangement came into use, “joint” or “shared” custody, based on the idea that it was in a child’s best interest for both parents to be substantially (or even equally) involved in parenting. Halla (2013) demonstrates the growth over time in shared custody laws, which were enacted in nine states in the 1970s, 29 states in the 1980s, ten states in the 1990s, one state since 1997, and two states do not have explicit shared custody laws. As a part of the law changes, or sometimes following them, the guiding principles in many states changed again, this time to be even more explicitly gender neutral and to encourage (or even presume) ongoing residence with each parent (Kelly, 2007). For example, the current Wisconsin statute governing custody (767.24(5)) states that “The court may not prefer one potential

custodian over the other on the basis of the sex or race of the custodian” and its 2000 statute (767.24(4)(b)) states that, “A child is entitled to periods of physical placement [custody] with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child’s physical, mental or emotional health.”

With these new guiding principles and statutory language, we might expect increases in shared custody over time. In this paper, we explore whether this has occurred, examining trends in shared custody over more than 20 years and selected factors related to this growth.

## DEFINITIONS

When parents divorce, both legal (decision-making) and physical custody (living arrangements) are decided. We focus here on changes over time in physical (rather than legal) as awarded in legal decisions – rather than necessarily as practiced post-divorce. We draw from our earlier analyses (Cancian & Meyer, 1998; Cancian, Meyer, Brown & Cook, 2014) and distinguish the following physical custody arrangements for children living with their parents<sup>2</sup>:

*Sole custody* means that children primarily or exclusively live with one parent; the other parent may have a schedule for seeing the children, in some cases including a limited number of overnight visits. Most sole custody cases call for children to live with their mother; we distinguish mother sole custody and father sole custody.

*Shared custody* refers to cases in which the children spend a significant number of overnights with each parent. For some analyses discussed here we differentiate between “equal” shared custody and “unequal.” In the U.S., states use a variety of thresholds for distinguishing sole custody from unequal-shared custody. We use the current Wisconsin distinction in which unequal-shared custody involves a child staying with one parent 25% to 49% of the time and the

other parent 51% to 75% of the time.<sup>3</sup> Time is defined by the number of overnights spent with the parent.

*Split custody*, defined here as at least two children who have different custody outcomes, for example, one child having primary residence with the mother and at least one child having primary residence with the father. Split custody is relatively rare.

Figure 1 illustrates the main custody types (excluding split custody) we consider in this paper, distinguishing by percent of time living with the father—from zero percent on the far left, to 100 percent at the far right. Differentiating by the percentage of overnights spent with each parent, mother-sole custody is defined as cases with 24 percent or less of the nights with the father, shared as cases with 25 to 75 percent with the father, and father-sole custody as cases in which the child spends 75 percent or more with the father. The figure shows that shared custody cases can be further differentiated: *shared with mother primary* is defined as cases with 25 to 49 percent time with the father, *equal-shared* defined as cases in which children spend equal nights with each parent, and *shared with father primary* defined as cases in which children spend 51 to 75 percent with the mother.

## **SHARED CUSTODY CONTEXT AND PREVIOUS RESEARCH**

In the United States, there are limited nationally representative data with information on custody outcomes.<sup>4</sup> The 2013 Current Population Survey-Child Support Supplement (CPS-CSS) does provide information on the number of custodial mothers and custodial fathers, based on where individuals say their children live, with 82.5% of custodial parents being mothers and 17.5% fathers (Grall, 2016). However, only a crude categorization of custody outcomes is possible with these data; some of these parents have sole custody, others have unequal-shared custody, and others have equal custody.<sup>5</sup> As a result, most analyses have used state-based data,

with the most recent analyses examining Wisconsin (Cancian & Meyer, 1998; Cancian et al., 2014; Melli & Brown, 2008).

In the U.S., explanations of the growth in shared custody, and the characteristics of families with shared custody draw from a variety of social science frameworks.<sup>6</sup> To the extent that policy emphasizes the best interests of the child, rather than parents' rights, we would expect custody outcomes to reflect the characteristics and societal expectations about the needs of the child. For example, with respect to children's age and gender, courts may believe that mother-sole custody is most appropriate for younger children and girls. Indeed, earlier analysis has found that father custody is more likely when children are older and/or boys (Cancian & Meyer, 1998; Fox & Kelly, 1995; Juby, Bourdais & Marcil-Gratton, 2005). Custody outcomes may also reflect parents' personal histories and situations, as courts may believe that a parent with more complex birth or relationship histories (previous marriages or children from other relationships) may be a less appropriate custodial resource for children, and so might give sole custody to a parent who had less complex family circumstances. Again, there is supporting empirical evidence that new partners, previous partners, and previous children in general decrease the likelihood of sole custody (Cancian & Meyer, 1998; Juby et al., 2005).

