

Effects of Joint Custody on Children

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An ancient Buddhist story¹ tells of a young mother who took her baby son to the pond of the sage Mahosadha to bathe him. A ghoulish, watching from a distance, assumed the form of a woman and approached the mother and son, asking if she might play with the child. The ghoulish took the child in her arms, singing softly to it. All of a sudden the ghoulish ran off with the child, while the mother pursued, screaming, "Where are you going with my son?"

"*Your* son?! He is my son!" shrieked the ghoulish, as the mother snatched her son back.

Mahosadha heard them quarreling and asked what the argument was about; he saw by her eyes that one of the women was a ghoulish. "Come with me," he said, "you will abide by my judgment." Whereupon he drew a line on the ground before his assembled students and placed the child on the line. He instructed the ghoulish to grab the hands and the mother the feet, saying, "He is the son of the woman who pulls the child to her side of the line."

As they pulled harder and harder, the child began to feel great pain and began crying. At the sound of his cries, the true mother's heart felt as though it were breaking and she released her hold on the child and stood weeping.

"Whose heart is it that softens for her child?" Mahosadha asked the crowd.

"The mother's heart, learned one," came the reply.

"And the other?"

"We don't know, learned one."

"The other is a ghoulish who seized the child to devour it."

"How do you know, learned one?"

"From the unwavering steadiness and redness of her eyes, from the absence of her shadow, and from her urgency and ruthlessness."

This tale is familiar to most of us in the West as the biblical story of King Solomon. Although the tale operates on many levels (cultural, psychological, and entertainment), its meaning within the context of contemporary custody disputes is apparent.

The sage Mahosadha arranged this teaching situation to provoke perceptions in his students, in addition to exposing the fraud and returning the child to its rightful mother. In modern custody litigation, we may not have the appearance of a ghoulish to make decisions easier, but we frequently find a child being pulled in two opposite directions. It is common to find a desire for custody arising, at least in part, from perceived parental needs and not from the child's physical and

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emotional needs. What is the effect on the "crying child" of our story when the sage's technique is torn from its teaching context and used instead to placate two warring parents?

California Custody Legislation

Previous to the January 1980 revisions, California Civil Code Section 4600 provided that custody should be awarded

to either parent according to the best interests of the child, but, other things being equal, custody shall be given to the mother if the child is of tender years.

Modern views came to reflect the notion that both parents could be fit primary guardians, and there was a subsequent erosion of the "tender-years" presumption.²

The statute now has been amended to award custody in order of preference "to both parents jointly pursuant to sec. 4600.5³ or to either parent," the court, therefore, having considerable discretion to award custody to the parent more likely to encourage frequent and regular contact with the noncustodial parent. California county courts vary in the implementation of the statutes, depending greatly on the sensitivity and sophistication of particular judges to child developmental issues. Because of the discretion granted family law courts, these decisions rarely are reviewed at the appellate level. Many innovative, as well as traditional, shared-custody arrangements have emerged since the custody statutes were amended.

The role of mental health professionals in assisting the family law courts also varies in different jurisdictions. In Santa Clara County (San Jose) California, the family law judges use input from its own Family Court Service as well as from private practitioners.

Psychiatric Evaluations

The Child Custody Center in San Jose has been functioning as a resource for families of divorce since 1975. The focus of the Center has been to address the emotional needs and best interests of the children involved through providing evaluation, mediation, and consultation to families in the process of divorce, those experiencing renewed conflict over custody or access, or those encountering problems in forming new family units. The families most often referred to the Center have been unable to resolve issues involving care and management of the children. Sometimes the custody conflicts parallel other disputes such as those over community property, financial support, and questions of mental fitness and psychiatric status. Referral sources include attorneys, courts, juvenile probation departments, psychiatric and medical professionals, and some self-referrals. The adults come from all walks of life and backgrounds, and characteristically have a strong interest in their children for a variety of reasons.⁴ The ages of the children seen in the Center range from infancy through adolescence. The Center's recommendations to the individual families and their attorneys are guided by the principles of offering the children, in whatever way possible, conflict-free access to parents and other significant attachment figures (for example, siblings, grandpar-

ents, stepparents, adoptive parents).

