

Programme Colloque

«Pères en solitaires : paternités contemporaines et nouvelles trajectoires familiales»

29-30 novembre 2012,
Centre Norbert Elias, Vieille Charité, Marseille

Legal custody arrangements of separated parents in Spain*
La garde des enfants de parents séparés en Espagne

Dr. Jeroen Spijker
Senior Research Fellow
Université d'Édimbourg et
Centre d'Estudis Demogràfics (Barcelone)

* This presentation is based on work carried out for the research project «Paternité et divorce en Espagne» that was funded by the CNE.

Content

1. Brief Introduction:

- Changing divorce legislation in Spain

2. Data sources

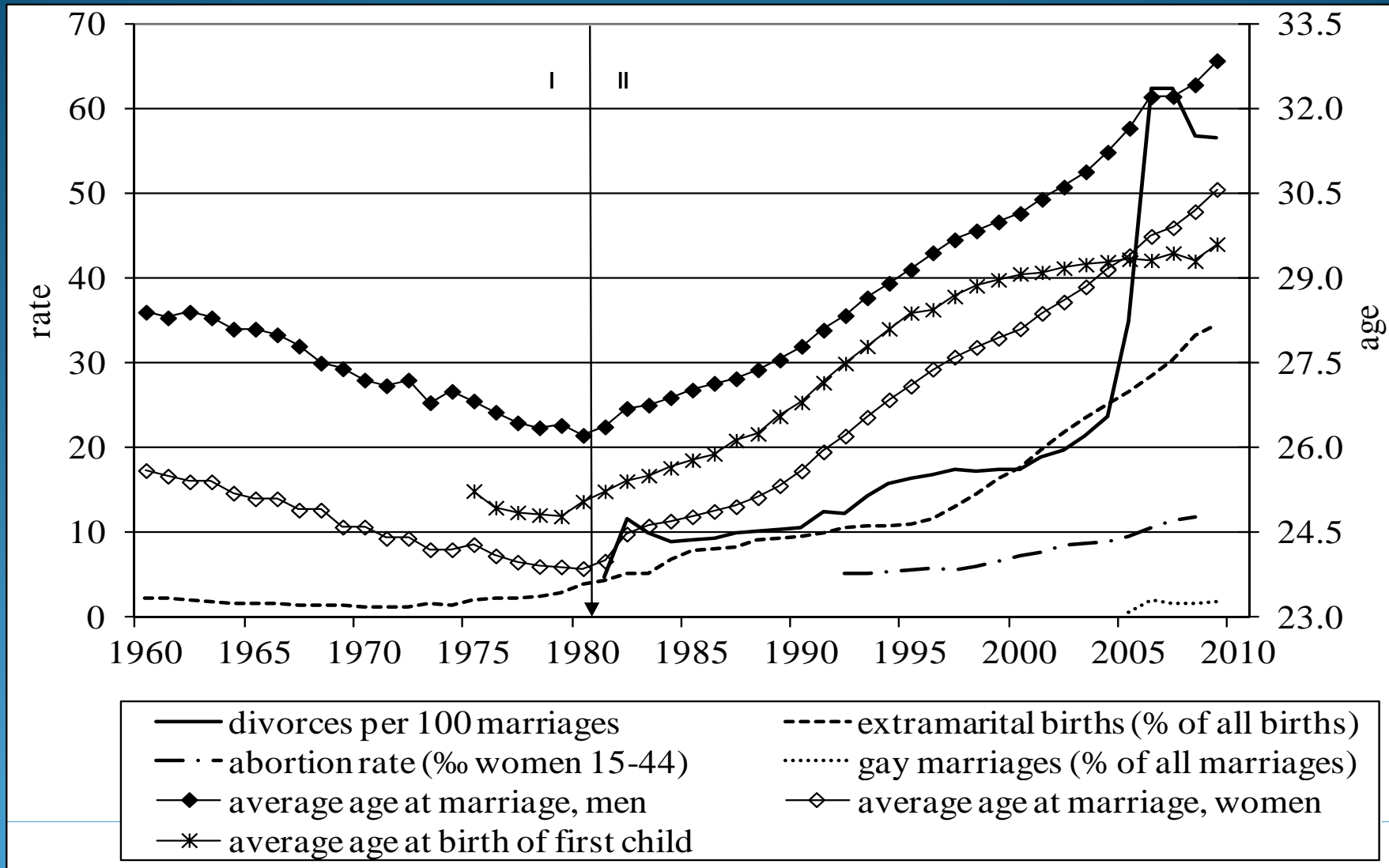
3. Results

- Overview of divorce trends 1981/96-2011
- Current levels of custody arrangements (2007-2010)

4. Conclusion

1. Brief Introduction

Some context: marriage, divorce and fertility indicators since 1960 in Spain



1. Brief Introduction

The development of divorce legislation in Spain (and its effect on divorce rates)

- During dictatorship: divorce was not possible and separation only with permission from the church (but rare).
- 1979. In accordance with an agreement between the Spanish State and the Holy See the Spanish church renounced to the jurisdiction of separations and marriage annulments and it thus became a matter of the civil courts.
- 1981. **The divorce Law** of July 7 1981. legalized divorce for both civil and religious marriages (permanent effect).
- 2005 Spanish Civil Code (Ley 15/2005) included the **Spanish Divorce Reform**:
 - No fault and no need for prior separation (permanent effect – as it eases break-up and reduces financial costs of obtaining divorce)
 - Unilateral (temporary upward effect followed by a possible long-term decline in the steady-state divorce rate as those married under unilateral divorce can be better matched than those previously married under mutual consent).

1. Brief Introduction

• As a consequence of increasing rates of marriage dissolution, new living arrangements and family forms of divorced and separated individuals have become more diverse and widespread, particularly when there are children involved:

- single parents
 - **custody with mother** (most frequent)
 - **custody with father**
- step-families
 - child stays with one parent who has repartnered
 - **custody with mother** (most frequent)
 - **custody with father**
- dual families
 - child stays alternatively with both parents (**shared custody**).

2. Main data source

Consejo General del Poder Judicial (General Council of the Judiciary).

- Before 1996, one could only keep track of trends in separations and divorces (including the degree of conflict associated with the divorce process) in Spain through the Judiciary's Annual Report.
- Since 1996 courts must fill in a bulletin each time a decree is dictated (*Boletines estadísticos de sentencias de separación, divorcio y nulidad* or Statistical bulletins of separation, divorce and nullity decrees).
- These bulletins are returned to the CGPJ who is responsible for delivering it to the National Statistical Office (INE).
- This way anonymised information of about two-thirds of the decrees becomes available each year in the form of microdata that can be used for research purposes.

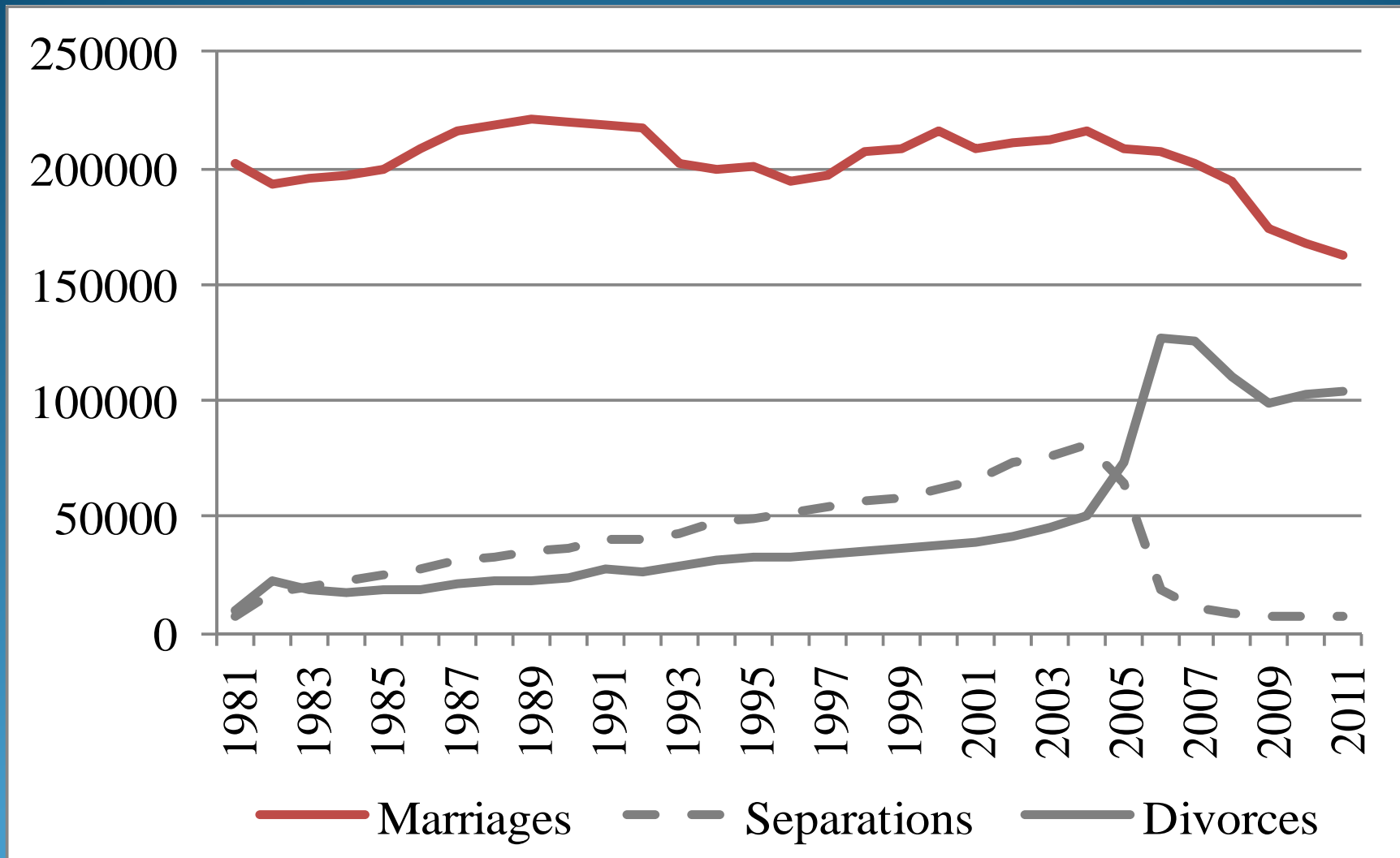
2. Main data source: Statistical bulletin of decrees since 1996

