

GENDER DISCREPANCIES AND DISPARITIES IN FAMILY COURT

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ABSTRACT

The purpose of this study is to gather information and statistics, as well as to investigate the relationships between male and female dynamics in family court. More specifically, child custody discrepancies towards fathers. Data were gathered through research of statistical and evaluative articles on gender dynamics and its effects on divorce results. A special focus on disparities and asymmetries between mothers and fathers in relation to their children is considered due to the findings, which suggest that over 79.9% of the parents awarded custody are the mothers, not the fathers of the children. There have been historical legal clauses that have discriminated against fathers in favor of the mother. These practices have had a rippling effect showcased in today's modern-day family court rulings and proceeding with the statistics varying this out at an alarming rate. Although the asymmetries are fully displayed, little has been done to mitigate the outcomes. In this article, we try to analyze the different variables surrounding the family court system and its outcomes, with supporting evidence of prior findings.

CHAPTER 1: INTRODUCTION

Today's world has provided a broad series of content advocating for women and anti-discrimination policies. However, one of the lesser talked about issues that involve discrimination is fathers' rights and the growing disparity in child custody fathers face. With over 79.9% (Grall, 2020) of custody winners awarded to the mother, one can only fathom where this asymmetry originated. This research paper aims to shed light on family court disparities and discrepancies between the genders. The most significant discrepancy of all from a numerical standpoint is that of custody battles, which has historically favored one parent over the other in an irrefutable manner given public policy and precedent set from the early to mid-1800s with the "Tender Years Doctrine" and erasing fathers from their children's lives. Although reversed 100+ years later, similar to almost exact outcomes are observed in modern-day family court, with 8/10 custodial parents being mothers and fathers once again trying to voice their dissatisfaction with the family court system and its blatant favoritism still alive and well in the modern-day United States.

Family court is an openly contested area by nature, as it involves the disintegration of relationships between partners and, in many cases, their offspring. Gender dynamics affect how these relationships are formed, operate, maintain stability, and manage conflict. Unfortunately, many stereotypes in parenting have had a grip on legal policies; the question of who is fitter to parent and nurture a child is not always treated as a case-by-case scenario; instead, it is generalized to a fault, creating a vacuum in the children's lives as much as each parent.

The problem with modern-day family court and child custody rulings is that not only does it raise questions of overt discrimination against fathers, but it also does not help those it proclaims to serve, which are the children. In this article, we visit work by authors whose

purpose is to conceptualize how the children of these single-mother homes are bare out in the world. Evidence suggests that the absence of fathers has a considerable impact. This finding makes one question the extent of fallacy our modern court systems employ today by quickly analyzing some of the major leading causes of such failures that start at the relationship level between men and women. With a high-risk level of divorce in modern-day relationships, one can only ponder why even getting married. In particular, as a father, the odds may be stacked against you and the fact that the spouse initiates most divorces. This research paper serves as a map of sorts to areas that have not been considered as much as others in relation to family court and gender discrimination.

CHAPTER 2: LITERATURE REVIEW

The purpose of this literature review is to concisely explore the concepts surrounding evident discrepancies in specific sectors of family court. Understanding that marriage and divorce are common eventualities in the United States only scratches the surface of the dynamics shared between both genders in divorce proceedings. However, popular polarizing literature from both feminist and men's right activists (MRA) can be found in abundance in their perspective platforms exploring the context of how divorce settlements and child custody works in a neutral manner is of an eminent nature. Therefore, revisiting past work with credible samples of participants, understanding past and modern-day statistical patterns, and encouraging new literature and studies to be conducted are advisable. In this literature review, we sample academic peer-reviewed articles, statistical data provided by the government, individual research and surveys, and a few popular articles, all from credible sources, to try to piece together the underlying issues and factors between both genders in family court.

Fathers' Rights Group

In "Digging Beneath the Equality Language," Behre (2015) collects and links information regarding how the father's rights movement has affected intimate partner violence policies. The critique in the study states what she perceives as the context behind sexists' beliefs that the group is trying to purport. Behre (2015) states, "The law was effectively a solution created to prove a problem by shifting the public policy focus from protecting victims to questioning their motives and potentially silencing them" (p. 525). She is implying that the father's movement was "silencing" victims. This implication is not accurate given that she starts the highlighted introduction by stating that in 2004 a fathers' rights group founded in West Virginia warning of the dangers of false allegations of domestic violence, sexual assault, and

