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Effect of joint custody laws on children's future labor market outcomes

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ABSTRACT

In a joint custody regime, both parents are given equal preference by the court while granting the custodial rights of their children in the event of divorce. Using 50 years of census data for the United States' population, I show that growing up in a joint custody regime leads to lower educational attainment and worse labor market outcomes. My results are robust to different model specifications and apply to both males and females.

1. Introduction

An almost inevitable byproduct of divorce is the issue of the allocation of custodial rights over a child. In the United States, the divorce rate started to increase sharply in the 1960s (Gruber, 2004). According to Rasul (2006), one million children in the United States have to survive the difficult process of divorce proceedings every year. A few decades ago, mothers were typically granted the sole custody of a child in the event of divorce under the argument that maternal care is more important to nurture a child (Brinig and Buckley, 1998). With the introduction of joint custody laws in the United States around 1973, both parents were given equal preference for custodial rights. As discussed in Nunley and Seals (2011a), joint custody can either mean joint legal custody or joint physical custody. In either of the cases, important decisions regarding the child have to be agreed upon by both parents.

Arguments have been forwarded both in favor of (e.g., Brinig and Buckley, 1998) and against (e.g., Singer and Reynolds, 1988) joint custody laws. Proponents of joint custody law suggest that it fosters more emotional and financial involvement on the part of the parents, and this extra involvement is better for children. Opponents of the joint custody law suggest that, following divorce, children are better off being cared for by the primary caregiver, and provision of joint custody might lead to an unhealthy domestic environment for the upbringing of a child.

Rasul (2006) provides a theoretical framework to investigate the economics behind joint custody. In Rasul's model, joint custody is optimal if the parent who attaches more importance to the development of the child keeps the majority of custodial rights. However, this result hinges on the assumption that the preferences for child development are relatively homogeneous. With sufficiently heterogeneous parental preferences for child development, sole custody is optimal. If the allocation of child custodial rights is not optimal, then it distorts the investment incentives for parents, and investment in children might be less than optimal. This is an interesting insight worthy of empirical investigation. Rasul's model provides us with a framework in which joint custody laws may actually harm a child's future prospects. Investment in a child is intended for human capital formation. If, as a consequence of the provision of joint custody, a child has access only to sub-optimal levels of resources while growing up, then it will adversely affect the stock of human capital the child will posses in the future when entering the labor market. Hence, the adoption of a joint custody law could have a significant impact on labor supply and the productivity of the labor force.

This study attempts to explore the impact of growing up in a joint custody law regime on future adult outcomes. In particular, I examine the consequences of children being exposed to a joint custody law regime on both educational outcomes (*years*

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of education, *high school dropout*, *high school graduate*, *some college*, and *college graduate*) and labor market outcomes (*real total income*, *percentage income over poverty line*, *weeks worked*, *real wage income*, and *employed*). For my analysis, I am using 50 years of census data obtained from the Integrated Public Use Microdata Series and a difference-in-differences (DiD) panel fixed-effect model. My results show that being introduced to joint custody laws as a child adversely affects future educational and labor market outcomes.

2. Background

Before the introduction of joint custody laws in the USA around 1973, mothers were overwhelmingly granted custodial rights in case of a divorce (Brinig and Buckley, 1998). The logic behind such decisions was based on the argument that maternal care is more important for the development of a child. However, with the introduction of joint custody laws, fathers were also granted partial custodial rights of their children. The joint custody laws have made custodial rights gender neutral and are more focused on the best interests of the child. When divorced parents share the custody of a child, they need to make decisions regarding the child's development jointly. This system is supposed to be more conducive to a child's overall development. The idea is that a decision made by one parent and that may be clearly detrimental to a child's future well being can be blocked by the other parent (Brinig and Buckley, 1998).

Rasul (2006) serves as the theoretical background for this paper. According to this study, joint custody laws have both "efficiency and distributional consequences". Each spouse's share of marital surplus is determined by the share of custodial rights. If the allocation of a child's custodial rights are made *ex ante*, then it will maximize investment in the child and minimize the likelihood of divorce. However, it is not feasible for couples to decide beforehand the level of resources that are going to be invested in a child. Hence, it is more than likely that the allocation of a child's custodial rights, conditional upon divorce, is going to be decided *ex post*. Any kind of *ex post* allocation of child custody will maximize *ex ante* investment only if the couples have sufficiently heterogeneous preferences for child development. Here, by '*ex ante*' we mean before the parents get divorced and '*ex post*' identifies the post-divorce situation. If the spouses have sufficiently heterogeneous preferences for child development, then it is optimal for the high-valuation parent to have the sole custody. However, for spouses with relatively homogeneous preferences of child development, joint custody is optimal if the high-valuation parent keeps the majority of custodial rights. Hence, joint custody is not universally optimal and the allocation of the child's custody should ideally depend on parental preferences for child development.

