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Who Wins Custody Battles: The Effect of Gender Bias

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Abstract

This study analyzes factors that play a role in winning custody battles. I hypothesize that a father with a high income is more likely to win custody. My study concludes the exact opposite of my hypothesis, the lower the income of the mother the more likely she is to win custody instead of a father with a higher income.

Keywords: Political science, Family, Divorce, Custody Battles, Income, Father, Mother, Gender, Bias

Winning Custody Battles

Many theories have been presented in trying to understand the climate around custody battles in America. For the average custody battle, there seems to be a theme where the mother is more likely to win. The 2016 census report indicates that only 17.5% of fathers win custody. Concerns arise whether there is a gender bias rooted within these decisions, leading to the question of under what conditions is the father most likely to win the custody battle?

For more than a century, many court decisions aligned with the “cult of domesticity,” which presented women as sole and primary caregivers. However, this mindset saw a shift in the 1960s-70s as more women entered the work force (Chandler, 2017). For comparison, in 1993 and 2017, fathers who worked full time went from 70.2% to 74.3% (Statista, 2021a) and for full time working mothers there was a rise from 40.9% to 51.4% (Statista, 2021b). Despite the increase in working mothers, societal expectations remained the same. Jen Fifield (2016) says “when parents divorce or separate, custody arrangements are more likely to reflect life as it was in 1975, with the mother as the primary caretaker and the father working to help support a child he seldom sees.” Today, even though national laws have not fully caught up with the evolving roles of parents, there have been small changes made. However, there’s still work left to be done. Some progress we’ve seen is a higher percentage of fathers spending time with their children compared to the average 35%. The National Parents Organization states Alaska, Arizona, Idaho, Iowa, Louisiana, Minnesota, and South Dakota as the having the most supportive laws for shared parenting (Fifield, 2016). There are different effects and causes of these changes within the roles of a mother and father in modern times, specifically during a divorce involving a custody battle.

I define winning a custody battle as a legal fight between divorced parents to decide who gets to be the dominant custodial parent. This research includes custody battle issues from all the 50 states in the United States of America.

There is a broad set of institutions that are interested in this question. They include, the National Parents Organization, the American Coalition for Fathers and Children, the National Responsible Fatherhood Clearinghouse, the Mothers Movement, the Mothers Rights Advocacy Group, and family law attorneys.

I hypothesize that a father with high income is more likely to win custody. My theory for this hypothesis is that the parent with higher income has access to better resources. I found no support for my hypothesis. Instead, I found support for a strong gender bias favoring women in custody cases.

Explaining Who Wins Custody

Many studies have investigated the effects of gender bias in custody battles in the United States. Although the literature regarding this topic covers a wide variety of theories, this review will focus on three main questions. These questions are what causes a custody case to be settled before going to trial? what is being done in order to showcase the stability of a father taking care of his children rather than the mother? and why is it more difficult for a mother to navigate through the child enforcement system program?

What factors cause a custody case to be settled before going to trial? A couple fighting for custody over their children tends to either go to court or, as most do, use mediation and

lawyers. In America, 90% of parents settle their cases without a judge's ruling (Lazic, 2021). The cases that do go to trial are caused by parents not reaching a decision on their own due to major conflict. That is when a judge will take a multitude of factors into consideration, for instance, how old the children are, school locations, parents housing situation, and history of domestic violence, abuse, alcoholism, and drug use (Fifield, 2021; Micklin, n.d.). Other factors play a role in court cases as well, but the judge's focus is which parent will be the best for the children. To add to this, depending on the state and the age of the child, if there's no evidence of abuse, a judge might even ask the child whom they prefer to live with. In these cases, judges aren't always expected to explain their decision. However, there have been bills introduced to encourage judges to do so. For example, in Virginia, Senator Favola (D-Arlington) introduced a bill that would require judges to write out their opinions for custody decisions. This bill could give parents an opportunity to use those written opinions for appeals and evaluate if there has been a bias in the judge's decision (Chandler, 2017).

