Effects of Decision-Maker Gender on Child Custodial Decisions in Cases Involving Child Abuse

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ABSTRACT

Attitudinal and demographic variables have the potential to influence the outcomes of dependency court cases and play an important role in determining custodial rulings. In the present chapter, we summarize the existing body of research exploring the effects of participant characteristics on rulings in dependency court cases involving allegations of child abuse and neglect. We focus primarily on the impact of participant gender on decisions regarding whether an abusive parent who had lost child custody be awarded custody of her child in the future. We draw from previous research, which reveals that women tend to value children more than men and that women (compared to men) tend to render more pro-child verdicts (guilt) in cases of child sexual abuse. Thus, we expect that women, as compared to men, will similarly perceive abuse and neglect as more severe and detrimental to the well-being of a child. In turn, we expect that women, as compared to men, will be less likely to recommend that a previously abusive parent regain custody over her child. We expect that this effect will be explained by men's lower threshold level for safe and appropriate parenting behavior. Finally, we present novel empirical research we have conducted testing these hypotheses. Specifically, we presented men and women participants with a vignette depicting a neglectful mother who had lost custody of her child, but who was making strides toward regaining custody. Supporting our hypotheses, women were less likely to grant the mother full custody of the child, as compared to men. Moreover, women were more likely than men to believe that the previously neglectful mother was an incapable parent.
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Numerous custody cases reach dependency court each year. Few of these cases are straightforward, and many accompany allegations of abuse and neglect. Because custody rulings are often emotional, and certainly involve serious life-long consequences that affect both the parent and child, it is imperative and a legal requirement that these rulings be unbiased and uninfluenced by prejudicial emotion. Yet, social science research repeatedly reveals the existence of personal prejudice and its effects on behavior and decisions. It is, therefore of great value to explore factors that predict outcomes in custodial cases, which often include emotionally laden legal decisions. Indeed, numerous benign characteristics of the parents influence custodial rulings, including, for instance, physical appearance, tattoos, and a father’s post-divorce living arrangement (Kunin, Ebbesen, & Konečni, 1992; Denne, Wornica, Meyer, & Stevenson, 2013). Moreover, characteristics of decision-makers have the potential to affect child custodial decisions as well. In the current chapter, we explore the possibility that decision-maker gender shapes evaluations and subsequent decisions in child custodial cases. We begin with a review of research exploring predictors of child custodial decisions generally, followed by a review of research exploring the effects of participant gender on legal case judgments in child abuse contexts. Finally, we present our own empirical data directly exploring the effects of decision-maker gender on child custodial decisions in a case involving allegations of child neglect.

Factors Shaping Child Custodial Decisions

A large body of research explores how characteristics related to jurors and defendants shape legal decisions (for a review, see Devine & Caughlin, 2014). Yet, comparatively little research has explored parent characteristics and participant characteristics as predictors of child
custodial decisions. Although limited, emerging research has documented various factors that have the potential to shape child custodial decisions. For instance, legislation and policy directly limit the parental rights of parents with mental illness when they are involved in a child custodial case. Specifically, more than 40% of all 50 states limit the child custody rights of parents who have a mental illness (see Hemmens et al., 2002 for a review). A more recent study revealed that eight states and the District of Columbia take the parent’s mental and physical health into consideration in regards to custody decisions (Child Welfare Information Gateway, 2013). Although considering parental mental and physical health in a child custodial case might be in the best interest of the child, future research should explore the possibility that the effect of parental mental health on child custodial decisions is driven by negative stereotypes and myths associated with mental illness. In support, there are well-documented negative stereotypes associated with mental illness, including dangerousness, laziness, and the belief that the person suffering from a mental illness somehow caused it or brought it upon themselves (Corrigan & Watson, 2002; Hocking, 2003; Aromma et al., 2010; Aromma et al., 2011). These stereotypes have serious potential implications for parents involved in a child custody case.

