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Bridging the Gap between Empirical Evidence and Socio-Legal Practice



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Co-parenting rhythms of care post-separation

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how law, culture and society are shaping the development of shared residence in comparative perspective

- **Law** - the system of rules which a particular country or community recognises as regulating the actions of its members. Can be enforced by the imposition of penalties.
- **Culture** - a set of values, norms, and behaviours shared by a social group. Culture is learned, not instinctual or inherited.
- **Societies** - systems of relationships between people. Members share some sense of common identity (family/nation-state). Shared culture is important in holding a society together.

- The extent to which respective parental and judicial preferences are causal in influencing decision making in this area is as yet uncertain but nonetheless represents an important field of inquiry and (critical) analysis.
- ***Are public preferences being reflected in judicial decision making or does judicial decision making come to influence the way in which couples proceed?***

- Drawing on ESRC-funded qualitative data (Masardo, 2009; 2011) from a cross national study into shared residence in Britain and France, this paper represents the first stage in redressing this gap in our understanding by drawing our attention to the subtle, yet complex, interplay of law, culture and society in the development of shared residence approaches.
- It makes the case for examining this neglected area of socio-legal study from an international and interdisciplinary perspective. In particular, the part played by family court practitioners (family judges, welfare officers and mediators) in facilitating or militating against specific patterns of care for

The Context



Increasing numbers of children alternating their home life across the two households of their separated parents

Country	1990-1999	%	2000-2009	%	2010 -	%
Sweden	Jensen & Clausen 1997	4	Jensen 2004	10	Nyman & Persson 2014	35
Netherlands					Spruijt & Duindam 2010	18-20
UK			Peacey & Hunt 2009 Skinner, et al. 2007	12-17 7-15		
Australia	Smyth 1997	3	Smyth 2009	18-20		
France	Poussin & Martin-Lebrun 1997	4	Toulemon 2008	12	Domingo 2013 Guillonau & Moreau 2013 Toulemon & Denoyelle 2012	25 21 21
USA <i>Arizona</i> <i>Washington</i> <i>Wisconsin</i>	Kelly	5-7	George 2008 Venohr & Kaunelis 2008 Melli & Brown, 2008	30-50 30		

The context



- A key feature of changing families is an increase in the numbers of children alternating their home life across the two households of their separated parents
- Domingo (2013), according to a recent French survey as part of the 2011 yearly census tells us that “25% of children aged less than 18 with separated parents ”regularly live with both parents”.
- Toulemon (2008; 2014), points to the issue of double counting. Potentially leading to an overestimation of the proportion of these children in the census.
- Correcting for double counts would reduce the proportion of children with separated parents sharing their time between two “usual homes” to 21%, an estimate more consistent with those of judicial decisions (Guillonneau & Moreau 2013), as well as with other large scale surveys (Toulemon & Denovelle 2012)

- Given the disparity in reporting and definitions both at the national level and internationally, shared (dual) residence is neither an easily defined nor an easily identified parenting arrangement.
- Indeed, ‘the very notion of shared residence can be viewed through different lenses, depending on whether it is being considered as a judicial decision, a family practice, an administrative division, a discourse, an aspiration, an ideology or a political tool’ (Masardo 2011: 119).

The residence status



The official residence of the child (within the context of shared residence at least) can also be dynamic in the sense of being fluid and managed in light of certain, often complex, negotiations that are perceived to be of mutual benefit in the care and upbringing of the child.

Examples include: tax breaks, child benefits, school catchment area and health care, all highlighting the importance of the policy context (Masardo, 2009).

- I wish to distinguish here the notion of shared residence to one of shared parenting, as the later can arguably be defined by degrees of emotional support and collaborative working that does not necessarily mean that children live with each parent on an equal or near equal time basis.
- As Smart et al. (2001: 126) conclude in their study of children's experiences of post-parental separation, 'Co-parenting [...] is a measure of the quality of relationships, not just a measure of time and place'.
- Notwithstanding the importance placed upon the quality of relationships (see also, Amato and Gilbreth, 1999, in this regard), fathers' accounts show how these relationships take place within different relational and structural frameworks that also need to be understood if we are to respond adequately to children's needs.
- For the purposes of this paper I am talking about a significant shared time arrangements where the child is spending a minimum of 30 per cent of their time living with each parent

The patterns of care parents adopted were various and often evolved through their own dynamic, occasionally involving several different formulations over time.