Of the cases that use mediation, 51% had both parents decide to have the mother as the primary caregiver (Lazic, 2021). This might give the impression that the bias is in favor of women when it comes to mediation, but that's not always the case. Maged and Frankel state in their study how men are more likely favored in custody/financial arrangements through mediation than court cases because of access to better legal representation (Maged, Frankel, 1990). This can be demonstrated by the fact that women tend to bargain away their property to get custody over their children because they're not fully aware of their legal rights. Furthermore, the New England Review states, "the inequality between the participants is particularly severe when one party has been physically abused by the other" (Maged, Frankel, 1990). These inequalities that favor men could explain why 90% of custody cases are settled without a court trial, with mediations it's easier to access a majority of the property and finances for one party, typically, the father. However, this comes at the cost of the average custodial father in America receiving only about 35% of child custody time (Custody Change, 2018).

If fathers want more of a role in parenting their children post-divorce, what is being done in order to showcase the stability and benefits of a father taking care of his children? There have been many studies on how the presence of a father can either help or hurt the children and wife. Many lobbyists and activists, most being fathers, spread awareness of how custody should be equally shared. Judges in New Jersey have acknowledged that fathers need to play a greater role in the lives of their children that extends past weekend visits (Micklin, n.d.). Laws surrounding divorce and custody have also begun being designed to treat both parents equally, which has started a domino effect for more father custody, especially in out of court agreements (Coles, 2009; Hamer & Marchioro, 2002; Pearson, Munson, & Thoennes, 1982). The effect of these laws has already been noticed in America. Nationwide, 40% of states (Lazic, 2021) now lean more towards equal custody time. Especially in Tennessee, at least 25% of households are single-father households, and they are increasing at a rate which has surpassed the households of single mothers (Lazic, 2021).

As fathers gain more time with their children, research has noted various changes in child behavior. The most surprising research by William Fabricius, professor at Arizona State University, showed that the children who spent more time with their fathers are more likely to succeed academically, grow up healthier mentally and physically, and were less likely to exhibit

delinquent behavior and not abuse substances (Fifield, 2016). This study and others like it are being used by lobbyists to further their agenda on equal custody. Opponents of such laws that favor fathers having equal custody suggest that these proposals/bills put children at risk if the father is an abusive ex-partner. Specialists in the field of domestic violence in families have stated that separating children from their mothers and giving equal custody to both parents is not the best for the children, and a victim shouldn't have to prove that (Fifield, 2016). The double standard for women who have faced abuse from their spouses is unimaginable. The system fails to protect women and children who are victims and allows batterers to be present in litigation abuse in the midst of family courts and discount the female victim's credibility (Mindthoff, Goldfarb & Alison Behre, 2019).

Nonetheless, putting the possibility of abusive spouses to the side, proponents of the equal custody laws showcase that behavior in children correlated with living with a single mother or a single father significantly. Studies showed single fathers were doing well or even better than single mothers in raising their children (DeFraim & Eirick, 1981; Ambert, 1982). How the fathers were doing better was measured in child behavior and child satisfaction with each parent. The researcher, Ambert, did try to explain this result by claiming that fathers receive more help and recognition from friends and family on raising children and this energy reflects on their children. On the other hand, mothers didn't receive the same appreciation, possibly because they're expected to do this by societal expectations (Ambert, 1982). Another study, however, highlighted similar results from both single mothers and fathers, but in comparison to married mothers and fathers. Data from the National Household Education Survey was used to measure the involvement of parents in activities like class events, school meetings, and volunteering in their children's school lives. They found that the single parents had similar participation rates. However, single mothers were less involved than married mothers, but single fathers were more involved than married fathers (Nord, Brimhall & West, 1997).

Another study, "*Father custody and social development in boys and girls*" looked into Freud's classic psychoanalytic theory to further help us understand how more custody time for fathers could impact children. The research emphasizes the importance of same-sex parenting for a healthy emotional development in children. The children were tested through factors such as self-esteem, anxiety, sociability, independence, and conformity. The article came out with the results that boys living with their fathers showed greater maturity than girls living with their fathers. Where on the other hand, girls living with mothers were more socially competent than boys living with their mothers (Santrock & Warshak, 1979; Warshak & Santrock, 1983). However, similar studies have not come to quite the same conclusions, so the outcomes are inconclusive.

