



Centre d'Estudis Demogràfics

**GEOGRAPHIES OF DIVORCE IN SPAIN: THE
EFFECT OF AUTONOMOUS REGIONS LAWS IN
RECENT TRENDS OF JOINT PHYSICAL CUSTODY
(2007-2013)**

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Abstract.- *Geographies of divorce in Spain: The effect of Autonomous Regions Laws in recent trends of Joint Physical Custody (2007-2013).*

In 2005 a Divorce Reform took place in Spain that explicitly included the possibility for legal joint physical custody so that children could alternatively live with each parent, even though this could already be arranged informally if there was an agreement between the parties (but this was sparsely practised). Since 2010 four Autonomous Regions produced their own laws concerning the care of children after marital breakup, namely Aragon (Law 2/2010), Catalonia (Law 25/2010), Navarra (Law 3/2011) and Valencia (Law 5/2011). While already prior to the implementation of these laws these Autonomous Regions generally observed higher proportions of joint custody than in the rest of Spain, in all but Navarra differences have only increased since then, particularly in Aragon and Catalonia where in 2013 30% of awarded custodies were joint custodies. In this paper we provide the regional trends and a description of the patterns and characteristics of joint physical custody arrangements of minor children based on microdata from the General Council of the Judiciary on “Decrees of separations, divorces and annulments” for these four regions and the rest of Spain. We discuss the nuances of the effect of each regional law in increasing joint physical custody, the need to advocate shared parental responsibility rather than joint physical custody per se and the potential for it to reduce gender inequality. Beyond legislation, the practise of day-to-day parenting that differs between regions before divorce (mainly due to differences in female labour force participation) explains part of the observed regional differences in coparenting after divorce.

Keywords.- Spain, Divorce, Law; Gender Inequality; Children

Resum.- *Geografies del divorci a Espanya: l'efecte de les lleis de les comunitats autònomes en les tendències recents de la custòdia física conjunta (2007-2013).*

El 2005 es va produir una reforma del divorci a Espanya que incloïa explícitament la possibilitat de tenir una custòdia física conjunta legal de manera que els fills poguessin viure de manera alternativa amb cada progenitor, tot i que aquesta ja es podia organitzar de manera informal si hi hagués un acord entre les parts. practicat). Des del 2010, quatre comunitats autònomes van elaborar les seves pròpies lleis relatives a la cura dels fills després de la ruptura matrimonial, a saber, Aragó (Llei 2/2010), Catalunya (Llei 25/2010), Navarra (Llei 3/2011) i València (Llei 5/2011) . Si bé ja abans de l'aplicació d'aquestes lleis, aquestes comunitats autònomes van observar generalment proporcions més elevades de custòdia conjunta que a la resta d'Espanya, tot i que les diferències a Navarra només han augmentat des d'aleshores, particularment a Aragó i Catalunya, on el 2013 el 30% de les custòdies adjudicades. eren custòdies conjuntes. En aquest treball proporcionem les tendències regionals i una descripció dels patrons i característiques dels arranjaments de custòdia física conjunta de menors d'edat basats en microdades del Consell General del Poder Judicial sobre “Decrets de separacions, divorcis i anul·lacions” d'aquestes quatre regions i les resta d'Espanya. Es tracten els matisos de l'efecte de cada llei regional en l'augment de la custòdia física conjunta, la necessitat de defensar la responsabilitat parental compartida en lloc de la custòdia física conjunta per si mateixa i el potencial perquè aquesta pugui reduir la desigualtat de gènere. Més enllà de la legislació, la pràctica de la criança quotidiana que difereix entre les regions abans del divorci (principalment a causa de les diferències en la participació de la força de treball femenina) explica part de les diferències regionals observades en el coprendre després del divorci.

Paraules clau.- Espanya, Divorci, Dret; Desigualtat de gènere; Fills

Resumen.-*Geografías del divorcio en España: El efecto de las leyes de las comunidades autónomas en las tendencias recientes de la custodia física conjunta (2007-2013).*

