

Paper Title: Who Gets the Kid? Child custody and the Status of Women in Taiwan

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Introduction

Divorce rates have been rising over the past few decades in Taiwan and East Asia, yet research on child custody remains quite limited both in the region and on a global scale (Chen 2016; Schneider and Kreyenfeld 2021). Child custody arrangements are critical in divorce, as they have long-term implications for the well-being of the parents and children involved. An empirical analysis of the child custody profiles of divorced families broadens our understanding of the factors involved in custody decisions and reveals evolving gender relations and emerging new social inequalities in contemporary families.

The rise of divorce in Taiwan is associated with the improved status of women over the past 50 years. Female empowerment affects partnership behaviors through positive assortative mating, as empowered women often partner with men who are closer in age and education, though some may opt for hypogamous marriages (Bavel, Schwartz, and Esteve 2018; Carmichael 2011; Cheng and Kolk 2021; Albert Esteve, García-Román, and Permanyer 2012). While the impact of assortative mating has been studied for a number of family outcomes such as union formation, the division of labor in the home, fertility, relationship quality, risk of divorce, and child development (Schwartz 2013; A. Esteve et al. 2016), there has been little exploration as to how it shapes child custody outcomes upon divorce.

An investigation of child custody outcomes in Taiwan offers a unique lens for viewing the evolution of custodial arrangements in the context of rapid social changes. In a traditionally patriarchal society like Taiwan's, family laws often hold a paternal presumption in custody assignments upon divorce (Htun and Weldon 2011). Children are often considered the "property" of a given family, and mothers have limited access to children after divorce. The 1996 legal reforms began to base child custody on the child's best interest, and women's status in Taiwan has improved dramatically over the past several decades. These two major changes to Taiwanese society necessitate an investigation into exactly how child custody outcomes have evolved over time and across different spousal pairs by age and education. The experiences of Taiwan also fill a gap in current literature that is dominated by child custody research in Western contexts.

The lack of empirical studies on custody arrangements is often due to data availability issues, as most existing research relies on court records that may not be available for research in many societies (Cancian and Meyer 1998; Cancian et al. 2014; Chen 2016; Y.N. Cheng 2015; Fox and Kelly 1995; Meyer, Cancian, and Cook 2017; Solsona and Spijker 2016). Rarely has any study attempted to investigate the custodial outcomes of *all* divorces, including those that are consensual and those that are mediated or accomplished through settlement. The divorce registration records in Taiwan used in this study are precious resources to this end.

This study examines the aforementioned social changes and reforms to family law that aim to promote gender equality or neutrality during the process of divorce. It also aims to explore the following research questions:

- Q1. Is mother-sole custody also the dominant form of child custody arrangements in non-judicial divorces?
- Q2. How are child custody outcomes affected by a mother's higher age and better education relative to her peers or spouse?
- Q3a. Does the association between the mother's individual traits (i.e., age and education) and child custody outcomes change as women become more empowered?
- Q3b. Does the association between spousal pairing (i.e., hypergamy, homogamy, or hypogamy in age and education) and child custody outcomes change as women's status improves over time?

Research Design

Data

The data for this study was drawn from the entirety of Taiwanese divorce records registered between 1998 and 2020. Digitalized registration data are only available from 1998 onwards. Within this two-decade span, a total of 1,289,944 divorces were registered. In 2002, a set of four additional pieces of information became available on divorce registration cards: the number of children in father-sole custody, in mother-sole custody, in joint (or shared) custody, and in other custody. Thus, only divorce records from 2002 will be used to investigate patterns in child custody arrangements for the purposes of this study. This results in a total of 1,087,675 cases in the period of 2002–2020. Of these divorces, about 60.8% (n=661,186) involved child custody arrangements and were thus analyzed in this study. The divorce registration form includes key information on the age, education, and nationality of the wife and husband as well as the type of divorce, number of children, and date of marriage. An important advantage of this dataset over past research on child custody is that it contains *all* divorce records. This includes divorce by consent, judicial divorce, mediated divorce, and divorce through settlement. As many existing custody studies are based on court records, the data used here can avoid the problem of leaving out a large share of divorces occurring outside of court.

Analytical Strategies

This study will first present the changing compositions of different types of child custody arrangements observed for all divorces from 2002 to 2020. Then, descriptive statistics showing the socio-demographic characteristics of these divorced couples will offer an overview of the divorced population with children and their custody arrangements over the past two decades in Taiwan. The changing distribution of child custody arrangements by divorce type overtime

will also be shown to test the first research question on the “myth” of substantial mother-sole custody cases in recent divorces. In addition, due to the mutual exclusivity of different custody outcomes, multinomial logistic regression models will be used to analyze research question 2 about the associations between maternal and spousal traits and child custody decisions. Marginal effects of maternal age and education and spousal pairings will be calculated using these regression models. Given the different types of divorces available in pre- and post-2010 period and that changes over time will be analyzed, two sets of multinomial logistic regression models will be run to test research question 3a and 3b: one for divorces in the first three years between 2002 and 2004 when two types of divorces (i.e., divorce by consent and judicial divorce) were practiced; and another set of comparable analyses for divorces in the last three years between 2018 and 2020 when divorce mediation and settlement became available.