child abuse. The fathers' rights group released a study that concluded that 76% of protection order cases against fathers were unnecessary based on false allegations. Behre (2015) says that the study was exaggerated and misconstrued at best and provides no support. Behre's article goes as far as to compare the fathers' right to be an activist to white supremacy, stating: "There are similarities between the FRM and the white supremacist movement, including the level of vitriol and claims to equality through complaints of reverse prejudice" (2015, p. 543). It seems Behre is invoking the counter-racism archetype of an argument to say that fathers are just bitter and therefore are counter-discriminating against women as her response to the fathers' rights movements seeking answers and pursuit of justice, at what seems an asymmetry in family court given that close to 80% of child custody bearers are mothers. She continues her oxymoronic argument by stating: "The term "fathers' rights" is in and of itself an innocuous term implying a movement in favor of gender equity and masking the antifeminist rhetoric and agenda undermining IPV [intimate partner violence] [IPV is used by Behre rather than domestic violence in this article because she feels there is lack of clarity surrounding the term domestic violence] policy" (p. 546). If this is the case and the language of when we hear the words: "father's rights" implies an antagonist approach to "mother's rights," would that same language warfare dilemma be applied to say "feminism" of the "feminine" is "anti-masculine" or antagonistic to the masculine. Overall, this study proves why fathers' rights should be explored so that we can analyze what seems to be the problem in these court rulings and understand why they happen regardless of our biases as individuals.

Fathers as Economic Tools

Maldonado (2005), in the University of Pennsylvania Law Review's article "Beyond Economic Fatherhood: Encouraging Divorced Fathers To Parent," emphasizes not treating

fathers as just an economic tool for child support payment, as fathers have been treated since the punitive establishment of child support by the law. Instead, Maldonado explains concisely, “In light of the evidence suggesting that paternal disengagement is harmful to children, I argue that it is crucial that fathers not abandon their children after divorce” (p. 927).

Maldonado goes in depth about changing trends in today’s society mentioning how “Fatherhood is in vogue” (p. 922), basically a fashion or a trend. He further breaks down the article into three parts. Part I illustrates the law’s ability to influence social norms in the family context. Part II explores societal expectations of post-divorce fatherhood and the law’s role in maintaining such. Finally, part III examines why some fathers nurture their children while others disengage from their children post-divorce. Again, he touches on law and social norms, exploring much of the dilemmas tackled with child support, delinquency patterns, and the consequence of child support avoidance and ambiguous expectations –going back to how historically, society and even sociologists and commentators see fathers as just a bag of money. At the same token, father disengagement has also caused much of these views after divorce, given that “Sadly, only twenty-five percent of children whose parents are divorced see their fathers at least weekly. Unfortunately, those fathers who do spend time with their children are often not parenting them, but rather, are entertaining them” (p. 921). Maldonado (2005) explores many terms given to fathers, such as “deadbeat” (p. 1008) or “Disneyland Daddies” (p. 948) helping paint a precise picture of where this battle seems to head when it comes to father involvement with their children.

Custody Statistics

The article by Grall (2020), published by the U.S. Census Bureau, explored statistics about child custody cases across the United States. Some of the highlights included what one can

perceive as the chaotic nature of marriage and divorce relationships, with finding that included that 26.5% of children in 2018 had a parent living outside the household, which added layer after layer on the dynamics of how these concepts affect children, given that about 30.1% lived in poverty. In contrast, 11.1% of those who lived in households with both parents present making, showing a 300% likeliness that children in single-mother homes lived in less than optimal conditions. Other statistics include how only about 45.9% of those expecting child support received them at full, ranging from 62.2%. Grall (2020) collected quantitative statistics from demographic characteristics, poverty, employment status, and custody. This article illustrated the statistics surrounding child custody, the demography, and objective results inquiries and surveys of who possesses financial support responsibilities and to what extent. Statistical data was collected from 1994-2020 with statistics that detail surrounding circumstances for both the children and custodial parents relating to financial support and custody, with 79.9% of custody holders being mothers, as well as other underlying factors and its own given data. The article stimulates an interest in the effectiveness of family court and how it affects parents and children.

Marriage and Divorce

Chun and Sohn (2009) explored how the pressure to stay married in many industrialized countries, such as Korea, has begun to disappear, with marriages being terminated at a new pace. Macro and micro levels have been studied through the life course and structural factors with demographic variables with other sociological research tied in (macro), while interpersonal and psychological variables (micro) related to marital disruption were also further explained. The study concludes with several surveys that the reports of couples considering divorce have ranged from 30% to 60% during the marriage duration.