A few studies have explored the potential for extra-legal characteristics related to the parent to shape child custodial decisions. For instance, Kunin and colleagues (1992) examined 282 custody investigations from 1982 from the San Diego County Superior Court to explore the actual effects of these variables in real-life custodial decisions. The researchers assessed and coded information about parents involved in dependency court cases, including demographic information, counselor notes, and psychiatric evaluations. When a mother was rated “high” in physical appearance, social skills, and social adjustment by a court appointed counselor, she was
more likely to receive full custody than if she was rated as “low” in those characteristics (Kunin et al., 1992).

Only one study has included an experimental manipulation of characteristics associated with a mother involved in a child custodial dispute. Specifically, Denne, Wornica, and Stevenson (2014) experimentally manipulated the presence of a mother’s visible tattoo to explore the impact of tattoo presence on participants’ likelihood to grant her full custody. Participants read a vignette depicting a mother involved in a custodial dispute over her child. The mother was described as generally responsible, but that she had engaged in isolated behaviors indicating poor parenting. Participants were shown one of two photographs of the mother, either with or without a simple floral tattoo. In line with hypotheses, participants were marginally less likely to allocate full custody to the tattooed mother as compared to the non-tattooed mother, and perceived the tattooed mother as a significantly less capable parent than the non-tattooed mother – a belief that significantly mediated participants’ tendency to deny her full custody. These findings are consistent with research indicating that women with tattoos are perceived to be less attractive, less religious, psychologically unstable, and financially insecure, (Swami & Furnham, 2007; Martin & Dula, 2010; Braverman, 2012) -- all factors that have been shown to greatly reduce a mother’s chance of receiving custody (Chesler, 1991; Efran, 1974).

**Gender Differences in Reactions to Child Abuse**

Although there is a small body of research exploring parental characteristics that predict outcomes in child custody cases, currently little research has explored participant characteristics – namely participant gender – as predictors of decisions in child custody cases (i.e. Chesler, 1991; Warshak, 1996). We expect that participant gender will emerge as a predictor of child custodial decisions, particularly when child abuse is involved. Specifically, we expect that
women will be less likely than men to award child custody to a previously abusive parent. Next, we turn to research and theory highlighting participant gender differences in reactions to cases involving child sexual abuse, child physical abuse, and child neglect. We use these studies to provide the theoretical framework for our own empirical research, which we summarize in this chapter.

In general, in cases involving child sexual or physical abuse, women tend to make more pro-child victim rulings than men and tend to make more case judgments that lead to defendant convictions (Bottoms et al., 2011; Dukes & Kean, 1989; Bottoms et al., 2007; Bottoms, 1993; Bottoms et al., 2014). Such gender differences are most strongly and frequently demonstrated in cases involving child sexual abuse (for a review, see Bottoms et al., 2007), yet they extend to cases involving child physical abuse and child neglect as well (Dukes & Kean, 1989).

**Child Sexual Abuse**

Women tend to believe children are more harmed by sexual abuse, and believe sexual abuse to be more severe and detrimental than men perceive it to be (Bornstein, Kaplan, & Perry; 2007; Bottoms et al., 2014; see Bottoms et al., 2007 for a review). A series of recent studies conducted by Bottoms and colleges (2014) further corroborates and explains these gender differences. Participants in three separate studies were presented with a vignette depicting an incident of child sexual abuse, varied in victim age, case strength, and abusive situation. Results, based on university and community samples, revealed that women consistently made more pro-victim rulings than men, were more empathic towards child victims, believed child victims’ disclosures of abuse more, attributed higher levels of guilt and responsibility to the defendant, and attributed less responsibility to the child victim.