e.g. 2010

Variables	Name	Initial Position	Final Position	Length	Valid values
PROV	Provincia	1	2	2	50 provinces, Ceuta and Melilla
AÑOD	Year of divorce application	3	6	4	1900-2010
MESD	Month of divorce application	7	8	2	1=Jan., 2=Feb., .. 12=Dec.
DIAD	Day of divorce application	9	10	2	1-31
AÑOS	Year of decree	11	14	4	Reference year
MESS	Month of decree	15	16	2	1=Jan., 2=Feb., .. 12=Dec.
DIAS	Day of decree	17	18	2	1-31
AÑOM	Year of marriage	19	22	4	1900-2010
MESM	Month of marriage	23	24	2	1=Jan., 2=Feb., .. 12=Dec.
DIAM	Day of marriage	25	26	2	1-31
HIJOS_MENORES	Minors	27	28	2	0=0, 1=1, 2=2, ..., 10= 10+; 98=Missing
HIJOS_MAY_DEP	Dependent adult children	29	30	2	0=0, 1=1, 2=2, ..., 10= 10+; 98=Missing
AÑONO	Birth year of 1st spouse	31	34	4	1900-2099
MESNO	Birth month of 1st spouse	35	36	2	1=Jan., 2=Feb., .. 12=Dec.
DIANO	Birth day of 1st spouse	37	38	2	1-31
SEXONO	Sex of 1st spouse	39	39	1	1=Male; 6=Female
NACNO	Nationality of 1st spouse	40	42	3	101=Albania; 102=Austria, ..., 999=Missing
ECIVO	Marital status of 1st spouse	43	43	1	1=Single, 2=Widowed; 3=Divorced; 9=Missing
AÑONA	Birth year of 2nd spouse	44	47	4	1900-2099
MESNA	Birth month of 2nd spouse	48	49	2	1=Jan., 2=Feb., .. 12=Dec.
DIANA	Birth day of 2nd spouse	50	51	2	1-31
SEXONA	Sex of 2nd spouse	52	52	1	1=Male; 6=Female
NACNA	Nationality of 2nd spouse	53	55	3	101=Albania; 102=Austria, ..., 999=Missing
ECIVA	Marital status of 2nd spouse	56	56	1	1=Single, 2=Widowed; 3=Divorced; 9=Missing
SENT	Sentence ruling	57	57	1	1=Separation by mutual agreement; 2=Contested separation; 3=Divorce by consent; 4=Divorce without consent; 5=Marriage nullified
DEMANDANTE	Claimant	58	58	1	1=Husband; 2=Wife; 3=Both; 4= Attorney General
PCOM	Alimony	59	59	1	1=Husband; 2=Wife; 9= Not stated, N/A
PALI	Food allowance	60	60	1	1=Husband; 2=Wife; 3=Both; 9=N/A
CUSTODIA	Custodia	61	61	1	1=Husband; 2=Wife; 3=Both; 4=others; 9=N/A
PREVIA	Previous separation	62	62	1	1= Yes; 2=No; 9=N/A
CCAA	Autonomous Community	63	64	2	17 Autonomous Communities, Ceuta and Melilla

3. Results (I): Overview of divorce trends 1981-2011

Figure 1. Marriages, separations and divorces. Spain 1981-2011.



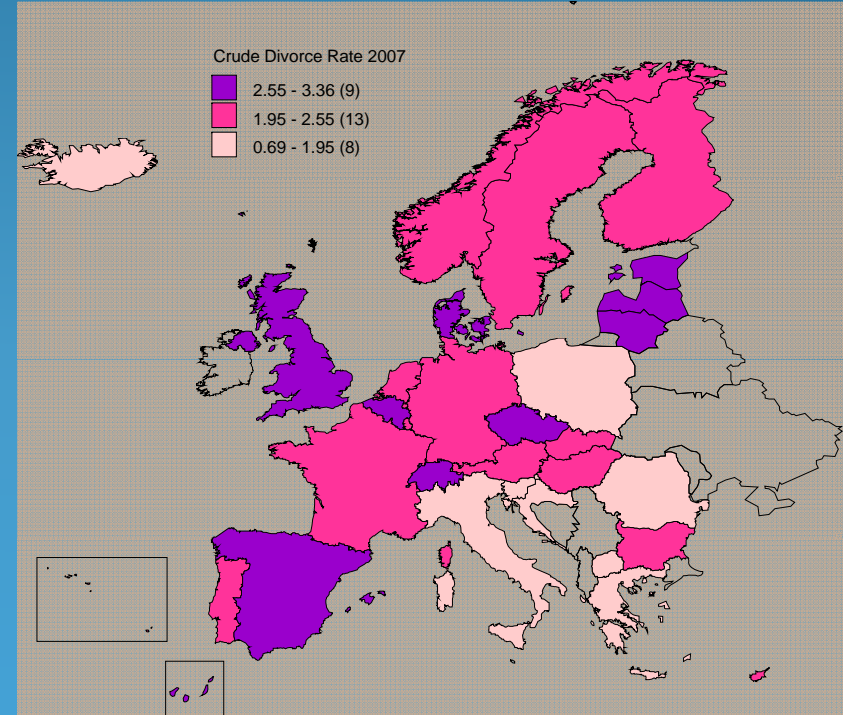
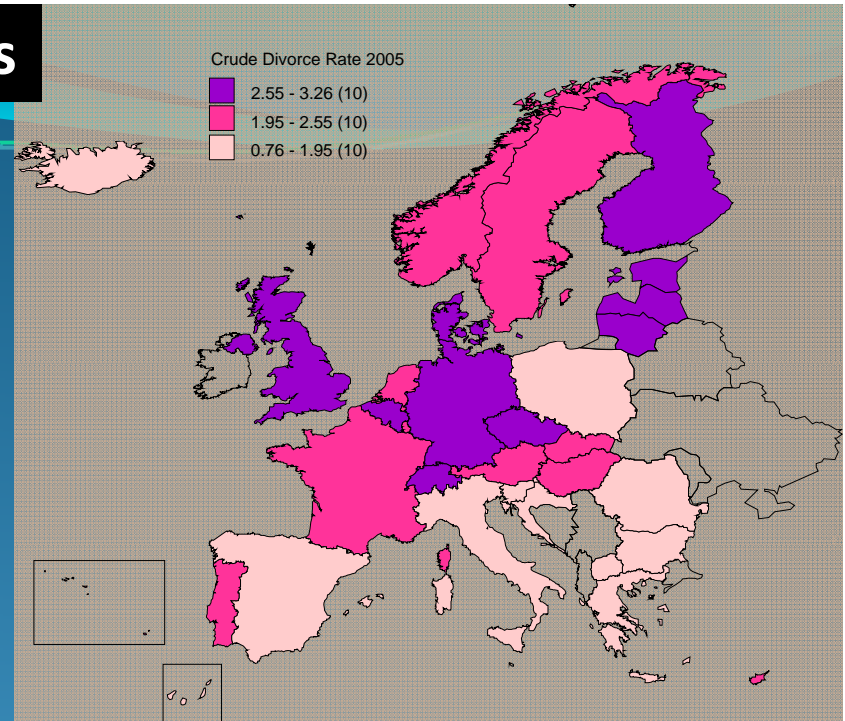
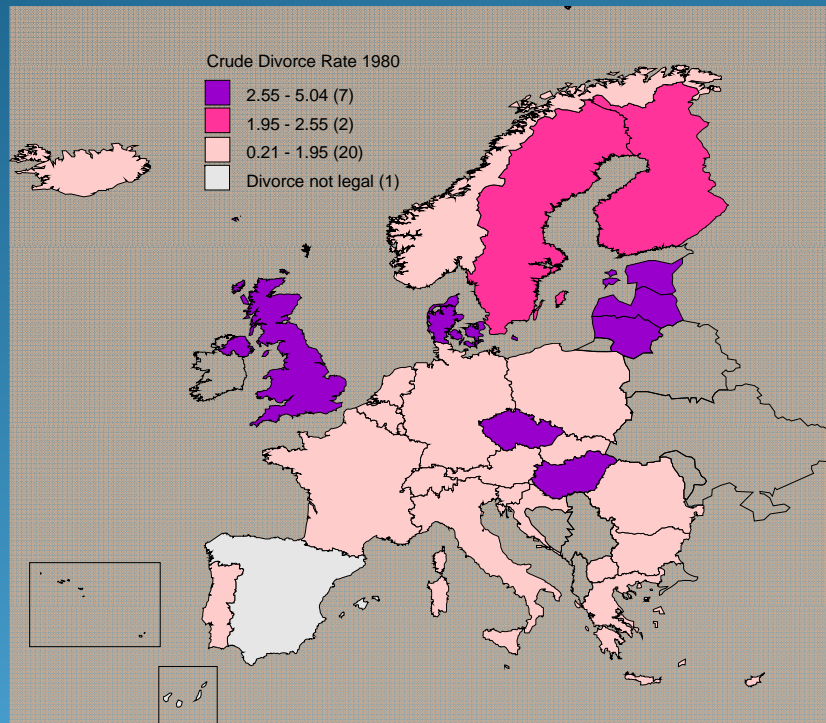
Data source: Eurostat.