For instance, the study, "*Sex of parent and children's well-being in a single-parent households*" looked at social, psychological, and educational results amongst male and female children from living with same sex parents. The results only showed some significant correlation, but the causation seemed to counter the same-sex parents' theory (Downey & Powel, 1993). Another study in Southern California using 187 children from 160 divorced families found a middle ground on the two conclusions we have seen so far in the studies mentioned above. It was found that children are emotionally better off in father custody, however, there was no correlation between psychological well-being and living with same-sex parents (Clarke-Stewart & Hayward, 1996). The studies aren't demonstrating similar results and

more research needs to be done. Nonetheless, fathers are gaining more power to highlight why a child would need their father just as much as they need their mother. The newfound knowledge is helping men gain more custody time over their children.

If fathers gain more custody, it brings up the question of whether or not the child enforcement system would potentially change as well? Currently, single mothers tend to rely on the system more, and the process is said to be difficult for a mother to navigate through. Even though women tend to win most custody battles, getting there can be tough. In the study, *“Custodial Mothers and Fathers and Their Child Support: 2013”* they mention the system makes it challenging for women to easily access child custody simply based on biases of them being a female. One of every six (17.5%) custodial parents are only fathers (Grall, 2016), which leads to 82.5% of the custodial mothers using the program. Overall, the help from programs and financial benefits a single parent gets depends on their gender. For women, as they do rely on the programs more, it takes them longer to access, and they receive less money than men.

Custodial mothers make up a bigger portion than custodial fathers, but still don't have a smooth process working through the child custody system. Overall, the small percentage of single fathers tend to be better off in income and social support in comparison to single mothers. According to history, men take up a very small proportion of awards for single parents because after divorces they don't struggle financially. To add to this, in 2013, 46.5% custodial mothers were getting help from at least one public assistance program in comparison to 24.1% fathers using at least one (Coles, 2015; Grall, 2016). All these differences are important to note because the laws mentioned earlier would require these programs that help fund single mothers be eliminated. Women advocates say that the laws favoring joint custody could end up disrupting a system that helps single mothers because single mothers get paid less in the workforce whilst single handily raising children for free (Chandler, 2017). The same programs that are already hard enough to get a hold of for these women will be harder to obtain, as the field of custodial parents starts leaning towards fathers.

Another sector that women struggle in more often than men during the process of a custody battle is obtaining knowledge and help when it comes to the legal aspect of custody battles. This potentially could be due to lack of money. Money is significant in what kind of lawyer you can get and how knowledgeable you can be through them about your rights in the process. There was a study done on the Court System in Massachusetts, where the research found that “women without legal representation (pro se) find the system difficult to navigate, and free legal services are often not available to them. Private counsel may be unwilling to represent women because of the difficulty obtaining adequate awards of counsel fees during, and sometimes after, a trial” (Maged, Frankel, 1990). Research highlights that women's living status decreases more than men after a divorce, mainly because of a large responsibility of raising children with a less amount of wealth and property. The economic disadvantage after a divorce for women, and the struggles of enforcing support and alimony orders are related for women as well, not to mention that they have less information about marital assets and their legal rights in divorces (Maged, Frankel, 1990).

Out of all the biases present in custody battles, biases from the judges are the most concerning. It is noted that when a father is actively seeking custody along with other favorable factors, he will get it over 70% of the time (Maged, Frankel, 1990). However, for women in the studies the evidence shows that courts hold higher standards for mothers than fathers in

custody decisions and that women dealing with child support enforcement find themselves in hostile and unresponsive systems. Hostile as in, litigants face suggestive comments, unsolicited touching/verbal harassment and if they bring their children to court, they face a lack of day care facility and inflexible court schedules (Maged, Frankel, 1990). The bias disadvantages go past just the court availability for single mothers. The lawyers that single mothers even hire can cause them to be at a disadvantage, especially if that lawyer is a female. It's called negative synergy of law and lawyering, where judges and male lawyers are overly aggressive/demeaning to female lawyers representing single mothers. A gender bias report documented those judges tend not to listen or believe lawyers who are women (Czapanskiy, 1993).