Joint-Custody Arrangements

This article describes the effects of various joint physical-custody arrangements observed in our clinical work. Most of the examples of such arrangements have come to the clinic for services since 1980, when the California statute regarding custody was amended to give the presumption of joint legal and physical custody as being in the best interests of the child. There are many different definitions for joint custody,⁵ sometimes called shared custody,⁶ divided custody, alternating custody,⁷ or coparenting.⁸ Most writers agree that in joint custody arrangements both parents assume responsibility for all the physical, medical, financial, educational, and emotional needs of their children. We emphasize that joint custody is an attitude on the part of both parents that they are connected to one another through their children, that they respect the other's relationship with those children, and that they work together on their children's behalf. Benedek and Benedek⁹ add another component to the above definition: that the child live with each parent a substantial amount of time.

Joint physical-custody arrangements can take many forms, including the following:

Long-term block time (1) children spend alternate years with each parent; (2) summer-winter: children spend school year with one parent, vacation months with the other.

Alternating short-term block times children spend (1) alternate monthly blocks; (2) alternate weeks; (3) split week; (4) every other day; (5) split day.

Birdsnest children stay in one home and parents move in and out for various time periods.

Free access children go back and forth between parents' homes at will.

Case Illustrations

We selected several examples of families we have evaluated illustrating outcomes of joint physical-custody arrangements on the children involved. These examples illustrate typical problem situations in the families.

Ben: Alternating Years, Then Split Weeks Ben, a thirteen-year-old whose parents separated when he was seven, initially lived with his mother. When his father moved to Japan with his job, his mother, feeling a need for individual independence, endorsed her ex-husband's request for physical custody. Ben lived with father abroad for three years, spending parts of summers with his mother, sometimes in the United States, sometimes in Japan. Father returned to the States when Ben was eleven. During an access time with mother Ben indicated he was very uncomfortable living with his father, primarily because of the father's frequent use of alcohol and outbursts of violence.

Mother consequently filed a petition for primary custody. In court mandated mediation, both parents "agreed" to a schedule in which Ben spent each Friday through Sunday with father and his household and the remaining weekdays with mother and her household. (Both parents had remarried.) This schedule had con-

tinued for one-and-a-half years prior to our contact with the family. Neither parent was pleased with custody arrangement and contacted the Child Custody Center for a comprehensive evaluation.

Ben was keenly aware of the ongoing conflicts between his parents and saw himself as caught in the middle with loyalties to both parents despite his clear desire to decrease the "back and forths" and reside primarily with his mother. When the issue of custody was broached, he became tense, averted his eyes and was verbally guarded. He stated he "wished he had a clone so each parent could have one of him." His mood was depressed and he conveyed a sense of insecurity about not knowing "what would happen next." He had gone through six years of alternating households in block periods of days, months, or years.

Steven: Alternating Monthly Blocks At the time this family was referred by the Juvenile Probation Department, the parents had been separated one year. Both parents were interested in Steven and had participated in his rearing prior to the separation. Told by the court to devise an equal split in the physical custody of their then two-year-old son, the father initially suggested a six months/six months division, while mother countered with a proposed exchange every three months, with one weekday evening and each weekend to be spent with the noncustodial parent. The mother would have preferred to have full physical custody of her child and agreed to the alternating three-month changes only under pressure from the court. Father was agreeable to the fifty-fifty division of the child's time. The three-months' exchange had been in effect for a year prior to our evaluation. During that time the high level of hostility between the parents, which existed at the time of the marital breakup, had not abated but rather escalated with each changeover and visitation of the child. Neither parent approved of auxiliary caretakers in the other's home and each expressed anger, fears, and frustrations in front of the young child. Further, the two households could not have been more diverse in structuring Steven's daily life. While one parent adhered to a fairly predictable routine, the other believed in having the child fit into whatever routine suited the parent's immediate needs.

During our evaluation sessions, Steven was extremely anxious, especially when his mother separated from him to go into the next room. During his subsequent play, he crashed trucks repeatedly, his anger manifesting itself in overly aggressive and uncontrolled violent play. Only with helpful intervention from the examiner could he stop his outbursts. He spoke of having three houses (identifying "mother's," "father's," and "my own," as if needing sanctuary) and appeared confused about where he lived and with what family members. In other "family sessions," which included mother and her fiancé in one household and father and a number of other relatives in the other household, he did not relate to anyone other than the parent. He appeared easily frightened and insecure for his age, which was confirmed by his day care teacher who described him as emotionally immature and timid compared to his peers.