3. Results (I): Overview of divorce trends

Figure 2. Crude divorce rate

Formula:

$$\frac{\text{Number of divorces in year } x}{\text{Average population during year } x} * 1000$$



Data source: Eurostat. Own calculations

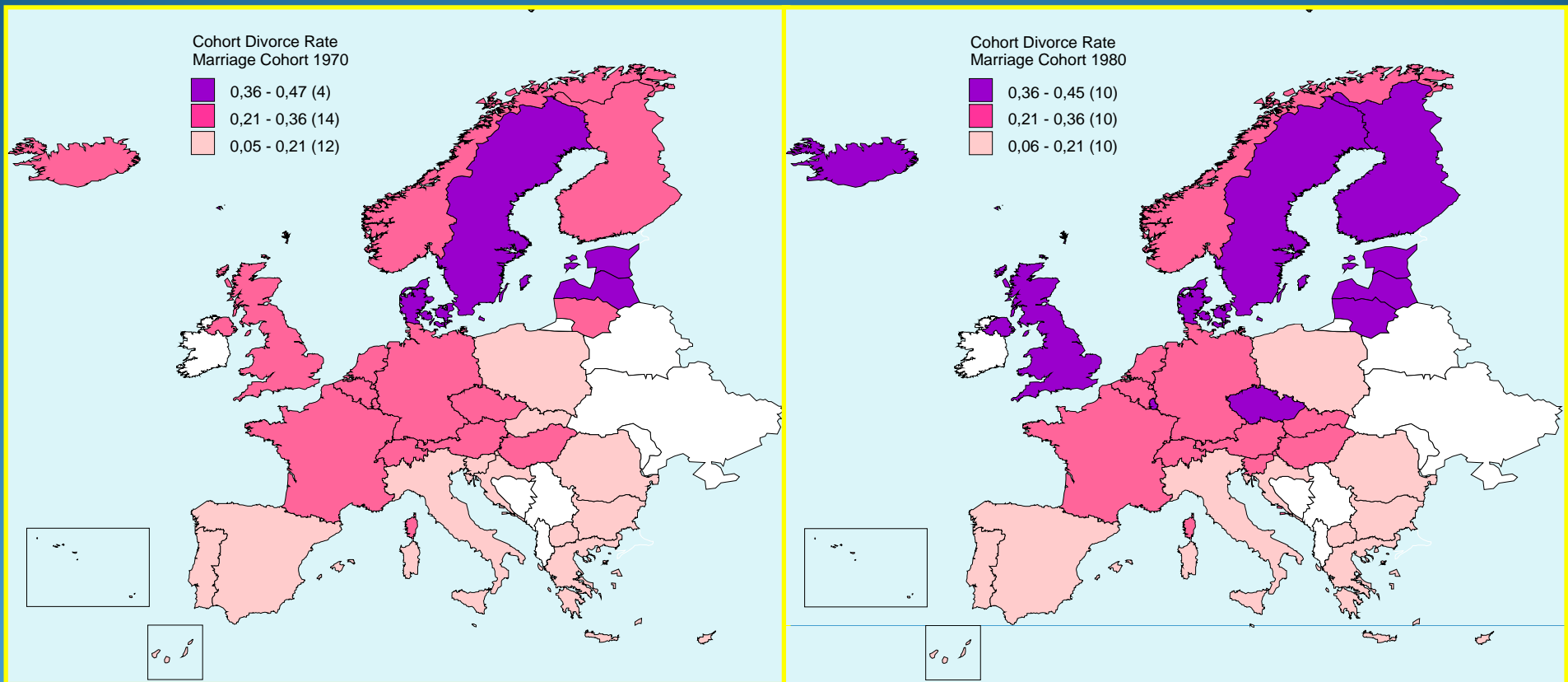
3. Results (I): Overview of divorce trends 1981-2010

Figure 3. Cohort divorce rate

Formula:
$$\sum_{<1...35+}^t \frac{\text{Number of divorces by marriage duration } t \text{ and divorce year } x + t}{\text{Number of marriages in year } x \text{ (= marriage cohort)}}$$

Year of marriage 1970

Year of marriage 1980



Data source: Eurostat. Own calculations

3. Results (I): Overview of divorce trends 1996-2010

Figure 4. Sentence ruling

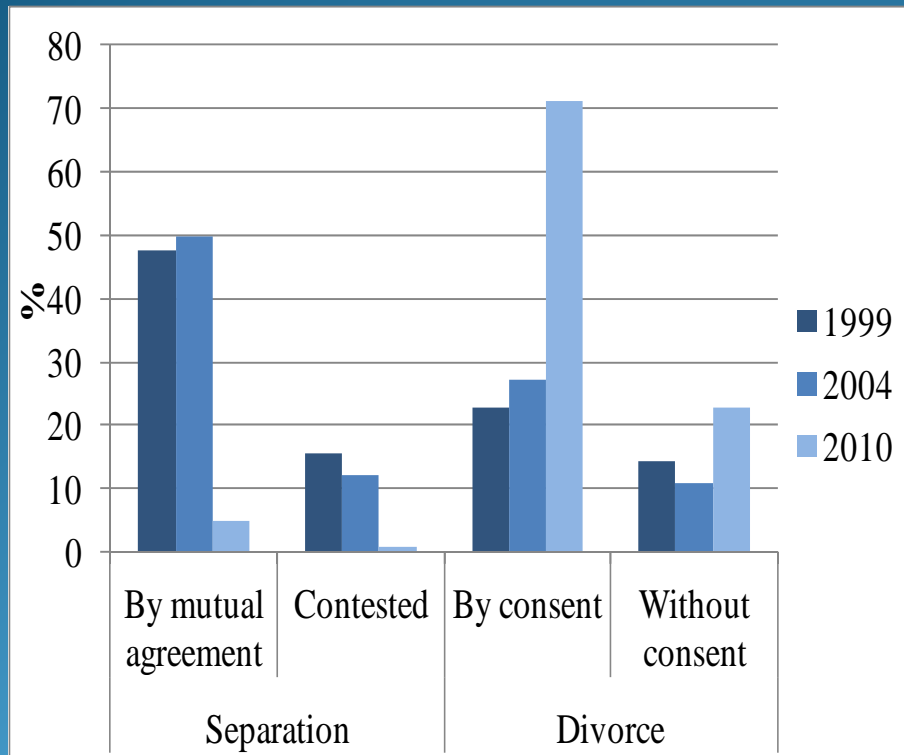
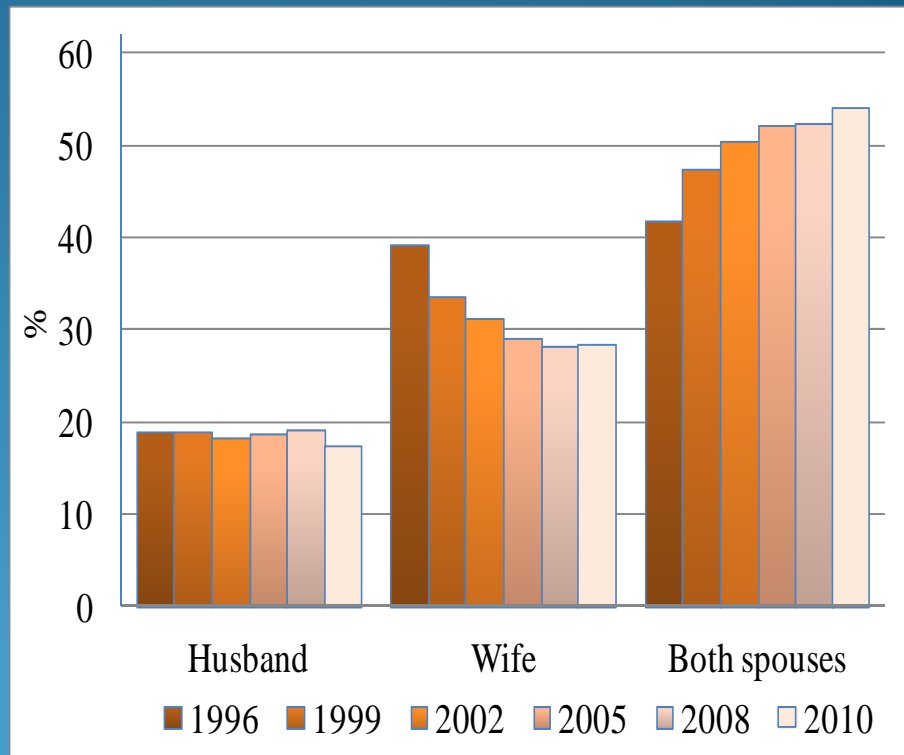


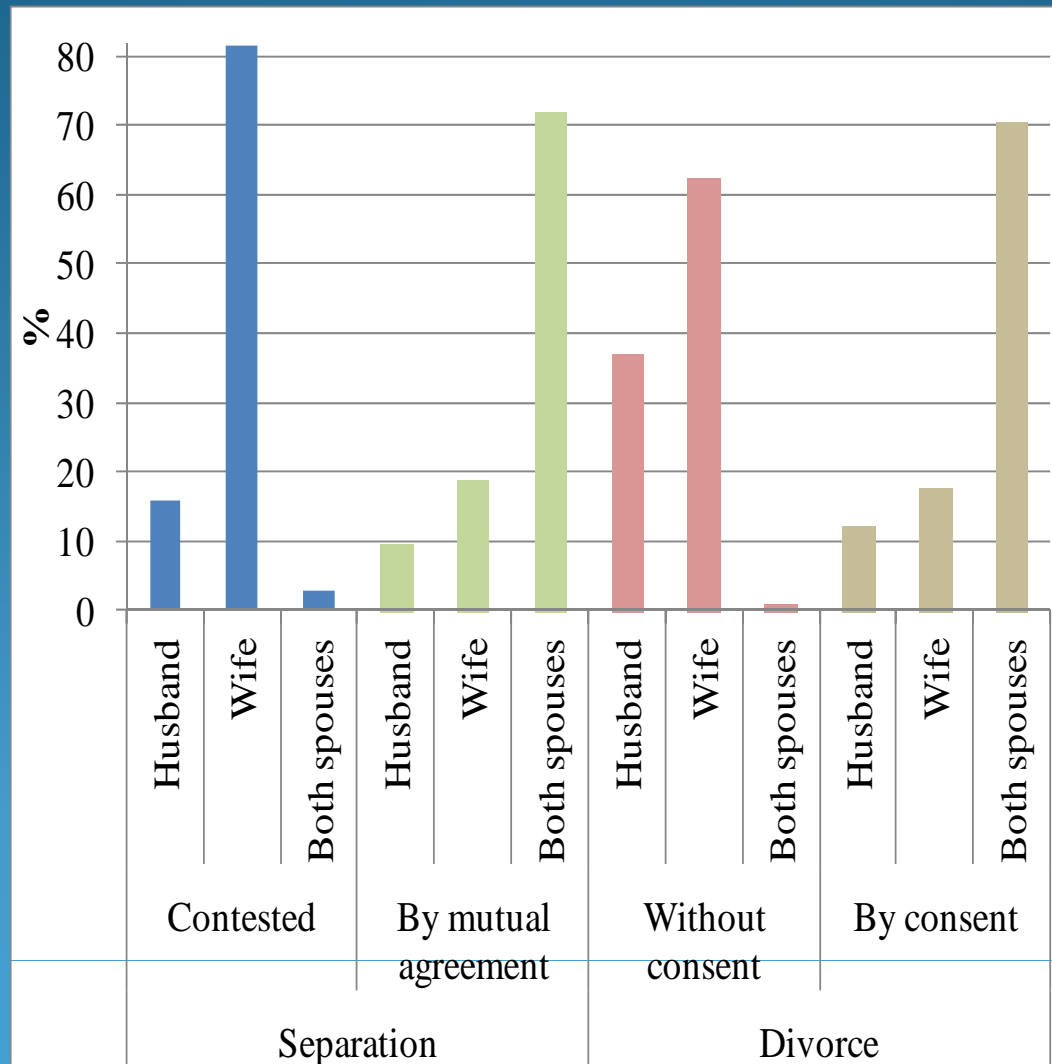
Figure 5. The claimants



Source: Boletines estadísticos de sentencias de separación, divorcio y nulidad from the General Council of the Judiciary (CGPJ). Own calculations