Results

The most notable trends are the decline of father-sole custody and the rise of joint custody in the past two decades, though there has been a myth of mother-sole custody becoming a dominant outcome after the 1996 legal reform. The findings show that judicial divorces are significantly more likely to be associated with mother-sole custody decisions, which is likely due to the substantial increase in divorces filed by wives after 1996 (Liu 2003). In all the years analyzed, mothers who went through litigation were twice as likely as fathers to be given sole custody by the court. This pattern is similar to the situation in the United States—when child custody is contested, the decision has favored the mother about twice as often as the father (Cancian and Meyer 1998). Such a dramatic shift from father-sole to mother-sole custody as a dominating custody type is in stark contrast with the situation before the 1996 legal reforms when the great majority of judicial divorces ended in father-sole custody arrangements (Liu 2001). While family scholars and legal practitioners may find this notable, one should also bear in mind that marriages dissolved in court have at the most constituted only 15% of all divorces in the past two decades. The great majority of divorces observed are ones of mutual consent, and these still have tended to end in father-sole custody more often before 2020.

Indeed, the myth of a rising dominance of mother-sole custody is not corroborated by empirical evidence. While father-sole custody cases have decreased since the 1996 legal reforms that abolished the paternal presumption for child custody, they remain the most prevalent outcome in the period 2002–2020. Twenty years after the 1996 reform, father-sole custody cases in 2016 still made up nearly 38% of all divorces with children (a decline from 48% in 2002), the rest being 33.6% of mother-sole custody, 22.7% of joint custody, and 5.8% of split custody cases. It was not until 2020 that a three-way split between father-sole (31%), mother-sole (32.8%), and joint custody (30.3%) cases was observed. This indicates that the impact of traditional practice stays strong and legal changes in family laws take considerable time to influence the awareness and choices of couples undergoing a divorce.

The compositional shift towards a three-way split in child custody outcomes has been closely linked to the rising status of women. As noted in prior studies, higher age and education are both associated with increased bargaining power for women (Bozon 1991; Van de Putte et al. 2009; Esteve et al. 2016), and this is particularly true when it comes to winning child custody. The results indicate that mothers who divorce at older ages have a much higher chance of gaining full or shared custody of their children, which resonates with past research conducted in Western societies (Cancian and Meyer 1998; Cancian et al. 2014; Fox and Kelly 1995; Halla 2015). Better-educated mothers are also more likely to have sole custody of their children or to agree to a joint custody arrangement. This is in line with findings reported in the United States and Belgium (Fox and Kelly 1995; Sodermans, Matthijs, and Swicegood 2013), where joint custody is more common among high-SES divorced couples. In addition, the findings here reveal that the age and education of a woman relative to her husband matter significantly in child custody outcomes, with hypogamy in age and education more associated with mothers winning full or partial child custody. Over the past two decades, the probability of father-sole custody has declined even for the most extreme type of hypergamy in age and education; and the link between hypogamy and mother-sole custody has become stronger.

Overall, the patterns observed in Taiwan over the past two decades indicate that increased age and education are both empowering for mothers, even though traditional patriarchal practices have still been influential. For instance, the probability of equally educated couples opting for father-sole custody was still higher than that of mother-sole custody, and a quarter of couples that are highly hypogamous in education ended up with father-sole custody in the period of 2018–2020. The good news is that about 22% of highly hypergamous couples opted for joint custody in the same period, which is more than a three-fold growth from 2002–2004.

Conclusion

Overall, this study underscores the role of the rising status of women in shaping child custody decisions. The findings also show the importance of investigating non-judicial divorce cases, as their child custody arrangements can be quite different. The experiences of Taiwan showcase that patterns of child custody arrangements can have very different evolution pathways depending on the timing and sequence of social and legal changes. Because of the direct legal transition of child custody towards the best interest of the child doctrine, the commonly seen phase in the West where mother-sole custody has dominated child custody cases is entirely absent in Taiwan. It has instead played out as a transition from a highly patriarchal scenario into one with a dramatic growth in joint custody decisions. This will undoubtedly have a substantial impact on the lives of adults and children involved in divorces, though the pros and cons of joint custody following a divorce await further research in an Asian context like Taiwan's.