

# Chapter 11

## The Different Ways of Implementing Shared Physical Custody in the French Context



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**Abstract** Drawing on quantitative contextual data, this largely qualitative study comprehensively explores the different ways of obtaining shared physical custody (SPC) in France. I show that the choice of SPC depends on the historical context in which the marital separation occurred. I distinguish three ways of entering into SPC: situations of parental disagreement settled by law, situations in which a third party intervened in the decision, and situations of parental agreement. In this final category, I discuss the category of agreement itself, showing that behind seemingly obvious, though far from explicit, ways of reasoning lie processes of influence and negotiation occurring between separated mothers and fathers.

**Keywords** Shared physical custody · Parental agreement · Parental disagreement · Parental negotiation

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233

## 11.1 Theoretical Framework

While the psychologically oriented question of the well-being of children prevails in research on SPC (see the Robert E. Emery's chapter in this volume), there are other perspectives which must not be neglected. Demographic research on conjugal separation categorizes its target population according to the place of residence of the child; which is to say, according to whether the child lives with the mother, the father or with both parents. Studies carried out on an international scale (Bjarnason and Arnarsson 2011), at a national level (Sodermans et al. 2013), as well statistical approaches towards court judgements relating to divorce settlements (Cancian and Meyer 1998), all converge around the observation that SPC constitutes a minority of cases, that the parents who adopt this arrangement post-separation belong to more advantaged social strata; and that, on the other hand, it is beginning to spread more widely across society (Cancian et al. 2014). In Belgium, for example, "a more heterogenous social group is now likely to share responsibility for children after divorce, generalizations made on the basis of previous studies are no longer valid" (Sodermans et al. 2013). In effect, SPC has undergone democratisation.

Regardless of the objectives of the studies conducted, the countries studied, and the quantitative methodology used, the research on the determinants of SPC are in accordance with the following points.

It is more commonly adopted when the duration of separation is shorter, when the parents are on good terms with each other, when the father is more invested in the children before the separation and is recognized as such by the mother, and when the children are between 5 and 10 years old (Juby et al. 2005; Berger et al. 2008; Melli and Brown 2008; Spruijt and Duindam 2009; Kitterod and Lyngstad 2012; Nielsen 2013; Sodermans et al. 2013; Biland and Schütz 2015; Sodermans et al. 2015).

"Although increasing numbers of parents share custody of their children, we still know little about how divorced parents negotiate this process" (Stafford Markham and Coleman 2012, 587). My principle objective here is to address this lacuna. To be clear, the objective is not to consider how the popularity of SPC, relative to other forms of custody, varies from one cross-section of the population to the next; I am interested rather in how the process which leads towards SPC unfolds; and an emphasis is placed on how the parents themselves reconstruct this process. By engaging with parent's testimonies, we arrive a typology of modes of entry into SPC ordered according to a sliding scale: on one end, those cases where parents arrive at SPC without need for intervention of a third party, on the other those cases which required a high level of intervention. We arrive thereby at an updated understanding of the dynamics of negotiation involved (Strauss 1978), both formal and informal. I draw on the results of a two-pronged quantitative and qualitative field study, whose protocol I will outline after providing an overview of the French context.

## 11.2 The Choice of Shared Physical Custody (SPC) in France

The case of France is interesting: the participation rate of women in the labour force is high (85% of 25–49 years olds), as is the number of unmarried parents (6 out of 10 children are born out of wedlock). In addition, while SPC may not be a legal presumption in this country, for a little under two decades legal provision for equal custody has existed. The law authorizing SPC in France dates back to 2002. It was implemented around the same time as in other European countries, after the Scandinavian nations but before countries in southern and eastern Europe. Although the possibility of SPC is mentioned first in the body of the 2002 law, even before that of establishing residency with one or the other parent, this does not mean that it is the default option, as is the case in Belgium for example. According to the most recent data available, compiled by the Insee (The National Institute of Statistics and Economic Studies) using tax returns, children in shared physical custody number 400,000, accounting for 2.7% of children under the age of eighteen in France (Algava et al. 2019). Another estimate based on social data about beneficiaries of the Cnaf (National Fund for Family Allowances) who share family benefits because they share custody of their children,<sup>1</sup> indicates that 239,000 children were part of an SPC arrangement in 2017—versus 33,000 in 2007 (Céroux and Hachet 2019). Though it remains a small-scale phenomenon, SPC has increased significantly in France in recent years.