3. Results (I): Overview of divorce trends 1996-2010

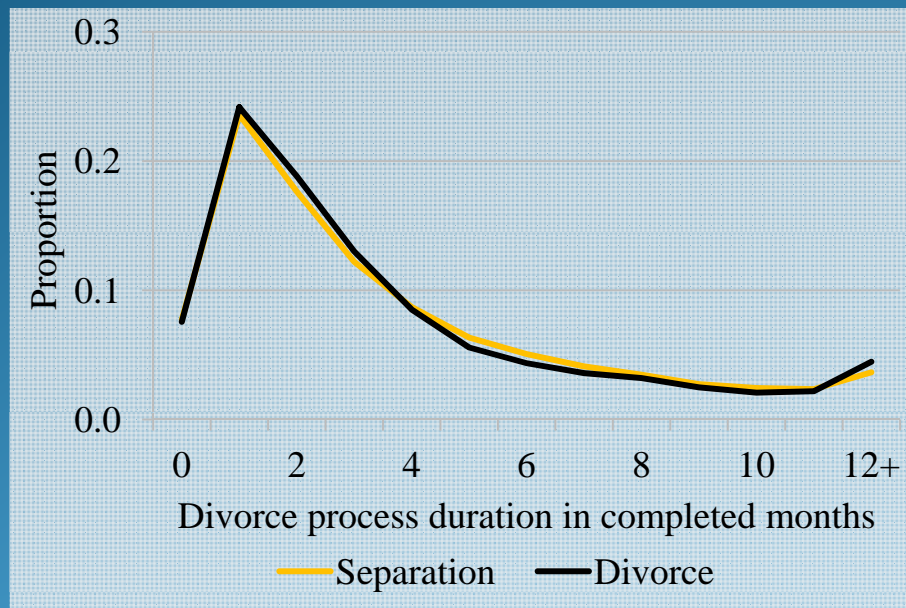
Figure 6. Type of separation and divorce decree according to who initiated the lawsuit. Spain 2010



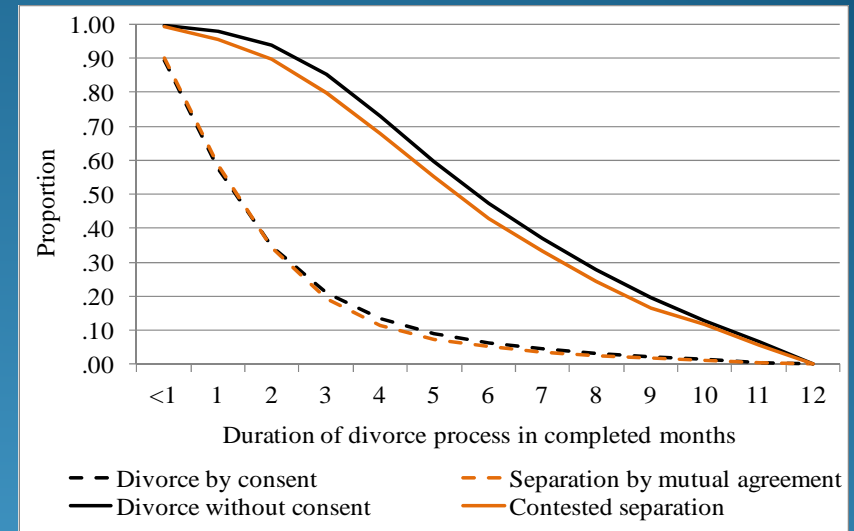
3. Results (I): Overview of divorce trends 1996-2010

Figure 7. Duration (in months) between judicial demand and decree in 2008-2010 according to

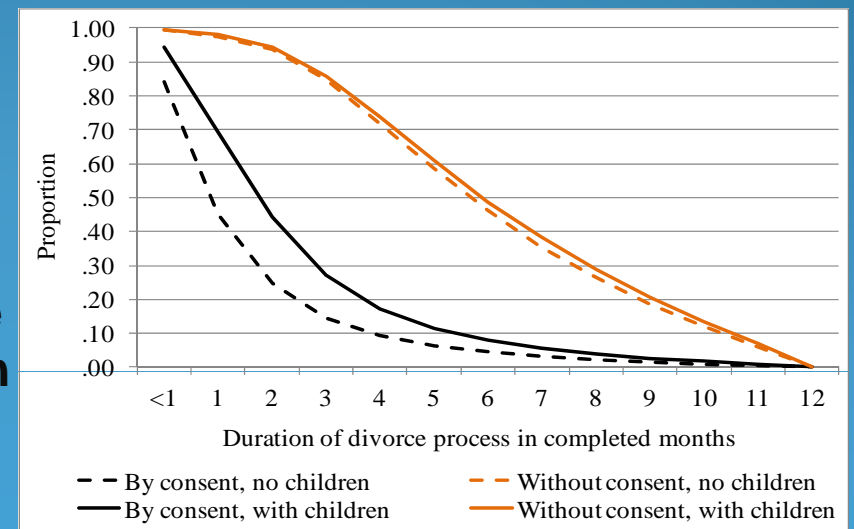
i) type of sentence



ii) specific sentence ruling



iii) the type of divorce & presence of children



Source: Boletines estadísticos de sentencias de separación, divorcio y nulidad from the General Council of the Judiciary (CGPJ). Own calculations

3. Results (I): Overview of divorce trends 1996-2010

Figure 8. Decreases of separations and divorce according to marriage duration (2010)

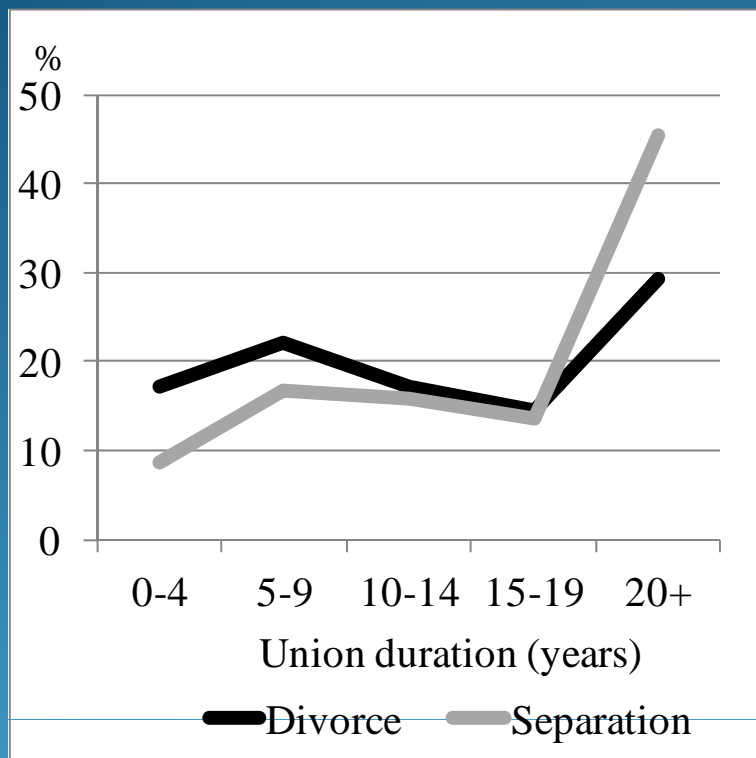


Table 2. Decreases of separation and divorce according to spousal age difference (% of total). 1996-2010*

Year	Same age	Wife > Husband	Husband > Wife	Total
Separation				
1996	36,9	8,1	55,1	100.0
2005	38,4	9,8	53,2	100.0
2010	37,7	11,2	51,2	100.0
Divorce				
1996	37,1	8,2	54,8	100.0
2005	38,4	9,4	52,4	100.0
2010	39,4	10,1	50,5	100.0

* Under the same age it is understood those marriages whereby the age difference is 23 months or less.

3. Results (II): Current custody arrangements

Table 4 Child custody arrangements, 2007-2011

Year	Fathers	Mother	Shared	Others	Total
2007	4,8	85,5	9,7	0,0	100,0
2008	4,0	86,0	9,7	0,3	100,0
2009	5,6	84,0	9,7	0,7	100,0
2010	5,7	83,2	10,5	0,6	100,0
2011	5,3	81,7	12,3	0,7	100,0

Source: INE (2008-2012). Press releases on the *Boletines estadísticos de sentencias de separación, divorcio y nulidad*.

3. Results (II): Current custody arrangements

Table 5. Age i) at marriage, ii) at the moment of the law suit and iii) at sentence ruling of both parents according to type of custody (2007 and 2010)

<i>i) Age at marriage</i>		Mothers			Fathers		
		2007	2010	Change	2007	2010	Change
Type of custody	Father	24.10	25.24	1.14	27.43	28.26	0.84
	Mother	24.94	25.97	1.03	27.48	28.48	0.99
	Shared	24.93	26.09	1.16	27.55	28.67	1.12
Total		24.90	25.93	1.03	27.49	28.48	1.00