To the extent that custody outcomes reflect continuations of pre-divorce arrangements, we might expect mothers who were not working outside the home while married to be more likely to have sole custody. Traditional economic theory of the family highlights the gains possible from parents' specialization of roles (Becker, 1981), suggesting that when one spouse (historically, the man) can earn a higher market wage it is optimal for that individual to focus on the labor market and the other parent (historically, the woman) to focus on caregiving. Under this framework, awarding the mother sole custody at divorce would maintain pre-divorce roles

(Weiss & Willis, 1985). On the other hand, to the extent that the gendered division of labor has changed over time, with fathers making somewhat greater contributions to caregiving (Livingston & Parker, 2011; Pleck, 1997), and mothers greater contributions to earnings (Blau & Kahn, 2007), shared custody might now more closely maintain pre-divorce roles. Couples in which both parents work outside the home are more likely to also share child rearing responsibilities (Pew Research Center, 2015), which may help explain why they are generally more likely to have shared custody (Cancian & Meyer 1998; Cancian et al., 2014; Juby et al., 2005).

While parents and courts may prefer to maintain pre-divorce roles, divorce creates new economic realities. Living standards as the economies of scale associated with a shared household are lost, and mothers, especially, have often experienced downward mobility (e.g., Bartfeld, 2000). These new economic realities can make the maintenance of pre-divorce roles difficult, in particular when we consider that shared custody is more expensive than sole custody, since both parents must maintain housing and other resources suitable for resident children (Melli & Brown, 1994)<sup>7</sup>. Thus, it is not surprising that shared custody is more likely among couples with higher incomes (Bartfeld 2011; Cancian & Meyer 1998; Cook & Brown 2006; Donnelly & Finkelhor, 1993; Juby et al., 2005; Pearson & Thoennes, 1990). Because parental education is so closely linked to income, those with higher education are also more likely to have shared custody (e.g., Juby et al., 2005), though this may also reflect class differences in shared parenting during the marriage.

Custody outcomes may also reflect the result of a bargaining or negotiation process—shaped by personal power relationships (Mnookin & Kornhauser, 1979; Teachman & Polonko, 1990) as well as the legal process. As such, we expect different custody outcomes depending on

parents' relative economic status (e.g., each parent's share of family income), or legal representation. Previous research suggests that as a mother's share of the couple's total income rises, she is more likely to have sole custody (Cancian & Meyer, 1998) and that if only the father has legal representation, father-sole custody and shared custody outcomes are more likely (Cancian & Meyer, 1998; Cook & Brown, 2006). These findings suggest that relative power may be important – more income may mean a parent has the resources to fight longer for the custody arrangement she/he wants, and legal representation may be effective at achieving the desired custody outcome.

In summary, the previous literature from North America has identified some factors associated with custody outcomes. These include factors that might be related to the best interest of the child (age, gender, previous parental marriage or other children), pre-divorce roles, total family income, and variables that might reflect bargaining power (share of income or legal representation). Moreover, some research has suggested that policy or even judicial preferences may play a role in custody outcomes (e.g., Halla, 2013). But the previous work is now somewhat dated and generally examines the broad array of custody outcomes rather than having a focus on shared custody. We contribute to this literature by updating previous analyses and by focusing on shared custody rather than all custody outcomes. We are especially interested in whether the likelihood of shared custody and the trend in this likelihood differs based on selected characteristics, using the most recent data available.

We consider the trend in custody outcomes upon divorce (and factors related to these trends) between 1988 and 2010. We use data from a single US state, Wisconsin, because these data provide detailed information on custody, and a long time series. (Moreover, because family law differs across states, it is useful to focus on a single state). In many ways Wisconsin is a

fairly typical state, ranking 20<sup>th</sup> of the 50 states in population, 21<sup>st</sup> in median household income, and 28<sup>th</sup> in the percentage of adults with a university degree (U.S. Census Bureau, 2010). In addition, there have been several studies of divorce, nonmarital births, and child support in Wisconsin because it has unique records (see, e.g., Bartfeld, 2000; Berger et al., 2008; Cancian & Meyer, 2011; Melli & Brown 2008; Meyer, Cancian & Chen, 2015; Seltzer, 1990), enabling readers to put the state-specific information in context.

## II. DATA AND METHODS

### DATA AND SAMPLE

In two earlier papers (Cancian & Meyer, 1998; Cancian et al., 2014) we used court record time series data from Wisconsin (described below) to analyze changes in custody outcomes and their correlates. Here we update and summarize those findings, with a particular focus on the growth in shared custody. The Wisconsin Court Record Data (CRD) include information collected from the court records of over 10,000 divorce cases with minor children. The earlier analyses included divorces through 1993 (Cancian & Meyer, 1998) and 2008 (Cancian et al., 2014). Here we update the analysis with data for divorces with initial petitions through 2010 (divorce dates through 2011). The CRD are quite unusual in including detailed information on physical custody and child support arrangements over an extended period, as well as information on each family's and parent's characteristics (Brown, Roan, & Marshall, 1994). Data come from 21 Wisconsin counties, including the largest urban county in the state, Milwaukee. We also use information from administrative records of earnings, with these records matched to the divorce records through Social Security numbers. All results presented here are weighted to adjust for different sampling probabilities across counties.

We use data from all 14 waves, or divorce cohorts, of the CRD for cases coming to court between 1987 and 2010; divorces were finalized during the period from 1987 through 2011.<sup>8</sup> Cases were collected by the date of the court petition, not by the date of the final divorce itself. However, data were not collected in every year; for example, there is a gap in the mid-1990s. We document changes in physical custody outcomes over the entire period, and also show how the prevalence of shared custody changes over time for particular subgroups: families in which the mother and/or father had legal representation, families with low and high income, and those with children of different ages and genders. In total we have 12,279 cases included in the descriptive analysis, including 9,966 cases also analyzed in earlier papers, and 2,313 new cases with final judgements rendered in 2008 to 2011.