A 2012 survey by the French Ministry of Justice estimated that SPC was the result of 17% of all judges' rulings on divorces and separations involving children<sup>2</sup> (Guillonnet and Moreau 2013). Following this survey, in 2014, a sample of parents who divorced in 2012 were asked questions about the choice of living arrangements for their children after separation (Belmokhtar and Cretin 2015). The authors note that regardless of the chosen living arrangement, “the choice of living arrangement is a given [i.e., an obvious choice] for eight parents in ten” (Belmokhtar and Cretin 2015, 2). For parents sharing custody of children, 77% of women and 91% of men answered that the choice “was from the beginning *a given*,<sup>3</sup>” while only 13% of women and 4% of men responded that the choice was made after lengthy reflection” (Belmokhtar and Cretin 2015, 2). This data is consistent with results obtained in Sweden, a country in which SPC is much more widespread than in France. The question used by Swedish researchers as the title of their article—“Why should they live more with one of us when they are children to us both?” (Fransson et al. 2016)—

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<sup>1</sup>Since 2007, parents with children in SPC in France have been able to share family benefits. Neither parents with a single child in SPC nor those who do not share benefits are included in this data.

<sup>2</sup>Primary residency with the mother represented 71% of decisions and primary residency with the father, 12% (Guillonnet and Moreau 2013). This data does not take into account non-adjudicated SPC.

<sup>3</sup>My emphasis.

eloquently shows that the choice of SPC is linked to the question of parenting style and parenting equality.

### 11.3 Data and Methods

This study draws on research data from a wider research project carried out within the framework of a doctoral thesis addressing the question of the temporal dimension to the experience of parents within an SPC arrangement. In collecting and analyzing the findings of this study, two distinct angles of approach towards the process of entering into such an arrangement were adopted. In the first place, we carried out semi-directive interviews with parents who shared equal custody. This allowed us to build categories which were in turn incorporated into a questionnaire targeting a wider population. Our research strategy consisted in sequentially collecting qualitative and quantitative data with a view to heightening the “complementarity” and enhancing the “development” of methods (Bryman 2006).

Between 2011 and 2017, I conducted 55 interviews with 42 parents in situations of equally split SPC of their children following a separation. Because this number of parents included seven former couples, my interview corpus was actually composed of 35 SPC situations in total. Recruitment took place via several channels, snowballing from family member to family member or friend, at family mediation centers, or at public institutions that offer support to parents. When constructing my sample, I took particular care to make sure my participants had diverse profiles in terms of age, gender, number of children, levels of income and education, former marital status, their use of the legal system, blended families, and length of separation. I interviewed an equal number of mothers and fathers, and the average age of parents was 41.5 years old (ranging from 32 to 54 years old), while the average age of children was 9.6 years old (from 1 to 16 years old). The average length of separation was 4.4 years (from 2 months to 12 years), and a third of recruited parents did not go through the legal system. In seven cases, a single child was impacted by SPC; in 24 cases, two children; three children in three cases; and four children in one case. A part of the interview guide was devoted to the subject of the process of entry into SPC addressing how the decision was taken, whether the parents were in agreement or, if not, who had directed them towards SPC, whether or not they had consulted psychologists, appealed to family mediation or lawyers from the start, and whether or not parents had initiated legal proceedings. Through a thematic analysis of interviews, involving a comparison of parental narratives, allowed for the construction of categories related to the process of entry into shared custody: whether it was the product of agreement, disagreement or an intermediary state. These categories were then further used as an item in the construction of a questionnaire distributed to parents abiding by an SPC arrangement.

France’s RA-CAF-2016 survey is based on a questionnaire given to 20,000 parents (from a population of more than 100,000 individuals) who receive child benefits from the state’s National Fund for Family Allowances and who share the

money that they receive because they have SPC arrangements or because they have reported to their local office that their children alternate between homes. Published on line in June 2016, this questionnaire was elaborated with the oversight and collaboration of the Cnaf (National Funds for Family Allowance), and contributed to the completion of my doctorate. 5103 parents completed the questionnaire, a response rate of 25,5%. Within this group, 87% of SPC parents indicated that their children live « as much time with one parent as with the other». This result confirmed the pertinence of our decision to define SPC as an arrangement involving equal custody, a decision based on further research into equal parenting responsibility after divorce.

For the presentation of the results, I use quantitative data to assist in locating in-depth interviews within the larger sample of SPC cases. This work is based above all on the comprehensive analysis of each of the categories which thereby were brought into focus. The methodological pivoting back and forth of our approach proved to be effective in advancing our comprehension of parental reasons for entering into SPC. For example, as will become clear, the category of ‘parental agreement’ as endpoint was the product of diverse modalities of negotiation as intermediary step.

## 11.4 Results

I will first present the data obtained from the quantitative study, which I only use here to provide statistical context, before turning to the impact that the time period had on decision-making, and then proposing a comprehensive approach to each way of entering into SPC.

### *11.4.1 Three Ways of Entering into SPC*

In the questionnaire-based RA-CAF-2016 survey, the first question was about the ways of entering into SPC. Parents were asked how SPC was implemented, with six possible responses (Table 11.1).