En 2005, se llevó a cabo una Reforma de Divorcio en España que incluía explícitamente la posibilidad de custodia física legal conjunta para que los niños pudieran vivir alternativamente con cada padre, aunque esto ya se podría organizar de manera informal si hubiera un acuerdo entre las partes (pero esto era escasamente experto). Desde 2010, cuatro comunidades autónomas elaboraron sus propias leyes sobre el cuidado de los niños después de la ruptura matrimonial, a saber, Aragón (Ley 2/2010), Cataluña (Ley 25/2010), Navarra (Ley 3/2011) y Valencia (Ley 5/2011) . Si bien antes de la implementación de estas leyes, estas Comunidades Autónomas generalmente observaron mayores proporciones de custodia compartida que en el resto de España, en todas las diferencias, excepto en Navarra, solo han aumentado desde entonces, particularmente en Aragón y Cataluña, donde en 2013 el 30% de las custodias otorgadas fueron custodias conjuntas. En este documento proporcionamos las tendencias regionales y una descripción de los patrones y características de los arreglos de custodia física conjunta de menores de edad basados en microdatos del Consejo General del Poder Judicial sobre "Decretos de separaciones, divorcios y anulaciones" para estas cuatro regiones y el resto de España. Discutimos los matices del efecto de cada ley regional en el aumento de la custodia física conjunta, la necesidad de abogar por la responsabilidad parental compartida en lugar de la custodia física conjunta per se y el potencial para reducir la desigualdad de género. Más allá de la legislación, la práctica de la crianza cotidiana que difiere entre las regiones antes del divorcio (principalmente debido a las diferencias en la participación femenina en la fuerza laboral) explica parte de las diferencias regionales observadas en el coparenting después del divorcio.

Palabras clave.- España, Divorcio, Derecho; Desigualdad de género; Hijos

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THE EFFECT OF AUTONOMOUS REGIONS LAWS
IN RECENT TRENDS OF JOINT PHYSICAL CUSTODY (2007-2013)**

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Aquest *Paper de Demografia* inclou la presentació de la comunicació “Geographies of divorce in Spain: The effect of Autonomous Regions Laws in recent trends of Joint Physical Custody (2007-2013)” exposada al *8th International Conference on Population Geographies*, a The University of Queensland, Brisbane (Austràlia), 30 de juny-3 de juliol de 2015.

També, part de la recerca es va publicar a:

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Versió anglesa: [Geographies of divorce in Spain: The effect of Autonomous Regions Laws in recent trends of Joint Physical Custody \(2007-2013\)](#)

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Brisbane, Australia

Geographies of divorce in Spain: The effect of Autonomous Regions Laws in recent trends of Joint Physical Custody (2007-2013)¹

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Summary

In 2005 a Divorce Reform took place in Spain that explicitly included the possibility for legal joint *physical* custody so that children could alternatively live with each parent, even though this could already be arranged informally if there was an agreement between the parties (but this was sparsely practised).

Since 2010 four Autonomous Regions produced their own *laws* concerning the care of children after marital breakup, namely Aragon (Law 2/2010), Catalonia (Law 25/2010), Navarra (Law 3/2011) and Valencia (Law 5/2011).

While already prior to the implementation of these laws these Autonomous Regions generally observed *higher proportions of joint custody* than in the rest of Spain, in all but Navarra differences have only increased since then, particularly in Aragon and Catalonia where in 2013 30% of awarded custodies were joint custodies.

In this paper we provide the *regional trends* and a description of the patterns and characteristics of *joint physical custody* arrangements of minor children based on microdata from the Spanish Statistical Institute on “Decrees of separations, divorces and annulments” for these four regions and the rest of Spain.

We discuss:

- the *effect of each regional* law –in particular *Catalonia*- in increasing joint physical custody,
- the need to advocate shared parental responsibility rather than joint physical custody *per se* if we look for reduce gender inequalities.

Beyond legislation, the practise of day-to-day parenting that differs between regions before divorce (mainly due to differences in female labour force participation) explains part of the observed regional differences in coparenting after divorce.

Joint legal custody and joint physical custody. Two different concepts

Shared parenting time (family practice *before* and *after* divorce)

After divorce:

Joint *legal* custody: important decisions on children

Joint *physical* custody: daily care of children



Shared residence with the mother and the father

In this study:

[Legal] Joint Physical Custody

Divorce and Joint physical custody. Legal context.

Spanish Divorce Laws

1936 Divorce Law (2nd Republic). Divorce by *consensus*

...

1981 Divorce Law . Cause of divorce. Separation and Divorce.

2005 Reform of Divorce Law. Joint legal custody if *consensus*, and decision of the judge in *exceptional situations*.

Autonomics Laws in the XXIst. Century on Shared physical custody

2010 Catalunya: the *preferred* option {gender equity}

2010 Aragón: the *preferred* norm {gender equity}

2011 Comunitat Valenciana: preferred criteria or by *default*?

2011 Navarra: Shared custody, by *default*? {it's not clear for us}

Regional Family Laws in Spain



Data and Methods

Data source:

Juridical statistics. INE. Selected years.

Judiciary **microdata** obtained from INE on “**Decrees** of annulments, separations and **divorces**” for Catalonia and other Spanish regions (2007-2012)

Population Census. Spain. 2011 and Time Use Survey. Spain. 2009-10.

Methods:

Descriptive analysis

Multivariate logistic regression

Dependent variable:

The proportion of joint physical custodies

Explanatory variables

In multivariate analysis: *Characteristics* of the: partners, union, and the legal process.