## **MEASURES AND METHODS**

We begin by using information contained in the divorce record's final judgment to categorize cases into the five different physical custody types described in Figure 1.<sup>9</sup>

– FIGURE 1 HERE –

For most of our paper, we combine the three shared custody types (mother-primary shared, equal-shared, and father-primary shared) into a single category to highlight the differences between cases in which one parent has the substantial majority of time from the cases where both parents share for a substantial portion of the time. As noted, for most analyses, we exclude cases with split custody (in which children have different arrangements) because these are relatively rare. Our measure of custody is what appears in the court record; parents may deviate from this in practice.

The court record contains information on a variety of characteristics of the court case, the parents, and the children. When these characteristics vary within a case, we use measures taken

at the final divorce judgment. The court record typically contains information on each parent's income. When income is not available in the court record, we use a measure of earnings from the Unemployment Insurance system. We adjust income for inflation to 2012 dollars, using the Consumer Price Index for All Urban Consumers (CPI-U).

Our primary focus is documenting changes in custody outcomes, and the growth in shared custody, in particular. As noted above, we are especially interested in whether the likelihood of shared custody and the trend in this likelihood differs based on child's age and gender, total family income, and legal representations, using the most recent data. To keep the presentation of results straightforward, we show bivariate relationships, though we discuss whether these associations hold in a multivariate context.<sup>10</sup>

### III. RESULTS

We begin by examining the trend in physical custody for all cases. Figure 2 shows a remarkable increase in shared custody over the period considered, with outcomes in the most recent years continuing the earlier trend.

– FIGURE 2 HERE –

As shared custody has grown from just over one in ten cases in the earliest years (11.6% in 1989) to fully half of cases in the most recent cohort (50.3% in 2010), mother-sole custody has declined dramatically, from about three quarters (76.2% in 1989) of cases to substantially less than half (41.6% in 2010). Moreover, shared custody cases are increasingly comprised of equal-shared, rather than unequal-shared: while unequal shared custody was at least as common as equal-shared in most of the early cohorts, equal-shared is twice as likely in the most recent cohorts (35.2% vs. 15.1% in 2010). This shift also reflects a growing role for fathers in shared custody cases, as most of the unequal-shared custody cases (over 80%) involve children staying

with mothers the majority of the time (mother-primary shared custody). On the other hand, there is little change in the share of cases that are awarded father-sole custody (6.2% in 2010), and split custody (1.9%) remains uncommon.

What accounts for these patterns? While legislative change may have played a role, shared custody grew fairly consistently over the period, without a major shift at the time of the 2000 change in the custody statute explicitly stating a preference for placement with both parents. These increases in the use of shared custody may reflect societal shifts in preferences about child custody that affect all children of divorce, or they may be concentrated among those with particular characteristics. In the remainder of this section, we examine the level of shared custody in the most recent period, and whether the trends differ by the children's age (Figure 3a) and gender (Figure 3b), total family income (Figure 3c), or legal representation (Figure 3d).

– FIGURE 3a-3d HERE –

Shared custody increased from about 11 to 50 percent overall during our study period. We first examine subgroups by child age because of the historical preference for mother custody among young children, based on the “tender years” doctrine. We differentiate between those who only have young children (under age 5) and those with only older children (over age 9), as these groups may be most affected if there are different patterns for those children in their “tender years”. (Thus, in this analysis we do not include families with children in the intermediate age groups or families with children in multiple categories.) Figure 3a shows the increase in shared custody has occurred for both of these subgroups. Moreover, in the most recent data, there is little difference in the likelihood of shared custody by child age, and across the whole period those with only young children (i.e., children under five years) are more likely to have shared custody, contrary to some predictions.

We now turn to child gender because some prior work has found that families with only boys were more likely to have father involvement than families with only girls. Figure 3b shows the results for cases with all boys or all girls (we exclude cases with both boys and girls, which are more likely to involve more children, complicating the comparison). As expected, in our most recent data, shared custody is more common when all the children are boys, although again the differences are not large, and the dramatic growth over time can be seen in couples with only boys as well as couples with only girls.

As introduced earlier, there are several reasons why custody outcomes might vary by income level. In addition to differences in the gender division of labor and family norms that relate to income and class, the cost of maintaining two separate residential homes may prevent lower-income couples (or a given parent) from pursuing shared custody; thus we expect a higher likelihood of shared custody for those with higher total income. Figure 3c shows that indeed, there are large and persistent differences in outcomes by income. While shared custody increases over time for low-income couples, it remains the clear exception – finally rising to a third of all cases in the most recent cohort. In contrast, shared custody reached a third of higher-income families (over \$90,000 per year) two decades ago, and was the outcome in two thirds of cases in the most recent cohort. Middle income families (not shown) are between these extremes.

