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## How Social Movements Have Influenced Child Custody Standards Over Time

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# **How Social Movements Have Influenced Child Custody Standards Over Time**

## **Introduction**

Child custody standards have evolved over time due to societal attitude shifts regarding gender roles. The stereotypes present within the decision-making process of child custody laws have been challenged repeatedly in order to attack sexism within the laws. Child custody decisions are important for the child and family in question, because whichever parental guardian has custody over the child has the legal authority to make life changing choices for the child. These choices can include education, religion, and the environment the child grows and develops in. Parental choices can affect a child's mental and physical well-being, which makes it crucial that custody decisions are made in the best interest for the child. In addition, studying evolving child custody standards is important for our overall understanding of American history. Child custody standards provide insight into the changing stereotypes around gender and how these stereotypes have influenced the legal decision-making process of custody decisions.

Throughout history, child custody decisions were based on stereotypes about maternal care. This was the “Tender Years Doctrine,” which presumed that mothers were the preferred caregivers for young children due to an assumption that women had a natural, instinctive ability to provide care, nurture, and loving attention. This maternal preference was rarely challenged, since women traditionally did not work outside the home. Fathers had limited rights and their role was viewed as primarily to provide financial support. However, beginning in the 1970s, there was a societal shift away from basing law on traditional gender roles, which led to increased advocacy on behalf of fathers. This helped prompt state legislatures and family courts to move from the Tender Years Doctrine to the “Best Interests of the Child” standard, which assessed multiple factors to determine custody arrangements tailored to the needs of each child

on a case-by-case basis rather than assuming maternal preference. Changing social attitudes contributed to this evolution in legal thinking, as did activism focused on the goal of treating both parents equally in child custody proceedings.

This thesis examines the change of child custody standards through three eras in American history, Colonial (1630 - 1830), the “Tender Years Doctrine” (1830 - 1970), and the “Best Interests of the Child” (1970 - Present). Each section explains how activism pushed by social movements caused social change in attitudes in regard to gender norms, and how these changes in attitudes translated into a new standard. The goal of this study is to answer the question “How have social movements influenced child custody standards over time?”

## **Methodology**

This thesis utilizes secondary literature from history, education, and sociology in order to understand how social movements influenced custody standards. Additionally, this project examines the legal standard of the era as developed in custody court cases. Academic law journals explain the laws applied during each era and the reasoning behind these cases. Similarly, court cases analyze custody facts and demonstrate how judges applied the prevailing legal standards. The reasoning in court opinions helped to gain a better understanding of how common stereotypes affected rulings. Within the court opinions, some judges used stereotypes to justify standards or used stereotypes to demonstrate change was needed. Lastly, the project utilizes primary sources such as speeches because they demonstrate aspects of activism in the push to change standards.

## **Colonial Era (1630 - 1830)**

Child custody laws and social norms during the Colonial Era in America demonstrate many differences from modern custody standards. During this time, children were viewed as

economic assets to a household. Fathers or men were viewed as the dominant figure within the household and societal institutions, while mothers or women held submissive domestic roles. Men were considered the breadwinners, defenders, and providers. Due to this organization between the sexes, fathers were the head of the household and had primary custody and decision-making authority over minor children. This authority was especially prevalent in the cases of young boys who could contribute labor to the family. This labor could be used, for example, in a family farm or business. Women were expected to be the primary caregivers and had no legal standing if the fathers chose to separate the children from them. During the Colonial Era, women too were viewed as property of their husbands. They could not own any form of property or assets, and had trouble finding jobs within the public sphere due to the norm of women belonging to the domestic sphere. Custody decisions in colonial America were made based on practical factors related to a child's best economic interests, rather than any concept of the emotional wellbeing of the child.