I will start by noting that there are no discrepancies between the answers provided by mothers and fathers when it comes to reconstructing the process which led them towards SPC. The majority of parent respondents (70%) stated that SPC was implemented with mutual agreement. 16% responded that it was the result of a legal ruling following a parental disagreement—in the overwhelming majority of cases, it was the father who wanted SPC, while the mother was against it. In order to avoid a binary opposition between agreement and disagreement, I have introduced a third category of SPC situations, which are the result of intervention by a third party. This category of intermediary situations, which accounts for 14% of parental

**Table 11.1** Implementation of SPC

Typology of entering into SPC	Share of answers
<b>Mutual agreement</b>	<b>70%</b>
<b>Disagreement settled in court</b>	<b>16%</b>
Father requested it	14%
Mother requested it	2%
<b>Third party intervention</b>	<b>14%</b>
Children's request	9%
Judge's suggestion	3%
Family mediation	2%
N = 5103	100%

RA-CAF-2016, Parents with children in SPC in the French National Fund for Family Allowances

responses, primarily reflects demands by children (9%) and to a lesser degree, a judge's proposal (3%) or a decision made during family mediation (2%).

The level of intervention required varies somewhat depending on parental experience. Parental accord is higher (74%) among those who had shared custody on equal terms for more than 10 years, compared to those who had done so for less than 2 years (62%). Instances of discord decrease in step with the duration of SPC (20% to 14%), and with the greater prominence accorded to the voice of children in the decision-making process (12% to 6%). We may deduce from these findings that joint custody arrangements which began earlier are more often the result of a mutual agreement between parents; more recent cases, attesting to a greater diversity of social backgrounds, are more likely to involve decisions where the demands of the father were heeded against the advice of the mother, and the voice of children taken into consideration. We shall now take a retrospective look at how parental arrangements were implemented before law of 2002.

### ***11.4.2 The Choice of SPC Prior to the 2002 Law***

The decision to implement SPC has different meanings depending on the time period in which a marital separation occurred. Here, I will refer to the experiences of two mothers who divorced in 1982 and 1984, and who implemented SPC of their children, and that of two fathers who went through several separations or divorces, without SPC when they occurred prior to 2002, and with SPC after.

#### **Two Pioneers**

Geneviève, a teacher in a Parisian suburb, divorced in 1982, when her children were 6 and 3 years old:

We undoubtedly wouldn't have had the idea on our own because when we got a divorce, we didn't even know it existed. It was the very beginning of divorce by mutual agreement [1975] but it was the lawyer—we got just one lawyer for the divorce—and it was the lawyer who told us, “Look, I don't understand. You're going to go before the family affairs judge for custody of the children when since you get along so well why not opt for a system of shared physical custody?” We didn't know, because it was still the *good ol'* system when we had to choose which one of us would get the children. (Geneviève, 65, retired teacher, D37, S34, SPC15, Paris suburbs, 2013)<sup>4</sup>

The “*good ol' system*” of choosing the parent who would get custody colored their perception of what had to be done after a divorce at the time. The lawyer who enabled them to consider this type of custody drew upon the fact that they got along well, which, before the 2002 law, was a vital condition for implementing SPC, as one parent could not request it without the other's agreement. The reasons given by Geneviève relate to the necessity for gender equality:

I'm the one who left, who decided to leave my husband because I no longer wanted to live with him, I couldn't see myself anymore . . . there it is, I felt like we no longer had enough things in common. But for me, from the beginning, it struck me as absurd to deprive him of his children when from the very start he had been a, well, I don't like this word, but a perfect father. Meaning he took care of them all the time, he knew how to change diapers, he knew how to give them their bottle, he got up at night, he took them to the doctor . . . and I didn't see what right I had, just because I was the female in the couple, to claim the right to keep the children. So since we had the same mindset—politically at least—, it all happened rather quickly after that. (Geneviève, 65, retired teacher, D37, S34, SPC15, Paris suburbs, 2013)

Monique, a physician in a small town in the *département* of Vendée, separated from her husband in 1984, when their three children were 14, 11, and 6 years old. Unlike in Geneviève's case, Monique's husband was not involved in child rearing tasks:

I was the one who took care of the children. I'm the one who carried them, I'm the one who managed everything, even though [my husband] did some things, he did them when it suited him. I organized my work schedule to do this . . . it struck me as logical that his position as the father be maintained, that's how it seemed to me, clear. I didn't think that depriving the children of their father was a solution. I wouldn't say this was a radical opinion, but almost. (Monique, 67, retired physician, D40, D37, S32, SPC16, village in the west of France, 2011)

Despite their unequal involvement in bringing up their children, Monique tried to convince her husband to take a greater role in raising their children because she wanted to “*maintain his position as the father,*” following the same logic as Geneviève. In the two configurations described, the mothers could have logically requested and obtained sole custody of their children, but not doing so was for them a “radical” act.