Finally, we examine the relationship between shared custody and legal representation. While other factors might be driving the associations shown in all the simple bivariate relationships represented in Figure 3, particular care is warranted in the case of legal representation, because it may be caused by parents' custody preferences. (If parents secure representation because they wish to pursue custody, a positive relationship between representation and custody might reflect the parent's preferences, as much, or more, than the

consequence of representation itself.) That noted, the figure shows that shared custody is consistently more common when only the father is represented than when only the mother is represented. However, interestingly, in many years shared custody is most common when both parents have representation. This can be contrasted with findings from Norway that shared-time is less common when parents use more formal legal processes (see Kitterod & Wiik, this issue). Among all four representation groups, shared custody has increased substantially over time.

Previous multivariate analyses generally support these observations. We highlight here the most recent results from Cancian and colleagues (2014), who examined a variety of factors related to custody outcomes among divorces in an earlier period (1988–1993) and in a later period (2003–2008). Consistent with the simple bivariate results shown in Figure 3a, child's age was not important to shared custody (though father sole-custody was less likely if the youngest child was aged 0–2). Similar to Figure 3b, families in which all children were boys were more likely to have shared custody in the early period, but there was no statistical difference in the late period. Consistent with Figure 3c, families with higher total family income were more likely to have shared custody in both periods, with some analyses suggesting a widening gap in custody outcomes between those with low and high incomes. Finally, consistent with Figure 3d, shared custody is more common when only the father has a lawyer than when only the mother has a lawyer. The previous multivariate analysis also includes other results not shown here: couples in which both parents were employed are most likely to have shared custody, and cases in which the father has had children with others are less likely to have shared custody.

There have been dramatic increases in shared custody in recent decades. Conceptually, these changes could reflect changes in the characteristics of families experiencing divorce (e.g., a higher share of families in which both parents are in paid work), or changes in the divorce

process (e.g., more shared custody over time even for families with the same characteristics). As detailed in previous analysis (Cancian et. al., 2014), statistical simulations generally suggest that the increase in shared custody is less the result of changes in the characteristics of cases than the result of changes in the process of awarding custody: simply put, shared custody is becoming more common for cases with a wide variety of characteristics.

#### IV. CONCLUSIONS AND IMPLICATIONS

Given limited contemporary data on physical custody outcomes, we rely on a unique collection of court record data for a single U.S. state, Wisconsin. To sharpen our analysis, we focus only on divorce cases; nonmarital separations are also of interest but are less well covered in our data. The Wisconsin Court Record Data have limitations—being drawn from a single state, and relying only on court records of custody, rather than measures of actual living situations. However, they provide detailed information on the custody outcomes for a representative sample of divorce cases filed from the late 1980s through 2010. Using this information, we document the dramatic increase in shared custody, and the parallel decline in mother-sole custody. The results presented here summarize earlier analyses (Cancian & Meyer, 1998; Cancian et al., 2014) and extend and update estimates to include the most recent Court Record Data collection, covering cases that were initially filed in 2009 and 2010.

We present new data examining the time trend in shared custody for various subgroups, divorcing families based on child age and gender, total family income, and legal representation. Shared custody is more common, and has increased more quickly, in some subgroups. Nonetheless, shared custody has become substantially more common over time for *all* groups. We also update our earlier analysis by focusing on the prevalence of shared custody in the most recent data for families with older children, with only boys, with higher income, and when only

the father has legal representation. We find that only income results in large differences: those with higher total family income are much more likely to have shared custody than those with lower incomes. In general, we find that parental characteristics (e.g. income) and the court process (e.g. legal representation) are related to custody outcomes; children's characteristics, in particular, seem to be increasingly less relevant to custody outcomes. That income differences remain predictive may reflect the practical challenges lower income parents face in trying to support two homes for children within their budget. As we have noted in earlier papers, as shared custody cases become more common, they are becoming less distinctive. We appear to be observing an increased legal and societal preference toward more shared custody as stipulated in court orders for divorcing parents, regardless of characteristics. Of course, relying on administrative records, we cannot account for the role of some variables (children's preferences, the level of conflict between parents, education, the distance the parents live from each other, their commitment to co-parenting, the extent to which the parents agreed on custody before coming to court, etc.). Collecting survey data from divorcing parents on the actual living arrangements of their children, and the similarity or difference from the court order, would be useful. Similarly, more detailed descriptions of how parents approach the custody decision, and the challenges they face after the decision, could inform policy and practice. In general, additional data collection and analysis is needed to better understand all the factors contributing to custody outcomes in the U.S., as well as their implications for family well-being.

These findings have implications for social policy in the United States. Traditional tax and transfer programs in the United States tend to assume that the number of people in a family is constant and can be used to determine benefits. But as this research shows, many children of divorce live substantial amounts of time with each of their parents, making family size somewhat

variable. How shared-custody children are counted by various programs is a difficult policy issue (Hakovirta & Rantalaaho, 2011; Meyer & Carlson, 2014). Our finding that there have been dramatic increases in shared custody highlights the need for policymakers to reexamine how a variety of programs define families.

Our data also have implications for family law professionals. With shared custody becoming more common, and more common for all for all groups (i.e., more diffuse), it is increasingly important for the Family Court community to help parents understand the benefits and risks of this rapidly growing family form, and to help parents craft child-responsive parenting arrangements. Shared custody – like any other parenting arrangement – can work well or badly depending on a range of factors. Moreover, even if shared custody works well around the time of the divorce, life changes may eventually present new challenges, and helping parents understand and be more prepared for future issues that would need to be addressed if they are to continue sharing parenting could prevent future difficulties.

