

*Shared Residence and the Best
Interest of the Child.
Rights, Agency and Age Dilemmas.*

Paper presented at «The Everyday Life of
Multi-Local Families. Concepts, Methods and
the Example of Post-Separation Families».

Background

- ▶ **Divorce and Post-Divorce Family Practice. The Perspective of Children and Young people.**
- ▶ Children's experiences with multi local family practice
 - ▶ How do children and young people experience divorce and post divorce family practice?



Children's families in Norway 2011

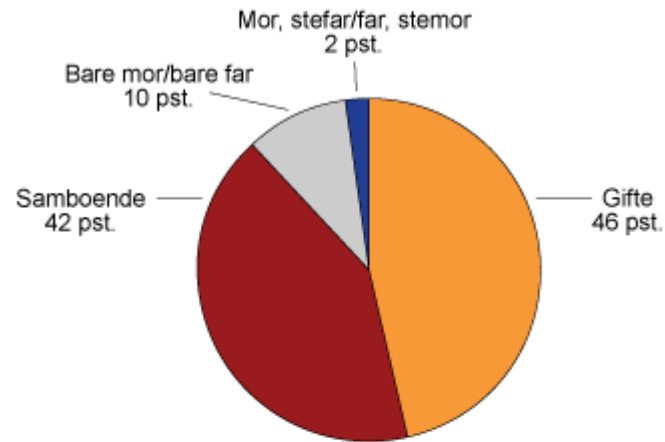
▶ Married parents	60
▶ Cohabitants	15
▶ Mother	17
▶ Father	3
▶ Mother + step-father	4
▶ Father + step-mother	1

▶ *Source: Statistics Norway*

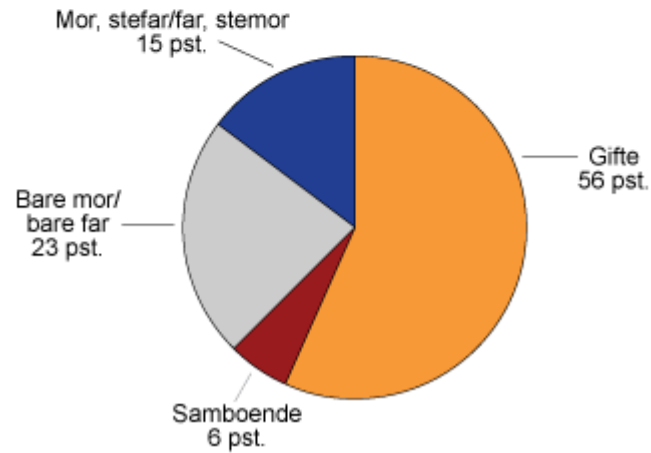


Barn, etter foreldrenes samlivsform. 1. januar 2008.
Prosent

Barn under ett år



Barn 17 år



Shared residence

- ▶ Fastest growing residence arrangement
 - ▶ 1996 – 4%
 - ▶ 2005 – 10%
- ▶ According to Kurki-Suonio (2000) the ideal of joint custody (including both joint legal custody and joint physical custody included shared residence) might be regarded as the *current cultural interpretation of the principle of the best interests of the child*.



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- ▶ There is a growing demand for shared residence in several countries; though it is argued by Smart (2004:484) among others, that such demand ‘ignore entirely’ the experiences of the children who are affected by the arrangement.
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- ▶

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- ▶ The aim of this paper is to ask to what extent shared residence can be understood as an arrangement that is in the best interest of the child
 - ▶
 - ▶ Children's Rights
 - ▶
 - ▶ Children's Agency
 - ▶ Children's Age



Three characteristics of shared residence practice:

- ▶ Analysis of the interviews mainly conducted in two steps: In particular at the full story of each child in order to trace why and how each case coped in a particular way. In the next step, we did 'cross-case' analysis (Miles and Huberman, 1994: 174), from which it emerged that the stories seemed to fall into three types of time-sharing:
 - ▶ i) flexible
 - ▶ ii) ambiguous
 - ▶ iii) rigid



Flexible time-sharing:

- ▶ I came from my father's place only a moment ago, the one you can see up there [pointing at a house up in the hills]. I had dinner there before I walked down here.... If I have to pick up things and if I'm bored being there [at dad's] I can get down here [to mum's].



Flexible time-sharing:

- ▶ We tried doing two weeks at each place, but I thought it lasted too long, even though the distance isn't far.
- ▶ The last time I left earlier from dad's , it was not because I was bored, it was because no one was home at mum's (...) what is annoying is that – for me to on my own – then they both have to leave at the same time, see?.