**Child Physical Abuse and Neglect**
Do gender differences in reactions to child sexual abuse extend to child physical abuse and neglect? Although the literature is mixed, there is some evidence that they do. Hansen and colleagues (1997) assessed psychologists’ and social workers’ perceptions of the seriousness of child abuse. Participants read a vignette depicting child physical abuse, neglect, psychological maltreatment, and sexual abuse. Female participants who read a vignette depicting child sexual abuse were significantly more likely to report the sexual abuse than were male participants. Although no gender differences emerged in reporting and severity ratings among the vignettes depicting less severe child neglect, physical abuse, and psychological maltreatment (Hansen et al, 1997), other research does reveal gender differences in those contexts. For instance, Dukes and Kean (1989) presented participants with incidences of child psychological abuse, neglect, and physical abuse. Participants then answered a series of questions assessing the extent to which they believed the incidents were abusive. Women viewed all the scenarios as more abusive than did male participants. In a similar study conducted by Bornstein, Kaplan, and Perry (2007), participants read vignettes depicting severe sexual abuse, mild sexual abuse, or physical abuse. Participants then answered a questionnaire assessing the severity and likelihood of reoccurrence of abuse. Results revealed that women tended to view both sexual and physical abuse as more severe, and more likely to reoccur, as compared to male participants (see also Howe, Herzberger, & Tennen, 1988). In a more recent mock trial study conducted by Bottoms and colleagues (2011), participants read a detailed scenario depicting a father accused of smothering his three month old baby to death with a towel out of frustration over the baby’s incessant crying. Women, as compared to men, were more likely to rule in favor of the prosecution, suggest a harsher punishment for the defendant, and value the infant as a unique being. These effects of gender were mediated by men’s greater empathy, sympathy, and
similarity felt toward the defendant. These findings corroborate those of previous studies, suggesting that the gender differences evidenced in child sexual abuse cases also persist in child neglect and physical abuse cases. While no studies to date have explored whether gender differences emerge in participants’ judgments in child custodial cases, it is reasonable to expect that similar gender differences will emerge, particularly when participants are asked to render decisions regarding withholding custody of a child from an abusive parent.

**Understanding Gender Differences in Child Abuse Cases**

Although well-established gender differences in reactions toward child abuse consistently emerge, it is important to understand the psychological underpinnings of such effects. Indeed, it is unlikely that these gender differences are due to fundamental differences in male and female anatomy. Instead, empirical evidence suggests that these gender differences are driven by underlying psychological phenomenon -- namely gender differences in empathy toward children (Bottoms et al., 2007; Bottoms et al., 2011).

Empathy is defined by Davis (1983) as the cognitive and emotional reaction of a person to the experiences of another. This includes the ability to take another person’s perspective and sensitivity to others. Specifically in rape cases, men have been shown to be less empathic towards the female rape victim than women and, as a result, make less pro-victim judgments (Barnett et al., 1992; Deitz & Littman, 1984; Deitz & Byrnes, 1981). Further studies have demonstrated that these findings generalize to children specifically in sexual abuse cases (Barnett et al., 1992; Davis, 1983; Bottoms, 1993; Toussaint & Webb, 2005; Bottoms et al., 2011). That is, women (compared to men) tend to experience more empathy for children and have stronger negative reactions to child sexual abuse – emotions and attitudes that drive their increased likelihood to convict the defendant (Bottoms et al., 2014).
There are several possible explanations for the effect of participant gender on levels of child-victim empathy in sexual abuse contexts. One such explanation is that women are able to relate to children better than men. Empathy is highest when the subject considers it possible that they would be in the same situation as the victim, or they perceive the victim as similar to themselves (Aderman, Brehm, & Katz, 1974). Women are more likely to be victims of sexual abuse than men, and therefore sexual abuse is a more salient issue for women (Bottoms, 1993; Bottoms, 2014). Because women are better able to identify with children who have been victims of sexual abuse (Back & Lips, 1988), they feel more empathy for them (Beling, Hudson, & Ward, 2001; Bottoms, 2014).

Alternatively, gender roles and socialization can explain, in part, gender differences in empathy and attitudes towards children (Eagly & Wood, 1991; Nicholas & Bieber, 1994; Hoffman, 1977; Bottoms et al., 2014). The attitudes that men and women have are a reflection of their socialization (Beling, Hudson, & Ward, 2001). Women are socialized to be caring, concerning and child-oriented, gearing them towards child care behavior and parenting; alternatively, men are socialized to be aggressive and independent (Bradshaw & Hinds, 1997; Kean & Dukes, 1991; Hoffman, 1977; Barnett & Sinisi, 1990). Additionally, women’s societal roles allocate them increased experience with children (Bottoms, 1993). It is possible then that women’s care-focused orientation and experience with children translates into women valuing children more, and in turn, empathize with children more than men.