Past: *The prevalent gender contract in each region*

Future: *The expressive function of law*

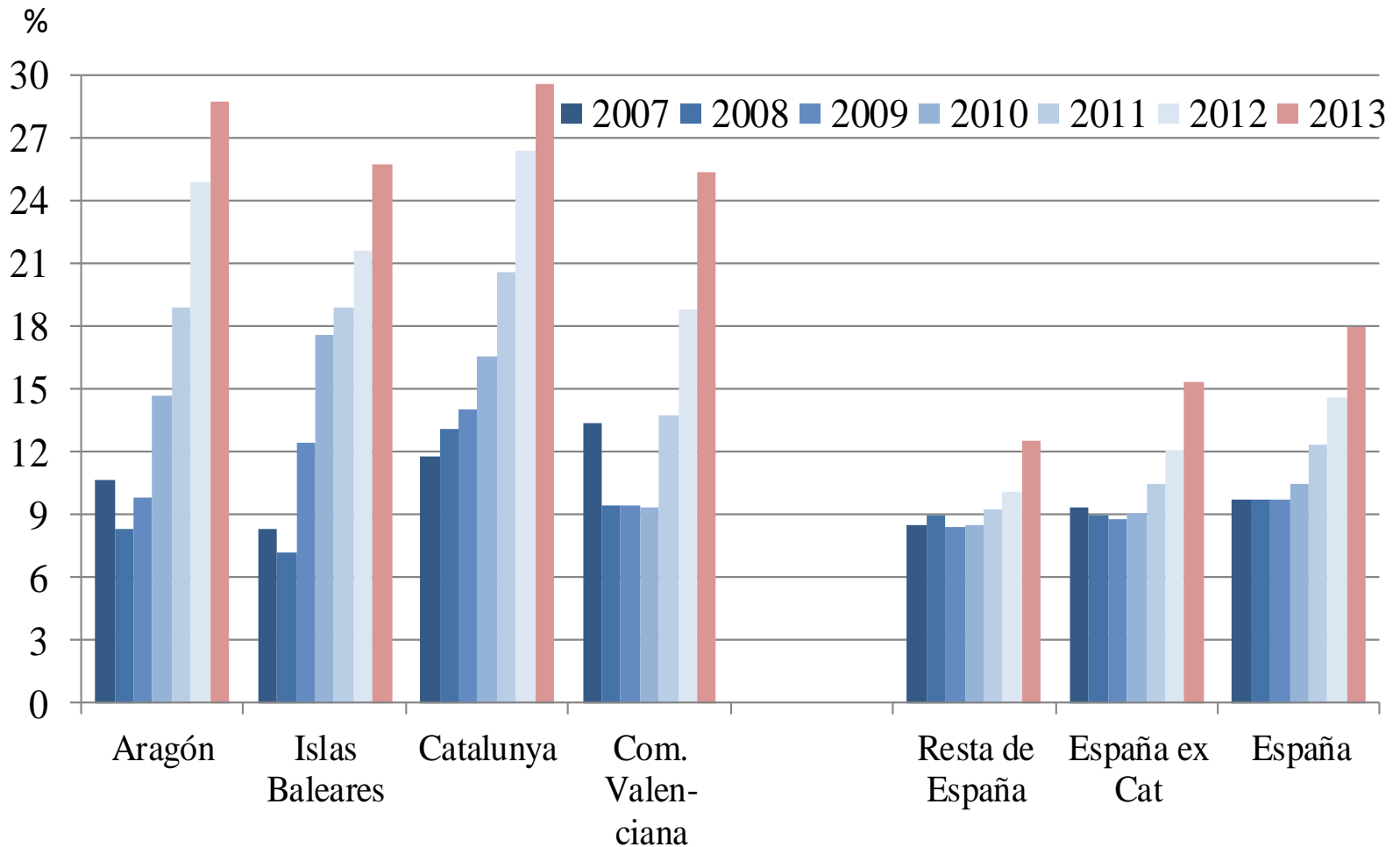
Divorces (decrees) by consent and Shared Custody (in %)

Autonomous Regions. Selected years.