Annie: Split Week Annie was three-and-a-half-years old when she and her family came to the Center for an assessment of the effect of current custody arrangements on her behavior. The parents had separated when Annie was six-

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months old. The parents had shared joint custody by moving the child from one home to the other every three or four days. Their brief marriage had been fraught with problems and disagreements from the outset, and the frustrations and anger generated within the marriage continued unabated despite the passage of three years' time and remarriage of each parent. Though each parent was genuinely attached to Annie and wanted to provide a good home environment, neither trusted the other; each alleged verbal abuse and physical violence by the other. This atmosphere of distrust and hostility was overtly and covertly communicated to the child who was forced to change homes and allegiance every few days.

Annie's behavior was characterized by frequently engaging others' attention through provocative and oppositional behavior. She displayed a high level of aggressive play, with many themes of physical violence. Her short attention span and low frustration tolerance were seen as due to anxiety stemming from parental conflicts.

Becky: Inconsistent Split Week We first saw Becky, a ten-year-old girl whose parents separated when she was five, when her father petitioned for full custody. The schedule of sharing custody was dependent on the father's irregular work schedule as a fireman. The father saw the joint custody agreement as detrimental to his daughter. The father felt his ex-inlaws undermined his position in Becky's eyes, and he also objected to the differences in "standards" between the households. The mother was satisfied with the agreement. Both parents reported problems in communicating regarding the complex schedule and other decisions on Becky's behalf.

Becky is an alert and intelligent child, but was very guarded and untrusting toward adults. Her school records showed good progress in academic areas, but the teacher noted her lack of appropriate social skills. She soiled herself regularly in school because she was afraid to express her needs to adults. We noted Becky to be very anxious during each evaluation session. She described having her loyalties split by being pulled into conflicts between adults. She felt frustrated in her attempts to placate all the adults, including parents, stepparents, and grandparents.

Jimmy and Julie: Split Week A five-and-a-half-year old boy and his two-and-a-half-year old sister were seen for evaluation six months after their parents separated. Both parents were highly educated professionals who had their own distinct ideas on child rearing. Father was pursuing an "equal division" of time for the children between his home and the children's mother's home. Mother desired a more traditional arrangement but was uncomfortable allowing the children time in their father's home. She stated that the children returned from father's care agitated, aggressive, and regressed in behavior. Before the children were seen for evaluation, the parents had "settled" on a sharing arrangement in which both children spent two days (one overnight) mid-week each week and alternate weekends from Saturday morning through Monday morning in the father's home. The remainder of the time was in the mother's home.

Jimmy, a bright, friendly, and verbally precocious five-and-a-half-year old

was uneasy when talking about his parents and their households. His play interview centered around a dollhouse that he described as being ravaged by fires and earthquakes. The events kill the mother and father; the boy attempts to rescue his sister, then calls the fire department. The story ends when a monster throws all the furnishings off the balcony of the house. It is not clear if the children are rescued. Jimmy describes being frightened and perceives his own household as disruptive and unsettled. ("We have earthquakes at our house, too.") In his daily life, Jimmy displays no behavioral or social problems; according to his teacher, he has good relationships with peers and adults and is doing adequately in school.

Julie, his two-and-half-year old sister, likewise shows no obvious psychopathology, yet appeared overly sensitive to her mother's mood and anxiety level and was observed to seek out physical and emotional reassurance from mother whenever she sensed mother's upset. Jimmy was especially aware of the disagreements between his parents, and found himself having to shift between their individual differences, approaches, views, and conflicts twice each week.

Nancy: Alternating Daily Schedule Nancy's parents requested our evaluation of this family one-and-a-half years after the parental separation. During that time, the couple had agreed to share physical custody of their then four-year-old daughter, Nancy, on an alternating daily schedule. This arrangement was satisfactory to both parents and the child appeared to have adapted to it well. She related warmly and affectionately to both parents, as well as being comfortable with her half-siblings in each household. Both parents had shared in the early care of their child, had developed a close and affectionate relationship with her, and she responded warmly to both. Although the parents held differing views about child-rearing approaches, they had collaborated well in their coparenting roles. We credited good adjustment the child had made following the divorce to their ability in coparenting.