Chun and Sohn (2009), just as it is in America with divorce rates rapidly growing and reaching heights close portraying nearly half of the marriages ending in such, the average divorce rate for men and women in Korea is 43.2% and 39.5%, respectively, with 87% of all divorce cases dealt in a consensual manner, the nature of child custody results and surrounding circumstances; however, is not presented. The authors note that many of the causes of divorce are “marital unhappiness and personal accounts such as alcoholism, drug abuse, infidelity, physical or mental abuse, sexual incompatibility, and financial problems” (Cleek & Pearson, 1985; Gottman, 1994; Levinger, 1966, as cited in Chun & Sohn, 2009, p. 777). The studies delve into gender dynamics of such phenomenon and explore the different reasons why men and women opt out of the marriage, stating that “while women tend to perceive relationship factors as the cause of divorce, men are more likely to blame themselves for the divorce or to attribute the divorce determinants to external factors such as employment problems and infidelity” (Chun & Sohn, 2009, p. 777). Much of the study highlights many shared similarities across developed world nations regarding the gender dynamics that come into play between men and women, with more feedback from women than men on the concepts that have terminated the relationship.

Curtin and Sutton (2020) use a quantitative method by collecting the information nationwide, highlighting the national marriage and divorce rate in the United States for the cumulative years from 1900 to 2018. The report illustrates marriage and divorce rates from an extensive timeline. In addition, they correlate marriage with positive health outcomes and longevity. Finally, the article utilizes data from the U.S Census Bureau, National Center for Health Statistics, and National Vital Statistics System to further paint a picture of marriage trends.

Legal Precedent and the Fathers’ Rights Movement

Dinner (2016) “The Divorce Bargain: The Fathers’ Rights Movement and Family Inequalities” provides legal precedent and history to the fathers’ rights movement, filling in a void to illustrate how various groups came to play their part in reconfiguring marriage in the late twentieth century. Her article focuses on “how the advent of sex neutrality within private family law has reinforced gender and class inequalities” (Dinner, 2016, p. 83), claiming that fathers’ rights activists, although advocating for equality in divorce and child custody laws, never wholly relinquished their ideal of a marital bargain premised upon gender differentiation and hierarchy. Deborah (2016) claims that Fathers’ Rights Activist (FRA) “actively opposed liberation from subordination within the family” (p. 84). Opposing gender equality in family law, due to that one can conceive as cherry-picking smarts that feminist groups pick themselves in order to protect women. Nevertheless, it seems she opposes it when it is done for men. Much of it is done elegantly, showcasing many prevalent themes in today’s custody and child support hearings. Much like Maldonado (2005), this article is divided into three parts: Part I discusses how men’s rights theorists and activists sought to restore the marital bargain by restructuring the public and private family law system. Part II examines how the fathers’ rights group proliferated at the local and state levels and how it began to shape legal contests in courts and state legislatures.

Furthermore, Part III examines how the fathers’ rights movement played a part in consolidating the divorce bargain during the 1980s. Again, Dinner (2016) makes a great case and point, although her article seems to lack a male perspective on her takes in many of the issues. Overall, the demonization of male-female dynamics, which portrays in a general manner fathers as power-hungry authoritarians, is outdated and needs revision and an updated take from modern-day marriages and divorces.

Modern Marriages and Divorce

Curtin and Sutton (2020) help gauge the scope of how prevalent marriage and divorce are in the United States from an objective perspective. Close to half of modern marriages end in divorce. Considering the numerical reality, the data collection methods are transparent, with polls, surveys, and public records acting as tools to identify relevance to pull together numbers in their illustration. This article acts as a quantitative form of research from the National Center for Health Statistics (NCHS), part of the Center for Disease Control and Prevention (CDC), highlighting the national marriage and divorce rate trends in the United States for the years 2000-2020. The report includes feedback from 45 reporting states, including Washington, D.C. Current sample of marriages at the time (2020) is that of 1,676,911 marriages from which the data is derived. The NCHS and U.S Census Bureau (Grall, 2020) continue to illustrate a neutral platform when discussing numbers and asymmetries with many gaps to fill on explaining the rationality of why marriage and divorce rates are occurring to such a high level in the United States, leaving much to speculate on the status of the nuclear home.