	% divorcios consensuados					custodia compartida			
	1999	2003	2007	2012	2013	2007	2012	2013	
Andalucía	43.8	51.8	55.9	57.9	69.1	9.6	7.0	9.9	
Aragón	58.0	66.2	69.6	71.2	79.1	10.9	24.9	29.0	←
Asturias	43.0	55.1	62.5	67.0	77.0	14.7	12.2	14.5	
Baleares (Illes)	59.3	67.2	67.4	70.8	79.1	8.0	21.8	26.1	←
Canarias	50.9	59.1	54.7	59.2	68.1	7.0	12.1	13.7	
Cantabria	44.6	57.8	67.3	69.9	77.2	4.8	9.5	9.6	
Castilla y León	42.1	51.3	58.3	66.3	73.5	11.7	9.6	11.8	
Castilla-La Mancha	42.1	52.6	62.0	62.5	73.7	9.9	8.9	11.6	
Cataluña	59.8	71.4	71.6	72.6	81.6	11.6	26.4	29.6	←
Comunidad Valenciana	55.3	60.3	68.3	66.9	78.3	13.2	18.9	25.7	←
Extremadura	37.0	41.8	56.6	64.5	70.4	5.2	8.3	7.4	
Galicia	41.0	53.7	55.4	64.2	74.3	8.4	9.7	10.0	
Madrid	57.5	65.2	65.5	67.7	74.6	5.9	12.7	16.5	
Murcia	52.0	56.7	57.6	62.5	71.7	7.7	5.8	7.9	
Navarra	65.1	69.2	72.3	73.3	88.2	6.0	12.4	15.9	
País Vasco	58.6	63.2	68.4	70.7	79.7	8.2	14.0	17.4	
Rioja (La)	57.0	67.0	68.2	66.6	79.1	12.4	13.5	15.8	
España	52.6	61.1	63.6	65.9	75.4	9.6	14.6	17.9	

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Trends in Joint Physical Custody 2007-2013 (in %) Autonomous Regions with Family Laws



Joint Physical Custody .

Catalonia, Spain and selected europeans countries

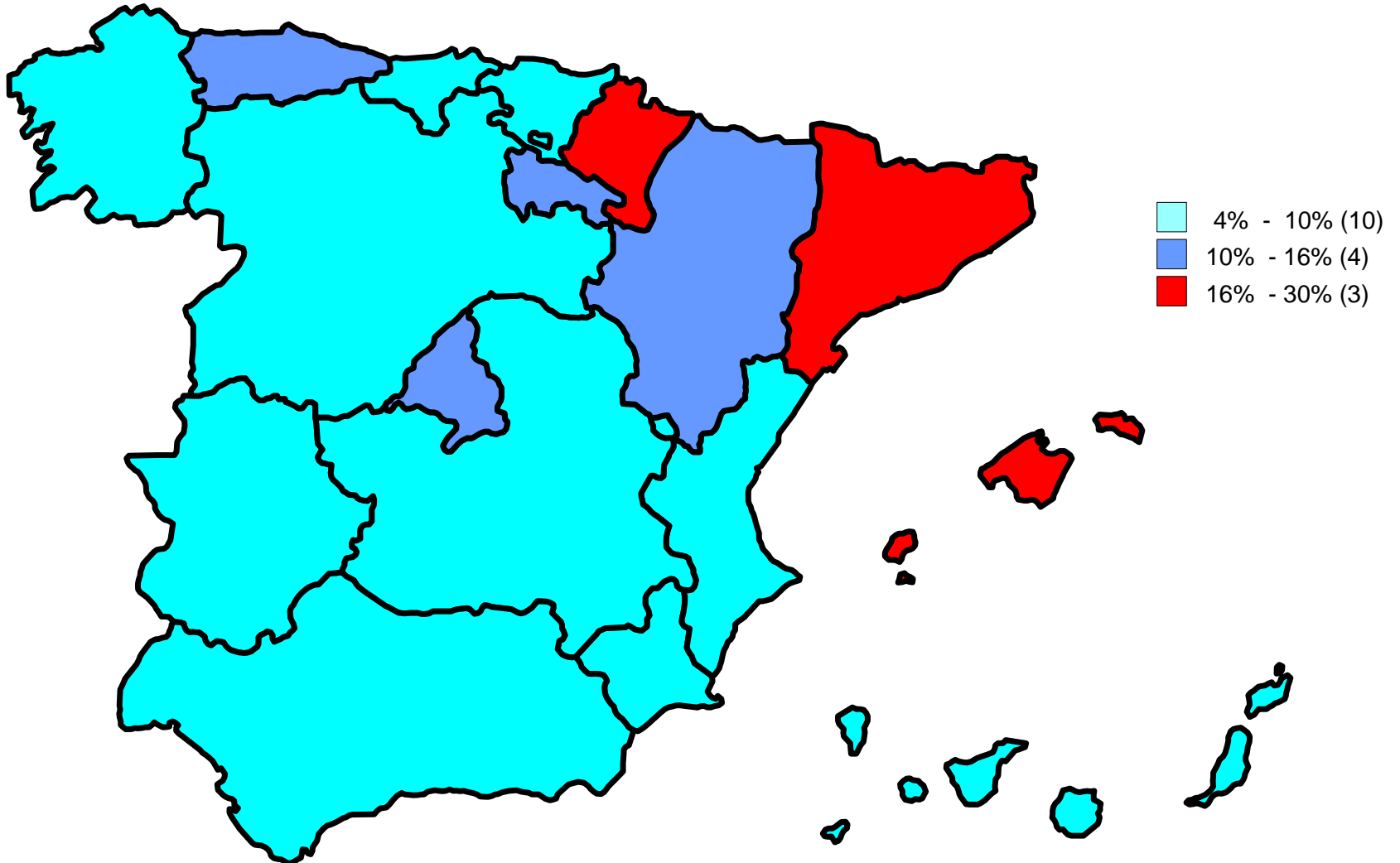
Country	Proportion	Year	Source
Catalonia	30%	2013	www.ine.es
<i>Spain, ex. Catalonia</i>	15%	2013	www.ine.es
Austria	1%	2001	Vezzetti (2013)
Belgium	33% (adolescents)	2006-11	Sodermans et al. (2013)
Czech Republic	8%	2011	Vezzetti (2013)
Denmark	39% (7 years old)	1995 cohort	Vezzetti (2013)
France	19%	2012	Guillonneau & Moreau (2013).
Germany	13%	2008	Vezzetti (2013)
Greece	3% (adolescents)	1998-2007	Vezzetti (2013)
Italy	5%	2010	Vezzetti (2013)
Netherlands	22%	2013	http://statline.cbs.nl/
Norway	20%	2005	Jensen (2005)
Portugal	3%	2008	Vezzetti (2013)
Romania	<1%	2009	Vezzetti (2013)
Slovakia	5%	2011	Vezzetti (2013)
Sweden	35%	2012/13	Statistics Sweden (2014)
Switzerland	<1%	2010	Vezzetti (2013)
UK	6% (adolescents)	2009	Bjarnason & Arnarsson (2011)