These findings also point to avenues for future enquiry. Although there is an ever-growing number of studies examining the consequences of shared custody for children (see a recent summary in Smyth et al., 2016), the research has not yet come to consensus. One difficult area on which there is even less consensus is the circumstances under which shared custody could be considered if there are safety concerns, and whether safeguards can be put in place that would be effective. One promising avenue of research would be to explore the *individual* perspectives of parents and children: are changes in custody schedules over time experienced by family members as “instability” or as “flexibility”? Another area in the US in which little is known is on the custody outcomes of children whose parents were never married. In addition, understanding the relationship between custody preferences and child support obligations would

also be useful; if some parents pursue shared custody so that they will have lower child support obligations, this may suggest a need to reconsider the way that custody and child support policy interact (see Smyth and Rodgers, 2011 or Smyth et al., 2012 for international perspectives). The rapidly increasing prevalence of shared custody in the United States raises many questions as to the causes and consequences of this trend which can only be answered with better data, from multiple vantage points, and with more sophisticated analytic techniques.

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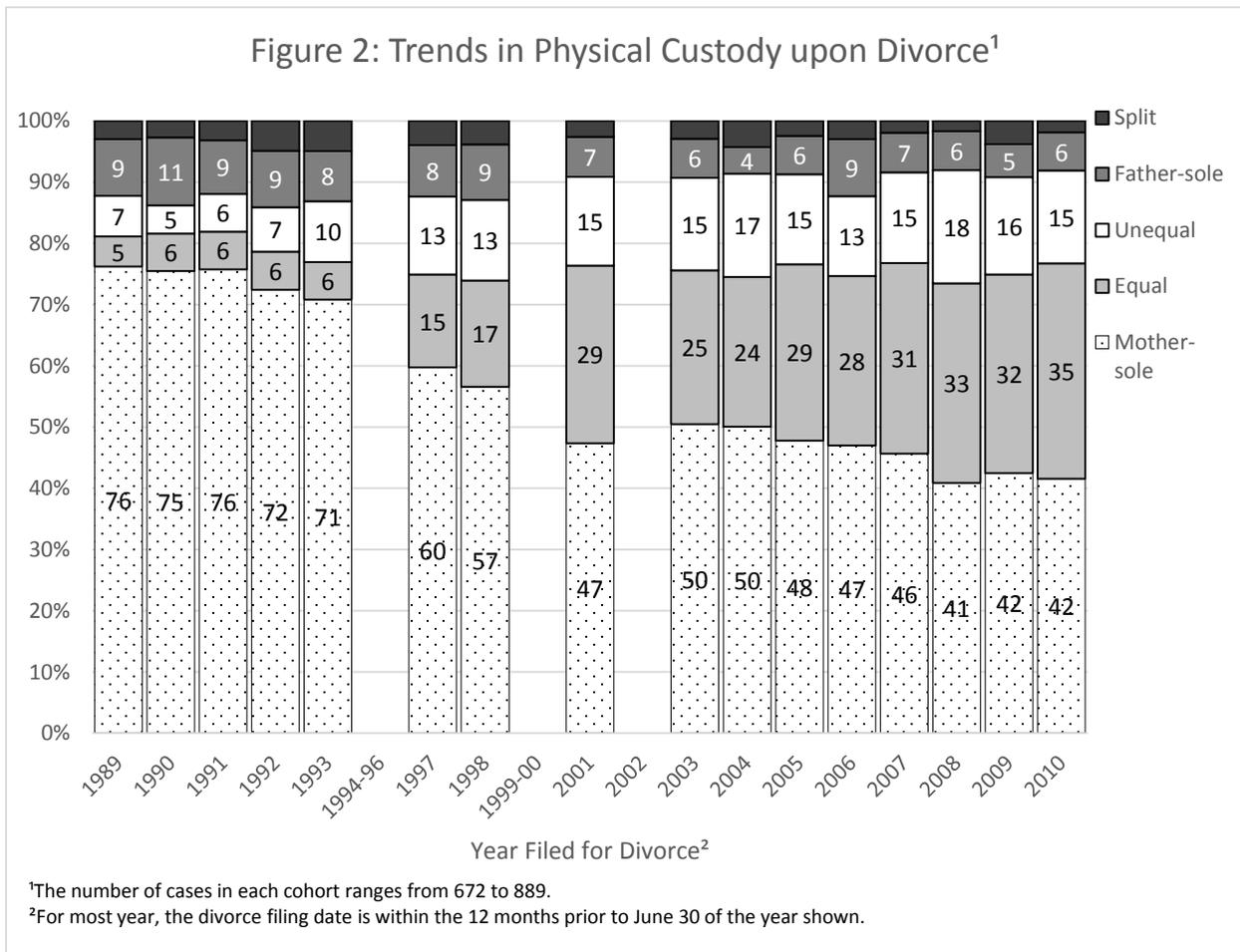
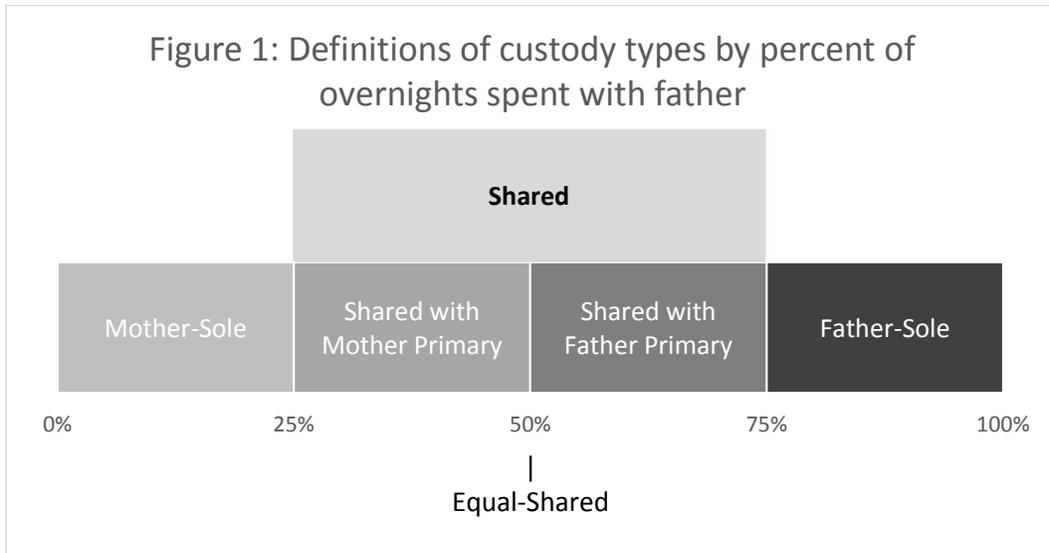
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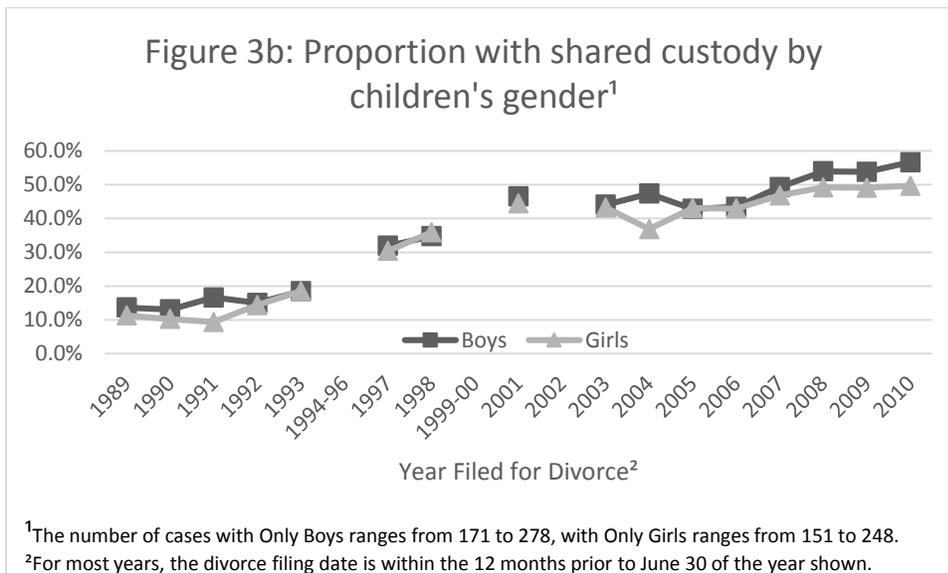
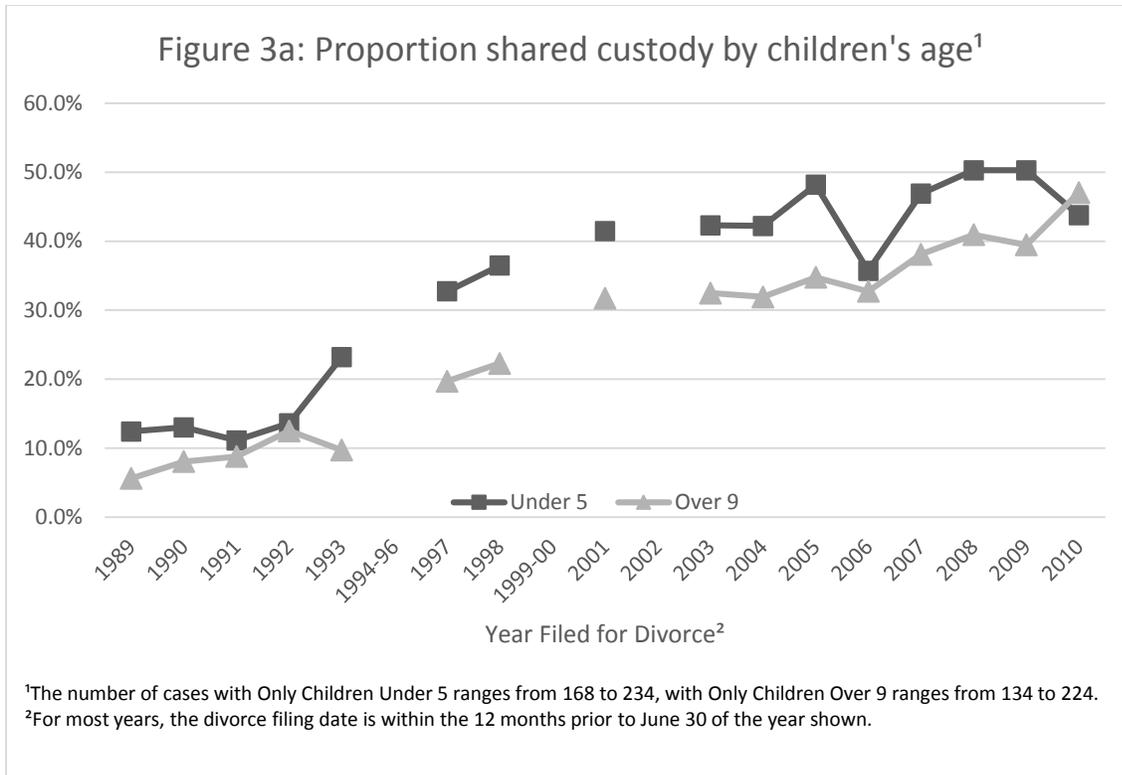
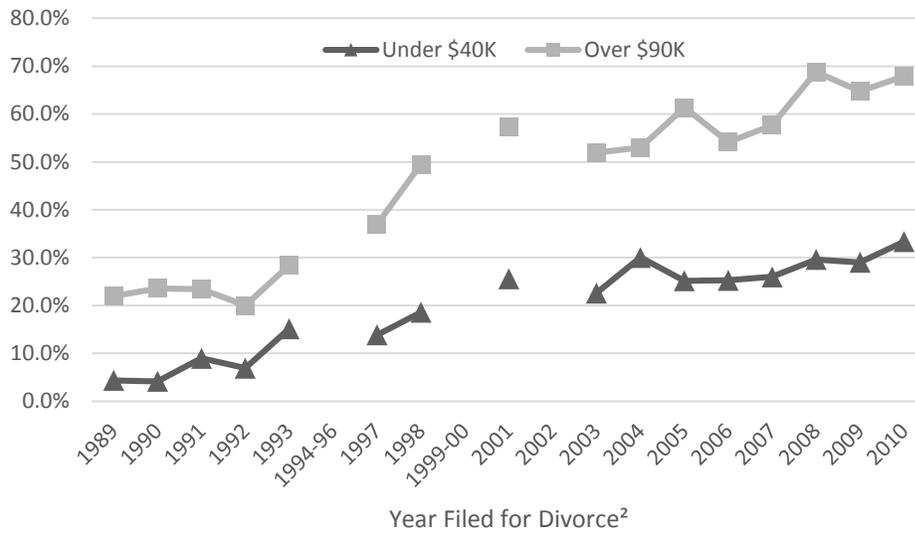
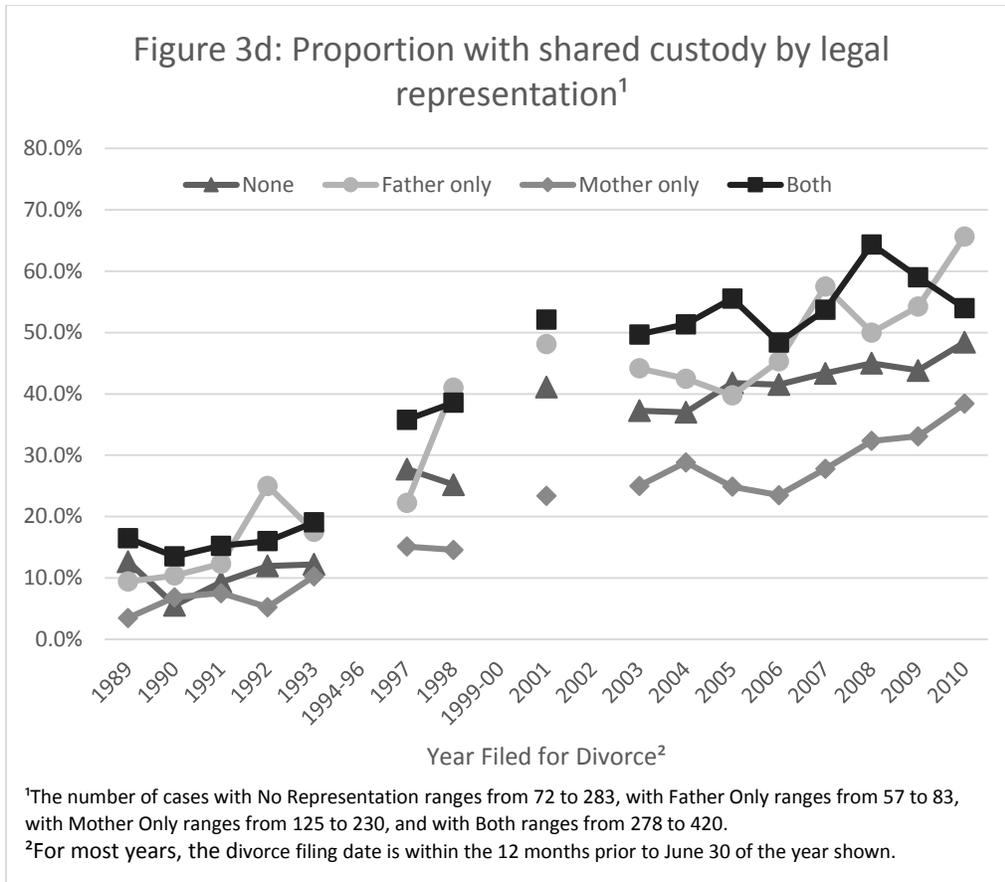