The beginning of school made these parents aware of Nancy's needs to have a primary home from which to attend school and to form peer relationships. Both parents recognized this need of their child, though each felt best able to provide that home base. They consulted our Center to help settle this question. Our task was to recommend the home of the parent best able to provide for the growing child's emotional needs and most likely to encourage continued access to the other parent.

Jennifer: Split Days Six months prior to consulting the Center, four-and-a-half-year old Jennifer's parents separated. For several years prior to their marital separation the parents "shared" caretaking responsibilities for their daughter, in that father worked days and cared for Jennifer in the evenings and mother worked nights and cared for her during the afternoon. Jennifer was in day care each weekday morning. After the parent's separation they essentially kept the same weekday schedule and alternated weekends in each parental home. Though communication between the parents had deteriorated during the last year or so of the marriage and continued to deteriorate after the separation, each had a personal need for and commitment to make the past arrangements continue. They cooperated with each other despite conflicts over financial support and grandparent

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relationships with Jennifer.

Jennifer was a verbal child who interacted in a warm, relaxed manner with each parent. She also could play independently and had no difficulty separating from either parent. Though she expressed sadness about her parents' separation and wished for their reunion, she showed no evidence of being overly anxious, insecure, or any other psychopathology. She appeared to be making a positive adaptation to the dual living arrangement and benefiting from the situation quite similar to the one that existed prior to her parents' separation.

Sharon, Sandra, and Ronald: "Bird's Nest" Sharon, eleven-years old; Sandra, eight-years old; and Ronald, six-and-a-half-years old, were evaluated for psychotherapy at the recommendation of a court mediation counselor. Their parents had agreed to alternating monthly residence in the family home following separation. Each parent had differing views on child rearing. Mother was somewhat placating and indulgent while father was authoritarian, rigid, and strict. Significant cultural and ethnic difference also existed between the parents. During the first three months of the "bird's nest" arrangement each of the children became increasingly anxious as the conflicts between the parents continued. All three children felt pressure to abide by the plan, yet were confused by it and caught in a battle of loyalties toward their parents. Conflicts between the parents were obvious, and at times even violent (for example, father forcing entry into the home to remove household furnishings while the children were in the home with their mother). Effective communication was nonexistent.

After six months, Sharon refused to spend any time with her father, focusing her anger on him and refusing to deal with him at all. Behind her tough exterior was much sadness and insecurity. She overidentified with her mother and had no balanced relationship with either parent. Sandra developed a sleep disorder, became much more anxious, speech became pressured, school work and peer relationships deteriorated. Ronald, while superficially more resilient than his sisters, became enuretic and increasingly dependent on his mother, often wanting to sleep in her room at night.

All three children complained about the alternating-month arrangement and the inability of mom and dad to get along. Sharon was the "spokesperson" for the sibship and the only one who openly expressed her anger at the arrangements. The "bird's nest" continued for one year until the court ordered another arrangement.

Discussion

It is apparent from the above examples that children's reactions to various joint physical-custody arrangements are complex. These arrangements demand more than children's coping abilities than may meet the eye. At a time when children already are experiencing a great deal of stress due to the breakup of their family, they find themselves still caught between their parents' disagreements and may feel that they (the children) must deal with the still unresolved problems between their parents.

Many of these children feel that the responsibility rests on them to equalize

and neutralize the conflict and often find themselves unable to do so. These children take on adult worries that can interfere with their own age-appropriate development. In addition, the children in joint-custody arrangements are often asked to adapt to two different peer and social environments and often don't have time and energy to develop either successfully. This is especially true when the children feel obliged to devote "enough time" to their parents.

Many children deal with their insecurity by participating in the parental conflicts, which become exacerbated with each exchange of homes. We observe that these children tend to show symptoms of aggression, anxiety, and depression. While we cannot specifically attribute each behavioral symptom to the joint-custody arrangement, there is a clear pattern of disturbance in children who continually are forced to deal with two hostile environments.

Parental custody agreements arrived at either through mediation or voluntarily between the parties, may serve the needs or wishes of the parents; however, such agreements often ignore the needs of the children. As seen in our examples, agreements that appear "fair and equal" to the courts and some parents may actually be detrimental to the needs of the children involved.