Finley and Schwartz's (2007) study, "Father Involvement, and Long-term Young Adult Outcomes: The Differential Contributions of Divorce and Gender," investigate father involvement. The study reports the psychosocial outcomes of a diverse group of 1,989 young adults. Finley and Schwartz (2007) present a very distinct perspective from feminist authors mentioned in this project, such as Kelly Behre (2015) and Deborah Dinner (2015), who were previously mentioned and do not consider the positive impact that father involvement has on children. While fathers have been stigmatized as second-class parents historically, they are vital to a child's development. Finley and Schwartz (2007) make it clear through research, surveys, and commentary from other studies that this is indeed the case. Issues such as the asymmetry

displayed in family court were tackled, shining light on concepts such as the Stanford divorce study by Maccoby and Mnookin (1992; as cited by Finley and Schwartz, 2007) “where it was found in 2/3’s of the cases where the father disagreed with the mother’s request for solo custody, the father requesting joint custody was overruled by the judge, and the mother was awarded sole custody” (p. 575), noting other studies such as (Thomson, 1994; as cited in Finley and Schwartz, 2007) where it is stated that fathers have the pressure to negotiate with their wives over custody before the court and come to a settlement, due to that once it is brought to a court trial, their chances exponentially diminish. The results of this study by both authors show that participants from divorced families desire more additional father involvement than those from intact families (Schwartz & Finley, 2005), with a more predominant desire from female children wanting their fathers to be present. The study notes much of the effects of these divorces and custody settlements on children and how the father's absence is an issue that should be fixed, with backup data and research concluding in various negative connotations and distress we as a society should try to tackle.

Separated Fathers

Flood (2012) delves into the feelings in the article “Separated Fathers and The ‘Fathers’ Rights’ Movement.” Flood (2012) states the propound feelings of anger, grief, and distress they experience after the culmination of their relationships with their partners and children –all of which have led to the emergence of the Fathers’ Rights Movement. Although many men find comfort in these groups just as feminists do in their groups, they can fall into a pattern of negative behaviors to achieve “fairness” or perceived fairness in the family court system. One can argue that both genders employ very destructive and manipulative litigation strategies; however, numbers show that women win most of these divorce and custody battles, with 79.9%

of custody holders being mothers (Grall, 2020). Flood (2012) describes the fathers' rights movement as: "defined by the claim that fathers are deprived of their 'rights' and subjected to systematic discrimination as fathers and as men, in a system biased towards women and dominated by feminists" (Flood, 2012, p. 3) take the spotlight in this research. It is no mystery that this group acts as a response to the feminist agenda. The author touches on many concepts and beliefs of discrimination held by separated fathers. The author states, for example, that: "three-quarters of fathers in Braver and Griffin's (2000) examination thought that the legal system favored mothers.... fathers believed that the legal system was biased against them, for example, because their ex-partners were granted custody despite being drug using, violent, or unfaithful" (Laakso & Adams, 2006; as cited in Flood, 2012, p. 5). Much of the data and surveys act as hearsay, particularly in divorce settlements, due to the confidential nature of these outcomes. Many individuals opt to settle the case before it reaches trial, fathers in particular. Overall, the author tries to dissuade fathers from joining the fathers' rights movement and find better alternatives without disregarding their lived experiences and other overarching concepts.

Gender Dynamics

McClintock and Sheehan (2019), in "Race, Gender, and Social Exchange in Young Adult Unions," explore a concept that might be able to intertwine gender dynamics and how we choose our romantic partners. Partner selection has much to do with underlying dynamics that lead to marriage and divorce. Much like the child custody asymmetries, there are various gender-asymmetric or race-asymmetric exchanges regarding partner selection, according to various studies from this article. The authors dissect how women, for example, value men's socioeconomic status (just as much of the court system values this on fathers).

In contrast, men value women's beauty. McClintock and Sheehan (2019) shine a light on how women choose in general economic co-dependency on men in these exchanges by trading "an advantage in beauty, for men's relative advantage in socioeconomic status (p. 74) women trade beauty, sexual access, and housework for ... racial and economic status" (p. 72) (referring to interracial and gender dynamics). Tying in how "despite trends towards equality, male advantage in income (he earns more) and disproportionate female housework (she does more) remain normative" (McClintock & Sheehan, 2019, p. 74), with the only unclear mark being how paid and unpaid home labor differs by a couple's race-gender combination and whether it is indicative of asymmetric exchange. The only relevant variable in housework vs. paid work is income; regardless of gender, whoever makes more money does less paid housework. All of these ties to many of discussed topics in the feminist articles by the authors opposed to the Fathers' Rights Movement, pointing fingers towards men instead of understanding how much of the dynamics of paid vs. unpaid labor, exchange of beauty for resources, is chosen by both men and women alike.

In a study by Rosenfeld for the American Sociological Association (2015), important information regarding gender dynamics was presented at the Annual Meeting. The gender dynamics presented mentioned who typically files for divorce in a modern-day heterosexual relationship were brought to light by Rosenfeld by stating he "found that women-initiated 69 percent of all divorces, compared to 31 percent for men" (para.4). The article further comments that "[s]ocial scientists have previously argued that women initiate most divorces because they are more sensitive to relationship difficulties" (para. 5).