English common law influenced and translated into the standards utilized in the colonial United States. Prevailing laws and norms of the English common law heavily influenced rulings in paternal custody rights over children. English common law, which formed the basis of colonial American law, generally recognized fathers as having sole guardianship and custody rights over minor children in the event of separation or divorce. This is because custody was seen as a property right of the father, since children were expected to provide labor and economic benefits to the household.<sup>1</sup> Unless a father was proven “unfit,” fathers had the sole authority to make decisions about their children's residence, education, and religious upbringing without input from the mother.<sup>2</sup> A scholar of English common law argues:

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<sup>1</sup> Spiro, R. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

<sup>2</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

This right sprang from the view of the father as head of the family, with unlimited authority over its members. Fathers had near absolute custody rights under English common law as well. They were given the right to the services and earnings of their children, and the right to pursue legal action for seduction of their daughters or enticement from the home of their sons.<sup>3</sup>

In summary, English common law was rooted in the father's perceived role as the familial authority figure, granting him significant authority over its members. These legal provisions reflect historical perceptions of paternal authority and familial dynamics, shaping societal norms and power dynamics during that period of time.

In American colonial times, mothers had very limited custody rights. A mother could petition for custody only in proven cases of a father's abandonment, abuse, or unfitness. While there were no firmly established legal standards for proving parental "unfitness" during the Colonial Era, there were guidelines present from English common law.<sup>4</sup> These guidelines included: inability to provide financially for the child or abandonment of the child, though what qualifies as abandonment was loosely defined. Immoral behaviors, such as alcoholism, gambling, and adultery, also qualified as behaviors to prove unfitness. However, the grounds for immoral behavior were subjective. In addition, neglect of the child's basic welfare, insanity or "feeble mindedness" that made a parent incapable of caring for a child, and criminal activity or imprisonment were grounds to prove a parent was unfit.<sup>5</sup> The burden of proof was normally placed on the mother to prove substantial evidence of unfitness of the father. Many claims were dismissed because they were too subjective or vague. The father's rights as the head of the household were given preference, so the final rulings of custody were in his favor.

Mothers faced legal, social, and economic burdens within the courts. Legally, mothers dealt with challenges because the standard of proof was high. The burden of proof refers to the

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<sup>3</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

<sup>4</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

<sup>5</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

obligation placed on a party in a legal proceeding to provide sufficient evidence to support their claims or allegations. The party making the assertion must demonstrate the validity of their claims to persuade a court or jury. Mothers needed substantial proof of unfitness or wrongdoing to override a father's rights.

During the Colonial Era, the general rights of women were significantly limited. Coverture was a legal doctrine in English common law and colonial America that merged a woman's legal identity with that of her husband upon marriage. Under coverture, married women lost many of their individual legal rights and became legally subsumed under their husbands' authority, often leading to their inability to own property, enter into contracts, or engage in legal proceedings independently.<sup>6</sup> Women had lower literacy and education levels due to their isolation from societal institutions. This made navigating the legal system difficult for many mothers. Socially, mothers had to battle against the societal view that child-rearing was within the domain of fathers. Societal attitudes were that a father could teach work ethic and public sphere principles that a mother could not.

Court preferences lined up to favor the father in legal proceedings. Courts favored not only keeping children in the home but keeping siblings together. This favored the father because financially he was more likely to be able to provide a home because men had an easier time finding labor and could own property.<sup>7</sup> Economically, the lack of financial resources hindered mothers from sustaining custody lawsuits, which could drag on. Fathers had easier access to legal counsel. Similarly, a mother had to prove she could financially provide for the children

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<sup>6</sup> Gillman, H., Graber, M. A., & Whittington, K. E. (2014). Chapter 2 / The Colonial Era. In *American Constitutionalism Powers, Rights, and Liberties* (pp. 61–62). essay, Oxford University Press.

<sup>7</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

without the father. This was difficult to establish because women had limited property rights and job prospects through which to do so.<sup>8</sup>

### **Tender Years Doctrine Era (1830 - 1970)**

During colonial times, family law granted sole custody to the father of the children in the case of a divorce because the father, as the family's breadwinner and sole provider, was considered the only parent fit to provide financially for the children. In addition, women had difficulties finding employment and could not own property.<sup>9</sup> This began to change in the mid 19th century due to the influence of courts and social activism.