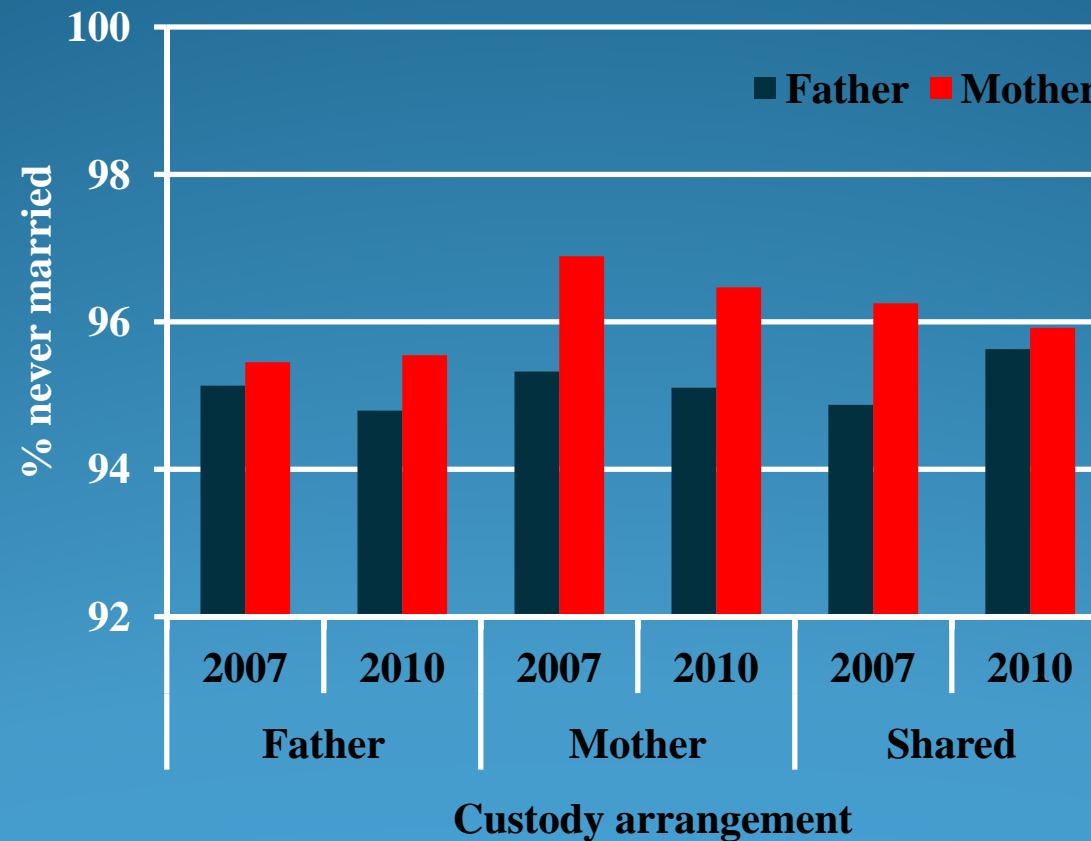
<i>ii) Age at moment of law suit</i>		Mothers			Fathers		
		2007	2010	Change	2007	2010	Change
Type of custody	Father	39.44	40.11	0.67	42.78	43.13	0.36
	Mother	38.34	39.00	0.66	40.88	41.51	0.62
	Shared	38.63	39.65	1.02	41.26	42.23	0.97
Total		38.41	39.13	0.72	41.00	41.68	0.68

<i>iii) Age at sentence ruling</i>		Mothers			Fathers		
		2007	2010	Change	2007	2010	Change
Type of custody	Father	39.93	40.62	0.70	43.26	43.65	0.39
	Mother	38.71	39.39	0.69	41.25	41.90	0.65
	Shared	38.97	39.96	1.00	41.59	42.54	0.95
Total		38.79	39.52	0.74	41.37	42.08	0.70

Source: Boletines estadísticos de sentencias de separación, divorcio y nulidad from the General Council of the Judiciary (CGPJ). Own calculations

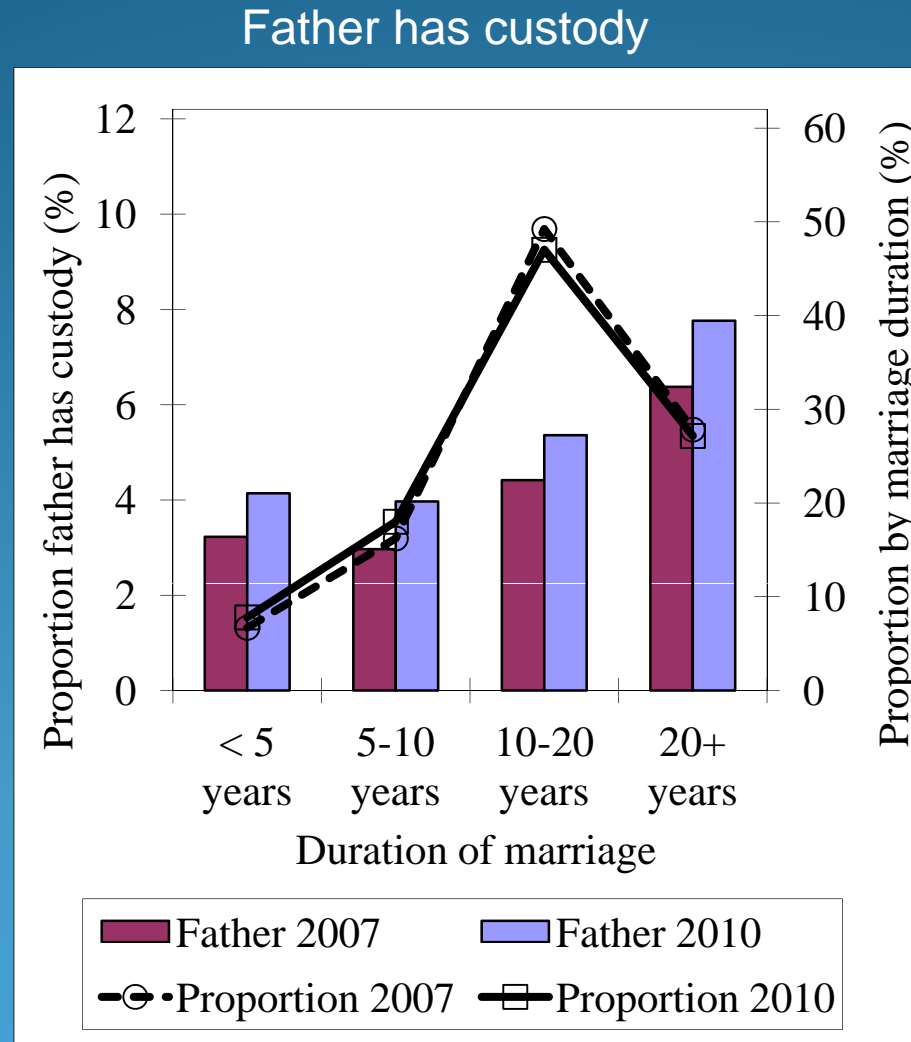
3. Results (II): Current custody arrangements

Figure 10. Proportion of never married parents at sentence ruling according to type of custody



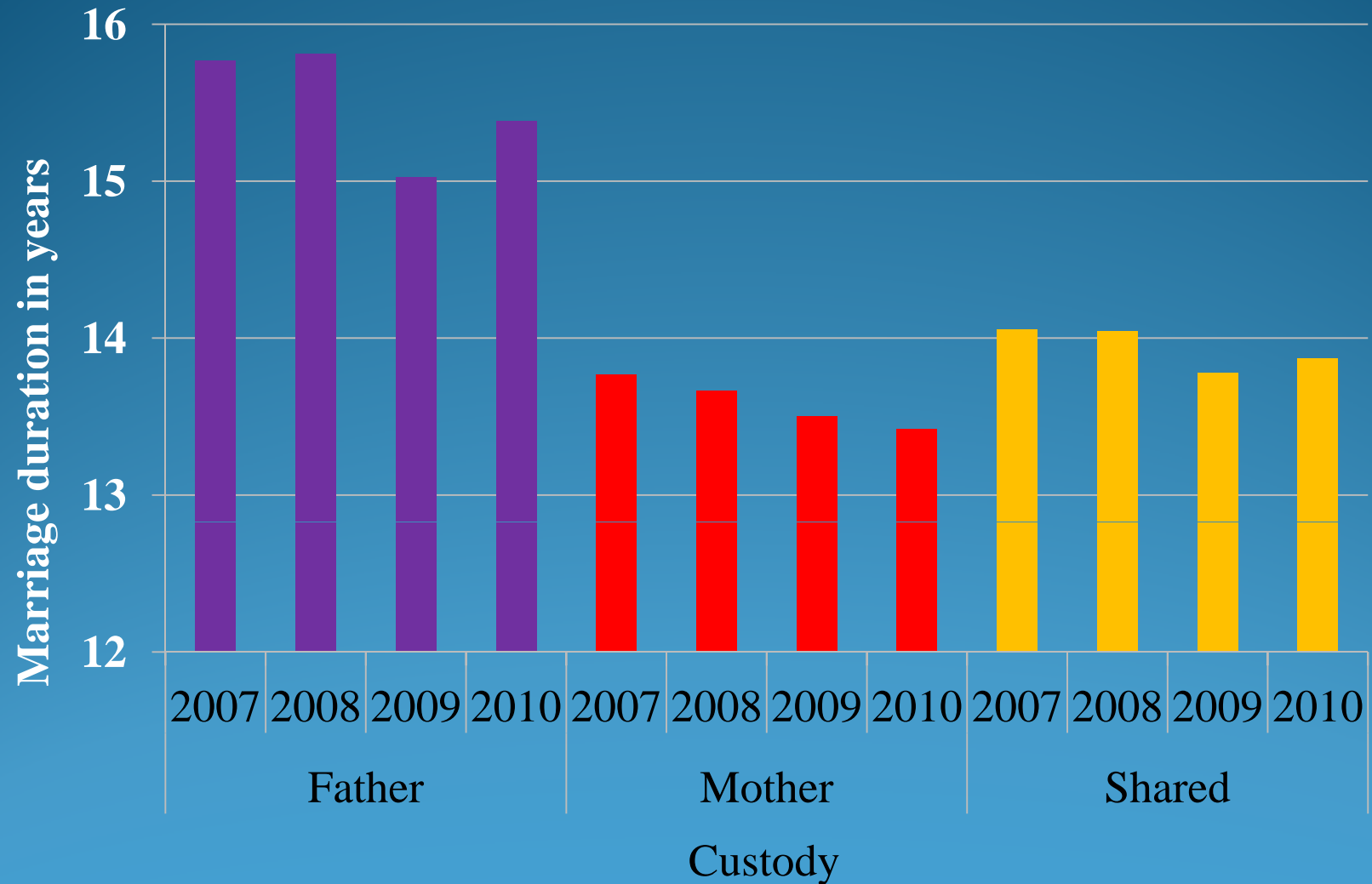
3. Results (II): Current custody arrangements