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<sup>4</sup>In this article, the following information is provided for all the interviewed parents: their anonymized first name, their age, their occupation, the genders and ages of their children, how long (in years) they have been in an SPC arrangement, where they live, and the date of the interview.

## Two Fathers Who Divorced Both Before and After 2002

Claude is a stock-keeper and lives in a village in the south of France. In 1988, he divorced for the first time, from a wife with whom he had two sons aged five and two; in 1994, he separated from the mother of his third son, who was 1 year old at the time; and in 2013, he separated from the mother of his fourth son and his first daughter, when they were 15 and 10 years old. During the first two separations, the primary residence was established at the mothers' homes, with the agreement of Claude, who had visitation and physical custody rights every other weekend and half of vacations. The idea of implementing SPC did not occur to him because "*It wasn't the done thing. It was impossible. No information about this arrangement had trickled down to us*" (Claude, 54, stock-keeper, S15, D10, SPC2, village in the south of France, 2015).

Christian, a retired serviceman who lives in a village in the *département* of Saône-et-Loire, has been divorced twice: the first time in 1997 when his first children were 12, 7, and 4 years old; and the second time in 2009 when the children from his second marriage were 7 and 4 years old. In 1997, he did not request SPC because "*it didn't really exist back then, it was very rare, and also, I was still in the military at the time and I couldn't stop working*" (Christian, 54, retired serviceman, D13, S10, SPC4, village in the east of France, 2015).

Since SPC's enshrinement in law in March 2002, it has "*trickled down*" to the entire population, and not only those with the highest social standing. Lawmakers' recognition of SPC has democratized access to this arrangement. As a result, during their last separations, in 2011 for Christian and 2013 for Claude, the same fathers who had not envisaged SPC of their children a few years earlier, implemented it at this time. The law changed the universe of possibilities for them, and their past experiences reinforced their choices.

In 2013, Claude separated from his third wife, with no conflict surrounding the separation. He justifies the choice of SPC, comparing it to other types of arrangements:

Because in reality, when a parent has their child every other weekend and for half of vacations, they aren't raising them, the children are there on vacation, and from experience I saw that they had lost their bearings, and it was only by chance that they all came back to me. But my entire generation—I'm talking about 1961 here—they all separated, and everyone did every other weekend, and everyone had problems with it. [...] It's the best balance for the kids. With shared physical custody, you get to raise your kids more or less properly. (Claude, 54, stock-keeper, S15, D10, SPC2, village in the south of France, 2015)

In 2011, during his second divorce, Christian also chose to implement SPC. The legislative context allowed him to envisage it as a way to avoid reliving the painful experience of his first separation, in 1997:

We got a traditional divorce—every two weeks and half of vacations. It went badly in the sense that after a while I wasn't seeing my kids anymore, and now that they're adults, and after I fought for years to have them, they indirectly hold it against me for having abandoned them. [...] For me, it was out of the question to do the same thing I did during my first



divorce. That was too painful. After six years of legal battles, I stopped. It's too masochistic. (Christian, 54, retired serviceman, D13, S10, SPC4, village in the east of France, 2015)

The arguments made by Christian to justify the choice of SPC do not stem, as is the case with Claude, from this kind of arrangement being better for children's well-being. His motivation was to avoid making the same mistake as during his previous divorce. He did not want to become distanced from his children as he did from those from his first marriage. The legal existence of SPC offered him the possibility of not doing the same thing again.

Although all the mothers and fathers cited here lacked information about SPC in the 1980s and 1990s, the playing field was not level when it came to their social and cultural resources. Aspirations for post-divorce gender equality were much more widespread at the time in higher social groups (Geneviève was a teacher and Monique a physician) than in working-class milieus (Claude and Christian were, respectively, a stock-keeper and a serviceman). The former opted for egalitarian choices at the risk of transgressing the dominant norms—and their ex-husbands followed them—while the latter did not consider doing so (nor did their ex-spouses) before the law was voted on and became widely known.

### ***11.4.3 The Choice of SPC Following the 2002 Law***

I will now move on to explore the major categories presented in Table 11.1. I will first examine cases of disagreements settled in court, before turning to situations in which a third party successfully intervened, before concluding with the category of mutual agreements between parents.

#### **Disagreements Settled in Court**

The RA-CAF-2016 survey reveals that in 16% of cases, SPC was implemented against the wishes of one of the two parents following a legal ruling (Table 11.1). In 90% of cases, it was the father who wanted SPC contrary to the mother's wishes (Table 11.1). Among the participants in the interview-based survey, I met two fathers, Jérôme and Laurent, who wanted SPC of their children, while the mothers opposed it. I did not encounter any situations in which mothers requested SPC in court while the fathers were against it. I will therefore only present these paternal situations, as explained by the fathers themselves.