According to common law, the Tender Years Doctrine proposes that during the tender years of a child (which is generally regarded as from the age of four and under), only the mother is allowed custody of the child.<sup>10</sup> The societal shift towards the Tender Years Doctrine arose when a woman named Caroline Norton launched a campaign to grant women custody of their children. Caroline Norton was an English woman who experienced a divorce and lost full custody of her children due to standards of which society viewed men and women. During this time, children were considered as assets and property something only men could own, due to the social hierarchy between men and women in society. Caroline Norton was a prominent author, journalist, socialite, and social reformer and spread her campaign globally starting in the United Kingdom. Norton's campaign was based on her experiences and struggles with losing her children that gained the attention of the British Parliament.<sup>11</sup> As a result of Norton's advocacy

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<sup>8</sup> Spiro, Rebecca. (1999, January 1). *Digitalgeorgetown Home*. DigitalGeorgetown Home.

<sup>9</sup> Author, B. H. R. C. P. (2019, July 8). *Tender years doctrine: Origin, history, modern usage & criticism*. Lawyer in Tulsa & Owasso, OK | Baysinger Henson Reimer & Cresswell PLLC.

<sup>10</sup> Author, B. H. R. C. P. (2019, July 8). *Tender years doctrine: Origin, history, modern usage & criticism*. Lawyer in Tulsa & Owasso, OK | Baysinger Henson Reimer & Cresswell PLLC.

<sup>11</sup> Author, B. H. R. C. P. (2019, July 8). *Tender years doctrine: Origin, history, modern usage & criticism*. Lawyer in Tulsa & Owasso, OK | Baysinger Henson Reimer & Cresswell PLLC.

and the movement she began, the British Parliament first passed the Custody of Infants Act (1839) to protect a mother's rights. The law established a presumption of maternal custody for children age seven and younger. In cases where the Tender Years Doctrine applied, the father was expected to provide financial support for the mother and children. This legal rule that originated in the United Kingdom was soon adopted by many nations, including the United States.<sup>12</sup>

Early case law during the years of 1830 to 1970 stressed gender stereotypes about the mother and viewed her as the most nurturing parent. The Tender Years Doctrine first appeared in the United States in *Helms v. Fanciscus* (1830, Maryland Court of Appeals). The court reasoned that "To grant custody of a child to a father was to hold nature in contempt, and snatch helpless, pulling infancy from the bosom of an affectionate mother, and place it in the coarse hands of the father."<sup>13</sup> The court continued, reasoning that "the mother was the softest and safest nurse of infancy" Maryland (1830).<sup>14</sup> Following this case, the common law principle was established that a mother should automatically have custody of her young children in the event of a divorce. The reasoning behind this principle explained that young children need to be with their mother during their formative years. In practice, this meant that a father could not sue for custody of his children until they had surpassed their "tender years."

During this era, courts viewed women in society as belonging to the domestic sphere. The view in society during this era believed that the husband had to be out in the public sphere creating the wealth, and his wife should manage the private sphere, the "women's sphere" or

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<sup>12</sup> Author, B. H. R. C. P. (2019, July 8). *Tender years doctrine: Origin, history, modern usage & criticism*. Lawyer in Tulsa & Owasso, OK | Baysinger Henson Reimer & Cresswell PLLC.

<sup>13</sup> Attorneys At Law, J. W. (2022, December 14). *What is the tender years doctrine?: United States Child Custody Law*. Arizona Divorce Lawyers & Family Law Attorneys - JacksonWhite Law.

<sup>14</sup> Attorneys At Law, J. W. (2022, December 14). *What is the tender years doctrine?: United States Child Custody Law*. Arizona Divorce Lawyers & Family Law Attorneys - JacksonWhite Law.