Differences in empathy translate into pro-victim rulings in numerous ways. Empathy influences one’s ability to take other’s perspectives, which in turn affects perceived responsibility for behavior. In a child sexual abuse context, men tend to perceive children as more responsible for their abuse than do women (Back & Lips, 1998). Alternatively, empathy
for the child, which is more commonly experienced among women, helps prevent victim-blaming. Even if originally the evaluator was disposed to make negative child attributions, these attributions are superseded by feelings of compassion and identification with the child victim (Bottoms, 1993). In turn, those with higher levels of empathy are more likely to make pro-victim rulings, at least in child sexual abuse cases (Bottoms, 1993; Bottoms, 2014). Indeed, women tend to render more pro-prosecution judgments in child sexual abuse cases precisely because women, on average, have higher levels of empathy toward victims of child sexual abuse. Moreover, Bottoms et al. (2014) found that men who were more empathic toward children tended to make more pro-child victim judgments. Likewise, women who were less empathic toward children made fewer pro-victim judgments.

Although research has been limited to the psychological underpinnings of gender differences in reactions to child sexual abuse, it is likely that these theoretical explanations generalize to other forms of abuse (physical abuse or neglect). In support, women are at greater risk of experiencing domestic physical victimization, as well (Tjaden & Thoennes, 1998). This is supported by Kean and Dukes (1991) who found that women are slightly more likely than men to intervene on behalf on a physically abused child and slightly more likely than men to take action against an abusive parent (Kean & Dukes, 1991).

**Novel Empirical Research**

No research to date has explored possible gender differences in reactions to child custodial cases involving child abuse. Social workers and judges make evaluations and decisions regarding family reunification versus termination of parental rights when cases involve previously substantiated child abuse. It is possible that the decision-maker’s gender might shape such decisions – a possibility that we explore in the present research. Specifically, we presented
men and women participants with a vignette depicting a neglectful mother who had lost custody of her child, but who was making strides toward regaining custody. We expect that men will grant the mother custody of her child more frequently than women. Furthermore, we predict that these gender differences in custody rulings will be mediated by beliefs about the capability of the mother such that men will believe the previously neglectful mother to be a more capable parent as compared to women. These hypotheses are in line with previously reviewed research illustrating that women (versus men) tend to hold more pro-child attitudes (Barnett & Sinisi, 1990; Hoffman, 1977) and perceive child abuse to be more severe (Hansen et al., 1997; Bornstein, Kaplan, & Perry; 2007; Bottoms et al., 2014).

Participants consisted of 257 community members (47% women; $M$ age = 34.32) recruited through Amazon’s Mechanical Turk. Amazon’s Mechanical Turk is an online workforce of potential participants who complete certain tasks in exchange for compensation. Research has shown that the samples provided by Mechanical Turk are more representative than the typical college sample and are at least equally reliable (Buhrmester, Kwang, & Gosling, 2011).

After providing informed consent, participants read a vignette depicting a mother who lost custody of her 5-year-old child due to allegations of drug addiction and child neglect. The child depicted had been placed in temporary foster care and had made dramatic improvements in physical health. The mother in review attended counseling, rehabilitation for a drug and alcohol addiction, and child visitation sessions with moderate consistency. Additionally, the mother was newly employed and had passed her first monthly drug screening. This vignette was reviewed for realism by a practicing social worker.
Participants then answered a separate questionnaire assessing their perceptions of the mother’s capability, characteristics, motivation to regain custody of her child, and the child’s potential to succeed if reunified with the mother. They then determined her eligibility for receiving full custody of the child. Specifically, participants first completed the Perceived Mother Capability Scale (Chronbach’s alpha = .97), which included items designed to measure the mother’s parenting ability (e.g., “The mother will likely provide a loving atmosphere for her child”) and quality of motherhood (e.g., “The mother is likely to provide an intellectually stimulating atmosphere for her child”). The Mother Motivation Scale (Chronbach’s alpha = .79) included questions designed to assess the mother’s motivation to regain custody of her child (e.g., “The mother has exhausted every resource for getting her child back”). The Perceived Child Potential Scale (Chronbach’s alpha = .89) included items designed to measure perceptions of the child’s ability to have a successful future if reunited with the mother (e.g., “If the child returns to his mother’s custody, his physical health will likely suffer”). Additionally, participants completed the Perceived Mother Characteristic Scale (Chronbach’s alpha = .83) by estimating the mothers’ intelligence, caring, responsibility, trustworthiness, and appearance) using a Likert scale ranging from 1 (Low in Quality) to 5 (High in Quality). Finally, participants indicated on a 7-point Likert scale ranging from 0 (strongly disagree) to 6 (strongly agree) the extent to which they believed the mother to be fit for full custody.