In the main, they centred around ‘cycles’ of care and ranged from next-to-daily changes of residence, to 3 or 4 day blocks, through to alternate weeks and alternate fortnights.

There were even instances in which it was the parents who would alternate their own residence around the child’s one home (“nesting”).

Respondents could also have several different residence arrangements running in parallel for different sets of children and/or stepchildren.

Alternate days parenting schedule



Figure 6.5 British respondent: Kyle (age 35) and Freya – Roly (age 8).

Week 1							Week 2						
F	M	F	F	M	M	F	M	F	M	F	M	F	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Despite the apparent complexity of this arrangement, Kyle described it as being well understood and as having worked well for several years:

The format we both understand! We don't have to talk to each other about the two-week cycle. We both have been doing it for so long that we don't have to ask any questions there. [...] [It] has worked for quite a few years now and has worked successfully. Roly seems very happy and well adjusted to both environments and he sees both places as his home now, which is good I think. Roly seems really, really happy in all ways.

Changes over time

Figure 6.6 British respondent: Anthony (age 34) and Irene – Jack (age 13).

Week 1							Week 2						
M	F	M	F	M	F	F	F	M	F	M	F	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Figure 6.7 Anthony's second and current arrangement.

Week 1							Week 2						
M	F	M	F	M	F	F	F	F	M	F	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

We changed it to every-other-weekend and Tuesdays and Thursdays, because it did get a bit complicated. So we knew [what was happening] in the week ... we'd have four days, because where it used to rotate in the weeks, sometimes you couldn't remember which day, if you know what I mean?

It got a bit complicated, so we agreed to stick to certain days in the week, and then if it's your weekend, it's your weekend! And that worked better, because everybody knew where they were all the time, and you could write on the calendar a month or so in advance what you were doing on [...]. But when we was doing it alternate days in the week it took forever to figure out if Jack was going to be here on that day or not.

Anthony

résidence hebdomadaire



Figure 6.8 French respondent: Jean-Pierre (age 56) and Hélène – Pascal (age 22) and Jules (age 17). First arrangement lasted for nine months.

Week 1							Week 2						
F	F	F	F	F	F	F	M	M	M	M	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Figure 6.2 French respondent: Jacques (age 44) and Mari-Lou – Julian (age 12) and Sophie (age 9).

Week 1							Week 2							
M	M	M	M	M	F	F	F	F	F	F	F	F	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat	

- Despite the myriad arrangements parents were involved in, the actual levels of overnight stays with both parents tended to remain consistent; that is, shared.
- Central finding, was that French parents tended to adopt significantly longer blocks of time resident with their children than their British counterparts, which could be explained, in part, by departures in attitude regarding the psychological wellbeing of the children.
- In the main, French parents appeared desirous of avoiding the constant toing and froing for the children that shorter periods of residence would entail, while British parents appeared more concerned about the effect overly long absences from either parent would have on their children.

Length of residence



There's a minimum stay and there's a maximum stay. I think a pattern that left children moving from one night here and one night there on the odd fortnight would just ... no one could keep track of that and confuse them. There needs to be a comprehensible rhythm [...] and that usually means that you're dealing with more than a single day unit. On the other hand, I don't think that more than four or five nights without seeing your mum or your dad is good.

