



Child-custody reform, marital investment in children, and the labor supply of married mothers

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ARTICLE INFO

Article history:

Received 24 May 2009

Received in revised form 26 July 2010

Accepted 11 August 2010

Available online 31 August 2010

JEL classification:

D13

J22

K36

Keywords:

Child custody

Child investment

Intrahousehold resource allocation

Private school

Labor supply

Household bargaining

ABSTRACT

Research on child custody primarily focuses on the well-being of children following divorce. We extend this literature by examining how the prospect of joint child custody affects within-marriage investment in children through changes in household bargaining power. Variation in the timing of joint-custody reforms across states provides a natural-experiment framework with which to examine within-marriage investment in children. The probability of children's private school attendance declines by 12% in states that adopt joint-custody laws. We also find evidence linking joint-custody reform to higher rates of labor force participation for married mothers, which may indicate less time devoted household production.

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1. Introduction

During the first half of the 20th century, courts in the U.S. typically favored mothers in child-custody cases (Brinig and Buckley, 1998; Jacob, 1988, Ch. 8). In the 1960s, states began to remove the explicit preference for mothers so that a parent's gender was no longer the basis for child-custody awards. Even after the move away from maternal preference, most courts continued to award sole custody to mothers (Cancian and Meyer, 1998). However, several states made explicit provisions in their laws favoring joint custody or revealed their preference indirectly by ruling in favor of joint custody during the 1970s and 1980s (Brinig and Buckley, 1998). Citing the best interests of children as the impetus for legislative change, the majority of states followed with legal provisions for joint custody by the mid-1980s (Brinig and Buckley, 1998; Cancian and Meyer, 1998). Although child-custody reform became a nation-wide phenomenon, the debate over joint custody's costs and benefits was carried out by a relatively

small group of politically active supporters with little empirical evidence to support their claims (Jacob, 1988, Ch. 8).

The joint-custody literature primarily focuses on the well-being of children following divorce. We extend this literature by investigating whether joint-custody laws affect within-marriage investment in children. We first use variation in the timing of joint-custody reforms across states, with data from the 1980 and 1990 U.S. Population Censuses, to identify the effect of child-custody laws on married couples' investment in their children's education. Married couples with children who live in states that change their laws to favor joint custody between 1980 and 1990 constitute the treatment group in a natural experiment, while those who live in states that had either instituted joint-custody reform before 1980 or that did not institute joint-custody reform before 1990 represent the comparison group. The dependent variable is children's private school attendance—a verifiable marriage-specific investment in child quality. Although most children in the U.S. attend public school and private school represents only one of the many investments parents can make in child quality, private school has attractive features as a proxy for overall parental investment. Because the financial costs of private school warrant long-run planning by parents, any observed differences in private school attendance resulting from joint-custody reform could be extrapolated to other monetary investments in children.

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Analyzing the effects of child-custody reform on marital investment in children provides an opportunity to study the bargaining behavior of spouses. If we assume the return on child investment is non-rival within marriage but rival outside of marriage, a change in custody regime transfers a portion of the expected return from one parent to the other by altering the time spent with children outside of marriage. The neutrality of an individual family member's non-earned investment returns, with respect to intrahousehold allocation of resources, is a key aspect of the neoclassical model of the family (Becker, 1991). Hence, a unitary model of household behavior predicts no change in child investment following joint-custody reform. However, if child-custody reform alters the distribution of the marital surplus after divorce occurs, cooperative bargaining models of family behavior predict changes in married couples' investment in children.

There is ample empirical evidence that changes in family laws and government programs that provide transfers to one spouse shape the bargaining process over the course of marriage (e.g., Attanasio and Lechene, 2002; Chiappori et al., 2002; Genadek et al., 2007; Gitter and Barham, 2008; Gray, 1998; Lundberg et al., 1997; Stevenson, 2007, 2008; Ward-Batts, 2008). States that change the default custodial allocation from maternal preference to shared custody decrease (increase) the expected post-divorce time mothers (fathers) spend with their children. Brinig and Allen (2000) find that women are more likely to file for divorce based on the expectation of sole child custody, an indication that joint-custody reform could raise the costs of divorce for mothers. As a result, joint-custody reform could place mothers in an inferior bargaining position within marriage. The empirical literature on intrahousehold resource allocation documents a higher rate of investment in or spending on children when mothers have greater bargaining power in the household (Attanasio and Lechene, 2002; Bobonis, 2009; Lundberg et al., 1997; Maitra, 2004; Thomas, 1990; Ward-Batts, 2008). If the reform shifts bargaining power away from mothers, who value child quality more on average, child investment may decline. By contrast, the reform could provide additional incentive for fathers to invest in children because they stand to reap a greater portion of the post-divorce benefits from child investment through increased visitation rights.