Even in cases where joint custody is preferred, it is in the best interests of a child that the high-valuation parent retains the majority of custodial rights. The problem for the judicial system, however, is the fact that the court does not have all the information. For example, the court does not know how spouses value child development. Even determining the high-valuation parent is riddled with problems. Respective monetary investments in children made by parents may give a distorted view of parent's preferences for child development, since investment can also be non-monetary, such as through the investment of time. This information asymmetry creates a situation where, *the best interests of a child* might not be served by granting both parents an equal share of child custody.

The *Coasian Irrelevance Theorem* holds in Rasul's (2006) model if child custody rights are treated just as other property rights and parents bargain over them simultaneously. Hence, the parent with higher valuation for child development will trade other property rights to gain better custody rights through bargaining. Introduction of a joint custody law marks a shift in the spousal bargaining power within a household. Before the introduction of joint custody laws, mothers were usually expected to receive sole custody of children in case of a divorce. Since joint custody laws made the process of granting child custody gender-neutral, mothers' bargaining position was weakened. This outcome of joint custody laws has important ramifications for the human capital formation of children coming from a separated household. It has been suggested by Lundberg et al. (1997) that a weakened bargaining position for mothers leads to lower investment in children. Hence, joint custody laws, as well-intentioned as they might be, have the ability to hurt the future prospects of a child whose parents have divorced.

Brinig and Buckley (1998), using bonding and monitoring theories, suggest that joint custody laws lead to fewer divorces and higher child support payments. Bonding theories predict that a father will be more emotionally attached to a child if he is expected to keep some ties with the child after divorce. If a state implements joint custody laws, then the fathers living in that state can expect to retain custodial rights of children if and when a divorce takes place. Monitoring theories predict that a parent will be more willing to contribute financially to a child's development if some sort of custodial rights are granted. The key idea is that a parent is willing to invest more if that parent can monitor how the money intended for investment in the child is being spent, then the parent may be willing to invest more. So, even in case of a court mandated child support payment, a parent might be willing to pay more to make sure the child has access to sufficient resources, if the investment can be monitored. Joint custody laws allow for such provisions, and, therefore, are more conducive for the human capital formation of a child coming from a broken household.

However, granting joint custody of a child to both parents also has its pitfalls. Brinig and Buckley (1998) suggest three possible scenarios where granting joint custody instead of sole custody may be harmful for the child. In the first scenario, joint custody may be awarded to unfit fathers. This may prove to be against a child's best interests since it hampers the developmental process of the child. Brinig and Buckley (1998) argue that, since both parents can monitor a child under a joint custody setting, such issues are unlikely to arise. In the second scenario, a parent may need to forgo other property rights in a divorce settlement in order to gain the sole custody rights of a child. However, Brinig and Buckley (1998) suggest that it does not necessarily make joint custody laws a bad initiative. In the third case, joint custody laws might as well become inactive if couples use it as a bargaining chip instead of an effective instrument to serve the best interests of a child whose parents are divorcing. Brinig and Buckley (1998), however, argue that this kind of *Coasian Irrelevance* might not work in reality since people in general might be unwilling to trade their children for assets or those arrangements might not meet the legal requirements. Using data from the Statistical Abstracts of the United States for the years between 1980 and 1991, and with the help of Ordinary Least Squares (OLS) and Two Stage Least Squares (2SLS) Fixed Effect methods, they find that joint custody laws reduce divorce levels. Child support payments are also positively influenced by the joint custody laws.

The critics of joint custody laws, however, insist that implementing them is a bad idea (e.g., Singer and Reynolds, 1988) and the system under which a court assigns a "primary caretaker" is better.

Using the Integrated Public Use Microdata Series (IPUMS) from the United States Census for 1980 and 1990 waves and a Difference-in-Difference (DiD) method, Nunley and Seals (2011a) find that following the implementation of joint custody laws, parental investment in children (e.g., private school attendance) may actually decline. Since joint custody laws weaken the bargaining power of mothers, they tend to develop more market-specific skills to be better placed at the bargaining table in case of a divorce. They