Consistent with our hypotheses, men (M = 2.33, SD = 1.70) were significantly more likely than women (M = 1.65, SD = 1.26) to report the mother as fit for full custody, $F(1, 253) = 12.77, p < .0001$. Men (M = 2.59, SD = 1.34), as compared to women, (M = 2.11, SD = 1.07) were also significantly more likely to view the mother as a capable mother, $F(1, 253) = 9.94, p = .002$. Furthermore, men (M = 2.66, SD = 1.45) rated the mother as significantly more motivated
to get her child back as compared to women ($M = 2.02, SD = 1.23$), $F(1, 253) = 14.23, p < .0001$. Finally, men ($M = 2.99, SD = 1.32$), as compared to women, ($M = 3.61, SD = .97$), $F(1, 253) = 18.15, p < .0001$, were significantly more likely to view the child as having more potential if placed back with his previously neglectful mother. There were no significant participant gender differences on the Mother Characteristic Scale $F(1, 253) = 1.77, ns$.

Supporting our hypotheses, men gave the neglectful mother custody of the child more frequently than women did. Furthermore, men believed the mother to be more motivated to regain custody of her child and believed the child to have more potential when reunited with the mother than women. The gender differences we have uncovered in the present research are consistent with those of previous studies. Importantly, we have demonstrated that these gender effects extend beyond the bounds of child sexual abuse cases to child custodial cases involving neglect. While this study demonstrated participant gender effects in a child neglect custodial case, it is important to note that this is only one of many forms of child abuse requiring custodial decisions. Social workers deal with a wide variety of cases that involve multiple types of child abuse and neglect that vary in severity and nature. For example, it is possible that the gender effects revealed in the present research would not manifest in custodial decisions in cases involving more severe child abuse and neglect. To fully understand the parameters of participant gender differences in child custodial decision-making, more research needs to be conducted employing more diverse abuse and neglect scenarios. Additionally, this study was conducted with a community sample, not a sample of practicing social workers and judges who are the decision-makers in these cases. Future research should focus on this population to foster a more complete understanding of how individual differences of legal decision-makers influence child custodial decisions.
Custodial rulings represent life-changing outcomes for the children and parents involved in these emotional legal cases. Although legal decisions should be uninfluenced by prejudicial emotion or bias, our preliminary research reveals that different life experiences stemming from one’s gender may shape how child custody cases are perceived and determined. Moreover, child custodial decisions carry significance for the lives of those involved. Denying a deserving and capable parent of child custody has the potential to cause significant harm to both parents and children. Likewise, returning a child to a parent who is not able to provide adequate child care has negative implications for the well-being of the child. Due to the gravity of the potential consequences stemming from child custodial decisions, it is crucial that researchers continue to explore the potential for individual differences and personal biases to shape outcomes in these cases. Our research has revealed evidence of one factor that may influence child custodial decisions (namely, gender). Yet, future research should continue to explore the potential for other relevant factors to shape decisions in child custodial contexts, including both decision-maker characteristics (e.g., age, ethnicity, profession, education level, prior abuse exposure), and child and parent characteristics (e.g., mental or physical illness, ethnicity, sexual orientation, education level). Uncovering factors that shape decisions in child custodial contexts is necessary to help facilitate decisions that are simultaneously fair to parents and in the best interest of their children.
References


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