We study the labor supply of married mothers as an alternative household bargaining variable in order to gain a better overall picture joint-custody reform's impact on the allocation of family resources. We use a similar differences-in-differences strategy, as described above, with annual data from the March Current Population Survey (CPS) for the years 1978–1993, to estimate the effect of joint-custody reform on a married mother's decision to participate in market work. Previous research shows a negative relationship between child outcomes and maternal employment (e.g., see Baum, 2003; Ruhm, 2004; Waldfogel et al., 2002). As a result, maternal labor supply could also proxy for non-monetary investment in children. Furthermore, non-monetary investments in children may complement (or substitute for) monetary investments, such that we might expect a positive (negative) co-movement between the two types of investment in response to custody reform.

While joint-custody laws were enacted to improve the well-being of children whose parents divorce, we find negative, unintended consequences for children of intact households. The probability of children's private school attendance declines by approximately 12% in states that adopt joint-custody laws. In addition, we find evidence linking joint-custody reform to increases in the labor force participation of married mothers, with much larger increases for married mothers with younger children.

The paper proceeds as follows: Section 2 discusses the legal background and economic models of child investment and household bargaining; Section 3 describes the data and econometric methodology; Section 4 presents the results; Section 5 relates our findings to the existing literature; and Section 6 provides concluding remarks.

2. Theoretical framework

2.1. Legal background

The authority of family-court judges to exercise wider discretion and institute joint-custody arrangements is a relatively recent legal innovation. Although child welfare was cited as the primary basis for child-custody reform, the passage of joint custody went against the widely held view among psychologists that sole custody was optimal (Goldstein et al., 1984). However, challenges to the sole-custody standard were issued at this time on the basis that it was an impulsion for post-marital conflict and, therefore, contrary to the best interests of the child (Stack, 1976). As a result, when most states began enacting joint-custody legislation, there was no consensus on the optimal custodial arrangement (Jacob, 1988, Ch. 8).

There were many underlying causes of child-custody reform. Women's increasing labor force participation and the more prominent role of men in child rearing were both key demographic changes that helped facilitate joint-custody reform (Jacob, 1988, Ch. 8). The preponderance of "dead-beat" parents (primarily fathers), who were in arrears of child-support payments, also generated political incentives to alter child-custody laws (Jacob, 1988, Ch. 8).² Contrary to other family-law reforms, expert opinion was relatively absent and personal experiences were more often cited in the legislative discourse on joint custody (Jacob, 1988, Ch. 8). Because it was difficult to show the negative consequences for children and the potential gains came at a low cost to the public, joint-custody reform was discussed by a small group of proponents and passed legislatures in relative obscurity (Jacob, 1988, Ch. 8).

A joint-custody provision relegates courts to handle only those custody disputes which cannot be settled privately (Buehler and Gerard, 1995). In the event that child custody must be decided in court, judges have discretion to rule in favor of joint custody if it conforms to the best interests of the child.³ Depending on family-specific circumstances, joint custody can fall under a protocol of (i) joint legal custody in which parents share in the decisions of child upbringing but the child's primary residence is with one of the parents or (ii) joint physical custody in which both parents share in child-rearing decisions and also share physical custody of the child. Under either joint-custody settlement, courts expect divorced parents to maintain a cooperative relationship while raising their children.⁴

2.2. Economic models of household bargaining and child investment

An extensive theoretical literature in economics investigates intrahousehold investment, production and distribution of resources.⁵ To motivate a discussion of this literature, we broadly group it into two categories: (i) the common preference approach which models the household as a single decision-making unit (e.g., Becker, 1991) and (ii) divorce-threat models in which heterogeneous agents bargain over the marital surplus and utility in the divorced state represents an external

² Since welfare payments were a federal issue, this political activity included a U.S. Congress mandate that funds would be withheld from paychecks and federal tax returns to pay delinquent child support (Jacob, 1988, pp. 132). By simply granting greater custodial rights, joint custody could also have been a low-cost (for the state) incentive for noncustodial parents to pay child support. In fact, Brinig and Buckley (1998) and Allen et al. (2010) find a positive effect of joint-custody reform on the level and receipt of child support income, respectively.

³ See Buehler and Gerard (1995) for a discussion of the Best Interests of the Child (BIOC) standard and how the standard varies by state.

⁴ The child-custody-law coding provided by Brinig and Buckley (1998) does not distinguish between joint-legal and joint-physical custody. While we are unable to examine the implications joint-legal and joint-physical custody separately, Kelly (1994) reports that the prevalence of joint-legal and joint-physical custody arrangements occurred concomitant with the passage of joint-custody laws across states. As a result, the child-custody reforms that we examine capture the overall shift to both types of joint-custody arrangements.

⁵ See Bergstrom (1996, 1997) and Lundberg and Pollak (1996) for excellent surveys of theoretical research on the economics of the family.

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