“domestic sphere.” The responsibilities of the domestic sphere included maintaining the household, including tasks such as cooking, cleaning, childcare, and tending to the family's needs. Additionally, women played a crucial role in perpetuating societal and cultural values through the upbringing of children and the maintenance of social connections within their communities. Stereotypes about women belonging to the “domestic sphere” were reinforced in the case of *Bradwell v. Illinois* (1872) in which the Court ruled in favor of the state of Illinois in the denial of Myra Bradwell's application to practice law. It was explained in the reasoning of Justice Bradley's concurring opinion “The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman.”<sup>15</sup> The opinion continues stating “The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as which properly belongs to the domain and functions of womanhood.”<sup>16</sup> Justice Bradley's concurring opinion highlights the patriarchal beliefs of the time, asserting that women's roles should be confined to the domestic sphere due to women's subordinate position in society.

Women were believed to belong to the domestic sphere because it is within their nature. Justice Bradley stated in his concurring opinion in *Bradwell v. Illinois* “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”<sup>17</sup> This argument stated by Justice Bradley in *Bradwell v. Illinois*, asserting women's innate belonging to the domestic sphere due to inherent qualities such as “timidity and delicacy,” reflects deeply ingrained gender norms of the era. During this era, it was commonly believed that “A true woman was virtuous. Her four chief characteristics were piety,

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<sup>15</sup> *Bradwell v. Illinois*, 83 U.S. 130 (1872).

<sup>16</sup> *Bradwell v. Illinois*, 83 U.S. 130 (1872).

<sup>17</sup> *Bradwell v. Illinois*, 83 U.S. 130 (1872).

purity, submissiveness, and domesticity. She was the great civilizer who created order in the home in return for her husband's protection, financial security and social status.”<sup>18</sup>

Stereotypes about men helped to enforce their dominant and preferred status within society. Justice Bradley’s concurring opinion in *Bradwell v. Illinois* stated that “Man is, or should be, woman’s protector and defender.”<sup>19</sup> Justice Bradley’s statement aligned with the commonly held belief that “A true man was concerned about success and moving up the social ladder. He was aggressive, competitive, rational, and channeled all of his time and energy into his work.”<sup>20</sup> By perpetuating these stereotypes, society upheld the status quo where men occupied positions of authority and control. Stereotypes about men as breadwinners, leaders, and protectors served to justify their dominance in various spheres of life, including the workplace, politics, and the family. Furthermore, stereotypes about men reinforced societal expectations of masculine behavior, ultimately discouraging men from expressing vulnerability. This created a culture where men were expected to suppress emotions, endure hardship silently, and maintain a facade of strength at all times.

Advocates for the removal of stereotypes in the law promoted replacing these stereotypes with equal treatment of the sexes. In her speech to the United States House of Representatives, in favor of the Equal Rights Amendment, Shirley Anita St. Hill Chisholm stated:

This is what it comes down to: artificial distinctions between persons must be wiped out of the law. Legal discrimination between the sexes is, in almost every instance, founded on outmoded views of society and the pre-scientific beliefs about psychology and physiology. It is time to sweep away these relics of the past and set future generations free of them.<sup>21</sup>

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<sup>18</sup> U.S. History. (2008). *The emergence of the “Women’s sphere.”*

<sup>19</sup> *Bradwell v. Illinois*, 83 U.S. 130 (1872).

<sup>20</sup> U.S. History. (2008). *The emergence of the “Women’s sphere.”*

<sup>21</sup> Public Seminar, January 29, 2020; Shirley Chisholm, Member of the U.S. House of Representatives from New York’s 12th district, For the Equal Rights Amendment, Address

In her address, Chisholm argues for the elimination of stereotypes entrenched within the legal system. She asserts that the replacement of these stereotypes with equal treatment of the sexes is imperative. Chisholm explains that legal discrimination based on gender is rooted in outdated societal norms. In her calling for the removal of these norms, she highlights the need to challenge the biases present within the legal framework that prioritizes equality for all individuals regardless of gender.

Court preferences favored the mother in legal proceedings. Mothers were favored due to deeply ingrained societal norms and traditional gender roles. Mothers were viewed in the court as the nurturing caregiver due to their roles within the domestic sphere, while a father's only purpose was to financially support the family. Through growing activism for the abandonment of outdated societal gender norms, society displayed a shift towards gender-neutral beliefs and policies.