Flexible time-sharing:

- ▶ Parental cooperation
- ▶ Low level of conflict
- ▶ Location of both parents in the same community

- ▶ Acknowledge children's rights to have a say
- ▶ Flexible day to day principle
- ▶ Sensitive towards children's needs



Ambiguous time-sharing

- ▶ They said we could spend time at both places...wherever we wanted...but I didn't feel that that was really the case. My mother became disappointed in a way...or not really disappointed, but something like that...if we went to my daddy's place. My daddy was more reserved in a way. My mother was more moody. We weren't supposed to go over there [at dad's], but I think it had to do with the fact that she, of course, was really depressed at that time.



Ambiguous time-sharing

- ▶ If you spend more time at one of your parent's places...issues like responsibility and child support payments arise.... It is important that parents are aware of these issues so that the children don't feel guilty. Parents should be able to cope with such issues without bringing the children into it because such questions are in a sense 'adult issues'.



Ambiguous time-sharing:

- ▶ Not fully acknowledging children's wishes
 - ▶ Children are in danger of putting their parents' needs ahead of their own (*the classical concept of feeling rules, Hochschild, 1983*)
 - ▶ It is good but exhausting
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Rigid time-sharing

- ▶ I would like to stay permanently at mother's place (...) I didn't want to stay at my father's place, but I had to. My father wanted it that way (...) so I didn't argue about it.
- ▶ I knew he [her father] would become hostile if I didn't go there.... It didn't matter if my mother had her birthday for example – I had to be there, it was rather strict.



Rigid time-sharing

- ▶ Father's rights
- ▶ Adult power over children's agency
- ▶ Not in the best interest of the child



Family mediation

- ▶ All parents with children under 16, are required to meet at compulsory family mediation before they can get their divorce case further proceeded by the County Governor.
- ▶ The aim is that parents shall reach an agreement about residence, contact and custody arrangements that is 'In the best interest of the child'.