Jérôme, a researcher, was the father of three children aged ten, five, and one when his wife left him in 2010:

The breakup was pretty sudden—it happened in all of five minutes. I asked her if she had someone else, if she loved him, if she planned on living with him. I got three affirmative answers so then it was settled . . . Anyway, we knew then that we would separate immediately. [. . .] We talked about the kids right away and then . . . Thing is . . . She wanted custody . . . But I said, "I want shared physical custody, you have somebody, you have a family, but I

won't have anything left otherwise." So ... It was both a question of personal equilibrium ... A little bit of honor too ... (Jérôme, 39, researcher, D11, S7, S3, SPC1, Paris, 2011)

Jérôme expresses his desire for "*shared physical custody*" in relation to the suddenness of the breakup, which left him completely bereft. He wanted to continue to be part of a family with his children, to avoid being alone. He was driven less by the fact that continuing co-parenting was the obvious option than by a burst of pride, of "*honor*," after being stripped of his identity. His request for SPC stems from a reasoning that is more family-based than paternal. One can imagine that his wife was not expecting this request, because, as he mentions, he was not that involved with bringing up the children:

For the division of labor, it was still ... Even if I wasn't the most macho guy, she handled lots more things when it came to cleaning, she prepared the meals. [...] On Wednesdays, it was always her who watched the kids ... During trips, she took care of them at night ... I took them to school or daycare in the morning, but pretty often she was the one who took care of them.

Laurent, an oncologist in Marseille, and later Paris, separated from the mother of his 4-year-old son in 2006:

We were living in Marseilles and at the end of 2006, I requested shared physical custody, which was refused. I had my son every other weekend and two days a week on the weeks when I didn't have weekends. We were slowly moving toward shared physical custody. In 2009, his mother moved to Paris in the middle of the year. The courts didn't like that much and they gave me full custody with the argument that you don't make [children] leave school in the middle of the year. In September, his mother regained full custody and I had every other weekend. This custody arrangement didn't suit me, so I decided to change job and move to Paris. Once I was settled in Paris in September 2010, I again requested shared physical custody, which was refused, with a family investigation, psychologists and everything, even though there hadn't been one before. It was only in March 2011 that the courts ruled in favor of true shared physical custody, which began in September 2011 when my son was ten years old. (Laurent, 50, oncologist, S11, SPC2, Paris, 2013)

Laurent waited 5 years before being able to implement SPC due to parental disagreements about this arrangement. The courts ultimately granted him his wish, at the cost, for him, of a move and a job change. Unlike Jérôme, Laurent specifies that he "*had always been a 'mom-dad,'*" meaning a father actively involved in raising his son. Regardless of their level of involvement in child rearing tasks, these two fathers requested and obtained SPC.<sup>5</sup>

### SPC Requested by Children

While SPC proposals made by judges to non-petitioning parents (3%) and the development of the arrangement during family mediation (2%) were rare in 2016,

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<sup>5</sup>The survey protocol I used excluded situations in which one parent requested SPC and did not obtain it.

requests by children accounted for 9% of responses about how SPC was implemented (Table 11.1).

According to the RA-CAF-2016 survey, 9% of SPC arrangements were established “at the children’s request” (Table 11.1). In the interview-based survey, I encountered two cases that fall within this category. Ludovic, who separated from his wife in 2009, with children aged five and three, did not immediately request SPC, mainly “*because the children were little, and everything that I read about shared physical custody said that it wasn’t good for little kids*” (Ludovic, 41, videographer, D9, S6, (S1), SPC1, Paris suburbs, 2013, 2016). Though he did not directly consult “child specialists,” Ludovic read off-circulated negative opinions about SPC of young children. For 4 years, he and his ex-wife adopted a unique arrangement of split parental time. His children lived with their mother, and every morning, he went to the home of his ex-wife, who worked very early hours. He woke up his children, dressed them, made their breakfasts, and took them to school. During this period, he also spent every other weekend and half of vacations with his children. His paternal investment did not transform into a request for SPC until his children suggested the idea:

In fact, they’re the ones who asked for it. One day, they came home from school and the older one said, “Why don’t we do one week one week, like my friends at school?” I discussed it with their mother, who agreed.

During those 4 years, Ludovic did not request SPC because he felt guilty for having left, and because he believed his children were too young to live in a situation of SPC. It was therefore their request that allowed him to imagine the possibility of SPC and discuss it with their mother. At the time, his children were 9 and 6 years old, and no longer 5 and 2 years old, and—an important factor—his wife had found a boyfriend. The fact that the mother of his children was no longer alone undoubtedly favored the request by the children, that of their father, and their mother’s acceptance. Thus, more generally, post-separation configurations must be taken into consideration to understand a parent’s motivation for or resistance to entering into SPC.