An experiment tested how well mothers and fathers can do certain tasks to provide for their children daily. In this experiment, the performance seemed to affect the custody decisions for mothers more than the fathers for the same violations, like failing to pick up their children on time, where the point reductions were higher for the woman (Villicana, Garcia & Biernat, 2017). That may have been just an experiment, but it's a mirror for what happens to women and the double standards they constantly face in front of the court.

Nonetheless, the biases go for both genders in custody battles. Whether it is for the man and consistently believing them over a victim or neglecting a father of his duty and stereotyping a woman as a primary caregiver. In the cases seen, we can see the different ways women tend to win custody. What appears to be missing here is under what conditions is the father most likely to win the custody battle? With the increased interest in men wanting to be a bigger part in their children's lives, what must they do and what is expected from them in order to win or simply gain equal custody.

Hypothesis & Theory

I hypothesize that a father with high income is more likely to win custody. When a father has high income, he is able to have access to better attorneys and legal resources. My theory for this hypothesis is that the parent who has more money will be able have a better chance of winning custody. To add to this, the gap between the two incomes for the spouses has to be significantly big because if they only differ by \$5,000-\$10,000 they will be able to access similar resources. However, if the income gap is by \$50,000+ it will make a huge difference on what kind of lawyers they can afford. Fathers tend to be more financially stable than a mother and that is why I think this is where they can get a step ahead in the process compared to the mother.

Data & Methods

I use data from Custody X Change, Divorce and Custody Survey 2021 to measure my dependent variable, custody outcome. There doesn't appear to be any scholarly review on this dataset yet. The only critique I would give on this dataset is that they should have the data in numeric form instead of string. Making this slight change would make their data easier to access for their users. Also, I think the survey could have asked more detailed questions on attorney experiences with court members, judges and just the whole custody process. For example, since other studies have shown there is a bias towards male attorneys, it would be interesting to see if the parent who was fully satisfied with the custody outcome had a male attorney. Other than that, I didn't have any complains about the dataset. In their data my

dependent variable's distribution varied in 5 different responses. The following responses were: I received sole custody, I received joint custody with more than half of my children's time, I received joint custody for about half of my children's time, I received joint custody and less than half of children's time, and my former spouse received sole custody.

I use an OLS regression model to test for the effect of income, gender, spousal relationship, and settlement on custody outcomes. I control for attorney representation. The central tendencies for all the variables in the model are in Table 1.

Table 1. Central Tendencies for Custody Outcome Variables

Variable	mean	median	mode	range
Income	2.822	3	3	0-6
Attorney Representation	1.151	1	1	1-2
Gender	0.478	0	0	0-1
Spousal Relationship	3.294	3	4	1-5
Settlement	1.215	1	1	1-2

My variables of interests are from Custody X Change, Divorce and Custody Survey 2021 as well. My first variable of interest was income, ranged from 0-7 for responses which were: 0 = under \$25,000, 1 = between \$25,000-\$49,999, 2 = between \$50,000-\$74,999, 3 = between \$75,000-\$99,999, 4 = between \$100,000-\$124,999, 5 = between \$125,000-\$149,999, 6 = \$150,000 or more, and 7 = prefer not to say. For income the data clustered around \$50,000-\$99,999, as you can see in the table with the average being a 2.773 for fathers who responded. This income is higher than the average income of single fathers in America, which is \$46,626. This demonstrates that most of the men fighting for custody are wealthier than the average single father in America. The mode is 3 which is between \$75,000-\$99,999 for income. This group of people would be seen as financial stable and could hire a top tier attorney to help better their case.

My gender variable includes 0 = female and 1 = male. The average response in the survey was .0478 and the mode was a 0, with women being the majority in respondents. This makes sense as there were 515 females and 495 males who participated in the survey. Making the cluster of responses around females. This variable is important because my research

question is focused on fathers and their outcomes in custody battles. By testing the two genders I can differentiate the different case outcomes between the mother and father.