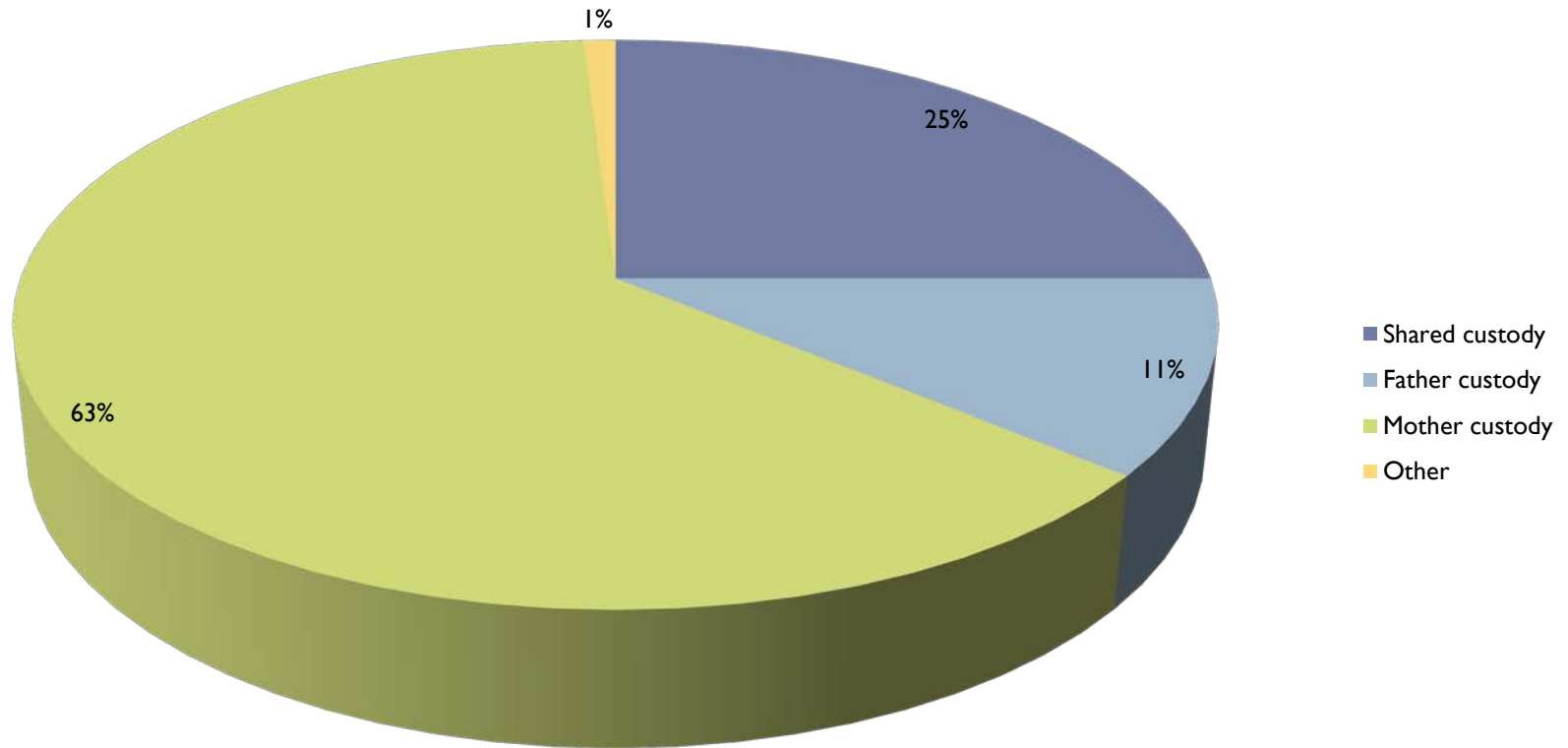


To sum up so far.....

- ▶ From the perspective of children and young people, a shared residence arrangement can work both as a pleasure and a burden
- ▶ Shared residence might be in the best interests of the child when children have an opportunity to have a say,
- ▶ but it is even more important that their opinions and choices are respected.
- ▶ The debate over shared residence requires more empirical evidence, and in particular children's perspectives should be acknowledged further.



Custody arrangement reached in family mediation (n=1646 children)



Worries by the mediators

- ▶ The parents agreed on shared residence for children aged one and three years old, an agreement I cannot vouch for as in the best interest of the child.
- ▶ The parents came to an agreement about a shared residence arrangement, but had limited knowledge, or not any knowledge at all, about the possible consequences such an arrangement might have for a young child on four months.....
- ▶ The father wanted shared residence or to spent long periods with the child. The child is only two years old.....



Residence arrangement in different age groups (n=1646)

Residence arrangement	Age groups				Total
	0-2 year	3-6 year	7-11 year	12-16 year	
Shared custody	16	23	30	31	25
Father custody	3	11	13	19	11
Mother custody	81	66	56	49	63
Other	3	1	1	1	1
Total	100	101	100	100	100
(n)	(287)	(485)	(423)	(269)	(1646)



The principle of father's rights

- ▶ *The focus on father's rights might have a kind of sinister purpose. I mean, it is great that fathers' rights to a larger extent are brought up, however, the notion of 'I have as much right as you have to spend time with the child'....that is not the case, the case is to try to find an agreement which is good for the child. In my opinion shared residence is not always the best solution for the child. Back in 1995 we used to advise against shared residence. Now days shared residence is the point of departure....in particular for those young parents.....the pendulum has turned, and we forget to look at possibilities in between. The rights' for fathers is not my concern, my concern is how to best safeguard the wellbeing of the child (from focus group with mediators)*
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The principle of father's rights

- ▶ *The reason this arrangement works bad is because it is irresponsible for the child. The father and I live in different parts of Norway, and the child spends 40 per cent of her time with her father, also starting to express that she don't likes it to be this way. She constantly needs to adjust, new rules, new people to get involved to, new kindergarten, new rutines, etc. In my opinion a 2-year-old girl has enough by being a two year old, and should not be forced to juggle between different ways of living and to live in a suitcase! My child needs to calm down, and she needs to be allowed to just be a child, not a 'shuttlecock'! It was the father who wanted this kind of arrangement, and when he was supported by the counseling office (mediation office) I felt I had no more to say....*

(Mother of 2 year old girl)



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- ▶ *Recently we have observed that in particular young parents are coming and that they both are minded on, and they have been reading on the web, that choosing shared residence is the natural, right and the fair thing to do. And it might concern a child aged 6 or 9 month, and it is cases like that, in which we feel that this is no good, if that child is going to move homes every week. Such cases are quite a challenge! (mediator, group 6)*
 - ▶ *And you have this concern about equality....that all children are going to spend equal time with each parent, I mean it has to be related to the child's age, in order to be in the best interest of the child. (mediator, group 1)*
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Shared residence and the best interest of the child

- ▶ *Rights Dilemmas*
- ▶ *Agency Dilemmas*
- ▶ *Age Dilemmas*