### **Best Interests of The Child (1970 - Present)**

Through activism, gender-neutral child custody standards emerged in legal proceedings. The societal shift towards the "Best Interests of the Child" standard began during the mid 20th century, with the growing criticisms of the Tender Years Doctrine in the 1970s.

Feminists criticized the stereotypical nature of the Tender Years Doctrine in regard to women. Feminists argued that the Tender Years Doctrine reinforced traditional gender roles within family life. Automatically favoring mothers as caregivers limited women's advancement in society.<sup>22</sup> The maternal presumption depicted women mainly as caregivers and mothers rather

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before the U.S. House of Representatives (August 10, 1970).

<sup>22</sup> Sack, L. (1991). *Women and children first: A feminist analysis of the primary*. Semantics Scholar.

than equally capable professionals, which limited their opportunities. This automatic preference in custody disputes made it difficult for women to balance work and family roles.

Father's Rights Groups criticized the outdated and discriminatory nature of the Tender Years Doctrine in regard to men. Father's Rights groups highlighted changing social norms and the ability of fathers to take on caregiving roles and nurture young children. These groups fought against the perceptions that fathers were less vital or capable parents in child-rearing. Father's Rights groups lobbied for equal consideration under the law and challenged the doctrine with lawsuits on the grounds that the Tender Years Doctrine violated father's constitutional rights to equal protection. Father's Rights advocates promote legal help to fathers on law firm websites that offer legal services. For example, a law firm website that serves clients living in Kalamazoo, Grand Rapids and Southwest Michigan promotes father's rights law assistance. Attorney David G. Moore, advocates for father's rights on the firm's website:

At David G. Moore, Attorney at Law, many of our clients are simply fathers who wish to be involved in the lives of their children. For this involvement to happen, though, a father's rights must be legally recognized. Many fathers are surprised to learn that simply claiming to be the biological father of a child and even agreeing to pay support entitles them to nothing.<sup>23</sup>

This quote emphasizes the significance of legal recognition in ensuring father's rights to participate actively in their children's lives. Attorney David G. Moore highlights the fact that being a biological father or agreeing to provide financial support does not automatically grant parental rights. David G. Moore stresses the necessity for legal advocacy to secure a father's rightful role in their children's upbringing.

After these criticisms from both feminist and father's rights groups circulated, courts were increasingly willing to consider fathers for custody. In the United States, the Tender Years

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<sup>23</sup>Moore, D. G. (2023, July 13). *Southwest Michigan Fathers Rights Lawyers - D.G. Moore law*. David G. Moore, Attorney at Law.

Doctrine was challenged on the grounds that it violates the Equal Protection Clause of the Fourteenth Amendment in the U.S. Constitution. The courts agreed with this argument, and the Tender Years Doctrine was gradually replaced by the “Best Interests of the Child” doctrine of custody.<sup>24</sup> A prevalent case reflecting the shift away from the Tender Years Doctrine towards the Best Interests of the Child standard is *King v. Vancil* (1975, Appellate Court of Illinois, Fifth District). During the initial divorce proceeding in 1974 the court held that the father, the appellant, would have custody of the children. The court granted the mother visitation rights. In a rehearing of the case, the court followed the Tender Years Doctrine standard. During the hearing, the judge awarded the mother custody because of the age of the two boys. “They should be living with their mother, as she would show more solicitude and care to them as their mother.”<sup>25</sup> The Appellate Court of Illinois did not agree with this reasoning for granting the mother custody of the children because it was not supported by the law. The court stated, “Our 1970 Illinois Constitution provides that equal protection of the law shall not be denied or abridged because of sex.”<sup>26</sup> The mother then provided evidence of her change in circumstances because of her remarriage. With this new marriage, she gained a new home and her present husband’s employment and income justified the judge’s decision to award her custody.