Figure 11. Type of custody (%) according to marriage duration



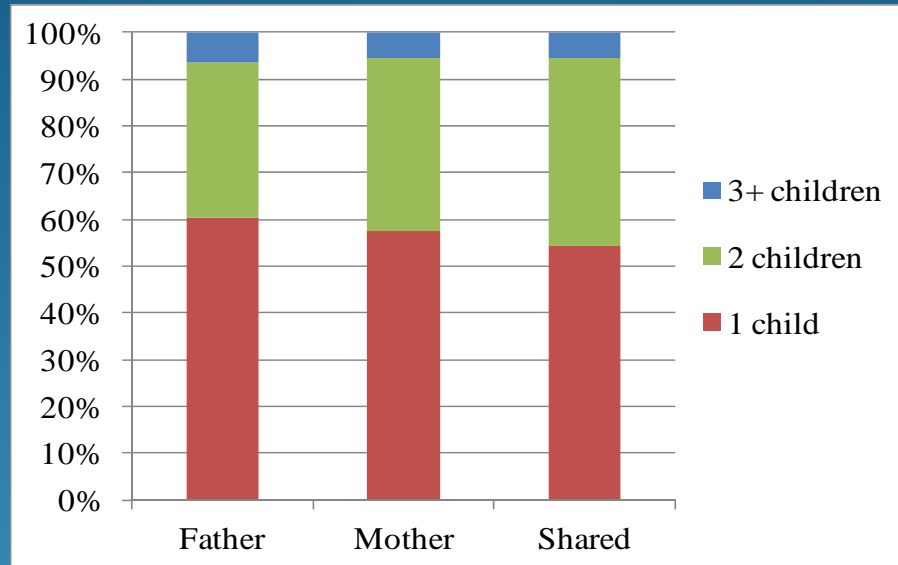
3. Results (II): Current custody arrangements

Figure 12. Average marriage duration by type of custody

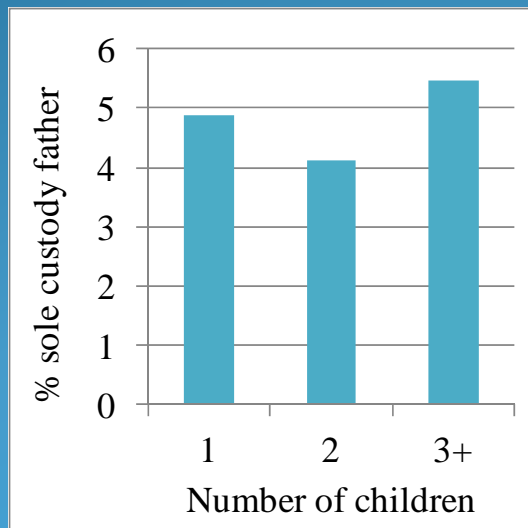


3. Results (II): Current custody arrangements

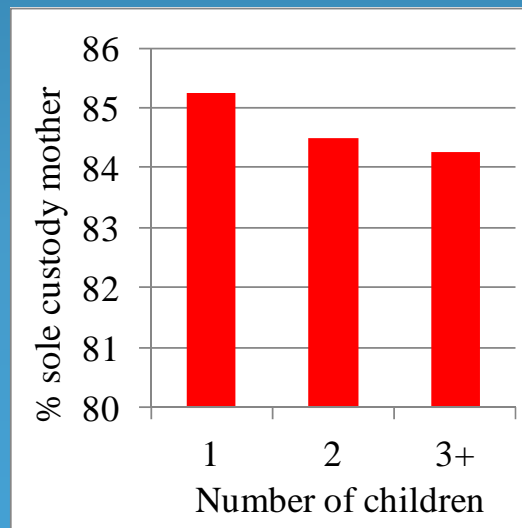
Figure 13. Number of children according to type of custody. 2007-10



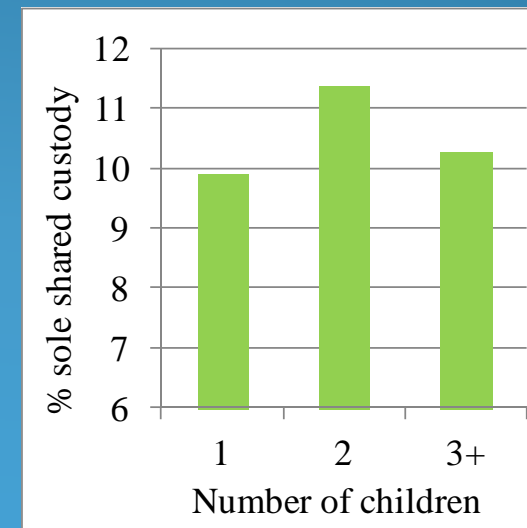
i. Custody father



ii. Custody mother

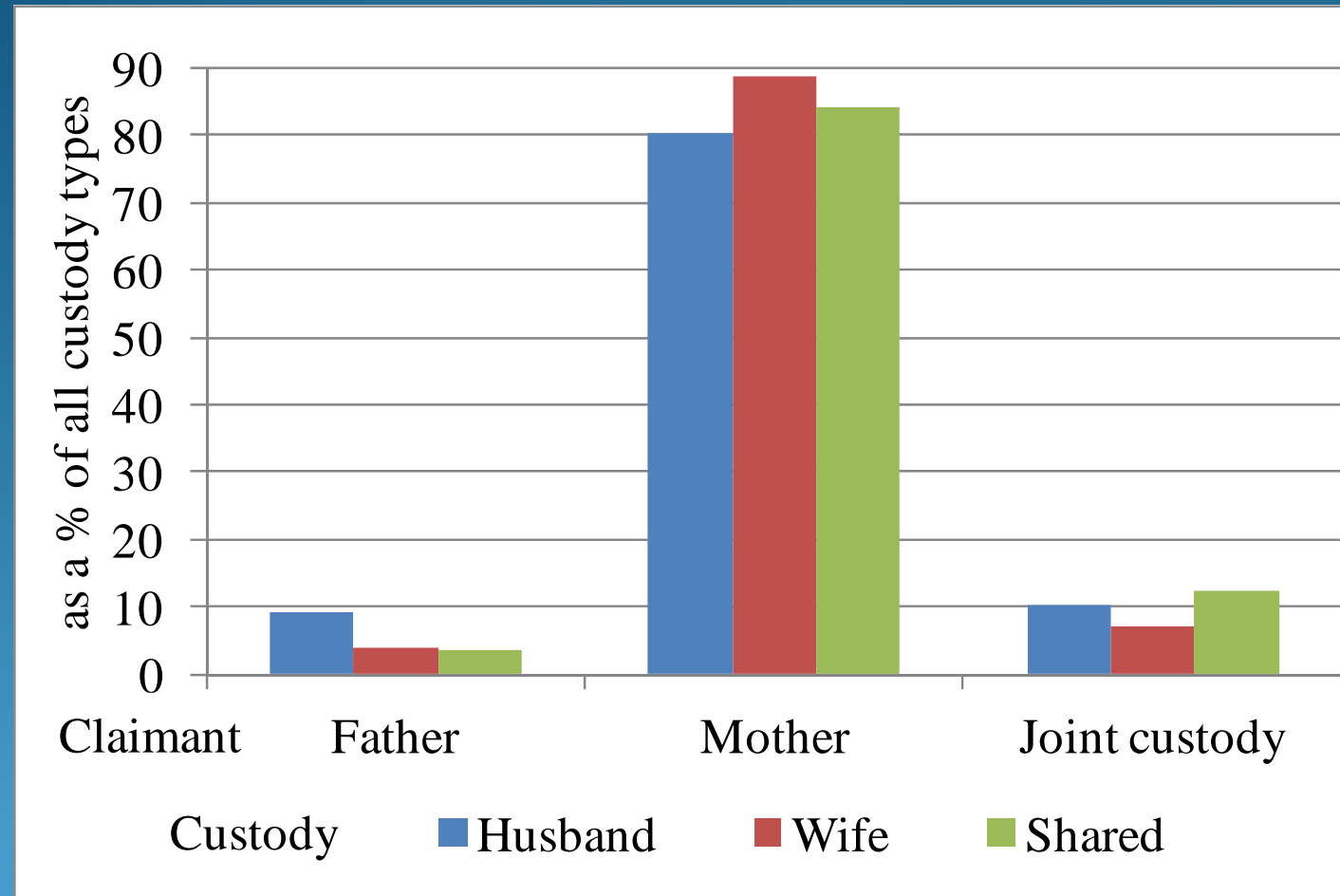


iii. Shared custody



3. Results (II): Current custody arrangements

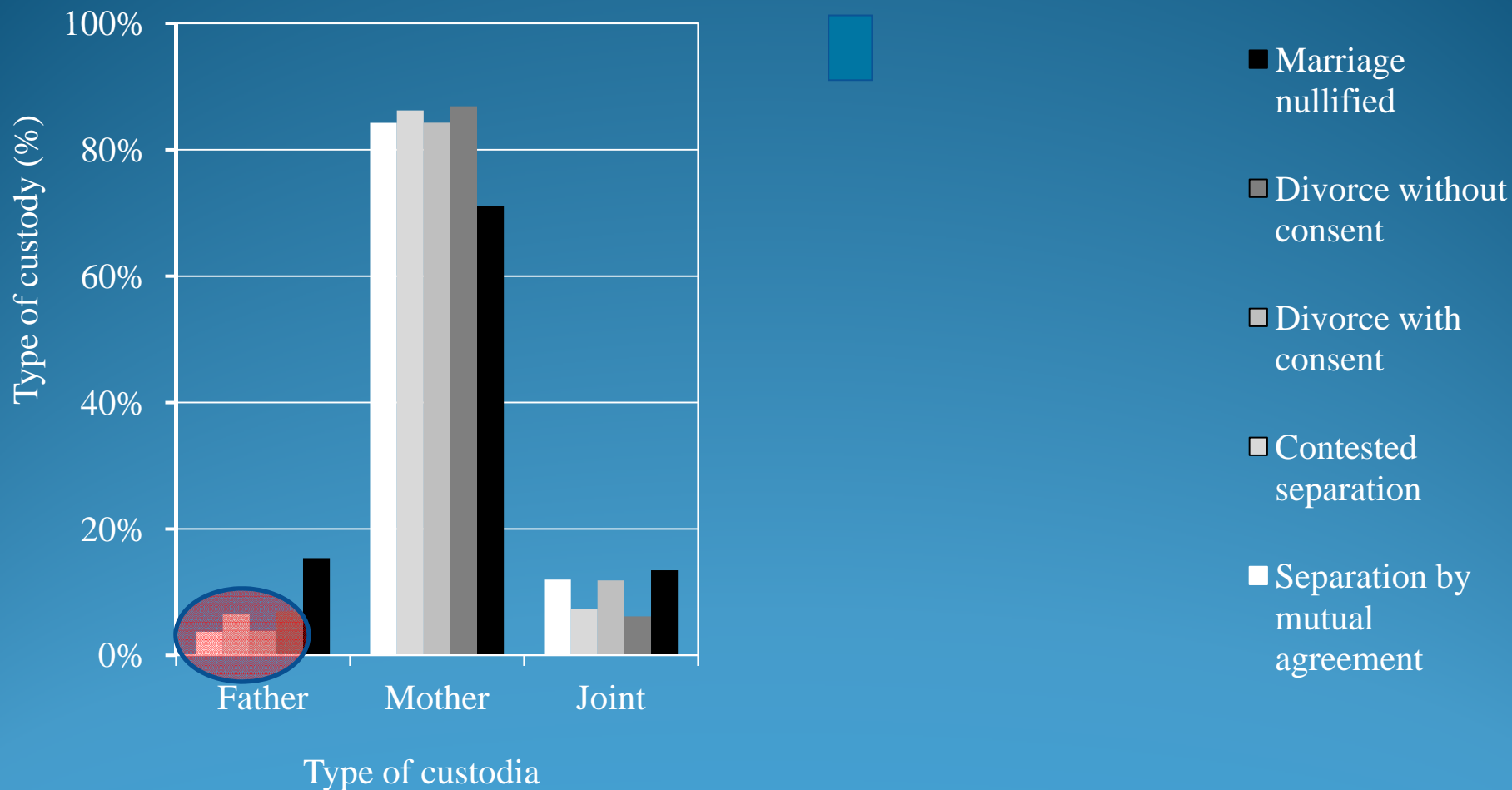
Figure 15a. Custody arrangement according to divorce claimant (average 2007-10)