For my attorney representation variable, the average response was within 1.151 and the mode being 1 which is representing yes, they had an attorney represent them. This variable should be beneficial to my research as I can test if the amount of income correlates with having an attorney and how good of an attorney as well. For attorney representation, the data cluster was around extremely dissatisfied, this could potentially be because most men did not get to be the custodial parent of the child in their cases. Which makes me wonder if the gender of the attorney mattered, if I could have had that information as well, it could have been useful.

Another variable was spousal relationship, the average response was 3.294 which ranges between moderately well to very well. The mode was 4, being very well. Spousal relationship respondents clustered around moderately well and slightly well, which makes sense considering they're getting a divorce, so they wouldn't be too fond of each other. I thought this would be interesting to look at because if the relationship between two parents is healthy does that make it easier for the father to obtain just as much, if not more custody rights over his children?

My last variable, settlement, is just a 1 = yes and 2 = no for if they settled with their spouse or took an alternative dispute approach, such as mediation, arbitration, cooperative law, collaborative law, or parenting coordination. The cluster was around yes, they settled and didn't take it court and used an alternative method. For most the alternative method was mediation as it is cheaper and faster than a court trial.

I expect to find that my model is statistically significant. Furthermore, I expect the model explains 25% or more of the variables in the custody outcome. I also expect that my variables of interests, income, attorney representation, gender, census region, spousal relationship, and settlement, are in the model less than or equal to .05.

Results

The results of my model are reported in Table 2. The variables in my model are income, attorney representation, gender, and spousal relationship. The variable settlement was not included as it was very far off from being significant and didn't add any useful information to further my research. My model is not a good fit overall because its variance fit was 5%, which is low. Not having a model that has a good fit means the statistical model doesn't fit well with my set of observations. The relationship between my response variable and my predictor variables is not correlated as strongly as I would have preferred them to be.

Attorney representation and spousal relationship were not statistically significant, the only two that were significant in relationship to winning custody were income and gender. They were significant in the manner that women won more battles, and it didn't matter what their income was compared to the man.

Table 2: Standard Error Estimation of Fathers Winning Custody

Independent Variables	
Income	-.0515* (0.0234)
Attorney Representation	-.1577 (0.0878)
Gender	-.3826** (0.0697)
Spousal Relationship	-.0331 (0.0307)
Number of Observations	991
R-Squared	0.03

*<.05 **<.001

Conclusion & Implications

In conclusion, I did not get the results expected. What I anticipated was that high income would be the big factor playing a role in helping a father get custody over his child. However, I didn't anticipate that the lower the income, the higher the chances for a woman winning. Which tells us, the high income plays little to no effect on increasing the chances of winning a custody battle for a father.

What I would do differently with my research is look into individual court cases where I can compare the experiences of the mother and father from the same custody battle. This dataset that I used was on 1001 respondents and their own experiences but not including their spousal's. It would have been nice to compare income between the individual pairs in a case instead of just broadly seeing how much an income a father or mother makes and what the outcome of their case was. For example, I would have liked to know the income differences between each mother and father, how big of a gap there was or wasn't. I would adjust my hypothesis in a way that would require potential laws or policies that can help fathers win. If the variables I tested aren't helping fathers, we need new variables and I think those could be the new policies lobbyists are fighting for.

Another thing I would try differently is looking at data based on regions or states instead of nationally. I would do this because looking at the four regions that were documented in this dataset, Midwest, west, south, and northeast, these regions favored women and, if income played a role, it was the same as the national results, the lower income wins. I wonder if the policies within these regions are the same or different that are causing similar results. I also would be interested in studying other countries, look at which ones have more shared custody and see what policies they have that we could use in America. Overall, what I learned from my own research can help future research by pointing out that our current legal system

and its gender biases are not only hurting a specific parent (the father) but could also hurt the children. We need to continue fighting for equal custody or at least an equal fight. There are many women who are capable to parent and stable to be a good mother however, in other situations the parent best suitable for the child is the father.

