

MOTHER OR FATHER: WHO RECEIVED CUSTODY?
--THE BEST INTERESTS OF THE CHILD STANDARD AND JUDGES' CUSTODY
DECISIONS IN TAIWAN

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Abstract

In 1996, Taiwan adopted the best interests of the child standard to substitute for the presumption of paternal custody. This thesis is an empirical and descriptive study of how Taiwan's judges explain and apply the new law. The hypothesis is that cultural and social circumstances may significantly influence judges' explanations of what is best for the child. Seventy cases of an urban district court and a rural district court were collected and analyzed. The findings attest that Taiwan's court decisions of child custody cases actually reflect many cultural ideas, such as stereotyped gender roles, a sense of "face," and the tradition of parents' long-term financial support for their children. Meanwhile, the varying socio-economic climate of Taiwan across districts and the lack of public welfare programs also clearly affect judges' custody decisions. Moreover, this study finds that since 1996, custody has been overwhelmingly awarded to mothers, whereas before 1996 fathers were favored by the courts.

This change of court preference was not only caused by the gender-neutral standard and the influence of the women's movement, but it was also caused by the influence of the traditional ideas and social customs on judges. Judges prefer the "all-or-none custody" arrangement that imposes a double burden on single mothers. This decision pattern undermines both gender equality and the child's best interests and further worsens the economic status of post-divorce single-mother families. This study argues that judges should stop using economic competence as a necessary factor in determining custody. Both public welfare programs and private child support from the non-custodial parent should be implemented to assist the custodial parent if she or he is the more suitable but economically less competent parent. In addition, judges should give visitation orders more often and pay attention to the child's psychological and emotional needs. This study may contribute to redressing Taiwan's current situation where policy makers and researchers unduly disregard the issue of private child support and the problems of current judicial practices.

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