3. Results (II): Current custody arrangements

average 2007-10

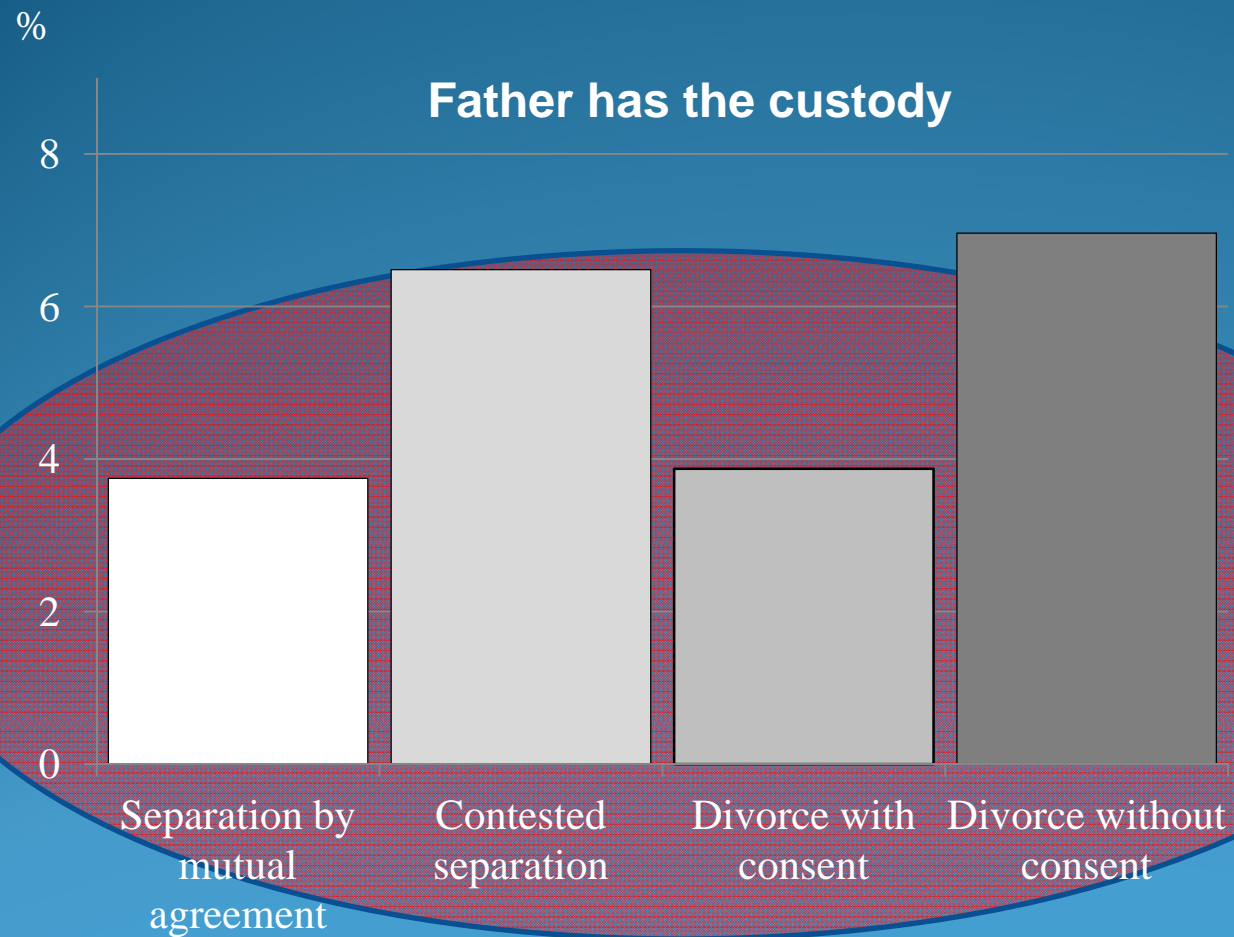
Figure 16a. Custody arrangement according to sentence ruling



3. Results (II): Current custody arrangements

average 2007-10

Figure 16a. Custody arrangement according to sentence ruling:



3. Results (II): Current custody arrangements

average 2007-10

Figure 16a. Custody arrangement according to sentence ruling

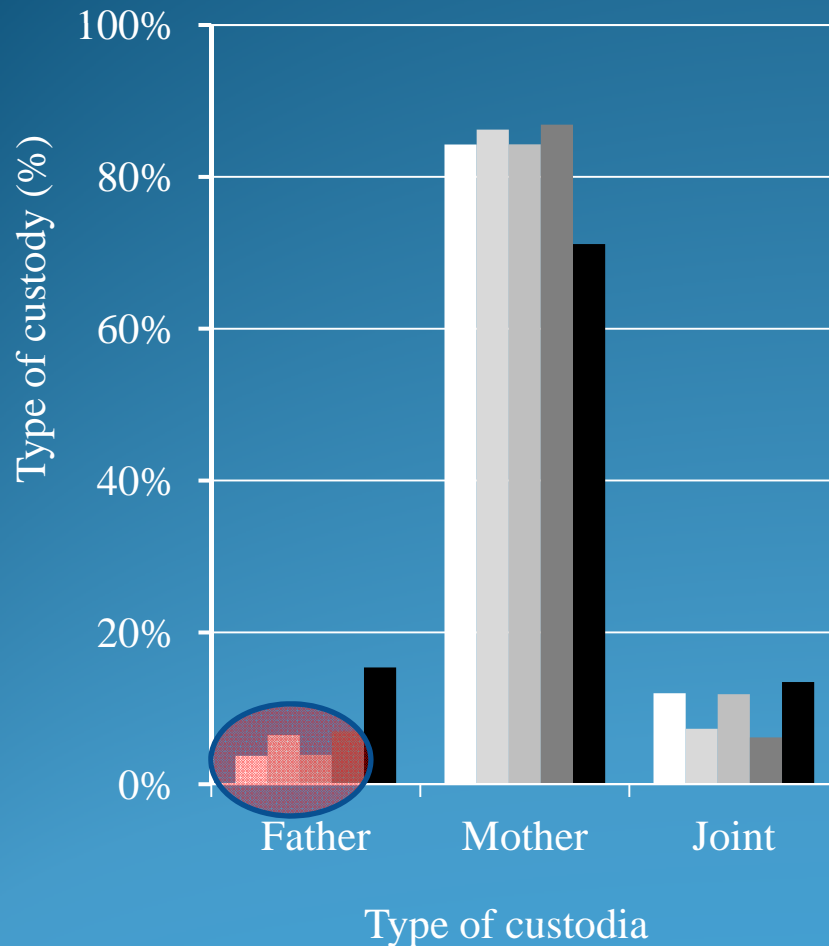
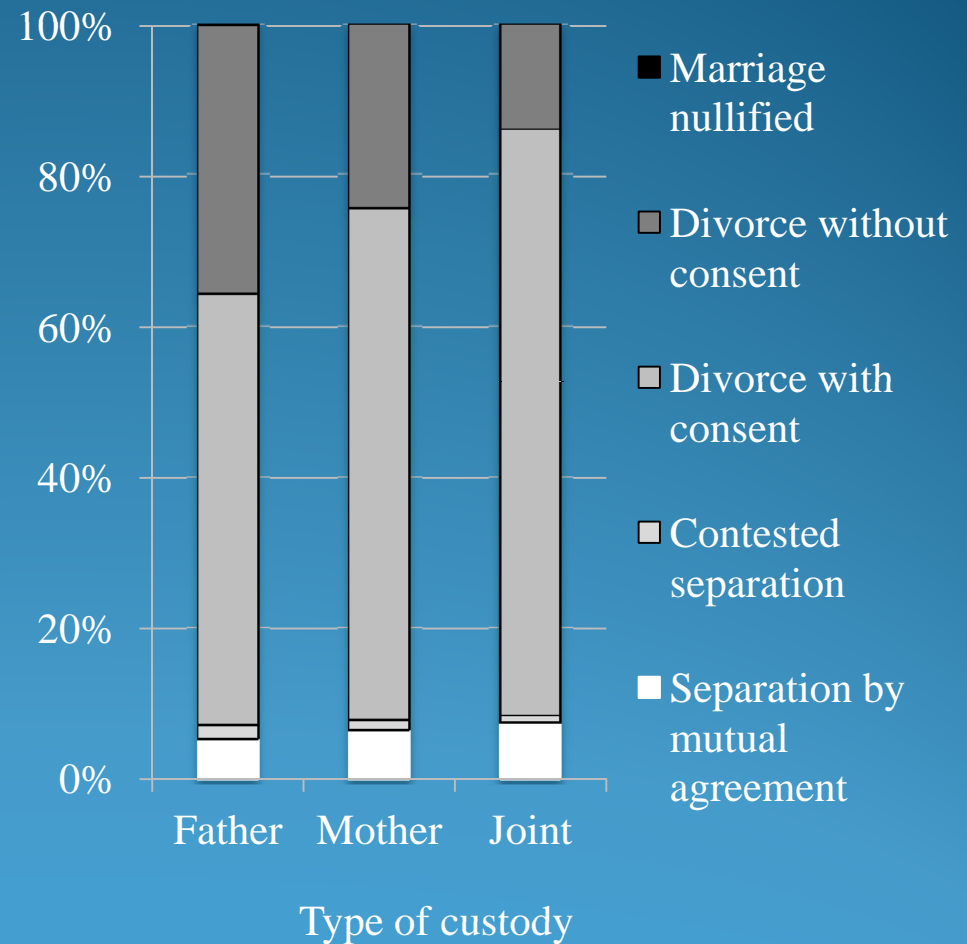