References

- Ambert, A. (1982) *"Differences in children's behavior toward custodial mothers and custodial fathers."* *Journal of Marriage and Family*, 44, 73–86.
- Brown, B. V. (2000) *"The single-father family: Demographic, economic, and public transfer use characteristics."* *Marriage and Family Review*, 29, 203–220.
- Chandler, M. A. (2017) *"More than 20 states in 2017 Considered laws to PROMOTE shared custody of children after divorce."* The Washington Post.
- Clarke-Stewart, K. A., & Hayward, C. (2002, May 15). *Advantages of father custody and contact for the psychological well-being of school-age children.* *Journal of Applied Developmental Psychology*. University of California-Irvine, 17(2), 239-270.
- Coles, R. L. (2009) *"Best kept secret: Single Black fathers."* New York, NY: Rowman & Littlefield.
- Coles, R. (2015) *"Single-Father Families: A Review of the Literature."* *Journal of Family Theory & Review*, 7(2), 144-166.
- Custody Change. (2018) *"How much custody time does dad get in your state?"*
- Czapanskiy, K. (1993) *"Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts."* *Family Law Quarterly*, 247-277.
- Downey, D. B., Ainsworth-Darnell, J. W., & Dufur, M. J. (1998) *"Sex of parent and children's well-being in single-parent households."* *Journal of Marriage and Family*, 60, 878–893.
- Downey, D. B., & Powell, B. (1993) *"Do children in single-parent households fare better living with same-sex parents?"* *Journal of Marriage and Family*, 55, 55–71.
- Eggebeen, D. J., Snyder, A. R., & Manning, W. D. (1996) *"Children in single-father families in demographic perspective."* *Journal of Family Issues*, 1, 441–465.
- Fifield, J. (2016) *"More time for dads? States weigh changes to custody laws."* The Pew Charitable Trusts.
- Grall, T. (2016) *"Custodial Mothers and Fathers and Their Child Support: 2013."*

- Hamer, J., & Marchioro, K. (2002) *"Becoming custodial dads: Exploring parenting among low-income and working class African American fathers."* *Journal of Marriage and Family*, 64, 116–129.
- Hook, J. L., & Chalasani, S. (2008) *"Gendered expectations? Reconsidering single fathers' child-care time."* *Journal of Marriage and Family*, 70, 978–990.
- Livingston, G. (2013) *"The rise of single fathers."* Pew Research Social & Demographic Trends.
- Maged, G. E., & Frankel, L. (1990) *"Gender bias study of the court system in Massachusetts"* *New England Law Review* V24: 745
- Micklin, B. M. (n.d.). *"Can a Man Win a Child Custody Case?"* hg.org.
- Mindthoof, A., Goldfarb, D., Alison Behre, K., (2019) *"How Social Science Can Help Us Understand Why Family Courts May Discount Women's Testimony in Intimate Partner Violence Cases."* *Family Law Quarterly* V53: 243-264
- Nord, C. W., Brimhall, D., & West, J. (1997) *"Fathers' involvement in their children's schools."* *National Center for Education Statistics No. NCES 98–091*. Washington, DC: US Department of Education.
- Norton, A. J., & Glick, P. C. (1986) *"One-parent families: A social and economic profile."* *Family Relations*, 35, 9–17.
- Pearson, J., Munson, P., & Thoennes, N. (1982) *"Legal change and child custody awards."* *Journal of Family Issues*, 3, 5–24.
- Santrock, J. W., & Warshak, R. A. (1979) *"Father custody and social development in boys and girls."* *Journal of Social Issues*, 35, 112–125.
- Statista Research Department, & 20, J. (2021) *"Work status of CUSTODIAL MOTHERS U.S. 2017."* Statista.
- Statista Research Department, & 20, J. (2021) *"Work status of custodial fathers U.S. 2017."* Statista
- Villicana, A.J., Garcia, D.M, and Biernat, M. (2017) *"Gender and Parenting: Effects of Parenting Failures on Evaluations of Mothers and Fathers."* *Group Processes & Intergroup Relations* 20, no. 6: 867–78.

Warshak, R. A., & Santrock, J. W. (1983) *“The impact of divorce in father-custody and mother-custody homes: The child's perspective.”* In L. A. Kurdek (Ed.), *Children and divorce: New directions for child development* (pp. 29–45). San Francisco, CA: Jossey-Bass.