Figure 3c: Proportion with shared custody by parents' total family income<sup>1</sup>



<sup>1</sup>The number of cases with Total Income under \$40K ranges from 58 to 186, with Total Income over \$90K ranges from 94 to 269.

<sup>2</sup>For most years, the divorce filing date is within the 12 months prior to June 30 of the year shown.



## NOTES

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<sup>1</sup> Precise numbers of mother-only families are difficult to determine before 1940 (Gordon & McLanahan, 1991); after this, the number of single-parent families headed by mothers increased substantially. The number of these mother-only families who have been married can be seen as a crude measure of custody. This number increased dramatically from 1950 on (Wojtkiewicz, McLanahan & Garfinkel, 1990). While the number ever-married father-only families increased dramatically in percentage terms during this period, the vast majority of these families were still headed by mothers (Garasky & Meyer, 1996).

<sup>2</sup> Some children do not live with either parent, and, in a multiple-child family, there may be other combinations (one child with sole custody and another with equal-shared time, for example). We exclude the few such cases from the analysis reported here.

<sup>3</sup> In January 2004, the threshold in Wisconsin between “sole custody” and “unequal-shared custody” changed from 30% of time with a parent to 25%. While using a lower threshold obviously increases the proportion of parents with shared custody somewhat (by 2-4% in most years), the trends in shared custody are the same whether we use a consistent 25% threshold or a consistent 30% threshold. The analyses reported here consistently apply the 25% threshold because it is the current standard. Note that in the United States context the threshold primarily matters because the formulae used to set the child support (child maintenance) obligations of a parent differ based on the percentage of time with each parent. In contrast to the system for benefits for families with children in place in some countries (Hakovirta & Rantalaiho, 2011), in the United States, the amount of benefit varies only if a child lives with a parent more or less than half time (that is, there is no partial benefit for a parent who has a child for a substantial period of time but less than half) (see also Meyer & Carlson, 2014).

<sup>4</sup> Some multi-state or national studies of divorces that cover at least part of the 1990s provide information on custody outcomes, but these studies are often limited by an inability to differentiate physical from legal custody (e.g., Donnelly & Finkelhor, 1993), do not provide a precise definition of shared or joint custody (Clarke, 1995), or primarily examine divorces in which custody was contested (Pearson & Thoennes, 1990). The National Vital Statistics System of the National Center for Health Statistics does contain information on custody arrangements at divorce for many states; however, the documentation does not clearly define the percentage of time required to be considered joint custody (see Clarke, 1995; Halla, 2013).

<sup>5</sup> While the CPS-CSS does report on the number of cases with “joint custody,” this could refer to where the child lives, or legal custody, or both. The percentage of custodial parents who report that they have “joint custody” has been increasing, from 19.5% in 1993 to 24.8% in 2003 to 26.1% in 2013 (U.S. Census Bureau various years). In the CPS-CSS we cannot distinguish growth in shared custody (with fathers reporting children are living with them and therefore reporting they are custodial parents) from growth in father-sole custody. Some U.S. research

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suggests that mothers and fathers report their children's living arrangements differently, with different reports more likely when children had at least one overnight with their father (Waller & Jones, 2014). Related, some international research suggests that a significant proportion of children thought to be living with their father only are actually sharing time with both parents (Toulemon & Pennec, 2010).

<sup>6</sup> This review is limited to research from the United States, although we so also include one study from Canada (Juby et al., 2005) because of the similar context.

<sup>7</sup> In their article on the economics of shared custody, Melli and Brown (1997, p. 554) conclude, "There is general agreement that shared custody is more expensive than sole custody. This is clearly true when comparing equal-time shared custody and cases without regular visitation. However, the number of overnights at which expenditures change is contested.

<sup>8</sup> The previous article included some cases from 1986 but because the 1986 data are not fully comparable to those for the more recent cohorts, we do not use them here.

<sup>9</sup> Sometimes the divorce decree explicitly states the physical custody arrangement. In other cases, the court record may contain a detailed parenting plan, including a calendar for which parent has responsibility for the children on which days. In the latter case, we calculate the number of overnights per year, and assign them to a custody category based on the percent of overnights with each parent.

<sup>10</sup> For example, if couples with older children are more likely to share custody, this may be because child age is important. Alternatively, it may be that those with older children are older themselves and have higher incomes, and it is parental age or income that is causally linked to shared custody, rather than child age. Similarly, parents with more income may be more likely to have legal representation, so a finding that legal representation is linked to custody outcomes may merely show the causal effects of income. The purpose of this paper is to highlight the simple relationships without making causal claims.