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*Research Article*

## **Characteristics of joint physical custody families in Flanders**

**An Katrien Sodermans**

**Koen Matthijs**

**Gray Swicegood**

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## **Characteristics of joint physical custody families in Flanders**

**An Katrien Sodermans<sup>1</sup>**

**Koen Matthijs<sup>2</sup>**

**Gray Swicegood<sup>3</sup>**

### **Abstract**

#### **BACKGROUND**

Research conducted in the 1990s showed that children who live alternately with their mother and father after divorce (joint physical custody) have closer relationships with both parents and better emotional outcomes. In 1995 and 2006, joint legal custody and joint physical custody became the default judicial recommendations in Belgium. These defaults served to increase the incidence of joint custody arrangements. However, parents with joint physical custody arrangements who divorced before 2006 may have had higher socio-economic standing and lower conflict relationships than couples that divorced afterwards. Thus earlier research on the impact of joint physical custody arrangements on child outcomes may be too optimistic when considering children of recently divorced parents.

#### **OBJECTIVE**

This study examines the characteristics of four different physical custody arrangements (sole mother, sole father, joint physical, and flexible custody) in Flanders, Belgium, and whether these characteristics have changed over time. The legal changes in 1995 and 2006 are used to distinguish three divorce cohorts.

#### **METHODS**

We use data on 2,207 couples that legally divorced between 1971 and 2010 from the Divorce in Flanders project, a large-scale representative multi-actor survey. Multinomial logistic regression models provide estimates of the likelihoods of different physical custody arrangements.

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<sup>1</sup> Family and Population Studies, Katholieke Universiteit Leuven, Belgium. Corresponding author. E-mail: ankatrien.sodermans@soc.kuleuven.be.

<sup>2</sup> Family and Population Studies, Katholieke Universiteit Leuven.

<sup>3</sup> University of Illinois, U.S.A. E-mail: swice@illinois.edu.

## **RESULTS**

The incidence of sole mother custody has decreased over the last decades and children increasingly alternate between the households of the mother and the father after divorce. The incidence of sole father custody has remained low. Higher educated parents are more likely to have joint physical custody arrangements than parents from lower social classes. Also, within couples, relative educational levels are important because the higher educated spouse is more likely to have physical custody of the child. We also find that the associations between socio-demographic variables and custody outcomes have changed over time. Prior to the legal changes low-conflict couples were overrepresented in joint physical custody arrangements, but this pattern has now disappeared.

## **CONCLUSION**

Flanders has clearly followed the road towards more gender-neutral parenting. Hand in hand with changing legislation, joint physical custody has become more prevalent, and the socio-demographic profile of joint-custody families has become more heterogeneous. The increased likelihood that higher-conflict couples enter joint physical custody arrangements may have important consequences for the children involved.

## **1. Introduction**

“Children are jointly produced collective goods”. This quote comes from Weiss and Willis (1985), who applied an economic allocation model to explain how ex-spouses divide their goods after a divorce. Almost 30 years later the debate on “dividing children” continues. Confronted with historically high divorce rates, western countries have modified family law to try to protect and balance the interests of all family stakeholders, including mothers, fathers, and children (Allen and Brinig 2011). Custody legislation is one arena in which changes have been remarkably rapid. Under the premise of the child’s best interest and driven by fathers’ rights groups who rejected the courts’ maternal presumption, legislators moved toward a more gender-neutral approach (Buehler and Gerard 1995; Felner, Terre, Farber, et al. 1985; Fox and Kelly 1995; Frankel 1985; Rothberg 1983; Settle and Lowery 1982; Warshak 1986; Wolchik, Braver, and Sandler 1985; Van Krieken 2005). This led to the adoption of new concepts, such as ‘equal parental rights’ and ‘joint physical custody’. The latter concept, also called ‘shared residence’, refers to a situation in which children live alternately in the maternal and paternal households

following divorce. Belgium introduced joint legal custody in 1995 and in 2006 joint physical custody became the default judicial recommendation. The incidence of joint physical custody in Flanders is estimated to be one fifth to one fourth of all divorced families (Sodermans, Vanassche and Matthijs 2013).

Bauserman's (2002) meta-analysis of numerous studies (mostly conducted in the 1980s and 1990s) on child custody and child well-being led to a positive evaluation of joint physical custody, but two caveats should be applied to this conclusion. First, most of the research reviewed by Bauserman was conducted in a context where there was no legal presumption of joint physical custody. This arrangement was often the result of a mutually agreed upon parental decision and was rarely imposed by a judge. Second, the results could have been biased by self-selection mechanisms because upper class and highly educated couples were overrepresented in joint physical custody arrangements (Bauserman 2002; Fehlberg et al. 2011). Research evidence from Australia (Fehlberg et al. 2011) and Sweden (Singer 2008) suggested that, when there is a legal presumption of joint physical custody, this option is less likely to be restricted to cases where parents mutually agree and are highly cooperative and well-to-do. If joint physical custody is increasingly adopted by or imposed on a more heterogeneous group, then generalizations based on earlier studies may no longer apply to the entire divorced population.

This study examines correlates of physical custody arrangements in Flanders and whether these have changed over time, due to the legislative action that made joint physical custody the default residential model. The Belgian situation is an excellent context in which to reconsider this question because it has one of the highest divorce rates in Europe (Corijn 2012; Matthijs 2009) and there has been a legal preference for joint physical custody since 2006. We use the data from the Divorce in Flanders project (Mortelmans et al. 2011), a large-scale representative multi-actor survey. The data enable us to study the link between family characteristics and custody arrangements over a 35-year period, before, between, and after the 1995 and 2006 legal reforms. Detailed information on residential arrangements was obtained by means of a residential calendar (see Sodermans et al. 2012). The rationale for this study was prompted by legal changes, but often custody decisions defined by court order are not implemented (Juby, Le Bourdais, and Marcil-Gratton 2005; Maccoby and Mnookin 1992). Therefore we examine the actual residential arrangements of children (also called 'physical custody arrangements') because the impact of new court practices is most relevant when it refers to the daily life of children and parents.

## **2. Joint physical custody: Overview of the Belgian and international policy context**

Before 1995 sole custody was common after divorce in Belgium. One parent (usually the mother) retained legal and physical custody rights over the child(ren) while the other parent had only visitation rights. Against the backdrop of father and mother interest groups reacting against this model and increased attention to child empowerment, the idea of shared parental responsibility emerged (Arteel, De Smedt, and Van Limbergen 1987). Legislators in Belgium seemed to recognize the benefits for children in maintaining a strong relationship with both parents and installed the principle of joint legal custody in 1995 (for an overview see Martens 2007). This shift was the judicial expression of a normative climate and targets both biological parents as ultimately responsible for the rearing of their children. Nonetheless, the 1995 law did not set forth a default residential model; the only guideline was the child's best interest. In 2006 joint physical custody was legally adopted as the default. If parents do not reach an agreement on residential arrangements for their children, the option of joint physical custody must be evaluated by the court and can be imposed by a judge if one parent requests it (even against the will of the other parent, if it serves the child's best interests). Like the 1995 law, this legislation refrained from stipulating precise criteria for joint physical custody, leaving considerable leeway in judicial decisions (Martens 2007; Vanbockrijk 2009).

The Belgian law does not provide a clear definition of joint physical custody and only mentions that children should live an equal amount of time with both parents.<sup>4</sup> Melli (1999) investigated which thresholds for joint physical custody were applied by different states in the U.S. before a reduction in child support could be considered. She found that most states set the threshold between 30% and 35%.

In many European countries there has been a similar movement towards equal parental rights in custody decisions, but so far only a few countries have adopted a legal presumption of joint physical custody. The Netherlands considered this legal presumption in 2009, but it was abandoned. Nevertheless, the incidence of joint physical custody increased from 5% to 16% between 1998 and 2008 (Spruijt and Duindam 2009). In Sweden the possibility for the court to decide on joint physical custody was introduced in 1998, and the proportion of children who lived

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<sup>4</sup>The word 'custody' may be linked to the concept of parental authority rather than to residential arrangements, and therefore many authors prefer the term 'residence' (e.g., shared residence, alternating residence,...). Although we are studying residential arrangements we prefer to use the terms 'joint physical custody', 'sole mother custody', and 'sole father custody' in line with most American research. Moreover, the term 'custody' is more appropriate than 'residence' in grasping the link with legislative changes, and that is exactly the rationale of this study.

alternately with both parents rose from 4% in 1992 to 21% in 2005 (Singer 2008). This residential pattern appears to be less common in Norway, but, following a new law in 2010 that gives courts the power to impose joint physical custody even against the will of a parent, Kitterød and Lyngstad (2012) expect an increase in joint physical custody arrangements. In France “residence alternée” was legalized in 2002 (Kesteman 2007, 2008). Over 10% of all children were involved in decisions of joint physical custody in 2005. Similar trends can be observed in Southern European countries. Legal reforms in Spain and Italy (in 2005 and 2006 respectively) identified joint physical custody as the default residential model (Lavadera, Caravelli, and Togliatti 2011; Piconto Novales 2012).

Outside Europe there has also been a shift towards a more gender-neutral approach to physical custody decisions. Australia introduced joint legal custody in 1995 and the Australian Family Law Amendment Act in 2006 created a presumption of ‘equal’ shared parental responsibility (Rhoades and Boyd 2004; Smyth et al. 2012). Nevertheless, a recent report showed that the prevalence of joint physical custody is only 8% in Australia (Cashmore et al. 2010). Custody legislation and prevalence of joint physical custody in the U.S. differs across states. For example, in Wisconsin 32% of children had a joint physical custody arrangement (Melli and Brown 2008), whereas in Arizona and Washington State this figure was between 30% and 50% (Nielsen 2011). Canada has not decided to legislate a preference for joint physical custody (Rhoades and Boyd 2004) and only 9% of children of divorced couples were found in this custody type (Swiss and Le Bourdais 2009).

### **3. Correlates of custody arrangements**

There is considerable evidence that the socio-demographic profiles of joint physical custody families and sole mother custody families are different. Numerous studies, mostly conducted in the U.S. or Canada, have shown that joint physical custody parents were more highly educated and had higher incomes than sole mother or sole father custody families (Cancian and Meyer 1998; Fox and Kelly 1995; Shiller 1986; Mcintosh 2009). Higher educated parents were more likely to be aware of this custody arrangement (Donnelly and Finkelhor 1993) and were better able to pay the costs of this relatively expensive custody arrangement (Juby et al. 2005; Kitterød and Lyngstad 2012; Melli, Brown, and Cancian 1997; Pearson and Thoennes 1990). Educational homogeneity and relative income levels between ex-partners may also be important in understanding residential decisions, because these factors are linked to the distribution of power between the two parents. Cancian and Meyer (1998) found

that joint physical custody was more likely if the ex-spouses had contributed equally financially during their marriage. When the mother was more highly educated than the father this led to more sole mother custody, whereas a paternal educational advantage was linked to higher incidence of joint physical custody (Juby et al. 2005). Joint physical and sole father custody were found to be more likely for boys than for girls (Cancian and Meyer 1998; Fox and Kelly 1995; Seltzer 1990), following a higher paternal involvement with sons (Juby et al. 2005). Joint physical custody should be more feasible when there is only one child because housing large families in two households is more expensive (Juby et al. 2005), but Cancian and Meyer (1998) found no association between family size and custody. Finally, there is evidence that parents in joint physical custody arrangements typically have the highest degree of parental cooperation (Irving et al. 1984; Pearson and Thoennes 1990; Smyth 2004; Wolchik et al. 1985) and a lower level of parental conflict (Gunnoe and Braver 2001).

The specific profile of joint physical custody families may at least partially explain why many studies report a positive association between joint physical custody and child adjustment. Upper-class families may have been overrepresented in joint physical custody arrangements, and these families typically have better adjusted children (Donnelly and Finkelhor 1993; Fehlberg et al. 2011; Johnston 1995; Strohschein 2005; Wolchik et al. 1985). However, in countries with a legal presumption of joint physical custody, a more heterogeneous group may be sharing the care of children after divorce, and generalizations from earlier studies may no longer hold. As joint physical custody becomes adopted by more countries the question arises as to whether its prevalence has also increased among lower educated or more conflicted couples. Donnelly and Finkelhor (1993) argue that low-income families may not have the appropriate skills and resources needed to successfully manage joint physical custody and may be better served with other residential options. Thus changes in the profile of joint physical custody families are likely to alter the association between joint physical custody and child well-being.

In this study we examine correlates of four different residential arrangements in Flanders: sole mother, sole father, joint physical custody, and a new custody option, flexible custody, in which children have no fixed or pre-arranged residential pattern. We focus on education, child-related variables (number, age, and sex), and variables reflecting the level of harmony within the spouses' relationship (initiator of divorce, being in mediation, conflict level of the divorce). Subsequently we test whether these correlates have changed over time. The two consecutive legislative changes of 1995 and 2006 are used to distinguish three time periods. This research question is particularly relevant because the profile of joint physical custody families may partially explain why earlier studies (e.g., Bauserman 2002; Crosbie-Burnett 1991;

Glover and Steele 1989) reported a positive association between joint physical custody and child adjustment.

## 4. Methodology

### 4.1 Data and sample

We used data collected by the Divorce in Flanders study (Mortelmans et al. 2011).<sup>5</sup> This large-scale survey was designed to study causes and consequences of divorce and contains detailed information on a variety of divorce-related issues, including the custody arrangement, background variables of parents and children, and legal process variables. A sample of first marriages (hereafter called the reference marriage) formed between 1971 and 2008 was drawn from the Belgian National Register. The sampling procedures were designed to realise an overrepresentation of divorced individuals: one third of marriages were still intact, the other two-thirds were dissolved. Respondents could not be legally divorced for a second time. Based on estimations with National Register data, between 10% and 20% of first marriages were excluded by this sampling criterion (Corijn 2013). Between September 2009 and December 2010, 6,470 respondents were interviewed by means of face-to-face Computer Assisted Personal Interviews (CAPI). The overall response rate was 42% (Pasteels, Mortelmans, and Van Bavel 2011). This response rate was within the normal range of multi-actor studies about similar topics in Europe. For example, the response rate of the Netherlands Kinship Panel Study (Dykstra et al. 2006) was 47%.

The Divorce in Flanders survey was a multi-actor study in which both (ex-) spouses of each reference marriage were contacted separately for participation. One child was randomly selected from each reference marriage. This target child was a mutual biological or adopted child of both ex-spouses, and all questions with regard to children (including the custody arrangement)<sup>6</sup> pertained to this child. Our subsample was limited to divorced families with a target child below age 18 at the time of the residential separation.

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<sup>5</sup> Flanders is the autonomous northern region in Belgium that contains about six million inhabitants, or 58% of the total Belgian population.

<sup>6</sup> Unfortunately, detailed residential information is only available for the target child. However, different custody arrangements for different children in one family (split custody) may apply. With the limited residential information about the siblings of the target child we could roughly estimate that only 6.5% of families involved split custody. Hence, our focus on the target child is unlikely to bias the results.

Our final research sample includes information on 2,207 divorced families in which there was at least one common (biological or adoptive) child at the time of the residential separation. In 66% of the cases (1,463 families) only one parent participated in the survey: 579 fathers and 884 mothers. In 34% of the cases (744 families) both parents participated. For these families we used the answers from one randomly selected parent: 386 fathers and 358 mothers. This procedure resulted in a final subsample of 965 fathers and 1,242 mothers. Respondents were between 24 and 71 years old at the time of the interview with a mean age of 46. The age of the respondent at the time of the divorce was between 18 and 68 with a mean age of 35 years.

## 4.2 Measures

Appendix Table 1 shows the frequency distribution of all variables for each divorce cohort separately to illustrate possible compositional changes across time.

*Custody type* – The custody type (residential arrangement) of the target child immediately after the residential separation was registered by a two-step procedure. First, parents were asked where the child lived immediately after the residential separation. If the child lived with both parents alternately, a residential calendar was presented to record the residential arrangement in detail.<sup>7</sup> The interviewer showed the respondent a calendar on paper, corresponding with a regular month (no holiday periods). The respondent was asked to indicate for every day and night whether the child resided with him/her or with the ex-spouse.<sup>8</sup> Note that the calendar information overruled the answer on the first question if the answers were contradictory. We distinguished four custody arrangements: sole mother custody (child lives at least 66% with mother), sole father custody (child lives at least 66% with father), joint physical custody (child lives at least 33% of time with each parent) and flexible custody (no fixed arrangement). The overall frequency distribution was: 66.4% sole mother custody, 19.3% joint physical custody, 8.8% sole father custody, and 5.5% flexible custody.

*Divorce cohort* – To evaluate the effects of the custody law reforms of 1995 and 2006, we classified respondents into three divorce cohorts. The classification was based on the timing of the residential separation rather than the legal divorce. The couples of divorce cohort 1 (31%) separated prior to April 1995, cohort 2

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<sup>7</sup> For more information on the residential calendar, see Sodermans et al. (2012).

<sup>8</sup> Respondents were also asked whether changes in the residential arrangement occurred afterwards, but this pertained to only 13.5% of families.

(55%) between April 1995 and September 2006, and cohort 3 (14%) after September 2006.<sup>9</sup>

*Parental conflict* – The level of parental conflict immediately after the divorce was derived from a retrospective question: “How much conflict was there between you and your ex-spouse after the decision to definitely break up? Give a number from 0 (no conflict) to 10 (a lot of conflict).” As reports on parental conflict may be one-sided and subject to social desirability, the mean conflict score of the mother and father was used for those families in which both parents participated.<sup>10</sup> The conflict variable was centered about its mean value (5.3). Appendix Table 1 shows no difference in average conflict between divorce cohorts.

*Mediation* – A dummy variable indicates whether or not the parents visited a professional mediator during the divorce process. Information comes from the question, “Did you visit a mediator regarding your divorce?” On average 11.5% of couples made such a visit, but the percentage increased significantly between the first and last divorce cohort.

*Decision to separate* – As the power balance between ex-spouses may be important for custody outcomes, we included the initiator of the divorce as a predictor variable in our analyses. A three-level categorical variable was constructed: husband made decision to separate (28.3%), wife made the decision to separate (51.8%), husband and wife together made decision to separate (20%).

*Number of children* – The family size at the time of the divorce was calculated as the number of mutual biological/adoptive children from both partners of the reference marriage. Children from one spouse with someone else (e.g., with a pre-marital partner) were not included. Because the association between the number of children and the physical custody arrangement may not be linear, a categorical variable was constructed with three levels: one child (37%), two children (47%), and three or more children (17%).

*Sex of child(ren)* – Earlier research showed that families with all boys were more likely to have joint physical custody than those with only girls (e.g., Cancian and Meyer 1998). Therefore we included the sexes of all of the children in the family. Families with children of both sexes were the reference category (37%), and they were compared with families in which all children were male (32%) or female (31%).

*Age of the target child* – On average the children in our sample experienced the residential separation of their parents when they were eight years old. Because a non-linear association with the physical custody arrangement can be assumed based

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<sup>9</sup> April 1995 and September 2006 refer to the months in which the legal changes came into force.

<sup>10</sup> The median of this conflict difference measure was 0, and the first and third quartile were respectively -3 and +2.

on previous research (e.g., Juby et al. 2005), we included both age and age squared of the target child at the residential separation as continuous variables. These variables were centred about their mean values.

*Educational level of mother and father* – The highest obtained educational degree of father and mother was divided into three categories. The low educated finished only lower secondary education (on average obtained at the age of 15), the average-educated obtained a higher secondary education degree (on average obtained at the age of 18), the high educated obtained a higher educational or university degree. Each respondent was asked about their own educational level as well as that of the ex-spouse, a strategy that allows us to include both parents' educational levels even if only one parent participated. We combined the educational level of mother and father in a new variable with five categories that simultaneously provides information on the educational level and on educational homogamy within couples. The five categories were: father higher educated than mother (19%); both mother and father low educated (14%), both mother and father average educated (24%), both mother and father high educated (19%), mother higher educated than father (24%).

*Survey participation* – Preliminary analyses uncovered several differences between families in which both parents participated and those in which only one parent participated. In the latter case there was, for example, a higher chance of sole custody (with the participating parent being the residential parent), a lower likelihood of joint physical custody, more parental conflict, and a lower educational level. To control for survey participation in our analyses we created a variable with three categories: both parents participated (33.7%), only father participated (26%), only mother participated (40%).

### **4.3 Analytical strategy**

Multinomial logistic regression models provided estimates of the likelihood that parents adopted joint physical custody, sole father custody, or flexible custody after the residential separation. Sole mother custody was the reference category. First we estimated a model using the entire research sample (Table 1). All predictor variables were entered in this model, including divorce cohort. Subsequently, because we are interested in changes over time, we included interaction terms between each predictor variable and divorce cohort to assess any significant change across cohorts in the association between predictor variables and physical custody arrangement. A separate multiplicative model was estimated for each predictor variable containing all other predictor variables. Lastly, we ran separate logistic regression models for

each divorce cohort to compare correlates of physical custody arrangements across time (Table 3). The bivariate associations by divorce cohort are shown in Table 2.

## **5. Results**

### **5.1 Correlates of custody arrangements**

Appendix Table 1 shows that the frequency of sole mother custody has decreased over time: the incidence has dropped from almost 80% to approximately 53%. This decrease was nearly balanced by an increase in joint physical custody, which has tripled over three decades. The incidence was less than 10% for couples divorced before 1995, but joint physical custody was the arrangement for 33% of the most recently divorced couples. Sole father custody as well as flexible custody remained low over the three divorce cohorts. The multivariate regression model (Table 1) confirmed that joint physical custody became more likely over time as the odds ratios for divorce cohorts 2 and 3 were greater than unity.

Overall, there was a negative association between parental conflict and joint physical custody, indicating that cooperative couples were more likely to have joint physical custody compared to sole mother custody (Table 1). This was also the case for flexible custody, though this effect was only marginally significant. Joint physical custody was also more likely when there was a mutual decision to break up, compared to a situation in which the man or the wife alone made this decision. When the man was the sole initiator, his relative odds of becoming the full residential parent decreased. We found no association between the physical custody arrangement and mediation.

In general, we observed an overrepresentation of highly educated parents in joint physical custody arrangements. When both ex-spouses were highly educated, their odds of having joint physical versus sole mother custody was 1.6 times higher than for middle-educated parents. When the father was more highly educated than the mother, there was a greater likelihood of sole father custody than when both parents had average levels of education. When the mother had more education than the father, the odds for joint physical custody, relative to sole mother custody, decreased. When both parents were low educated, there was a higher likelihood of sole father custody compared to sole mother, and an even lower likelihood of joint physical custody.

Prior findings that joint physical custody was more likely among boys-only families was not evident in our analysis, as the sex of the children in the family did not predict physical custody outcomes. Similar results were obtained when the sex

of the target child was included instead of the sex composition of all children in the family. Moreover, there was no association between family size and the custody arrangement.

**Table 1: Likelihoods of joint physical, sole father, and flexible custody versus sole mother custody (Multinomial logistic regression odds ratios – N=2,207)**

	Joint	Father	Flexible
Divorce cohort (cohort 1: Before June 1995)			
Cohort 2: June 1995 - August 2006	3.05***	1.26	0.95
Cohort 3: After August 2006	5.48***	1.32	0.79
Parental conflict	0.96*	0.99	0.95†
Mediator visited	1.21	0.89	1.42
Decision to separate (both)			
Husband	0.49***	0.54**	0.88
Wife	0.76†	0.73	1.14
Number of children (1 child)			
2 children	0.99	1.06	0.85
3 or more children	0.80	1.07	0.62
Sex of the child(ren) (mixed)			
All boys	1.08	0.95	1.05
All girls	1.10	0.70	1.32
Age of target child (continuous)	0.98	1.09***	1.12***
Age <sup>2</sup> of target child (continuous)	0.99*	1.01**	1.01**
Parent's education (both average)			
Father higher than mother	1.33	1.50†	1.47
Both low	0.50**	1.59†	1.10
Both high	1.60**	0.65	1.14
Mother higher than father	0.61**	0.74	0.93
Survey participation (both)			
Only mother	0.65**	0.31***	0.60*
Only father	1.21	1.73**	1.21
$\chi^2$		381.69	
Nagelkerke R <sup>2</sup>		0.22	

Note: Reference category given in parentheses. †p<.10; \*p<.05; \*\*p<.01; \*\*\*p<.001

Both the age and the age squared of the target child at the time of the separation correlated significantly with the custody arrangement. For joint physical custody the odds ratio for the quadratic term was negative, which indicated a concave (U-shaped) curve. Additional analyses showed that joint physical custody

was most likely when children were between 4 and 12 years old. For father and flexible custody the sign of the quadratic term was positive, which indicated a convex curve. Additional analyses showed that there was a positive non-linear association between the age of the child and the likelihood of father/flexible custody.

## 5.2 Changing correlates of custody arrangements over time

We tested interactions between all predictor variables and the divorce cohort variables to examine whether correlates of residential arrangements had changed over time. We found significant interaction terms between divorce cohort on the one hand and parental conflict ( $\chi^2=386.33$ ), and mediation ( $\chi^2=387.13$ ) and parental education ( $\chi^2=380.97$ ) on the other hand.

The association with the highest change over time was parental conflict. The association between conflict and joint physical custody changed between cohort 1 and cohort 2. Before 1995 joint physical custody was significantly associated with low parental conflict. For example, parents with joint physical custody arrangements that divorced before 1995 reported a mean conflict score of 3.9, whereas this figure was 4.7 for sole father custody families and 5.6 for sole mother custody families (Table 2). However, the association between parental conflict and the custody arrangement was absent for couples that divorced after 1995. In the last divorce cohort the direction of the association reversed, but this association was not statistically significant. The cohort specific multivariate models (table 3) further illustrate this finding.

The association between joint physical custody and mediation also changed over time. The models indicate that the association between mediation and joint physical custody was different in cohort 3 and cohort 1. In the first divorce cohort, couples with joint physical custody arrangements were more likely to see a mediator than other couples. For example, 16% of joint physical custody couples in divorce cohort 1 visited a mediator versus 7% of sole mother custody couples and 4% of sole father custody couples (Table 2). Within the last divorce cohort mediation gained popularity but was not related to the custody arrangement. The cohort-specific models (Table 3) confirm the decreasing association between mediation and custody type over time.

**Table 2: Bivariate associations between predictor variables and mother (M), joint (J), father (F), and flexible (FL) custody per divorce cohort (N=2207)**

	Cohort 1: Before June 1995				Cohort 2: June 1995–August 2006				Cohort 3: After August 2006			
	M	J	F	FL	M	J	F	FL	M	J	F	FL
M parental conflict	5.6	3.9	4.7	3.9***	5.5	5.0	5.5	5.0	5.2	5.3	4.5	5.7
Mediator visited												
Yes	6.6	16.2	3.7	13.2*	11.7	13.8	9.0	16.2	19.4	15.5	20.7	6.7
No	93.4	83.9	96.3	86.8	88.3	86.2	91.0	83.8	80.6	84.5	79.3	93.3
Decision to separate												
Husband	25.6	26.2	28.3	23.7	31.5	20.7	30.0	32.4***	34.6	28.4	17.2	26.7
Wife	56.6	52.5	50.9	57.9	51.5	49.0	44.6	54.4	47.3	46.1	55.2	46.7
Both	17.8	21.3	20.8	18.4	17.0	30.3	25.5	13.2	18.2	25.5	27.6	26.7
Number of children												
1 child	45.1	48.4	35.2	42.1	33.6	32.6	30.6	35.8	24.9	33.0	17.2	46.7
2 children	41.3	41.9	48.2	52.6	47.6	51.0	46.9	46.3	54.6	49.5	58.6	40.0
3 or more children	13.7	9.7	16.7	5.3	18.8	16.5	22.5	17.9	20.6	17.5	24.1	13.3
Sex of the child(ren)												
All boys	36.3	35.5	27.8	26.3	31.4	33.0	36.9	31.3	27.3	27.2	20.7	40.0
All girls	31.9	37.1	33.3	44.7	30.0	29.9	19.8	35.8	30.9	35.9	20.7	26.7
Mixed	31.8	27.4	38.9	29.0	38.6	37.2	43.2	32.8	41.8	36.9	58.6	33.3
M age of target child	5.6	5.9	7.8	8.8***	7.7	7.4	10.6	11.1***	10.0	8.2	11.5	11.3***
Parent's education												
Father higher than mother	20.3	36.1	35.3	26.3***	15.3	18.5	24.3	26.9***	13.0	18.6	34.5	26.7***
Both low	19.9	6.6	17.7	23.7	12.2	8.1	24.3	13.4	7.4	2.0	17.2	0.0
Both average	19.9	18.0	23.5	21.1	26.8	25.4	25.2	17.9	23.5	30.4	6.9	26.7
Both high	13.9	31.2	11.8	13.2	18.6	28.1	9.0	16.4	19.8	31.4	17.2	33.3
Mother higher than father	26.0	8.2	11.8	15.8	27.1	20.0	17.1	25.4	36.4	17.7	24.1	13.3
Survey participation												
Only mother	47.4	30.7	20.4	26.3***	45.5	31.4	45.1	29.4***	46.1	35.9	3.5	26.7***
Only father	21.9	30.7	48.2	31.6	21.8	29.9	45.1	29.4	21.8	35.0	44.8	33.3
Both	30.8	38.7	31.5	42.1	32.7	38.7	37.8	36.8	32.1	29.1	51.7	40.0

Note: \*p < .05; \*\* p < .01; \*\*\*p < .001 (Chi-square test for categorical variables, F-test for metric variables).

**Table 3: Likelihoods of joint and sole father custody versus sole mother custody for three divorce cohorts (odds ratios)**

	Cohort 1:			Cohort 2:			Cohort 3:		
	Before June 1995			June 1995–August 2006			After August 2006		
	Joint	Father	Flexible	Joint	Father	Flexible	Joint	Father	Flexible
Parental conflict (continuous)	0.88**	0.92†	0.86**	0.97	1.03	0.96	1.02	0.99	1.10
Mediator visited (continuous)	2.57*	0.47	2.16	1.28	0.85	1.60	0.76	1.15	0.37
Decision to separate (both)									
Husband	1.06	0.98	0.97	0.36***	0.52*	1.12	0.62	0.15**	0.50
Wife	1.15	0.99	1.30	0.65*	0.62†	1.25	0.85	0.70	0.78
Number of children (1 child)									
2 children	0.90	1.68	1.33	1.08	0.79	0.86	0.74	1.40	0.28
3 or more children	0.63	2.12	0.47	0.83	0.83	0.89	0.78	1.19	0.19
Sex of the child(ren) (mixed)									
All boys	1.12	0.62	0.70	1.14	1.20	1.39	0.95	0.70	0.77
All girls	1.36	1.13	1.49	1.00	0.57	1.51	1.08	0.61	0.55
Age of target child (continuous)	1.01	1.10**	1.13**	0.99	1.13***	1.12**	0.90*	1.01	1.02
Age <sup>2</sup> of target child (continuous)	1.00	1.02*	1.01	0.99	1.01	1.01*	1.00	1.01	1.02
Parent's education (both average)									
Father higher than mother	1.79	1.15	0.99	1.26	1.19	1.65	1.29	8.29*	1.92
Both low	0.36†	0.68	0.99	0.69	1.74†	1.26	0.18*	5.75†	---
Both high	2.40*	0.71	0.92	1.56*	0.48†	0.99	1.39	2.33	2.36
Mother higher than father	0.36†	0.40†	0.55	0.78	0.79	1.46	0.38*	2.42	0.36
Survey participation (both)									
Only mother	0.69	0.45†	0.43†	0.58**	0.31***	0.71	0.90	0.06**	0.59
Only father	1.34	2.49*	1.19	1.02	1.71*	1.33	2.04	1.99	1.62
X <sup>2</sup>		109.82			192.67			62.05	
Nagelkerke R <sup>2</sup>		0.23			0.19			0.25	
N		654			1211			312	

Note: Reference category given in parentheses / -- cell frequencies are too low / †p<.10; \*p < .05; \*\* p < .01; \*\*\*p < .001

We found no evidence of a changing association between parental education and joint physical custody over time. However, the cohort-specific models (Table 3) show that there was a higher likelihood of two highly educated parents having joint physical custody in cohorts 1 and 2, while this relationship was absent within the last period. This is not because high-educated people opted less frequently for joint physical custody in the last divorce cohort, but because middle-educated parents opted more often for it or had it imposed (Table 2). Because middle-educated parents were the reference group, the difference with high-educated parents became insignificant in the last cohort. In other words, joint physical custody became more widespread among average-educated parents after joint physical custody had been legally adopted (2006).

With regard to the association between sole father custody and parental education, the significant interaction terms showed strong evidence of an evolution over time. A mother with more education than her ex-spouse had a higher chance of becoming the residential parent before 2006, but this pattern of association disappeared after joint physical custody became the legal default. Additional analyses showed another association that was only present within the last cohort: if the mother had a low educational level (irrespective of the father's education), the likelihood of sole father custody was higher than that of sole mother custody.

## **6. Conclusion and discussion**

Two important legal changes have occurred in Belgian custody law within the last three decades. In 1995 and 2006 respectively, joint legal custody and joint physical custody became the legal defaults. These legislative shifts went hand in hand with changes in post-separation parenting behaviors and attitudes. Flanders followed the road toward more gender-neutral parenting. Our study indicates that joint physical custody is more likely among higher educated parents, whereas families with two less educated parents are less likely to have joint physical custody. Fathers who are more educated than their ex-spouses are more likely to obtain joint physical custody, whereas mothers who are more educated than their ex-husband are more likely to become the sole residential parent.

There is a non-linear association between age of the child and physical custody arrangement, consistent with the findings of Juby et al. (2005). Sole father custody is more likely when children are older and joint physical custody is more likely in the middle age group (between 4 and 12 years old). Flexible custody seems to be more likely when parental conflict is low and when the target child is closer to 18 years old at the time of the separation. Flexible moving requires cooperation from

all partners involved. Previous findings (e.g., Cancian and Meyer 1998; Fox and Kelly 1995; Seltzer 1990) that identified an association between custody arrangements on the one hand and family size and sex of the children on the other hand were not observed in our Flemish data. This could be attributable to sample criteria. Because all respondents were married after 1970, the average duration of the marriages within cohort 1 was shorter than in the more recent divorce cohort, leading to an artificial positive association between divorce cohort and family size.

Besides the replication of earlier research, the innovative contribution of this study was to demonstrate whether correlates of physical custody arrangements had changed over time, as a result of changing custody legislation. Our results showed that the negative association between parental conflict and joint physical custody disappeared after 1995. Fehlberg et al. (2011) argue that the legal presumption of joint physical custody in Australia could have led to more parental conflict because of the terminology used in the law. The concept of 'equal time' was introduced by the legislature to strive for gender neutrality, but it may have created the expectation that joint physical custody is a 'parental right'. The attention has been shifted away from enabling continuity in the parent-child relationship toward an equal division of children's time between both parents (McIntosh 2009). A second reason for the decreased association between parental conflict and custody type may be the higher incidence of court-imposed joint physical custody situations due to legal presumptions. An example from the Swedish context shows that since shared residence became the default in Sweden in 1998, joint custody has been more frequently imposed on high-conflict couples (Singer 2008). The 2006 Belgian law stipulates explicitly that joint physical custody must be investigated (and can be imposed) by the judge, particularly when there is no agreement between parents. Thus the likelihood of joint physical custody may be increased when there is a non-cooperative parental climate. Also in Australia, a legal presumption increased the number of court-imposed joint physical custody cases (Cashmore et al. 2010; Fehlberg et al. 2011). As noted twenty years ago by Rothberg (1983), parental flexibility and interaction are essential requirements for workable custody arrangements, but may conflict with the rather rigid schedules imposed by courts.

The declining association between parental conflict and joint physical custody may lead to a bifurcation of joint physical custody parents. Joint physical custody is still popular among low-conflict and cooperative parents, but it is also increasingly used as a compromise among high-conflict couples (Fehlberg et al. 2011). This may have far-reaching consequences for the children involved, given the evidence demonstrating that joint physical custody is not beneficial when parental conflict is high (Amato and Rezac 1994; Fehlberg et al. 2011; Frankel 1985; Johnston 1995). McIntosh (2009) also warns that the qualities needed to make shared parenting

arrangements work (e.g., good communication skills, a cooperative attitude) are typically not the characteristics of parents that litigate in court. In Sweden the legal preference for joint physical custody was cut back in 2006 by amending the law to indicate that this custody arrangement can only work when both parents are able to cooperate (Singer 2008).

We also found a shift in the association between custody type and mediation. In earlier times parents with joint physical custody arrangements visited a mediator more often. Probably, the mediation process helped them work out mutually agreeable custody arrangements. For recently divorced couples, joint physical custody has become the standard and is more often obtained without mediation.

Our results show an increased heterogeneity over time in the educational profile of parents with joint physical custody arrangements. In the earlier period, when joint physical custody was uncommon, it was largely restricted to a distinct group of upper class, highly educated parents. Recently, the likelihood of joint physical custody among average-educated parents has increased. These dynamics may reflect a 'social diffusion' process of joint physical custody over time. Highly educated parents were forerunners with regard to joint physical custody. Their less traditional value pattern could have influenced their readiness to accept gender-neutral parenting. Moreover, they had the financial means to afford it. More recently, enforced by legislative changes, joint physical custody has been adopted by a more heterogeneous group and become more prevalent among lower educational groups. However, it remains relatively uncommon for two less-well-educated parents.

Our results suggest that fathers are increasingly taking up the care of their children if mothers are less educated, especially after 2006. Although the proportion of sole father custody families did not increase over time, the educational profile of sole father custody families has changed. The recent law may have facilitated a readiness to view sole father custody as a viable alternative to sole mother custody. Especially when fathers are more educationally (and thus economically) advantaged than mothers, they seem to have the 'power' to gain physical custody rights. Mothers, on the contrary, seem to lose their educational advantage over time. Mothers that were more highly educated than their ex-spouse were more likely to get physical custody of their children in earlier cohorts than in the most recent cohort. This suggests that the 2006 legal reform has served the rights of fathers more than those of mothers, and that the latter group has started to lose their advantageous position in becoming the residential parent.

Probably the evolution towards gender neutrality in custody decisions has not yet ended. In this respect our results articulate well with Martin's (2004) discussion of the 'divorce divide'. Divorce rates in the U.S. (and also in Europe, e.g., De Graaf

and Kalmijn 2006) have declined among the higher social classes, whereas they have risen among lower-educated groups (De Graaf and Kalmijn 2006; Harkönen and Dronkers 2006; Martin and Parashar 2006). The latter are in fact the most vulnerable members of society (in terms of economic and psychological resilience), and they are least able to deal with the consequences of divorce. Hence, divorce may function as an engine of growing inequality. Assuming that this social diffusion of joint physical custody will continue and that this (relatively expensive) residential arrangement is expanding within the lower social classes, a reconsideration of this custody option for child well-being is important.

This study has several limitations. Although its main aim was to analyze the effects of legal changes on custody arrangements, we did not have information about the legal decisions or on how the physical custody arrangements became settled (mutual parental decision versus court-imposed). Moreover, we had to rely on individual retrospective information, as remembered and reported by parents. Because the survey had a cross-sectional design there is a possible recall bias concerning subjective measures such as parental conflict and who took the decision to separate. Hence, the temporal and causal ordering of conditions present at the divorce and subsequent residential arrangements cannot be parsed with this type of recall data. Even though we were able to describe the association between family characteristics and custody arrangements and how these changed over time, our ability to draw causal inferences is limited. We only take into account the first residential arrangement after divorce. As physical custody arrangements are likely to change over time (when children age or when new unions are formed), we miss some of the dynamics of children's family histories.

Other limitations follow from the sampling design. The selected target child was not representative of the population of Flemish children of divorced parents. In the selection process children of at least 10 years old that lived in the household of at least one of their parents were given priority. Hence adolescent children were somewhat overrepresented in this study. But the reported incidence figures for joint, sole mother, and sole father custody were quite consistent with the study of Sodermans, Vanassche, and Matthijs (2013) on custody arrangements of Flemish adolescents.

Families from which one parent participated scored significantly different on a number of variables compared to families from which both parents participated. It is very likely that families that did not participate were even more different on variables like parental conflict, parental involvement, and education.

Another important drawback is that the sampling design did not include parents that were divorced twice. Hence our study is restricted to stable post-divorce families. Related to this limitation is the one-sided report of parental conflict in

cases where only one parent participated in the survey. Thus there is some uncertainty about the conflict report by this parent. Moreover, we do not have information on cohabitating couples with children who separated without marrying. Since this category of parents is increasingly common, they should be a point of emphasis in future work. Lastly, the low number of cases in father and flexible custody means that results for these categories are potentially less robust.

Despite these limitations, this research holds considerable relevance for family policy in so far as it demonstrates how the socio-demographic composition of joint physical custody families has been shifting in tandem with new laws surrounding physical custody arrangements. According to Allen and Brining (2011) it is important to evaluate legislation changes, since any legislative shift, however subtle, may have important consequences for children and their parents. The most compelling question raised by our study concerns how much child well-being is affected by a legal presumption of joint physical custody. There is wide consensus that extended parent-child contact after divorce is a positive development for child well-being, but the increasing occurrence of conflict in joint physical custody situations may be a matter of concern. An Australian report that assessed the impact of a joint physical custody default stated that fathers benefited the most, followed by mothers, while children derived the least benefit (Cashmore et al. 2010). Already there are indications that negotiation and litigation have become more focused on parental rights than on the best interest of children (Fehlberg et al. 2011). This despite the fact that child well-being was a key motivating factor behind the new custody legislation.

The changed legal conditions and associated physical custody arrangements make generalizations from previous studies tenuous. New empirical evidence on the well-being of children in joint physical custody in both low and high conflict situations and across varying socio-economic positions should be a priority. Cross-national comparisons in which custody legislation varies should offer additional insights. We expect to pursue several of these lines of inquiry in further research.

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## Appendix

**Appendix Table 1: Descriptive statistics for all variables, per divorce cohort (% or mean)**

%	Cohort 1: Before June 1995 N=684	Cohort 2: June 1995 – August 2006 N=1211	Cohort 3: After August 2006 N=312
Custody type ***			
Sole mother	77.5	63.7	52.9
Joint physical custody	9.1	21.6	33.0
Sole father custody	7.9	9.2	9.3
Flexible custody	5.6	6.5	4.8
<i>M</i> parental conflict (0-10)	5.24	5.36	5.16
Mediator visited ***			
Yes	7.6	12.1	17.6
No	92.4	87.9	82.4
Decision to separate			
Husband	25.7	29.1	30.6
Wife	55.9	50.5	47.6
Both	18.4	20.1	21.9
Number of children ***			
1 child	44.4	33.3	27.9
2 children	42.5	48.2	52.6
3 or more children	13.1	18.6	19.6
Sex of the child(ren) **			
All boys	35.0	32.3	27.4
All girls	33.2	29.4	31.4
Mixed	31.8	38.4	41.4
<i>M</i> age of target child (0-18) ***	6.01	8.04	9.63
Parents' education ***			
Father higher than mother	23.3	17.5	17.5
Both low	18.7	12.5	6.2
Both average	20.1	25.9	24.4
Both high	15.3	19.7	24.0
Mother higher than father	22.7	24.5	27.9
Survey participation			
Only mother	42.5	39.2	37.8
Only father	25.3	26.1	28.9
Both	32.2	34.7	33.3

Note: \*\* p < .01; \*\*\*p < .001