Successful vs. Unsuccessful Marriage

Teachman (2002) proposed that perhaps a more significant factor in successful vs. unsuccessful marriage is the woman's ability or inability to bond. The study showed that the more premarital sex a woman had and more partners she had, the less ability to bond she would have in contrast to less premarital sex with fewer partners. Taking data from author Michael Rosenfield, an associate professor at Stanford University, the article serves a specific purpose: to illustrate a picture discussing mathematical figures of who typically initiates divorce in heterosexual marriages and non-marital relationships in the United States. Data is derived from a 2009-2015 survey considering 2,262 adults ages 19-94. In addition, the article discusses professional opinions, illustrating possible reasons for such asymmetry.

And the Favorite Is – Mothers Over Fathers

Teitelbaum (1994) reviews the work of Maccoby and Mnookin, establishing credibility upon these authors in his introductory paragraph by stating: "What we do not know about divorce and its effects would fill a large bookshelf. *Dividing the Child*, the fortunate collaboration of one of this country's finest psychologists, Eleanor Maccoby, and one of its finest academic lawyers, Robert Mnookin, fills an important space on that shelf" (p.1808). Teitelbaum continues to praise and compare their work throughout his academic review by giving us more insight into how other precedent studies are lacking by providing only partial perspectives, a topic often employed by feminist authors to discount the male perspective in family court rulings and proceedings. Teitelbaum further brings this point up by pointing at some of these authors by names, such as Leonore Weitzman's research on child custody and the economic sequelae of divorce, and others, such as Judith Wallenstein and Mavis Hetherington with their insufficient

reach of a larger population sample. Maccoby and Mnookin's work is credible because it samples a larger population.

Teitelbaum (1994) also analyzes contemporary data, such as recent explanations during the time of his research that tried justifying the explanations for a policy that has favored mothers over fathers to parent children, explaining that

...recent explanations have been empirical in tone. The importance of continuity of care to appropriate child development called for placement of children with the parent with whom he had formed the strongest bond. Typically, that parent was the mother. This emphasis also justified disfavoring joint and divided custody because those arrangements threatened the stable living arrangements and emotional ties necessary to the young child's development. (p. 1808)

Teitelbaum discredits such justifications for maternal preference stating that they have fallen out of favor, particularly in California, where Mnookin and Maccoby's studies are based, while ignoring the contributions fathers can make to the child and imprisoning mothers in traditional role assignments. Teitelbaum gives credit to the authors and acknowledges that adopt a version of gender equality, a view that emphasizes the even distribution of burdens and particularly of custodial responsibilities and opportunities.

Divorce Settlements

In "Gender Difference in Satisfaction With Divorce Settlements," Sheets and Braver dive into topics of relevance and importance when analyzing gender dynamics and discrepancies in family court, and that is by carefully revising each gender's level of satisfaction and lack of it when it comes to divorce and settlements. The apparent is clear as stated by Sheets and Braver: "Women show better emotional adjustment after divorce... perhaps because they see themselves as the initiator... men on the other hand, are often overcome by the divorce, showing poor adjustment and greater morbidity...Further, because women typically reside with the

children...they may experience an accentuation of their paternal self after divorce... men, in contrast, may sense a devaluation of the father role due to part time parenthood” (p. 337). The article shows relevance due to its parallels with modern times, as mentioned previously, there is an 8/10 dominance by mothers in the realm of custody (Grall, 2020) to this day. Fathers are often disgruntled and feel dissatisfied with our court system. Children and mothers experience a significant financial/economic decline after divorce. It is evident throughout the article that men and women are affected differently and show varying levels of dissatisfaction in different realms. Taking financial circumstances away makes men much more negatively affected by divorce than women—as their paternal role is erased very slowly as time progresses post-settlement.

The Red Pill

In the documentary “The Red Pill” (2016), Jaye explores a long-awaited perspective and journey into many issues facing fathers in family court. This piece of media illustrates a feminist falling into a never-ending rabbit hole of society, feminism, and the men’s rights movement. Director-producer Cassie Jaye explores both sides of the arguments regarding custody battles and divorce settlements. While interviewing a father, she gets firsthand testimony on the hardships faced by the paternal figure when it came to custody and court rulings (42:00). Where the father explains that he did not want a child due to her temper issues after eventually fathering a child, she would repeatedly threaten him about not seeing his child if he breaks up with her. In articles by Sheets and Braver and Maccoby and Mnookin, these behavioral patterns are touched upon when tackling how the father’s “paternal role is sequentially erased” (p. 1808) as custody and visitation rights slowly become one-sided the longer time goes.