### **What Lies Behind Parental Agreement?**

In my quantitative survey, 70% of parents stated that the implementation of SPC had been decided on in agreement with the other parent (Table 11.1). While situations of parental disagreement or those resulting from intervention by a third party are easily understood, the same is not true for the agreement category, which appears to reflect that SPC was an obvious choice, a given. Nonetheless, this “given,” or “obviousness,” awakens the sociologist’s curiosity and calls for more in-depth explanations.

#### **Discourse About Shared “Obviousness”**

Though not all the SPC parents encountered use the term “obvious” to explain what drove them to adopt SPC, many of them do nonetheless use this vocabulary, or terms such as “natural” or “normal” that express the same idea. What does the obviousness

of SPC mean to the parents who chose it? Sandrine is the only mother encountered who explains that the choice of SPC had been decided well before the separation:

Shared physical custody . . . We had already talked about it when we got married, before having kids, because there were people around us already divorcing and trying to figure out the issue of custody . . . we had already talked about shared physical custody, we felt like it was a good compromise, one week with Dad, one week with Mom. So that was it, after that we lived our life . . . and then, bad luck, we were getting a divorce, and it came about naturally that my husband and I did fifty fifty, meaning every other week, there you have it. (Sandrine, 36, nurse, S9, D6, SPC2 months, Paris suburbs, 2011)

In order for this decision, made 10 years earlier, to be respected in 2011 when the separation occurred, other conditions had to be present. One main condition for the parents to be able to discuss SPC as the obvious solution was the father's involvement in parenting and domestic responsibilities. Later in the interview, Sandrine explains:

My husband always took care of the children while I was working. So it was natural for me that it should continue, even after the divorce.

For Sandrine, SPC was the continuation of parental responsibility in another form. Marie-Pierre expresses this maternal discourse recognizing the father's capacities in the same way, with nearly the same words:

It was natural because in our parenting couple we were already taking care of the children in an equal way, he took care of them a lot, and so did I. (Marie-Pierre, 37, nurse, D12, D9, SPC7, Paris suburbs, 2011)

Her ex-husband confirms these comments:

The decision to go for shared physical custody was spontaneous and natural. We didn't discuss it, not at all [. . .]. It was obvious. I was involved in my daughters' upbringing, we can say it was obvious. There wasn't any discussion (Bojan, 38, teacher, D12, D9, SPC7, Paris suburbs, 2011).

The "natural," "obvious," or "spontaneous" nature of implementing SPC means that parents did not need to force their ex-spouses to change their habits in order to split physical custody of their children after the marital separation. The two parents both felt competent in caring for their children, and felt the other parent was equally competent.

### **A Paternal Initiative Accepted by the Mother**

The following cases recount situations in which fathers initiated SPC and were able to convince mothers to implement this arrangement. These are therefore situations of parental agreement whose protagonists identified the father as the initiator.<sup>6</sup> In this category, we see fathers invested in their children and, generally, marital breakups initiated by the mother. Stéphane states:

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<sup>6</sup>These situations should not be confused with cases of disagreements over SPC of children that are settled by law.

I couldn't imagine any arrangement other than shared physical custody at the very least. She had no choice. I was involved. I took partial parental leave when my second daughter was born. I have always been there. Traditional custody was unthinkable. (Stéphane, 34, optician, D8, D6, SPC4, city in the east of France, 2014)

Later in the interview, we learn that his marriage ended after he discovered that his wife was having an extra-marital affair: "*She had someone else, she denied it for a long time. Once I had proof, the breakup was immediate.*" The story of the separation sheds new light on the fact that Stéphane's ex-wife did not have a "*choice.*" Not only were they sharing parental responsibilities but his ex-wife, being the cause of the breakup, could not refuse Stéphane what he considered to be the "*minimum,*" meaning shared physical custody of their daughters. Some women can therefore be prompted to accept implementation of SPC because they feel responsible for the breakup. "It is a matter of guilt or restitution for 'causing' the divorce" (Stafford Markham and Coleman 2012, 597). Whoever causes the breakup carries a feeling of guilt<sup>7</sup> that drives him or her to limit his demands. Conversely, Ludovic, who left his wife after finding a new girlfriend, did not see himself requesting SPC right away:

I was the one who left her, I wasn't going to take away her kids too by asking for shared physical custody. (Ludovic, 41, videographer, D9, S6, (S1), SPC1, Paris suburbs, 2013)

Not every situation of father-initiated SPC is implemented due to the mother who has caused the breakup feeling guilty. Claude and Muriel separated by mutual agreement. Claude thought that SPC was the most stabilizing solution for the children. Muriel would have preferred "*traditional custody*" but she accepted a joint arrangement "*for the children*":

I would have preferred traditional custody. But it was easier for the children in a difficult separation. The children come first. My husband didn't want a "once every two weeks" arrangement. What's important is that the children come first. They wanted shared physical custody, and so did my ex-husband. (Muriel, 42, unemployed, S15, D10, SPC2, village in the south west of France, 2015)

Muriel accepted SPC not only because Claude requested it, but because her children did too. After discussing the arrangement with them, she conformed to their wishes.

