

AALS: Workshop on Family Law, Plenary Session: Child Custody

Summary: Social science research should inform and help to shape family law, but conflicts and complications are inevitable given the different systems for determining and testing truth in science and the law. The potential for misunderstanding and misuse is particularly great in family law, where legal standards often are vague yet the need for object guidance is great. This presentation illustrates the issues with a brief consideration of several topics including (1) what researchers know, and don't know, about how divorce affects children; (2) evidence on the benefits and practicality of joint physical custody; and (3) several purported individualized solutions to the problems posed by the indeterminate best interests standard: parental alienation, children's wishes, and child custody evaluations. The speaker suggests that solutions to the problems of child custody may be more procedural than substantive, as is discussed further later in the conference. Still, a clear custody rule certainly would help to reduce conflict at a tumultuous time in family life.

- I. Some basic differences between law and social science
 - a. Two ways of pursuing truth: Rhetoric versus empiricism
 - i. Just because you can lie with statistics doesn't mean statistics lie
 - b. Should research (and researchers) serve the system or change it?
- II. Children and divorce: What researchers know and don't know
 - a. The light under the lamp post: Resilience
 - b. In the dark: Emotional pain
 - c. Four predictors of children's mental health
 - i. A good relationship with one parent
 - ii. Controlled parental conflict
 - iii. Economic stability
 - iv. A good relationship with the "other" parent
- III. Custody solutions
 - a. Joint physical custody
 - i. Meta-analysis and the "Chicken McNugget Problem"
 - ii. Demographics
 - b. Child custody evaluations: Application of psychological science or alternative dispute resolution?
 - c. Parental alienation: No syndrome (but sometimes a real problem)
 - d. Children's wishes: What do children get to decide in two parent families?
- IV. Procedural solutions
 - a. ADR and parental self-determination
 - b. Should the state be involved in child custody disputes?
 - i. What do courts refuse to enter childrearing disputes between married parents?