Proportion Joint Custody in Spain. 2007. (in %)



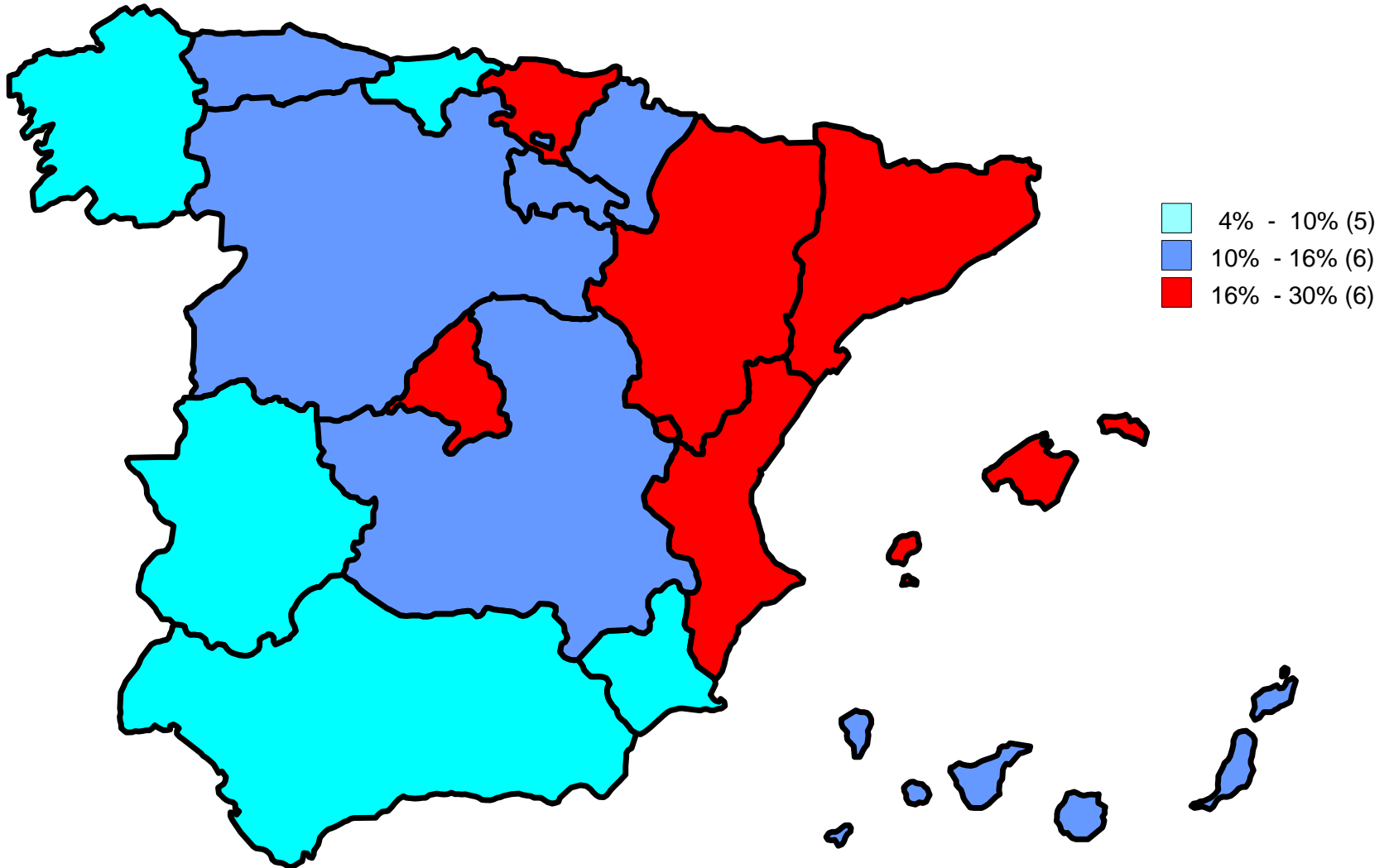
Source: Decrees of separations, divorces and annulments. Spanish National Institute.