### **A Maternal Initiative Accepted by the Father**

Cases of SPC initiated by the mother appear to be very rare, if we rely on the quantitative data concerning parental disagreements. In the RA-CAF-2016 survey, the cases in which "the mother requested it against the father's wishes" account for 2% of responses on the implementation of SPC.<sup>8</sup> This data gives the impression that there are many more fathers than mothers who want to share physical custody of their children. But these results only concern legal proceedings in which the parents'

<sup>7</sup>Or *may* carry a feeling of guilt . . .

<sup>8</sup>According to data from the Ministry of Justice, when one parent requests shared physical custody and the other primary custody, the request for shared physical custody comes from the mother in only 13 percent of cases (Guillonnet and Moreau 2013).

requests differed. Yet the interview-based survey reveals that some jointly agreed-upon SPC arrangements were initiated by the mother. Rachid left his partner in 2003, when their son was 3 years old. In this interview excerpt, he explains how SPC was implemented:

In 2003, I was depressed, really, really down, and personally I wouldn't have felt myself capable of taking care of [him]. So it was his mom who took charge. Because of the circumstances, because I was . . . at rock bottom. So she told me, "Okay, for [our son] it would be best"—well I don't know if it was for her or for [our son]—"that we share." Honestly there's one thing that's for sure, it's that I didn't feel capable of doing it. I was more in the traditional dad mindset, I'm not going to be able to take care of [him], I'll have him every other weekend, something like that. To be completely frank at the beginning I had that mentality in my head . . . very quickly, raising my son, well that became the only certainty in my life. (Rachid, 45, city hall employee, S15, SPC12, city in the west of France, 2015)

Unlike in the previously mentioned cases, although Rachid initiated the breakup, his spouse, and not him, requested SPC. Without the intervention of the mother of his son, it is clear that he would not have SPC of his child. It was the mother's initiative that allowed him to find a place as a father, and looking after his son provided him with an element of certainty in what was a difficult situation.

Louise and Arnaud separated in 2004, when they had a 5-year-old daughter and a 2-year-old son. They agree that SPC was implemented at the mother's initiative:

At the time . . . Arnaud didn't feel . . . Well . . . Their father didn't necessarily feel like he could completely handle . . . Dealing with two pretty young kids, and so that's why we went for the idea of the splitting the week in two. (Louise, 43, architect, D15, S11, SPC10, Paris, 2014)

She had to struggle within her own progressive mindset—because I was lucky to have someone very progressive—against her idea of taking the children. But she had it from the beginning, as part of her humanist side, this idea of equality, which is very present. (Arnaud, 42, architect, D15, S11, SPC10, Paris, 2014)

Louise underlines limited competency and limited paternal motivation to take care of young children, whereas Arnaud underlines the "*luck*" he had to be with someone "*progressive*" and "*humanist*." The mother's argument centers on the concrete possibility of the father being able to care for the children, and the necessary adaptations to be made to enable SPC. Later in the interview, Louise explains that splitting the week in half allowed her to continue to handle everything, especially the laundry, as "*they went to their father's home with clean clothes, and came back with dirty clothes.*" The father's argument is completely detached from material considerations and relates to a world of conceptual justification. For the father, Louise's progressivism explains why she was able to combat the norm of maternal physical custody and allow him to be a father in daily life, albeit exempted, in this case, from a certain number of domestic responsibilities. The opportunity to implement SPC, as well as the terms of the arrangement, depends on the age of the children (Hachet 2017).

Julie, who separated in 2008 from the father of her daughter, 1 year old at the time, mentions the importance of her own experiences as a child:

At first I was so angry that it crossed my mind more than once, I'm not saying I wasn't thinking it would be simpler if he just wasn't there . . . But, well, at the same time, I had a father who was gone all the time and I know what it's like not to have a father. So yeah, I didn't want to put my daughter through that. I took it on myself for her, you know, but now honestly things are better. (Julie, 43, piano teacher, D6, SPC4, city in the west of France, 2013)

Julie resists the “*simpler*” possibility of getting rid of the father of her daughter because of her memories of her own father's absence. She wages an inner battle, like Louise does with the norm, to give her ex-partner a place. In both cases, the breakups were sudden, and initiated by the woman. In both cases, the mothers took the initiative to involve their spouses in some degree of family mediation, which resulted, in addition to discussions of concrete arrangements, in committing the fathers to their roles.