However, the appellate court wanted review of parental fitness, in line with the Best Interests of the Child standard. In response to this evidence, the court stated “As to appellee’s changed marital status, it has been held that this is not sufficient cause to change the custody of the children unless it proves that the children’s welfare would be affected thereby.”<sup>27</sup> The conclusion of the case explained:

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<sup>24</sup> Attorneys At Law, J. W. (2022, December 14). *What is the tender years doctrine?: United States Child Custody Law*. Arizona Divorce Lawyers & Family Law Attorneys - JacksonWhite Law.

<sup>25</sup> *King v. Vancil*, 34 Ill App. 3d 831 (1975).

<sup>26</sup> *King v. Vancil*, 34 Ill App. 3d 831 (1975). (Ill. Const., art. I, S18 (1970)).

<sup>27</sup> *King v. Vancil*, 34 Ill App. 3d 831 (1975).

It is necessary that there be a positive demonstration by the person deprived of custody that the change is necessary for the welfare of the children. . . There is no question raised by the appellee as to the fitness of the appellant to care for the children. . . The judge did not make any adverse findings concerning the present care of the children. The burden of proof to show that a change in custody was for the best interests of the children rested with the appellee. She did not meet that burden. There was a complete absence of any proof.<sup>28</sup>

In summary, the original ruling granted custody to the father because the mother failed to prove that it was in the best interests of the children for the custody arrangement to be altered. The court rejected the stereotypical norms and evaluated factors of the fitness of the parents to decide who was granted custody. While both parents were proven fit for custody there was no evidence that was not based on stereotypes that could prove that the father was unable to care for the children.

The Best Interests of the Child standard is gender-neutral and aimed at understanding the actual family dynamics. Article 3 of the UN Convention on the Rights of the Child established that in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>29</sup> In determining a child’s best interests, the responsible parties must evaluate and balance “all the elements necessary to make a decision in a specific situation for a specific individual child or group of children.”<sup>30</sup> The relevant factors that are considered in determining the best interests of the child include the child’s age, gender, background, and personal history. The standard also reviews providing for the child, for example their health, education, safety, protection, care, vulnerabilities, and well-being. Finally, the

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<sup>28</sup> *King v. Vancil*, 34 III App. 3d 831 (1975).

<sup>29</sup> Sutherland, E. E. (2017, January 21). *Article 3 of the United Nations Convention on the rights of the child: The challenges of vagueness and priorities (chapter 1) - implementing Article 3 of the United Nations Convention on the rights of the child*. Cambridge Core.

<sup>30</sup> Sutherland, E. E. (2017, January 21). *Article 3 of the United Nations Convention on the rights of the child: The challenges of vagueness and priorities (chapter 1) - implementing Article 3 of the United Nations Convention on the rights of the child*. Cambridge Core.

standard reviews the family environment, family relations, and contact. Judges award primary custody to the adult who will best serve the child's interests. However, this doesn't have to be one of the child's parents. If both parents are unfit, the court may award custody to a relative or to a state agency until one or both parents can care for the child. Father's Rights Groups are still critical of the court system because they argue fathers have to try harder to prove that the mother is unfit where mothers don't have to do much to prove the father is unfit.<sup>31</sup>

Father's Rights Groups are specifically critical of the fact that the age of the child is still a factor that is considered within child custody cases. This factor can be seen utilizing the Tender Years Doctrine, where courts gave custody of children to mothers because the children were within their "tender years." This factor can be used to reinforce the stereotype that fathers are not fit to care for young children.

## **Conclusion**

Social movements and activism have played a crucial role in reshaping child custody standards, reflecting evolving societal values and understanding of parental roles. Through these efforts and advocacy, movements have brought about significant changes in legal frameworks and judicial attitudes. These movements have not only challenged entrenched gender norms but also fostered a deeper understanding of the complexities of parenthood and the importance of parental involvement in children's lives.