In addition, the documentary tackles various other issues related to men as well as the silencing of prominent feminist voices that stood up for boys and their fathers; it goes against the

prominent feminist agenda of today, as riots and boycotts occurred in a couple of venues such as the Australian premiere. The Palace Cinemas, with chief executive Benjamin Zeccola, told *Guardian Australia* that they decided to cancel the screening because of an “upset significant proportion of customers...it was offensive to a large section of our core audience” (Reed, 2016, para. 7). This documentary by Cassie Jaye opens the eyes of their audience to unpopular opinions and views that must be explored when analyzing gender discrepancies not only in family court but in society at large. Jaye (2018) discusses her views in *Meeting The Enemy: a Feminist Comes to Terms with the Men’s Rights Movement*.

CHAPTER 3: METHODS

This research paper is of quantitative, descriptive, and speculative design. During this research, I examine specific data ranging from the Center for Disease and Control (CDC) to the U.S Census Bureau statistics alongside various articles from feminist, neutral authors, and men's right activist (MRA) on the subject of the Fathers' Rights Movement and child custody research. The Senior Capstone critiqued the author's writing based on their ideological fallacies and examined the data and opinions they purport. The study is based on anecdotal and statistical symmetries and asymmetries on record that depict gender roles beginning to shift from traditional to more contemporary practices, yet many of which remain the same as part of societal stigmas—much of the data given traces back from as early as the 1900s to modern day. The grand majority of this research is done utilizing a combination of the Purchase College Library resources such as Academic One File, Academic Search Complete, EBSCO host, Google, Google Scholar, and the Nexis Lexis legal database. Additionally, a documentary by Cassie Jaye, "The Red Pill," was the catalyst that began my quest for information on this topic.

The following research questions were the pillar to guide my research:

RQ1. *What is the biggest negative gender asymmetry in Family Court?*

RQ2. *What are the reasons for such asymmetry?*

RQ3. *How does the data bear this out?*

I chose this topic of research based on anecdotal and statistical symmetries and asymmetries on record that I have observed while in engagement with my groups of friends, family, and known relatives. In a society so obsessed with rights vs. privileges, with one voice being much louder than the other due to the expected assumption that its triviality is a proponent of power dynamics in gender relations, I question if all sides are aware of the disparities against

the group whom we have assumed to have all the power in this little segment of life marriage, divorce, and family court. Much of the articles I ran into from the scholarly perspective are based on feminist viewpoints, with even the more neutral voices leaving out possible theories for why fathers have become such an expandable relic in marriage, divorce, and the family court system general. Attempts to discredit the fathers' rights groups and movements are on plain display, and in this Senior Capstone, I critique positively and negatively all sides of the equation. After watching *The Red Pill* (Jaye, 2016), which depicts a feminist author diving into the MRA world, I find topics to discuss and analyze, with the biggest one being child custody disparities. I analyze and compare contrasting articles with the statistical and quantitative data available to hypothesize and explain contributing factors and influences. I hope this topic can be further studied and analyzed.

CHAPTER 4: RESULTS

Gender dynamics have led to discrepancies and disparities in family court. From the evident asymmetries in child custody to child support cases, they lean towards one gender. Many other factors specific to family court, such as other asymmetries in which gender gets the ball rolling in initiating the divorce, were also observed. Past precedent in outright discriminatory doctrines and practices such as the “Tender Years Doctrine,” which was later reversed, still seem to have a grip on societal parenting stereotypes –leaving crippling adverse effects on child development. A growing number of single-mother homes has led the way to negative statistics of future barriers to the children missing the fathers in the home.

RO #1: What is the biggest negative asymmetry in Family Court?

Child custody has the biggest negative asymmetry in terms of balance and outright repercussions for the child, with over 79.9% of child custody winners being mothers and not fathers, according to the US. Census Bureau. With 26.5% of the children in 2018 having at least one parent living outside the household. Over 30.1% of these children lived in poverty, in contrast to only 11.1% that lived in poverty with two-parent households and 89.9% living in moderate to excellent conditions. Single motherhood homes made it 3x or 300% more likely that children ended up in such conditions, unlike single father homes, who lived relatively much better. Other asymmetries and disparities include only 45.9% of those expecting child support receiving them fully, with 62.2% percent maximum.

According to the (CDC) Centers for Disease Control and the U.S. Census Bureau, nearly half of modern-day marriages in the United States lead toward divorce. The current sample from 45 states, including Washington D.C., in 2020 is 1,676,911 marriages. That may mean that half will divorce and may be involved in a custody court battle.

According to a Stanford divorce study by Maccoby and Mnookin (1992), 2/3's of the custody cases were disagreed upon by the fathers, all of which later requested joint custody just to be overruled by the judges. In addition, 75% or 3/4's of fathers in the Braver and Griffin (2000) examination thought the legal system was biased against them.