Richard

A comprehensible rhythm



- While fathers revealed a great diversity, not only in the days on which the changeovers occurred but also in their timing and logistics, in the main, they reflected the needs of all family members for consistency and a comprehensible rhythm.
- From what evidence there is available, these respective differences in shorter and longer periods of residence are also borne out in wider British and French research (cf. Bradshaw et al. 1999; Moreau et al. 2004; 2013).
- **In the French context, there are indications that shared residence has to some extent become equated with an alternate-weeks pattern of care, witnessed for example in recent statistics from the French ministry of justice.**

Table 1. Division of definitive† judicial decisions in France pronounced by judges hearing family cases (*JAF*), 13–24 October 2003, by mode of shared residence and by age of child *a*

Source: Based on figures cited in Moreau *et al.* (2004), taken from *Ministère de la Justice – DACS – Cellule Etudes et Recherches – Enquête “Résidence des enfants” octobre 2003.*

Pattern of care <i>b</i>	Age 0–4 n=136 as %	Age 5–9 n=162 as %	Age 10– 14 n=80 as %	Age 15 + n=30 as %	Total n=408 as %
Alternate weeks	76	81	79	82	79
<i>À la carte</i> division of care according to detailed parenting plan <i>c</i>	16	12	8	9	12
Every two weeks	7	2	8	0	5
Undetermined pattern of care	2	4	6	10	4
Other	0	1	0	0	1

Table 2. Division of definitive† judicial decisions in France pronounced by judges hearing family cases (*JAF*), 04–15 June 2012, by mode of shared residence and by age of child

Source: Based on figures cited in Guilonneau and Moreau (2013), taken from Ministère de la Justice. La résidence des enfants de parents séparés

Dans le cadre de ces 6 042 décisions définitives, la
résidence en alternance dans 17% des situations,

N=1026

(TBC)

- a clear difference in approach between the two samples could be discerned relative to the amount of time children were resident in any one household. In the British sample fathers tended to fall noticeably into adopting shorter blocks of residence, while the French fathers tended to veer towards longer blocks of time.
- There were indications in the fathers' narratives that these differences could be explained, in part, by differences in attitude regarding the psychological wellbeing of the children. Although we are dealing with relatively small sample groups, the fathers' accounts may nevertheless highlight wider cultural differences in the nature of the relationship between parents and children and the state with regard to what is considered appropriate for children at different stages of their development.
- Moreover, where parenting plans are mandatory (non-private ordering approaches) or where parents resort to judgement, there are indications that these differences are to some extent also reflected within judicial decision-making/preferences.

What appears to be uppermost in parents' minds is providing a model of family life that is consistent and well understood by all parties. If it is hard for the parents to keep track of which days their children are with them, it is likely to be all the harder for children.

For fathers in the French sample, this consistency was provided by developing residence arrangements that did not leave children in a continual state of flux.

For the British fathers, the actual pattern of care was not as important as the routine itself. Sticking to a pattern, whatever it might be, gave the children a structure and consequently a sense of boundaries in which to experience family life

Are public preferences reflected in judicial decision-making or has judicial decision-making come to influence the way in which couples proceed?

- A greater understanding of this relationship has the potential to offer wider explanatory power when exploring the nature of the relationship between parents, children and the state.
- being able clearly to identify shared residence as a distinct model of post-separation care through its regulation may well help to assist families and facilitate the development of policy in the future, where this is appropriate.
- the danger is ever present that as judges and policymakers attempt to pin-down what constitutes such arrangements and what does not, its classification may become overly prescriptive.

- differences in British and French sample groups through the adoption of shorter and longer blocks of residence respectively point to the need for flexibility in terms of definition as well as judgement on the part of parents.
- The accounts show us that there are no categorical rights or wrongs in approach. Therefore, a major challenge arises in the regulation of such practices to resist the temptation to become overly prescriptive in setting definitions that favour a particular pattern of care, however attractive an option this might seem.

- Equally important not to impose any subjective judgements on one type of arrangement over another, particularly since cross-national differences within the sample groups could be seen in part as stemming from differences in attitude regarding the psychological wellbeing of the children.
- Patterns of care are dependent on a multitude of factors and often develop through a process of trial and error, indicating that parents themselves are likely to be the best judge of their own family circumstances and the needs of their children at different stages of their development.

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