Historically, child custody laws often favored one parent over the other. Within the Colonial Era the father was automatically favored due to the belief that children were property and women could not own property. Additionally, the father was seen as the sole parent with the ability to finance and support children. The commonly believed stereotypes surrounding women

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<sup>31</sup> Author, B. H. R. C. P. (2019, July 8). *Tender years doctrine: Origin, history, modern usage & criticism*. Lawyer in Tulsa & Owasso, OK | Baysinger Henson Reimer & Cresswell PLLC.

placed women at a disadvantage in civic life which created difficulties for women in the legal proceedings of child custody. Through the activism of Caroline Norton, the Tender Years Doctrine became an universal standard. During the Tender Years Doctrine era the mother was automatically preferred due to the perception of a woman's natural ability to nurture and care for the children. Due to activism from feminist and father's rights advocates, this standard fell increasingly out of favor because of its outdated stereotypical background. This brought the change to the standard of the Best Interests of the Child. As highlighted in the case *King v. Vancil*, this standard focuses on factors pertaining to the fitness of each parent to care for the child. This standard has brought equal treatment of the parents to the forefront of the legal decision-making of child custody with the removal of stereotypes.

Research about activism affecting child custody law is relevant because it informs legal reforms, promotes social justice, enhances child well-being, explores parental rights, examines gender dynamics, and evaluates advocacy efforts. Social movements have influenced judicial practices by raising awareness about biases and disparities in custody determinations. Courts have become increasingly more aware of the diverse needs of families. Courts have begun embracing flexible custody arrangements tailored to individual circumstances rather than adhering strictly to traditional models. Overall, social movements and activism have been instrumental in transforming child custody standards, promoting parental equality, safeguarding children's well-being, and challenging outdated notions of parental roles. While progress has been made, ongoing advocacy and collaboration are essential to address remaining challenges and ensure that custody laws and practices continue to evolve in alignment with the evolving needs and values of society. By prioritizing the rights of parents and the best interests of children, these movements contribute to the establishment of a more just and equitable family law system.



As stated in previous sections of this thesis, the standards within each era are based on stereotypes. However, it is important to acknowledge the stereotypes and standards are focused solely on culturally dominant populations and leave minority populations out.

Child custody laws during the Colonial Era were rooted in colonial ideologies and societal norms that often disregarded the rights and voices of minority groups, including indigenous peoples, African Americans, and other ethnic minorities. Legal frameworks favored the interests of dominant colonial powers or in other words white settlers. Minority families were frequently subjected to discriminatory practices, with their parental rights undermined and their familial bonds disrupted.

Child custody laws during the Tender Years Doctrine were structured to favor the interest of mothers. However, the interest of women within minority populations were not meant to be represented within this legal framework. Similar to the Colonial Era, minority women's rights and voices were typically ignored, while white women were prioritized in the legal system.

The goal of the Best Interests of the Child era is to create an equal legal framework that ultimately removes the previous stereotypes utilized in the decision-making process of child custody. The Best Interests of the Child standard aims to evaluate various factors pertaining to both parents to help decide the best situation for the child and their overall well-being. While this standard does aim to create equality within child custody hearings, this standard has not been equitable for LGBTQ couples. Historically, laws and judicial precedents were influenced by heteronormative views, which did not recognize the legitimacy of LGBTQ relationships. In addition, the Best Interests of the Child standard is subjective, relying on various factors that can be interpreted differently by different judges. The lack of clear guidelines that prohibit discrimination based on sexual orientation or gender identity can cause LGBTQ couples to face

inconsistent rulings. Finally, societal stigma and discrimination against LGBTQ couples can influence the legal system. Child welfare workers, judges, and other professionals involved in custody cases can be influenced by societal stigma. This can lead to LGBTQ couples being unfairly judged as less suitable parents.

While child custody standards currently strive to prioritize the best interests of the child, they often fail to account for the unique circumstances and cultural contexts of certain minority populations. Child custody standards are primarily influenced by mainstream values and norms, which can unintentionally marginalize families from diverse backgrounds. To create a more equitable legal system, it is essential to incorporate a wider range of perspectives and experiences into custody evaluations. Doing so will ensure that all children will have their best interests genuinely and comprehensively represented in custody decisions, while also fostering a legal framework that reflects and serves the diverse nature of our society.

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