## 11.5 Discussion and Limitations

My results are consistent with research that indicates that implementation of SPC is primarily the result of parents who agree on this type of arrangement. They also confirm the results of Alexander Masardo, which show the importance of historical context in the choices made by parents: “It is reasonable to suppose that the more widely accepted the practice of shared residence becomes, the more likely it is to be taken up as a serious option when parents separate” (2011, 133). This historical context is also a legal context. Thus, a change in the Catalan civil code in favor of “*custodia compartida*” largely contributed to the spread of this practice among the population (Solsona and Spijker 2016).

My study also allows for an expansion of the ways of entering into SPC beyond a binary opposition between spontaneous agreements, legal or otherwise, and parental disagreements settled in court. I have shown that on one hand, there is an intermediary category in which a third party intervened in the decision, and on the other, that the category of “parental agreement” can itself be split into several different modes. In France, direct proposals made by judges during hearings are few, as are decisions for SPC made during family mediation. In contrast, for nearly 10% of parents with SPC, the request for SPC by children was decisive and brought about the parents' agreement, particularly when the children were older. Children had a role in implementing SPC, as they did in how it subsequently functioned: “Children's narratives reveal how most of them engaged in different kinds of decision-making practices on a regular basis” (Berman 2018, 111).

The category of parental agreements is most often considered as “a given” (Fransson et al. 2016) and as a result is little examined. I have shown that parental agreements on SPC, brought to court or not, hide decision-making processes that can be lengthy and in which one of the two parents is able to influence the other to accept his or her choice. I have also shown that SPC results not only from pressure from fathers to have access to their children, but also from initiatives by mothers to ensure

their children have an invested father. “These mothers believed that sharing custody was the right thing to do for their children” (Stafford Markham and Coleman 2012, 593).

The study’s limitations reside in the lack of systematic questioning of the two parents sharing physical custody of their children, which would have allowed for a subtler understanding of the types of negotiation at work. They also stem from the selection of subjects questioned, meaning parents in situations of SPC. I was consequently unable to gain access to parents who would have liked to implement SPC but who did not do so. The parameters of my research also prevented me from taking into consideration situations in which parents had ended an SPC arrangement, even in cases where it had been the choice of both parents - who subsequently were unable to maintain it. Finally, another limitation is that I collected these parental statements sometimes several years after a separation, which may have generated bias in reconstruction of the past (Bourdieu 1986).

## 11.6 Conclusion and Perspectives

In the relevant literature, analysis of the reasons that parents implement SPC after a separation or divorce is often limited to brief commentary about legal rulings. All the research on this subject concurs that in the vast majority of cases, SPC is the result of parental agreement. However, the way in which agreement is reached between parents is rarely examined. By focusing on this question of parental agreements, I have shown that they take form well before a legal ruling, and at times entirely outside of the court system. Here are the primary results:

The background circumstances which lead to conjugal separation exerted an influence on the macro level in determining whether and in what form SPC would be possible or practical. Before the law of 2002 parents coming from less advantaged social strata, and fathers in particular, often did not consider requesting SPC. Once the law had authorized it, the new norm spread across society to the point of impacting upon the decision-making process of individuals from social groups who would otherwise have been least open to equality in parenting. In short, parents henceforth made their decision as individuals in response to the particularities of their situation.

The ages of the children matter. With the youngest, parents most often agree that it is best for them to live with their mother. Decisions to implement SPC can thus be delayed until a time when the fathers, in particular, feel more capable of taking on parental responsibility. Older children intervene in the choice of the kind of living arrangement.

Gender matters. The guilt felt by the individual who decides to end a relationship has different impacts on the choice of custody arrangement depending on the gender of the individual who leaves. If the woman leaves, she will more readily accept a request for SPC by her former spouse, to make up for her departure. If the man leaves, he is less likely to request SPC, feeling like he is not allowed to go beyond



what the dominant norm attributes to fathers, meaning every other weekend and half of vacations.

Repartnering matters. Our findings did not allow us to measure precisely the impact of new relationships on custody arrangements, or for that matter on the delayed implementing of SPC. The effect of re-pairing is never unequivocal: the configurations which it produces vary according to whether or not the new partner has children, the age of the children concerned, and the arrangement in place prior to family recomposition.

SPC may be considered the obvious choice for parents already sharing parental tasks before a separation. It can also result from the preference of one parent who was able to convince the other, outside of court. This can therefore serve to distinguish between paternally-initiated SPC and maternally-initiated SPC. We find ourselves confronted with a more complex reality than that captured by the often employed, yet overly static, category of ‘parental agreement’. This chapter has identified some of the dynamics of negotiation which are often instrumental in driving the delicate process of transition towards such an arrangement. To expand on this study, it would be useful to conduct quantitative surveys specific to the implementation of SPC, in France as well as in comparable countries. The results would allow the influence of SPC as “a given,” (i.e., as a seemingly obvious choice) to be measured, as well as the impacts of legislation, social policies, and national cultures on post-divorce co-parenting.

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