Proportion Joint Custody in Spain. 2010. (in %)



Source: Decrees of separations, divorces and annulments. Spanish National Institute.

Proportion Joint Custody in Spain. 2013. (in %)



Source: Decrees of separations, divorces and annulments. Spanish National Institute.

1. Characteristics of Shared Custody

Multivariate Logistic Regression

Factors associated with a positive (+) to the shared custody in Catalonia:

YEAR of DIVORCE: + the **more recent** the year of divorce. *New culture in legal practice.*

CHARACTERISTICS OF SPOUSES: + if father is **older** than 40 years and have 2 children. When both spouses are of **Spanish** nationality

CHARACTERISTICS OF THE UNION: + When the union has lasted 5-10 years, when the breakup is a first marriage.

LEGAL PROCESS: + When the demand for divorce is **joint**, there was a previous legal separation, the legal process is **short** (less than 6 months), and the decree is by **consensus**.

Comparison between Catalonia and the rest of Spain

- In the period 2007-10, before the Catalan Law, the proportion (“odd”) of joint custodies was on average **1.5 times higher** in Catalonia than in the rest of Spain. This ratio increased by about 0.2 per year, a trend that continued in 2011-12 (after the Catalan law) when the ratio averaged **2.1**.
- In both territories virtually the same personal characteristics are associated with higher or lower probabilities. A notable exception is when both spouses are **foreign** as the territorial difference in custody arrangements is relatively small: in Catalonia **only 30%** more than in the rest of Spain.

2. *On the expressive function of law*

Criteria to determinate the Custody of Children

Catalan Law/ BOE-A-2010-Artículo 233-11

The Judge may consider:

- a) The special love relationship that children have with their parents.
- b) The ability of parents to ensure the welfare of children and a suitable living environment.
- c) The attitude of each parent to **cooperate with each other** to with each other to ensure maximum stability in the child's relationship with both parents.
- d) The **time** that the mother or father had to dedicate for the **care of children before the break-up**.
- e) The opinion expressed by the children.
- f) The agreements made in anticipation of the union dissolution.
- a) The location (**space**) of the homes of the parents, and the schedules and activities of the children and parents.

