

# IMPROVING CUSTODY DISPUTE NEGOTIATION: EMPIRICAL TESTING OF THE EQUALITY PRINCIPLE

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The Equality Principle (EP) is a novel idea to motivate parents litigating in custody disputes to negotiate. The EP is designed for a special but common case in which both parents are individually fit, there are no decisive differences between the two households that the parents live in, but the conflict between the parents is so infected that the children's well-being is threatened and shared custody must be ruled out. The present paper empirically tested the Equality Principle in its higher bidder version. In this version, both parents are first told that the conditions for the EP are met. Then, both parents are asked how much visitation they would allow the other parent, assuming that they would win sole custody and living. The most generous parent is awarded custody and living, along with a dictum to facilitate the promised amount of visitation. In the present model (PM), the offered amount of visitation has no functional effect on the custody dispute because the judges and jurors award custody as well as the amount of visitation. A within-subjects vignette experiment measured 52 participants' levels of visitation generosity in the EP and the PM. Participants showed significantly higher visitation generosity in the EP compared to the PM. The results are discussed in terms of representation of the present model, an equal amount of visitation offered, ecological validity, child perspective, and appellant's rights. In conclusion, the present paper showed that the EP is a promising strategy to resolve seemingly unresolvable custody disputes.

## Practitioner's Key Points:

- The longer the custody dispute, the more children suffer. The Equality Principle encourages swift resolution which helps children.
- The Equality Principle is designed to resolve custody litigations where both parents are fit by making them compete in visitation generosity.
- The Equality Principle has at least two versions; randomization and highest bidder of visitation time wins. Highest bidder is probably more plausible for the general public.
- Empirical evidence shows that the Equality Principle in the highest bidder wins variant is a promising strategy to quickly resolve high conflict custody disputes with fit parents.

**Keywords:** *Custody disputes; Equality principle; Negotiation; Vignette study; Visitation generosity.*

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Every year, thousands of children have experience from high-conflict separations between their parents. It is a well-known fact that children in high-conflict divorces and custody disputes suffer (Amato, 1993; Emery, 1999). Both physical problems (headaches, stomach aches, fever), as well as psychological issues such as anxiety, fear, insecurity, issues with sleeping, nightmares, and depression have been reported (Bergman & Rejmer, 2017). Furthermore, the intensity and longevity of the conflict affect the children's well-being negatively. A comparison of literature on parental divorce and early childhood development has demonstrated that parental divorce and especially its consequences for the parental emotional states, economic standings, and behaviors have a significant influence on children's emotional, social, and cognitive development (Leon, 2003). For the sake of the affected children, solving the custody dispute fast should be a major point of focus. Furthermore, making sure that parents adhere to decisions made – by the court or by themselves – is crucial. In this way, hopefully, ongoing damage to the affected children's development and psychological and physical health can be inhibited. For the present paper, the label custody dispute is used as a catch-all phrase for litigation for custody, living, and visitation. Furthermore, we use the term custody evaluator regardless of the training of the one conducting the custody evaluation.

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Currently, custody disputes in Sweden (as well as in other countries) consist of a custody evaluation by government-assigned custody evaluators followed by legal rulings in court, usually based on recommendations from the custody evaluators (Ngaosuvan, 2018a). The custody evaluation can be seen as consisting of two different stages: risk assessment (RA) and an investigation of the child's best interests (ICBI, Ngaosuvan, 2012). In RAs, parental risk factors are evaluated. