MAIN CHARACTERISTICS ASSOCIATED WITH THE ASSIGNMENT OF CUSTODIES AFTER THE DIVORCE

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Abstract

This research focuses on an analysis of the sociological variables that affect the way that custody is awarded after marital break up, specifically after the divorce of married heterosexual couples. A quantitative methodology has been used based on Statistics on Annulments, Separations and Divorces and data for various rates in Autonomous Communities gathered from the Spanish National Statistics Institute (INE). The main obtained results confirm that these variables have a significant effect on the way that child custody is awarded.

Key words: Divorce, custody, Civil Code, Marriage, legislation, consensus

1. Introduction

There has been unprecedented social change in Spain in recent decades with the country becoming one of the most advanced in the world. There have not only been major technological and scientific advances, but also a broad set of changes in the social world, as a result of which the human being of our times possesses the distinctive trait of directly coexisting with change and adaptation. Both the social structure and social institutions have metamorphosed in a short period of time (Torres, 2015).

In the line of González and Requena (2008), a range of factors have resulted in a totally different society from that which could be observed 40 years ago, including: demographic change, the intense participation of women in the labor market, the emergence and consolidation of new family structures, the secularization of society, and changes to gender roles, among other things.

The family has also been affected by these transformations and been subject to changes of all types, from its definition to its functions and the way that it is configured (Meil, 2015). The changes that have progressively received most acceptance in Spanish society are those that result from marriage dissolution, especially divorce. Several different periods have been gone through, ranging from a stigmatizing vision to the understanding that it is a solution to a dissatisfactory joint life project. In this regard, "broad and barrier-free acceptance has become the norm in a period of few years (...) and it comes as no surprise that in this context it has even been laid down in law with a change to the Divorce Law" (Becerril, 2008:205).

Although the legalization of divorce is not the main focus of this research, the major step forward that Act 15/2005 of 8th July amending the Civil Code and the Law on Civil Procedure concerning separation and divorce represented in these matters needs to be highlighted. Above all, it involved the change from a multi-stage model to one in which divorce is completed without this requirement and in which time periods are shortened.

As a result, Spain is one of the European countries where the number of divorces has increased (Table I), peaking in 2006, but then falling and stabilizing at approx. 100,000 cases. This last statement must be qualified; although it is true that there has been an increase in the way that divorce has evolved, there was a turning point in 2005-2006. The trigger for this increase was the change to the legislation (the possibility of divorce without needing to go through a prior separation period) rather than related to the decision of more couples to divorce. Since the 2005 Act, separations have only been residual, and for the sake of homogenization, the present study only refers to divorce processes.

Table I. Evolution of divorces/separations in Spain.

|  |  |  |  |
| --- | --- | --- | --- |
|  | 2008 | 2012 | 2016 |
| Separations | 8,761 | 6,369 | 4,353 |
| Divorces | 110,036 | 104,262 | 96,824 |
| Total | 118,797 | 110,631 | 101,177 |

Source: Authors based on National Statistics Institute (INE) data

Divorce leads spouses to a negotiation process which can be consensual or contentious in nature, and a set of variables exists which make this process and its outcome more or less complex and long-lasting, with the following standing out: the dissolution of the marriage itself; maintenance allowances/alimony; the use of the marital home and other marital assets, etc. However, one of these variables is of prime importance and stands out above all others: whether any children are involved. This can be a decisive factor that defines the break up: "when couples have children, the situation becomes more complex and the solution to the custody of minors is a process with multiple complications which have continued to be mulled over and intensely discussed in recent years" (Suso, González, Pérez and Velasco, 2012:5).

That the study is focused on whether children are involved is justified by the decision as to who custody of children should correspond, and any collateral aspects derived from this (such as child support payments, visiting rights and choices about certain aspects of the child) are one of the most controversial aspects of any marital dissolution process (Becerril, 2014).

In addition to this complexity, it also has to be borne in mind that in Spain over half of break ups are divorces with children whose custody needs to be determined. As the Survey on Annulments, Separations and Divorces (hereafter ENSD) indicates, divorces involving children amounted to 52.4% of the total in 2016. In this regard, and to provide a comparison with a nearby country, just over half of couples in France who divorced had children: specifically, 6 out of every 10 divorces involved minors (Rapoport and Le Bourdais, 2001), a similar figure to Spain. Thus the involvement of children is a matter that concerns a great number of divorces in Spain and is an essential part of the break up process, as it can be a significant cause of conflict.

Divorces in Europe in general, and specifically Spain, affect a significant part of the population. With this, the allocation of custody has been generating more and more public debate, becoming a central socio-political issue. For example, through the recognition and regulation of the modality of joint custody: Germany in 1997, Holland in 1998, Austria in 2001, France in 2002 or Spain in 2005, among others (Jiménez, Becerril and García Moreno, 2020). For this reason, the analysis of this issue is important for the international sphere, since it allows us to study how certain variables influence the custody modality finally assigned. This can also lead to the implementation, or modification, of the legislation regarding the guardianship and custody of children.

This research is framed within a line of research in which the authors participate, a field of work with which it is intended to glimpse and analyze the diversity of collateral aspects to divorce, in general, and with respect to the assignment of custody of particular form (Becerril, 2008, Becerril and Jiménez, 2017; Becerril and Jiménez, 2019; Jiménez, Becerril and García-Moreno, 2020)

2. Custody: Definition, evolution and characteristics

As what is under study here is child custody, this concept and the forms of custody that exist in Spain must be defined. Child custody comes under the purview of Civil Law and, more specifically, Family Law. In line with Solsona, Spijker, and Ajenjo (2017), it can be understood that "custody refers to daily care and therefore both to co-residence and the time and space shared by each of the parents and their minor children" (p.2) or, as Prieto (2014) defines it: "the legal situation that obtains when a court passes a ruling to grant guardianship and custody of minor children to one or both parents when these have ceased cohabitation after a break down in their marital relationship" (p.9).

In Spain there are different types of custody (Catalán, 2011):

A) Sole custody in favor of one of the parents. This is the type of custody that is most commonly adopted in court in processes in which no mutual agreement has been arrived at. This implies the awarding of custody to one of the parents and visiting rights granted to the other. The latter will typically contribute to the upkeep of the children through child support payments.

B) Joint custody: this type of custody enables each of the parents to have the children during a certain period during the year. During this period the parent in question exercises full custody rights and has visiting rights during the other period. When custody is shared, both parents are responsible for the care, support and education given to the children jointly, periodically or in rotation.

C) Other situations. On occasion custody is granted to other family members, such as grandparents, uncles and aunts, brothers and sisters, etc. Joint custody also exists: custody of one or several children is awarded to one of the parents and of the remaining children to the other parent. However, this last group will not be examined by this study, as these situations are very much in the minority.

First, it is interesting to know what the share of the different types of custody is in divorce processes. According to ENSD (INE) data, it can be observed that in the main the trend is toward custody being awarded to the mother. Divorce has been linked to very high percentages of sole custody being awarded to the mother, remaining at over 80% up to 2011, despite the 2005 reform. A more substantial fall has only been noticeable since 2011, resulting in a figure of under 60% in 2016. Even so, this type of custody clearly surpasses all others.

The main explanatory factor for this may lie in the role that has historically been attributed to the figure of the mother, and women in general, as the caregiver. It is this, precisely, which contributes to the vision of the woman, the mother figure, being the parent that should have the guardianship and custody of minor children. And it is this that justifies that the mother should care for the child and that, post divorce, she should continue exercising this care.

A further justification is the fact that, even when fathers are acknowledged to be involved and play a certain role, it is the mothers who are responsible for children to a greater extent and, so, this is why they are granted guardianship and custody. One possible explanation might even be that the majority of divorces that occur are non consensual, leading the judge to award custody to the mother for reasons of continuity. However, if decree judgments are observed, the number of consensual divorces has grown, as "at the current time, both separations and consensual divorces amount to approximately two-thirds of the total" (Flaquer, 2012:36). In other words, there would seem to be an ongoing consensus that the mother continues to be the caregiver. Most recent ENSD data confirm Flaquer’s statement, and indeed reaffirm it, as in 2016 consensual divorces represented 76% of the total, whereas this figure stood at 67.4% in 2010.

The wide range of variables that might be determinants of the way that custody is awarded is becoming clearer. The broad literature review that was conducted has shown that the object of study, child custody, has been analyzed from the point of view of disciplines ranging from law (Alascio, 2011; Alascio and Marín, 2007; Torres, 2011; Velasco, 2009; Viñas, 2012) to psychology (Catalán, 2015; Justicia, 2013; Yarnoz-Yaben, 2010). In contrast, there has not been a broad spectrum of research in Spain that provides a sociological perspective or that focuses on determining what the social factors involved in this decision might be.

Internationally, post-divorce child custody has been studied for decades, and a variety of variables has been identified as being linked to the final ruling and awarding of custody:

1. Mother’s age: The general observed tendency is that there is a high likelihood of joint custody when mothers are young (under 20); this likelihood falls when mothers are in their twenties and low thirties, but goes up again from the age of 33 (Juby, Le Bourdais and Marcil-Gratton, 2005). Cancian and Meyer (1998) conclude that the tendency is for older mothers to receive sole custody.

2. Number of children: Prior results are very diverse for this variable. Maccoby and Mnookin (1992) indicate that joint custody is most likely when an only child is involved, but the number of joint custodies conforms to the increase in the number of children that the couple has in common. In contrast, neither Cancian and Meyer (1998) nor Teachman and Polonko (1990) observe there to be any significant relationship with this variable. Juby, Le Bourdais and Marcil-Gratton (2005) conclude that there is a greater likelihood when there are two children in common involved, although at a low level of significance. Chausseborg, Carrasco and Lermenier (2009) also confirmed this greater likelihood in the case of two children.

3. Consensual or contested divorce: Joint custody is more likely when there is little dispute between the spouses (Chausseborg, Carrasco and Lermenier, 2009). So, for example, 81% of cases of joint custody granted in France are by agreement (Jousselme, 2008).

4. Petition for divorce: According to Brinig and Allen, 2000, if the woman files for divorce, she is usually awarded single-parent custody to a greater extent. However, in reality the process is quite the opposite, i.e., women mostly file for divorce because they have a much greater likelihood of being awarded guardianship and custody. Brinig and Allen examine other factors, such as power distribution between spouses and income. They conclude that of all the factors involved, the opportunity to secure the children is the greatest determinant when filing for divorce.

Interest in this question is more recent in Spain, although there is something of a history of demographic and sociological studies. Most of the research that exists today is related to processes of marriage break up. Initially, data available for use were limited, even for the Second Republic (1931-39) (Alberdi, 1979; Iglesias, 1977; Lezcano, 1979), but a tradition was started, albeit one that saw little continuity in the 1980’s (Borrajo, 1989; López and Toharia, 1989). There are some very good analyses of the biography of divorce in the 1990’s (Houle et al., 1999) and the subsequent consequences (Becerril, 1999), although the data source for these first approaches was the 1991 Sociodemographic Survey. A few years had to pass for the first analyses of divorce to be based on a more up-to-date source, the Survey of Annulments, Separations and Divorces (ENSD). A full analysis of the evolution of divorce was conducted by Solsona and Simó (2007) and took a broad view of divorce-related sources, data and trends to date. However, the ENSD does not provide data on the awarding of custody until 2007, as a result of which research specifically on custody does not emerge until after that date.

Spijker (2012) stands out among the first analyses to include types of custody. This study takes the 2005 legal reform into account, and breaks down the types of custody and details their characteristics. The study also gives initial confirmation to some of the international hypotheses used, specifically in relation to the fact that when fathers/mothers are younger at the time of divorce, it is more likely that they will be granted joint custody. It also confirms that when the number of children involved is two, there is a much greater likelihood of joint custody, especially in cases of mutual agreement. Lastly, when the two spouses jointly file for divorce, this facilitates joint custody and an individual petition by either of the spouses is linked with a greater likelihood of custody being awarded to the spouse filing for divorce. Other analyses subsequently conducted by Solsona, Brullet and Spijker (2014) for Catalonia and by Becerril, 2014, and Solsona, 2015 for Spain as a whole, come to similar conclusions.

A first monograph published by Picontó (2012) stands out during these years. This contains sections written by jurists, sociologists and lawyers who specifically offer a range of perspectives on joint custody. An analysis by Flaquer (2012) also stands out. This focuses on the implications of joint custody and the liberalization brought about by the 2005 reform without the due protection measures that should have been put in place. Custody was also examined by Flaquer (2015) in a subsequent specific study of joint custody which reached the conclusion that, with some caveats, it is beneficial from the minor’s point-of-view, and confirming the importance of there being a consensus when joint custody is awarded.

More recent analyses on custody have been developed in the social science field in Spain (Becerril and Jiménez, 2017; Becerril and Venegas, 2017; Ruiz and Alcázar, 2017; Solsona, Spijker and Ajenjo, 2017). The aim of these was to analyze the impact of new autonomous legislation on the awarding of custody, and to systematize and understand these changes in relation to, especially: the “gender contract” (Solsona, Spijker and Ajenjo, 2017); criteria for awarding custody (Ruiz and Alcázar, 2017) and to restating the importance that consensus and contention have in awarding custody (Becerril and Jiménez, 2017). Many of these studies have only recently seen the light of day in a book coordinated by Becerril and Venegas (2017) that brings together a variety of legal, political, sociological, demographic and partnership perspectives. This is the most up-to-date and fullest publication to date about custody after marriage break up.

3. METHODOLOGY

The general objective of this research is to explore the variables that are significant in the awarding of post-divorce child custody in Spain. A number of objectives derive from this general objective:

1. Ascertaining whether the individual characteristics of the spouses and the relationship between them are determinants of the way that custody is awarded.

2. Analyzing whether the features of the break up process are related and decisive in the way that custody is awarded.

3. Ascertaining whether economic variables are significant in the way that custody is awarded.

Based on these objectives, a series of hypotheses have been devised which the research aims to test. Regarding the first objective:

1. The higher the age of the woman, the greater the likelihood that the father will be awarded sole or joint custody.

2. When there is a high number of minor children, the likelihood that the father will be awarded sole or joint custody is greater.

3. When there is a high number of dependent children of legal age, the likelihood that the father will be awarded sole or joint custody rises.

4. The nationality of the spouses is a determinant variable in the awarding of custody.

Regarding the second objective:

5. There is a greater likelihood of joint custody in consensual processes than in contested processes.

6. When it is the wife who files for divorce, there is a greater likelihood that she will be awarded sole custody.

7. Regional Autonomous Community (devolved) laws on custody are key to the type of custody that is determined.

Regarding the third objective:

8. Economic variables are determinants that explain differences in the way that custody is established.

The methodology used is quantitative, with descriptive and multivariate analyses. The chosen databases and the treatment undertaken are presented in the following:

Annulment, Separation and Divorce (ENSD) statistics will be used to ascertain the degree of consensus/lack of consensus, the age of the spouses, nationality, number of dependent minor and major children, the effect of the devolved laws concerning custody and the person filing for divorce. These are annual statistics treated by the Spanish National Statistics Institute (INE) by virtue of an agreement with the General Council of the Judiciary (CGPJ) and prepared from information on rulings provided by a variety of judicial organizations that have jurisdiction in this matter. Included are rulings handed down on annulments, separations and divorces in all of Spain, with the reference period for the results being the calendar year, and the reference for the information, the date on which the dissolution of marriage is decreed. The data gathering method is a statistical form based on an administrative measure.

The use of this source is justified by the fact that it is the only source that offers a broad variety of information on the variables under study. ENSD data are for the 2008-2016 period. So, in order to provide the most up-to-date information possible, statistical operations were performed on the last year of this period. According to the technical details provided by INE, the statistics are for a population of 101,294 cases of annulment, separation and divorce. Purposeful sampling was done to obtain only divorces and the final sample comprised 96,824 cases, i.e., 193,648 individuals.

In relation to the study of the statistics, first a purely descriptive analysis was performed, followed by second-level comparisons using two types of analysis: on the one hand, using the Chi-squared statistic to measure the connections between the variables and Cramer’s Phi and V to determine their strength, due to the type of variables available, which are for the most part nominal. Meanwhile, the multivariate correspondence analysis technique was used to refute the results. This enables a large amount of information to be synthesized in a small number of dimensions.

The various ENSD variables had to be recoded (table II). The construction of the “type of marriage” variable enables heterosexuals and homosexuals to be distinguished between. Another of the basic variables is the type of procedure, which has been recoded to cover only cases of divorce. The woman’s age has been recoded using day, month and year of birth and elapsed time to the divorce decree being granted. Lastly, a marriage by nationality variable was created by recoding the nationality.

Table II. Recoding

|  |  |  |  |
| --- | --- | --- | --- |
| Variables | Response categories | Recoded  Variable | Response categories |
| Sex of first spouse | -Male  -Female | Type of marriage | -Heterosexual  marriage  -Homosexual marriage |
| Sex of second spouse | -Male  -Female |
| Decree and ruling |  | Type of procedure | -Consensual  -Non consensual |
| Mother’s age | Day, Month and Year of birth | Mother’s age | 15 to over 65 |
| Nationality | All nationalities | Nationality | Spanish  Other |

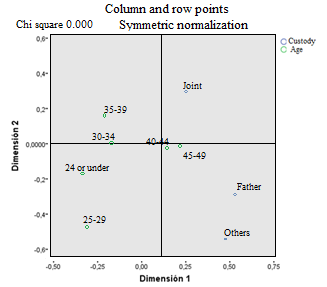
National Statistics Institute databases were available for economic and employment rate variables. These provide information for the 17 Autonomous Communities excluding Ceuta and Melilla for the 2008-2016 period. Statistical operations were performed on the last year so as to provide up-to-date data.

First a bivariate correlation using Pearson’s statistic provides information about relationships among the variables. Subsequently, the linear regression analysis technique is used on those between which a link exists. According to Cardona et al. (2013) "[this technique] enables the functional relationship or mathematical equation that relates the variables and the strength of this relationship to be established.” It therefore informs about the extent to which they may explain the phenomenon under study. This enables more robust results to be obtained. The statistics package used to perform the various analyses was SPSS v.20.0.

4. RESULTS

The variables used with respect to the first hypothesis that "the higher the age of the woman, the greater the likelihood that the father will be awarded sole or joint custody" are the mother’s age and the type of custody awarded. First, a link between the two is confirmed but this link does not seem to be very strong/decisive according to the results of the Cramer Phi and V statistics (0.438 and 0.219, respectively). Although a link does exist, it can be said to be not very powerful.

Diagram I. Type of custody by mother’s age

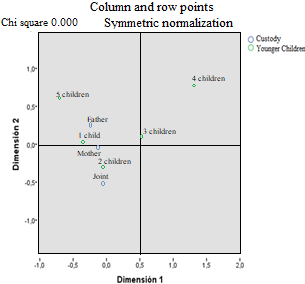


Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

In relation to Diagram 1, it can be stated that the older the mother’s age, the more likely it seems to be that joint custody (35-39) or sole custody (40-44 and 45-49) is awarded to the father. However, all the younger age groups are close to the custody being awarded to the mother figure. It can therefore be stated that the hypothesis has been validated, with the mother’s age being demonstrated to be a decisive variable in the awarding of custody.

The variables used for the second hypothesis, "When there is a high number of minor children, the likelihood that the father will be awarded sole or joint custody is greater" were number of children and type of custody awarded. There is a link between the two which is, moreover, very strong and a powerful determinant according to the Cramer Phi (0.904) and V (0.502) data.

Diagram II. Type of custody by number of minor children.

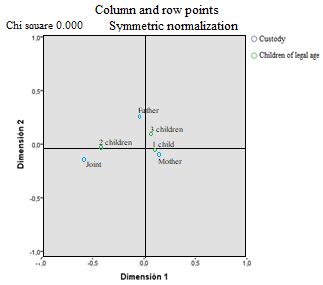


Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

The diagram indicates that when the number of children is the maximum in the database, the father would be more likely to be granted sole custody, but not joint custody, which is more related to the existence of two children (see Diagram II). There is, therefore, a link between the number of minor children and the type of custody awarded. So, the hypothesis is partially supported. A greater number of children influences the likelihood of the father being granted sole custody, but joint custody is most likely when there are two children.

The variables chosen to test the third hypothesis "When there is a high number of dependent children of legal age, the likelihood that the father will be awarded sole or joint custody rises." The variables used were dependent children of legal age and type of custody awarded. The link between the two was statistically significant although Cramer Phi and V showed it to be not very strong (0.61 and 0.41, respectively).

Diagram III. Type of custody by number of dependent children of legal age.

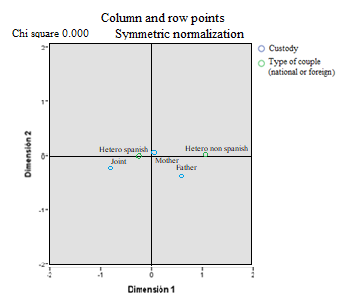


Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

The above diagram (III) shows that the higher the number of children, the greater the likelihood of sole custody being awarded to the father figure, whereas the option of joint custody is still very close when there are two children, so the result is the same as that obtained for the second hypothesis.

The aim of the fourth hypothesis was to ascertain whether the nationality of the spouses was relevant to the awarding of custody. The variables used for this were nationality and type of custody awarded. A link is shown to exist between the chosen variables but when the Cramer Phi (0.64) and V (0.37) values are observed, it does not seem to be very strong.

Diagram IV. Type of custody by nationality of spouses.

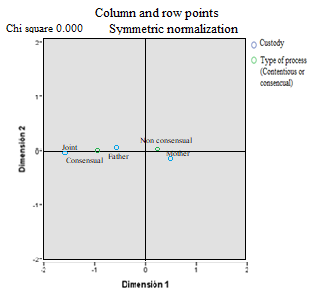


Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

So, after applying the various statistics to test the link, as shown by Diagram IV, it can be stated that the hypothesis has been validated. The spouses’ nationality is a factor to take into consideration when the type of custody is established. Whereas there is a tendency toward awarding custody of children to the female in Spanish cases, when the marriage is between non-Spanish spouses, the complete opposite seems to be the case, with a latent tendency to award custody to the father figure. Furthermore, marriages in which spouses are non-Spanish are much less likely to be awarded joint custody than those in which the spouses are Spanish.

The fifth hypothesis is related to consensus in the process, with the assumption that when there is a consensus, this is more likely to facilitate joint custody than in contested processes. The variables used are type of procedure and type of custody awarded. There is a statistically significant link between the two but the strength of the link is not great (Cramer’s Phi 0.120 and V 0.95).

Diagram V. Type of custody by type of procedure.

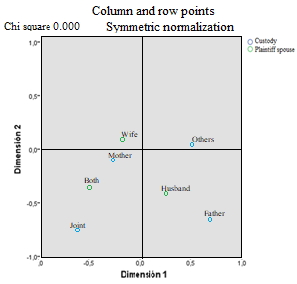


Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

The likelihood of joint custody being granted is confirmed to be higher when the type of procedure is consensual. However, it is also shown that in the case of divorces judged to be contested, there is a prevalence of sole custody rulings. The hypothesis is therefore validated.

A further question relates to the spouse that files for the divorce. The initial hypothesis is "When it is the wife who files for divorce, there is a greater likelihood that she will be awarded sole custody." The variables used to test this link were plaintiff for divorce and type of custody awarded. The relationship between the two is statistically significant. However, when the Cramer Phi and V statistics are applied, the relationship between the two is shown not to be very strong (0.127 and 0.89, respectively).

Diagram VI. Custody by person filing for divorce.

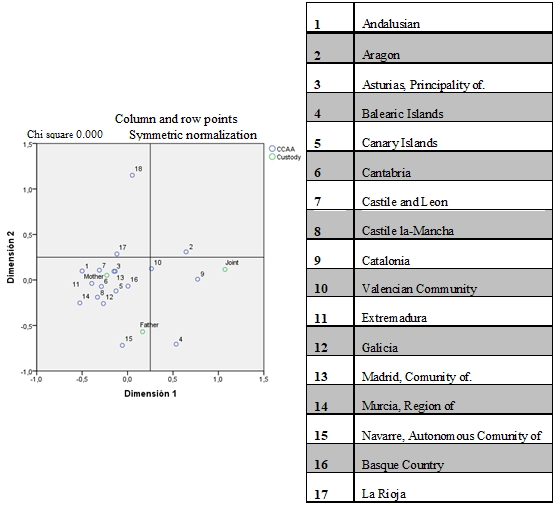
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Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

A certain relationship exists between the plaintiff for divorce and the type of custody that is awarded, with a significant link between the plaintiff and the spouse –male or female- who is granted custody (see Diagram VI). The hypothesis can therefore be stated to have been validated.

The seventh hypothesis stated that "Regional Autonomous community (devolved) laws on custody are key to the type of custody that is adopted.” The variables used to test this hypothesis were Autonomous Community and the type of custody awarded. The Chi squared test showed that the relationship between the two is statistically significant. Notwithstanding, this link does not seem to be very strong (Cramer’s Phi 0.180 and V 0.90, respectively).

Diagram VII. Type of custody by Autonomous Community.



Source: Statistics on Annulments, Separations and Divorces (INE, 2016)

All the Autonomous Communities can be seen to be close to joint custody (both). These are the Communities where own legislation concerning custody exists, including: Aragon (2), Catalonia (9), Balearic Islands (4) and the Valencian Community (10), while legislation is in process in the Basque Country (16). This can be seen as a trend toward a move away from sole custody being awarded to the mother figure (2nd spouse) similar to in La Rioja (17). The hypothesis can be stated to have been validated, with the existence of autonomous legislation shown to be significant.

The eighth hypothesis is that "Economic variables are determinants that explain differences in the way that custody is established.” The variables used are custody, GDP, activity rate, employment rate and unemployment rate.

First, when the Pearson statistic was applied for correlation between custody and GDP, the relationship was observed to be significant, with R2 showing that this variable explains 45.9% of the way that custody is awarded.

Second, applying the Pearson statistic for correlation between the custody and activity rate variables gave P-value=0.042, indicating a link between the two variables. A linear regression was therefore conducted, with a 32% loading on the awarding of custody, which implies a linear dependence relationship between the two values. When separate male and female analyses were performed of the activity rate, the Pearson statistic indicated that the relationship between this variable and custody is statistically significant (P-value=0.010) for women, whereas activity rate does not present any type of link for men (P-value=0.172). A linear regression was carried out with the custody and female activity rate variables, and the same level of significance was obtained, with R2=35.0%, meaning that significant linear dependence is again observed. This variable could therefore explain the way that custody is awarded.

Third, the Pearson statistic was applied to the custody and employment rate variables and was significant (P-value=0.01). The same P-value and R2=49.5% were recorded with the linear regression technique. As with the previous variables, the relationship between custody and the separate male and female employment rates was analyzed. This link was only significant for women, obtaining P-value=0.000. A linear regression was then carried out to obtain further information, with R2=56.6%.

Lastly, after applying the Pearson statistic for correlation between the custody and unemployment rate variables, the result was P-value = >0.05, which means that the relationship is not significant. The relationship is also shown not to be significant when the linear regression technique was carried out, as P-value=0.84>0.05. Separate analyses of the unemployment rate for males and females gave values that also show there to be no link.

In sum, all this information enables it to be stated that a variety of economic indicators such as GDP, activity rate, and employment rate provide an explanation and influence the way that custody might be awarded, thus confirming our hypothesis. However, it should be highlighted that once the analyses had been carried out, it was seen that the studied rates were greater for women than for men, both with respect to the link and to its strength.

5. DISCUSSION AND CONCLUSIONS

In this study we have analyzed a number of different variables that might affect the awarding of child custody after marriage break up in Spain, specifically relating to the divorce of heterosexual married couples. Important groups were not included, such as homosexual marriages and de facto couples. The non inclusion of these groups was attributed to the need to standardize the study and, above all, due to the lack of statistics on the characteristics required for their analysis.

Even though the awarding of custody has been and continues to be a frequent study topic for disciplines such as law and psychology, there was a definite lack of research from the socio-demographic point-of-view. Thus, the analysis presented here provides a broad overview of the types of variables that influence this decision, and opens up a number of lines of study for future research, such as a comparison with homosexual couples.

A range of variables affects the decision as to how custody is awarded. The spouses’ individual characteristics are decisive, as when the mother is young, it is more complex for the father to obtain sole or joint custody. Nonetheless, this becomes easier as the mother figure gets older, as occurs, for example, with the 35-39 and 40-44 age groups, which tend greatly toward joint custody. This is confirmed by the Juby et al. (2005) international results, where the likelihood of joint custody is high from the age of 33 onwards. Spanish research has also pointed in the same direction (Spijker, 2012). The mother’s age is also important in another dimension, as the older the spouses are, the greater the possibility that there will be a greater number of offspring.

When analyzing the number of children, it can be seen that when there are two, whether minors or dependents of legal age, there is a greater likelihood of joint custody being awarded. Similarly, the analysis of the two groups of children (minors and dependents of legal age) another common trend is recorded: when there is a large number of children, there is a greater likelihood that the father will be given sole custody, whereas when there is only a single child, it is practically a given that the mother will be granted sole custody. This last finding is similar to what has been stated previously (Becerril, 2014; Spijker, 2012) about joint custody being less frequent when there is an only child involved. It is understandable that sole custody might be an obstacle to reconciling work and family life when there are two or more children and that this might lead to further problems and restrict access to the labor market or other areas of social life.

The spouses’ nationality has been shown to be a relevant factor. The general trend is for sole custody predominantly to be awarded to the woman in divorces of Spanish couples, but in the majority of cases it is the male who is granted sole custody in divorces between non Spanish spouses. These results might be associated with the different cultural features of this type of couples or with the difficulties that may exist for continued residence in Spain, in this case for the mother figure. This is a line of research that needs to be examined in greater detail.

As for the type of procedure, sole custody is more likely to be granted to the mother when the process is contested. However, whether it is contested or consensual, it is the mother figure who is more likely to be awarded sole custody, although there is a great likelihood of joint custody being granted when divorce decrees are agreed (Flaquer, 2015). It has also been demonstrated that the person who files for divorce is important in awarding custody. There is a significant relationship between the two factors. This is also shown to be of major importance when it is the mother alone or the two spouses who file for divorce jointly, but less so when it is the male alone. This result is in the same line as what was stated by Brinig and Allen (2000), who found that the woman tends to be awarded sole custody more often when she is the person who files for divorce. Other Spanish research arrives at the same conclusion (Spijker, 2012).

The existence of legislation that fully and completely regulates the way that custody of children is awarded is seen to be important, with major differences found between Autonomous Communities that have introduced their own legislation and those that have not (Solsona, 2015; Solsona, Spijker and Ajenjo, 2017). So, Catalonia, the Valencian Community, La Rioja, Navarre, Aragon and the Basque Country are the Autonomous Communities in which there are high percentages of custody awarded to both spouses (joint). As Solsona, Spijker and Ajenjo (2017) point out in this regard, possessing a specific legislative framework, with instruments that favor a pact between spouses regarding the post-divorce care of their offspring, is to the benefit of co-parenting after a break-up.

With regard to the importance of the economic factor, indicators such as the employment and unemployment rates, the activity rate and GDP have been seen to be useful for indicating whether the economic component is a significant factor in the awarding of custody. GDP can be seen to be an important variable that explains 45.9% of the way that custody is awarded. So, as GDP differs from one Autonomous Community to another, greater percentages of joint custody are recorded in Communities with a higher GDP. The activity rate for women is also a significant factor in the type of custody awarded, as is the female employment rate, which has a quite powerful effect on the awarding of custody (explaining as much as 56.6%). The fact that the female activity rate is to important leads us to think that, whether the woman is in work or not, the working day might also influence the type of custody awarded as it enables both spouses greater or lesser flexibility. All this may lead to a conclusion similar to that reached by Cancian and Meyer (1998), who stated that joint custody is a more common mode in couples in which both spouses work, confirming prior studies by Solsona, Spijker and Ajenjo (2017).

In short, the individual characteristics of the spouses, of the process, economic variables and changes to legislation are all important elements in the awarding of sole child custody to one or other of the parents, or joint custody, after divorce.

These results have significant implications for members of the legal profession who operate in the field of divorce (judges, lawyers, social workers, etc.) and is a reliable source of knowledge for social scientists. It has to be borne in mind that divorce and custody condition the lives of adults and minors, and have relevant implications for population cohorts, for social and family policies, and for the general well-being of the population affected by divorce, with the interests and well-being of minors being especially important.

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6. BIBLIOGRAPHIC REFERENCES

Alascio, L. (2011). La excepcionalidad de la custodia compartida Impuesta (art 92.8 CC), Indret: Revista para el análisis del Derecho, nº 2/2011.

Alberdi, I. (1979) Historia y sociología del divorcio, Madrid, CIS.

Allen, D. & Brinig, M. (2011). Do Joint Parenting Laws Make Any Difference? Journal of Empirical Legal Studies, 8(2), 304-324.

Alascio, L. y Marín, I. (2007). «Juntos pero no revueltos: La custodia compartida en el nuevo art. 92 CC». InDret: Revista para el Análisis del Derecho, 3/2007.

Becerril, D. y Jiménez, J. (2019). Reformas legales y su efecto sobre las rupturas matrimoniales. OBETS. Revista de Ciencias Sociales, 14(2): 287-311.

Becerril, D. y Jiménez, J. (2017). Acuerdos y desacuerdos: conflictividad en las rupturas de parejas homos y heterosexuales. En Becerril, D, y Lozano, A.M. Sociología del conflicto en las sociedades contemporáneas, Madrid, Dykinson, pp. 41-58

Becerril, D. y Venegas, M. (Eds.)(2017), La custodia compartida en España. Madrid: Dykinson

Becerril, D. (2014). La custodia en los procesos de ruptura en España. En Cairo, H. y Finkel, L. (Eds.). Actas del XI Congreso de Español de sociología. Crisis y cambio: propuestas desde la sociología. Madrid, Federación Española de Sociología.

Becerril, D. (2008). La percepción social del divorcio en España. Revista Española de Investigaciones Sociológicas (Reis), (123), pp. 187-208

Becerril, D. (1999) Después del divorcio. Madrid: CIS

Borrajo Iniesta, S. (1989) La ruptura matrimonial en España, Madrid, Eudema

Brinig, M. & Allen, D. (2000). These boots are made for walking: why most divorce filers are women. American Law and Economics Review, 2(1), 126–169.

Cancian, M. & Meyer, D. (1998). Who gets custody?. Demography, 35, 147-157.

Catalán Frías, M.J. (2011). La custodia compartida. Recuperado de <http://repositorio.ucam.edu/jspui/bitstream/10952/574/1/La%20custody%20com> partida.%20Mar%C3%ADa%20Jos%C3%A9%20Catal%C3%A1n%20Fr%C3% ADas.pdf

Catalán Frías, M.J. (2015) Evaluación de custodia: criterios psicológicos utilizados por los psicólogos forenses en la administración de justicia, Murcia, Universidad de Murcia. Tesis doctoral.

Chaussebourg, L., Carrasco, V. y Lermenier, A. (2009). Le divorce, Paris: Ministere de la Justice

Donnelly, D. & Finkelhor, D.(1993). Who has Joint Custody - Class-Differences in the Determination of Custody Arrangements. Family Relations, 42(1), 57-60.

Flaquer, L. (2012). Liberalización sin protección: Un balance de los resultados de la aplicación de la Ley de divorcio de 2005. En Picontó, T. (Ed.), La Custody Compartida a debate, Madrid: Dykinson, pp. 23-44

Flaquer, L. (2015), El avance hacia la custodia compartida o el retorno del padre tras una larga ausencia, en Torres Albero, C. (Ed) España 2015. Situación social, Madrid, Centro de Investigaciones sociológicas, pp 351-359.

Fox, G. & Kelly, R. (1995). Arrangements Determinants of Child Custody in Divorce. Journal of Marriage adn Family, 95(3), 693-708.

González, J., y Requena, M. (2008). Tres décadas de cambio social en España. Madrid: Alianza

Iglesias de Ussel, J. (1977) Características familiares de la ruptura familiar en España. Sociología y Psicología jurídicas, 135-148

Jiménez, J. Becerril, D. y García-Moreno (2020). La relación entre reformas legales y la asignación de la custodia compartida en España (2007-2017). Revista Española de Ciencia Política, 53, 119-142.

Jousselme, C. (2008). Résidence alternée:Pour/Contre. Archives de Pediatrie, 15, 483- 485

Juby, H., Le Bourdais, C. & Marcil-Gratton, N. (2005). Sharing roles, sharing custody? Couples' characteristics and children's living arrangements at separation. Journal of Marriage and Family, 67(1), 157-172.

Justicia, Mª Dolores (2013) Tipos de custodia, régimen de visitas e intervención, en Cantón Duarte, José, Cortés Arboleda, Mª del Rosario, Cantón Cortés, David y Justicia Díaz, Mª Dolores (eds), Violencia doméstica, divorcio y adaptación psicológica. De la dinámica familiar al desarrollo de los hijos, Madrid, Pirámide, pp. 202-235.

Lezcano, R. (1979) El divorcio en la segunda república. Madrid: Akal

López, R, y Toharia, J. (1989) Separación y divorcio en España. Madrid: Ministerio de Trabajo y Seguridad Social.

Maccoby, E. & Mnookin, R. (1992). Dividing the child: Social and legal dilemmas of custody. Cambridge: Harvard University Press.

Canela, M. (s.f.). Cómo hacer una Regresión Logística con SPSS© paso a paso. Fundación Andaluza para la Investigación en Salud.

Meil, G. (2015). Familia, en Torres Albero, C. (Ed) España 2015. Situación social, Madrid, Centro de Investigaciones sociológicas, pp 289-402.

Picontó, T. (Ed.), La Custodia Compartida a debate, Madrid: Dykinson.

Prieto, P. (2014). Custodia compartida en Aragón: diferencias con otras Comunidades Autónomas y análisis jurisprudencial. Recuperado de https://zaguan.unizar.es/record/15796/files/TAZ-TFG-2014-1401.pdf

Rapoport, B. & Le Bourdais, C. (2001). Temps et formes padres familiales. Loisir et société, 2(24), 585-617.

Ruiz Callado, R. y Alcázar, R. (2017) Factores determinantes en la atribución de la custodia compartida. Un estudio sociológico den loa Juzgados de Familia, en Becerril, D. y Venegas, M.(Eds.), La custodia compartida en España. Madrid: Dykinson pp. 109-124

Solsona, M. (2015) Divorcio, generaciones y género, en Torres Albero, C. (Ed). España 2015. Situación social, Madrid, Centro de Investigaciones sociológicas, pp117- 126.

Solsona, M. & Simó, C. (2007). Evolución histórica del divorcio en España desde la aprobación de la ley de 1981 hasta la reforma en 2004. En cabré, A. y Miret, P. (Eds.), La constitución familiar en España: Tendencias y factores. Madrid: Fundación BBVA

Solsona, M., Spijker, J. & Ajenjo, M. (2017). Calidoscopio de la custodia compartida en las regiones de España. En Becerril, D. & Venegas, M. (Eds.) La custodia compartida en España. Madrid: Dykinson pp 45-72

Solsona, M., Brullet, C. y Spijker, J. (2014). Coparentalitat i custòdia compartida a Catalunya. Documents d’Anàlisi Geogràfica, 60(2), 387-415

Spijker, J. (2012). Trends in custody arrangements in Spain since the Divorce Reform of 2005. Papers de Demografia, 404.

Suso, A., González, I., Pérez, A. & Velasco, M. (2012). Análisis de los modelos de custodia derivados de las situaciones de separación y divorcio en España. Madrid: Ministerio de sanidad, servicios sociales e igualdad.

Teachman, J. & Polonko, K. (1990). Negotiating divorce outcomes: Can we identify patterns in divorce settlements?. Journal of Marriage and the Family, 52, 129- 139.

Torres Albero, C. (2015). España 2015. Situación social. Madrid: Centro de Investigaciones Sociológicas.

Torres Perea, J. (2011) Custodia compartida: Una alternativa exigida por la nueva realidad Social. Indret: Revista para el análisis del Derecho, 4.

Velasco, V. (2009). La problemática del uso de la vivienda familiar en supuestos en custodia compartida: reflexión comparativa España y EE. UU. Diario La Ley, (7179), 1.

Viñas, D. (2012). Medidas relativas a los hijos menores en caso de ruptura. Especial referencia a la guarda. Revista para el análisis del Derecho, 3, 2-55.

Yarnoz-Yaben, S. (2010). Hacia la coparentalidad post-divorcio: percepción del apoyo de la ex pareja en progenitores divorciados españoles. International journal of clinical and health psychology, 10(2), 295-307.