RO #2. What are the reasons for such asymmetry?

There are a multitude of reasons for such asymmetry and its reasoning. The biggest seems to be by past precedent, the "Tender Years Doctrine." This legislation was the biggest perpetrator in the past interpretation of the law, with such a concept starting in the law in the late 18th century by a prominent British feminist, journalist, and social reformer author Caroline Norton. The proposal was that women should be given custody of their children in the event of divorce; she worked with politicians and convinced British Parliament to pass the law that protected mothers' rights; such enactment was called the Custody of Infants Act of 1839. The legislation initially gave a level of discretion to judges during child custody cases and gave the mother presumption for custody of young children under the age of 7. Later the British Parliament took even further in this presumption and extended its authority until the child was 16. The "Tender Years Doctrine" was not scrapped in the United States and Europe until the latter of the 20th century.

In parts of the United States, the Tender Years Doctrine was later questioned in some courts to go as far as being ruled against the Equal Protection Clause or the 14th Amendment in the Constitution. Feminist authors and historians blame stereotypes on societal constructs such as the patriarchy and misogyny, which is dumbfounded by the fact that these settlement cases have benefited mothers and not fathers who actively seek, at a minimum dual custody of their children. Men's Right Activists (MRA) Furthermore, active fathers, on the other hand, blame

systematic discrimination and precedent against them, such as that exhibited by the feminist's very own "Tender Years Doctrine," although supposedly overturned, still has yet to fix such asymmetries in modern-day family court as the statistic by any source indicates.

RO #3. What can we do to help fix this issue?

In order to begin to fix such issues, it is vital to create awareness of how children are negatively affected by the lack of their father figure. As demonstrated by Maldonado (2005), having single-motherhood homes is not a win for children. Maldonado states: "Paternal disengagement is harmful to children" (p. 927), and his findings sustain that ¼ or 25% of children whose parents are divorced see their father at least weekly. Finley and Schwartz (2007) stated that children face behavior problems, school adjustment, and decreased socio-economic safety shortly after the divorce. According to a national survey (Marquardt, 2005), 61% of young adults from divorced families, compared to only 31% of those in intact families, agreed to the statement "I often missed father" (p. 24), with a predominant desire from female children and young adults wanting for their fathers to be present.

A closer look into family court practices and rulings and a need to plunge into divorce settlements (most of which remain confidential) might be needed for further examination. The stigmatization of fathers as just a check or wallet and nothing more is hurtful to both the children involved and the fathers who cling to the hope that this disparity to be mitigated.

CHAPTER 5: DISCUSSION

The results indicate that 79.9% of custody winners are mothers (U.S Census Bureau), with 69% of divorces in the United States being started by women, according to the American Psychological Association study by Michael Rosenfield, compared to 31% of men. The Stanford divorce study by Elanor Maccoby and Robert Mnookin (1992) found that 75% of fathers disagreed with the mother's request for sole custody from a sample of 1,100 families who had filed divorce in San Mateo or Santa Clara County, California, 75% of fathers in the Braver and Griffin examination (2000) thought the legal system is biased against them. The Tender Years Doctrine or Custody of Infants Act of 1839 outright discriminated against fathers, granting custody to the mothers until the child grew from 7-16 years of age as ratification went on. The divorce rate in historical context has increased compared to its index from the early 1900s, in particular during events of crisis, such as both world wars and the great depression, where families were most likely to stay together than separate.

Interpretations

In line with statistics put forth by the U.S Census Bureau, Center for Disease and Control, as well as studies conducted by the American Psychological Association, Stanford Studies, and Michigan Law Review, it can be interpreted that child custody precedent as well as modern practices in divorce and child custody are not favorable to the father in terms of equitable parenting and has a long history of discrimination. Furthermore, the results of these discriminatory practices negatively affect the children, with various studies showcasing the hurdles kids face when their father is absent from their development.

Implications

It is implied that women are the ones that take the most action when initializing the spiral of events that lead to such discrimination for the fathers when they file for divorce. However, contradicting articles lean towards the side of the woman while not indulging in research of the male perspective on such matters. Modern-day assumptions are that the mother is breaking from the relationship due to unhappiness or fault on the father's side. However, conflicting reports on intimate partner violence hint that both parties tend to perpetrate in one form or another physical, emotional, and psychological abuse in relatively comparable matters. Some reports state that both parents agree that the mother is to be awarded primary custody (51%) according to Lackey and Lackey PLLC. However, other research by peer reviewed works such as that of Maccoby and Mnookin indicate that fathers do not agree with custody practices.