2. *On the expressive function of law*

Contents of the **Parenting Plan**

Catalan Law: / BOE-A-2010-13312 Art. 233-9

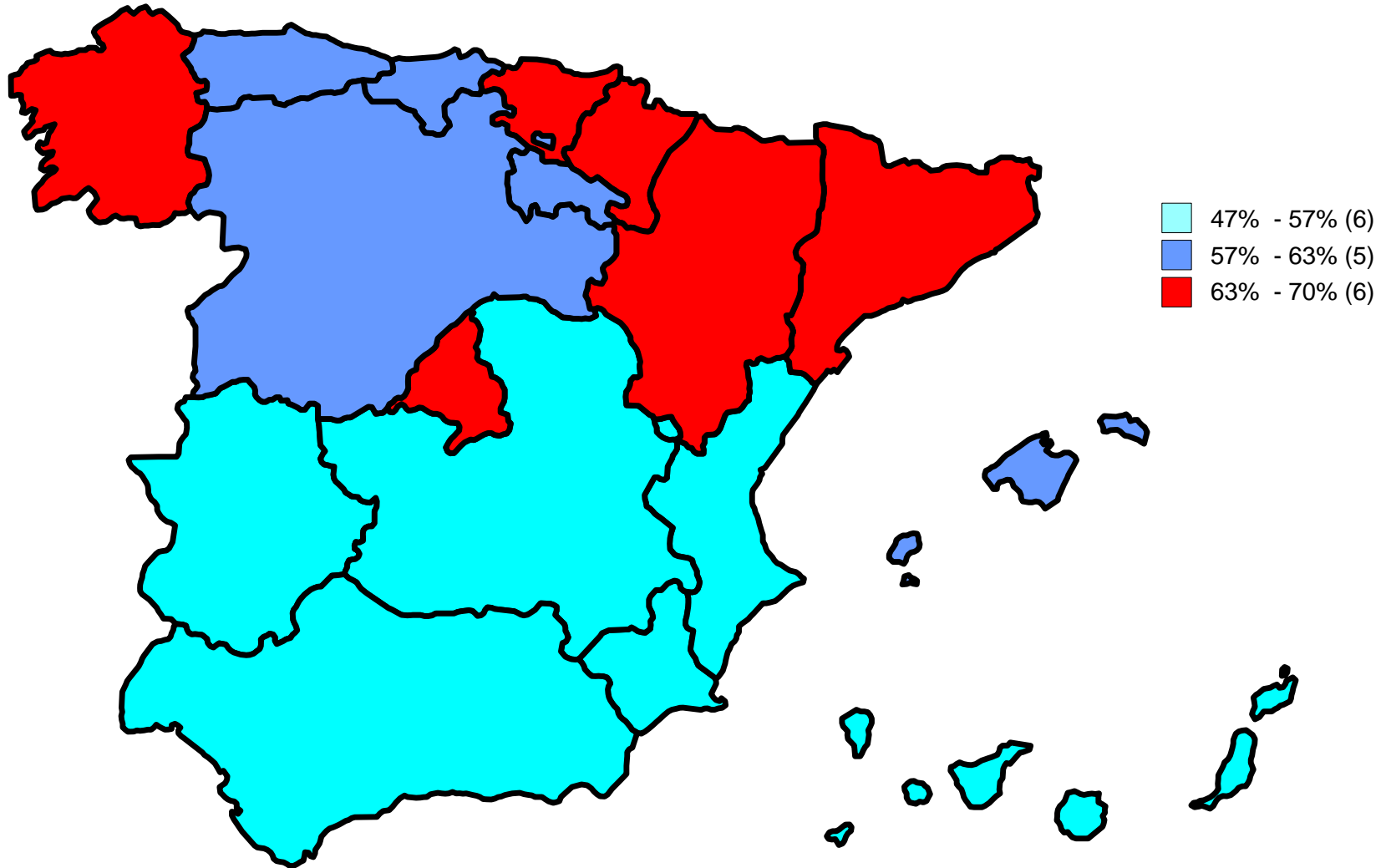
The place or places where the children usually live. Rules to determine which parent is the responsible guardian at all **times**, including regarding the daily activities, should be included.

- The **residential arrangement** of the children with each parent, including during holiday periods and other important dates for the children, parents and family and, if appropriate, how the costs are shared.
- The daily day **parental tasks** that every parent is responsible for
- The system of **relationship and communication with children** during periods when a parent does not have them with him or her.
- The type and **extracurricular education, training and leisure activities**, as appropriate.
- The **duty of sharing information** regarding education, health and welfare of children.
- The way of important **decisions making**

If in the case of disputes or changing needs of the children they will use family **mediation** or not