Figure 16b. Sentence ruling according to sentence custody arrangement



3. Results (II): Current custody arrangements

average 2007-10

Figure 17a Alimony paid by husband according to custody arrangement

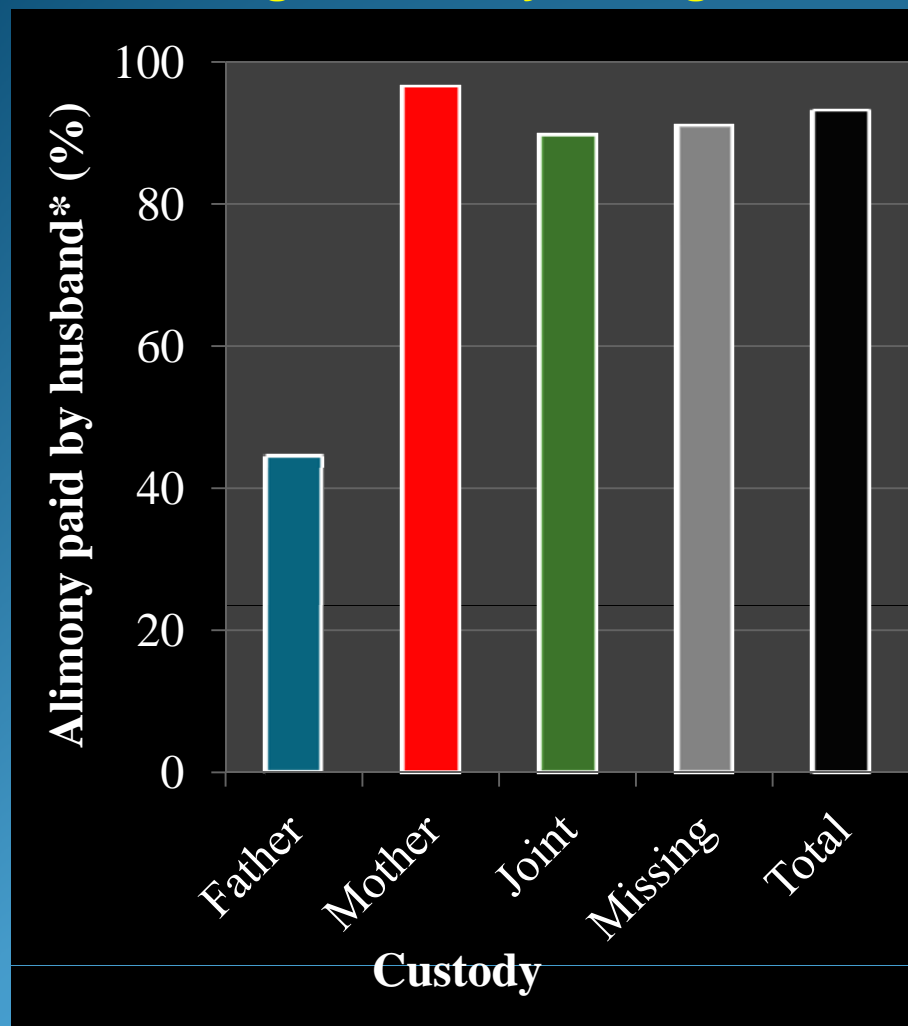
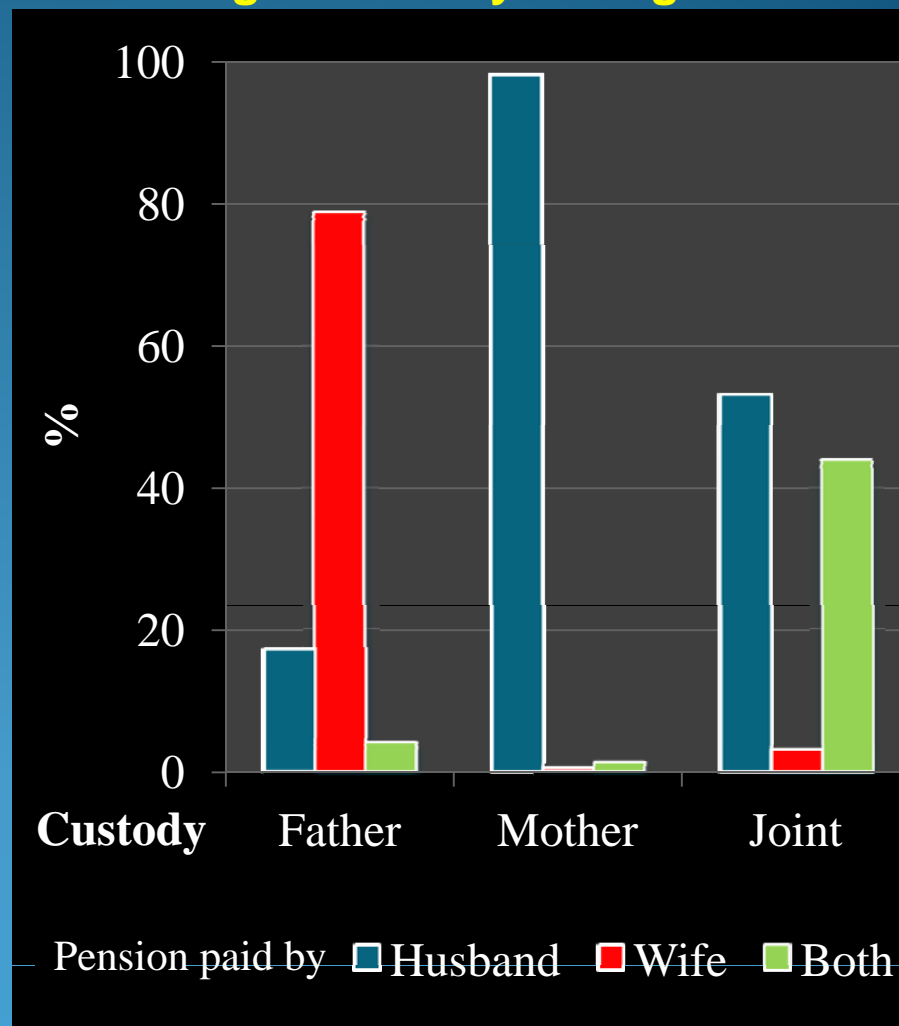


Figure 17b. Food allowance payments according to custody arrangement



* Inverse paid by wife

3. Results (III): Household composition (SILC data)

Households of single fathers as a proportion of all households with dependent children.

	Single parent household, one or more dependent children	Total with dependent children	% single father hholds
SPAIN			
< 25	2	11	18%
25-29	1	64	2%
30-34	0	221	0%
35-39	1	440	0%
40-44	5	697	1%
> 45	27	1754	2%
Total	36	3187	1%
FRANCE			
< 25	2	22	9%
25-29	4	102	4%
30-34	1	289	0%
35-39	10	552	2%
40-44	24	599	4%
> 45	81	1246	7%
Total	122	2810	4%

4. Summary: Sole custody for father – net effects

Variable	Categories	B	E.T.	Wald	gl	Sig.	Exp(B)
Reference year	2007			168.511	3	.000	1.00
	2008	-.123	.035	12.096	1	.001	0.88
	2009	.205	.033	37.606	1	.000	1.23
	2010	.275	.034	67.187	1	.000	1.32
Age at marriage of husband	<25 yrs			32.782	3	.000	1.00
	25-30 yrs	-.125	.029	18.185	1	.000	0.88
	30-35 yrs	-.054	.038	1.967	1	.161	0.95
	35+ yrs	.089	.049	3.313	1	.069	1.09
Spousal age difference	Homogamy			37.264	2	.000	1.00
	Hypogamy	.117	.044	7.054	1	.008	1.12
	Hypergamy	.164	.027	36.762	1	.000	1.18
Marriage Duration	< 5 yrs			314.094	3	.000	1.00
	5-10 yrs	-.014	.053	.072	1	.789	0.99
	10-20 yrs	.333	.049	46.012	1	.000	1.39
	20+ yrs	.634	.053	145.302	1	.000	1.89
Previous marital status husband	Single						1.00
	Divorced and widowed	.067	.059	1.291	1	.256	1.07
Duration of sentence ruling	< 6 months			100.967	2	.000	1.00
	6-11 months	.210	.032	42.887	1	.000	1.23
	12+ months	.398	.042	91.431	1	.000	1.49
Claimant	Husband			957.445	2	.000	1.00
	Wife	-.893	.031	817.892	1	.000	0.41
	Both	-.749	.034	491.997	1	.000	0.47
Decree	Separation by mutual agreement			68.913	3	.000	1.00
	Contested separation	.384	.105	13.276	1	.000	1.47
	Divorce by consent	-.009	.054	.029	1	.864	0.99
	Divorce without consent	.261	.061	18.397	1	.000	1.30
Minor children	One			39.291	2	.000	1.00
	Two	-.162	.027	36.635	1	.000	0.85
	Three+	.015	.051	.092	1	.762	1.02
	Constant	-2.973	.080	1390.164	1	.000	0.05

5. Final remarks

- Divorce became legal in Spain in 1981 but divorce rates really began to take off after the 2005 Divorce Reform that facilitated the divorce process.
- The Divorce Reform also provided a legal framework for joint custody. Up until then, in more than 90% of sentence rulings the mother was given sole custody.
- Since then, shared custody showed an initial increase followed by a stabilization at around 10% (2007-2009) and has since increased slightly to about 12%. Sole custody to the father has shown less change over time (around 5-6% since 2009).
- Based on the results:
 - Given that marriages are more and more legally dissolved with the consent from both spouses, this may suggest that joint custody is likely to increase in the future.
 - In terms of possible structural influences, the continuing increase in the age at marriage and less age homogamy could lead to more sole father custody.

5. Final remarks

Finally, while since 2007 the divorce decree data provide information that permits comparing differences in custody arrangements according to the characteristics of the divorcees and of the divorce process, **the type of custody relates to the decision of the court but says nothing about the claimant's custody preferences or the claimant's motive for a particular type of custody or how the custody is finally carried out (i.e. the "physical joint custody")**.

For instance, while legal custody may be shared, this does not tell anything about the **time** that each parent spends with the child(ren) and if **each parent contributes financially the same or not** (corrected for disposable income). Indeed, there are different forms in how joint custody can be arranged.

These aspects should be considered in future research, although to do so this would require specifically designed survey data.



Thanks for your attention
For any questions, my e-mail is
jjaspijker@yahoo.es