Limitations

Due to the nature of confidentiality in divorce settlements, and how the great majority of them are decided and negotiated before it reaches trial, much of the data that can break down the specifics of how the deals are often brokered, and who it benefits –it is of extreme difficult to paint a better picture of the disparities and discrepancies with the system emplaced today. The only clear and concise indicators of potential discrimination are the asymmetries presented in the form of statistical inequalities in child custody and support outcomes and research on divorce initiations.

Recommendations

A long survey with structured questions to develop a sense of clarity with divorcees and the surrounding circumstances and outcomes would be recommended if manageable. Sampling a large number of participants that meet the criteria form interview and disclosure of divorce and

child custody settlement would be ideal. The biggest issue regarding expanding the data on the specific variables and circumstances revolving around managing a quantifiable equation to measure specific details is the confidential nature of divorce settlements. Due to that no public record is found except for specific samplings such as that done by Maccoby and Mnookin in a large scale, many of the studies have too much of a small sampling to accurately illustrate or represent divorce discrepancies encompassing all of the United States. Even Mnookin and Maccoby's data, although it has the highest number of participants, shows how difficult it could be to get participants that meet criteria for the specific study. Of roughly 3,000 pre-divorce families, only 1,100 met the criteria and participated in the study. The more access we have to consensual disclosure of detail by all parties, the more information we have to work with in an updated and contemporary manner, in this new year 2023.

REFERENCES

- American Sociological Association (2023, February 24). *Women more likely than men to initiate divorces, but not non-marital breakups—American sociological association*.
<https://www.asanet.org/women-more-likely-men-initiate-divorces-not-non-marital-breakups/>
- Behre, K. A. (2014). Digging beneath the equality language: The influence of the fathers' rights movement on intimate partner violence public policy debates and family law reform. *William. & Mary Journal of Women & the Law*, 21, 525-602.
- Chun, Y.J., & Sohn, T.H. (2009). Determinants of consensual divorce in Korea: Gender, socio-economic status, and life course. *Journal of Comparative Family Studies* 40(5), 775-789.
- Curtin, S. C. & Sutton, P.D. (2020) Division of Vital Statistics. Marriage Rates in the United States 1990-2018.(Report NCHS Health E-Stat).
- Dinner, D. (2016). The divorce bargain: The fathers' rights movement and family inequalities. *Virginia. Law Review*, 102, 79-152.
- Finley, G. E., & Schwartz, S. J. (2007). Finley, G. E., & Schwartz, S. J. (2007). Father involvement and long-term young adult outcomes: The differential contributions of divorce and gender. *Family Court Review*, 45(4), 573-587.
- Flood, M. (2012). Separated fathers and the 'Fathers' Rights' Movement. *Journal of Family Studies*, 18(2–3), 235–345. <https://doi.org/10.5172/jfs.2012.18.2-3.235>
- Grall, T. (2020, May). *Custodial mothers and fathers and their child support: 2017*.(Report Number P60-269). United States Census.
- Jaye, C. (2018). *Meeting the enemy: a feminist comes to terms with men's rights movement* [Video]. TED Conferences. <https://youtu.be/3WMuzhQXJoY>

- Jaye, C. (Director). (2016) *The Red Pill* [Documentary].
<https://www.youtube.com/watch?v=Q7MkSpJk5tM&t=5s>
- Maccoby, E. E., & Mnookin, R. H. (1992). *Dividing the child: Social and legal dilemmas of custody*.
Harvard University Press.
- Maldonado, S. (2005). Beyond economic fatherhood: Encouraging divorced fathers to
parent. *University of Pennsylvania Law Review*, 921-1009.
- McClintock, E. A., & Sheehan, S. Z. (2019). Race, gender, and social exchange in young adult
unions. *Sociological Spectrum*, 39(2), 71-92.
- Reed, B. (2016, October 26). The red pill: Melbourne cinema drops men's rights film after feminist
backlash. *The Guardian*. <https://www.theguardian.com/film/2016/oct/26/the-red-pill-melbourne-cinema-drops-mens-rights-film-after-feminist-backlash>
- Schwartz, S. J., & Finley, G. E. (2005). Fathering in intact and divorced families: Ethnic differences
in retrospective reports. *Journal of Marriage and Family*, 67, 207–215.
- Sheets, V. L., & Braver, S. L. (1996). Gender differences in satisfaction with divorce
settlements. *Family Relations: An Interdisciplinary Journal of Applied Family Studies*, 45(3),
336–342. <https://doi.org/10.2307/585506>
- Teachman, J. D. (2002). Stability across cohorts in divorce risk factors. *Demography*, 39(2), 331-351.