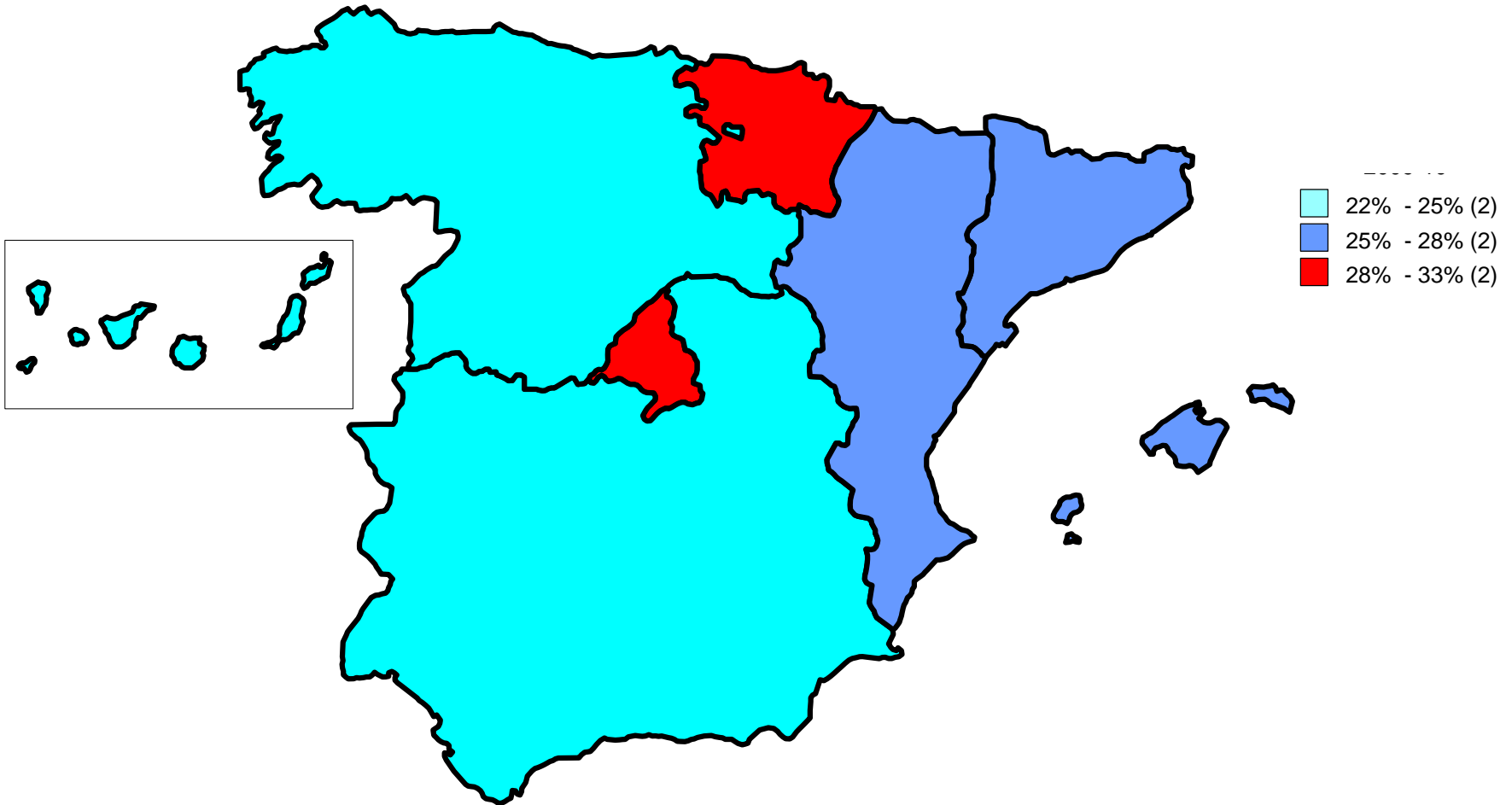
3. On regional gender contracts:

Employed mothers of minor children living in union. Spain. 2011.



3. On regional gender contracts:

Household division of labour: each partner 40-60%. Spain. 2009-10.



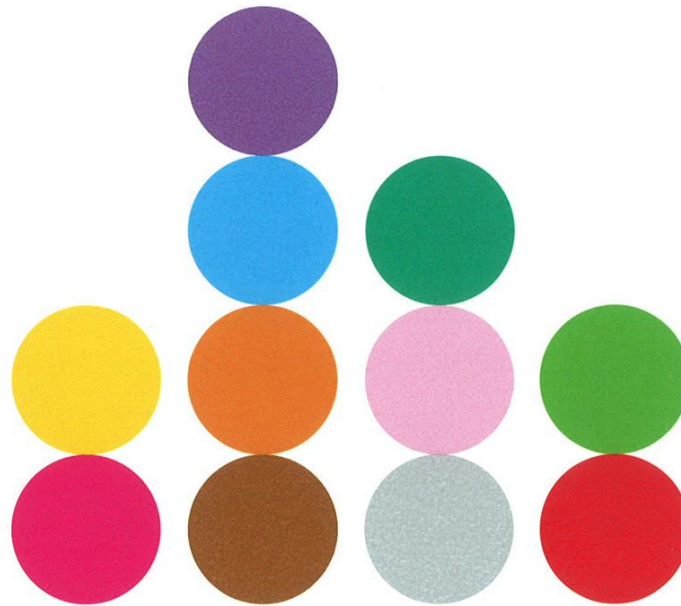
to not conclude.....

1. The relation between consensus and the shared physical custody in a historical perspective.
Democratization of divorce facilitates the **mutual agreement** in legal process; the mutual agreement in legal process facilitates **the joint physical custody** **if** there were **shared parenting** before divorce.
2. Regional diversity inside Spain and inside Catalonia, as well, reflects the prevalent **gender system** in each region and places:
 - a gendered **juridical** culture and juridical practice;
 - a different **gender contract** of division of labour;
 - a different bargaining **power** of partners to negotiate a win-win agreement;
 - and a different political philosophy around gender **equity** in family laws
3. The need to pursue **shared parenting** and not Joint Physical Custody *per se*..
..... different colours for custody are possible ...
....a responsible alternative for couples breakdown...

Custodia consensuada

Para custodias, colores

Emilio Encabo Lucini
Juan Romero Corell



LIT-
ERA



entendre ns

una alternativa
responsable
en las rupturas
de pareja



entendre ns

una alternativa
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Thanks a lot for your attention