Past outcome studies of joint physical custody have assessed relitigation of court action as criteria of success.¹⁰ Obviously it is helpful to both the court and the families to have litigation minimized, and while we agree this measurement of success is valid in some cases, it does not address the effect of the arrangement on the children involved.

We focused on families who have previously agreed on joint custody or had joint custody implemented by court order and sought our services because of difficulties or concerns with it. There are studies that suggest joint physical custody can be successful in certain situations.¹¹⁻¹⁴ We suggest that any joint custody agreements must not only include the parents' desire and commitment to it but also their ability to work cooperatively with each other and their ability to assess the effect of their agreement on the children. Benedek and Benedek¹⁵ outline other conditions in which joint custody is most likely to be favorable.

In summary, our view is that children benefit from solid, continuing, positive, and stress-free relationships with both parents. Stella Chess, MD, *et al.*¹⁶ reported on the adverse effects of parental conflict on children's long-term adjustment. Good postdivorce adjustment can be accomplished in joint custody as well as in sole primary custody situations in which the child has meaningful access to the noncustodial parent. During the Center's work in the five years prior to the changes in custody legislation to joint custody, we almost always recommended significant access time with the noncustodial parent in order to maintain a continuing relationship to both parents. The concern should not be one of equal time but of the quality of the relationship. This can be achieved by any parent who is available, interested, and caring about the child in whatever arrangement serves the child's needs best. Any assessment of the success of joint custody agreements must be broad enough to include all the complex issues arising from the breakup of the family and its effect on the child's best interests. Joint custody offers benefits for children in the favorable circumstances that have been described. On the

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other hand, as an attempt at "fairness" between combative, angry parents it can burden a child with as much pain as the child in the Buddhist fable. The sage Mahosadha knew the outcome of his technique would end favorably for the child, whereas in modern custody litigation a favorable outcome cannot be assured for the child.

References

1. From *Tales of India*, compiled and translated by vanBuitenen JAB. Chicago, University of Chicago Press, 1959
2. For a discussion of the evolution of the tender years presumption, see Deyrden AP: Child custody in historical perspective. *Am J Psychiatry* 133:1369-76, 1976
3. Cal. Civil Code § 4600.5 (West 1983) even goes as far to state there is a presumption that where parents agree, joint custody agreements are in the best interests of a minor child.
4. Atwell AE, Moore US, Nowell CS: The role of stepparents in child custody disputes. *Bull Am Acad Psychiatry Law* 10:211-17, 1982
5. After the final draft of this article, the California Legislature added the following definitions of "joint custody" to the Cal. Civil Code, § 4600.5 (d) (1983):
 - (1) "Joint custody" means joint physical custody and joint legal custody.
 - (2) "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents.
 - (3) "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way as to assure a child of frequent and continuing contact with both parents.
 - (4) "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.
 - (5) "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.
6. Woolley P: Shared custody. *Fam Advoc Summer*: 6-9, 33-34, 1978
7. Cox MJT and Cease L: Joint Custody. *Fam Advoc Summer*: 10-13, 42-44, 1978
8. Galper M: *Co-Parenting: A Source Book for the Separated or Divorced Family*. Philadelphia, Running Press, 1980
9. Benedek E and Benedek R: Joint custody: Solution or illusion? *Am J Psychiatry* 136:1540-44, 1979
10. Ilfelt FW, Ilfelt HZ, Alexander JR: Does joint custody work?, *Am J Psychiatry* 139:62-66, 1982
11. Greif J: Fathers, children and joint custody. *Am J Orthopsychiatry* 49:311-19, 1979
12. Akerbanel A: Shared parenting after separation and divorce: A study of joint custody. *Am J Orthopsychiatry* 49:320-29, 1979
13. Galper M: *Joint Custody and Coparenting: Sharing Your Child Equally*. Philadelphia, Running Press, 1978
14. Steinman S: The experience of children in a joint custody arrangement: A report of a study. *Am J Orthopsychiatry* 51:403-14, 1981
15. Benedek and Benedek: *Joint custody...*, 1543
16. Chess S et al: Early parental attitudes, divorce and separation, and young adult outcome: Findings of a longitudinal study. *J Am Acad Child Psychiatry* 22:47-51, 1983 □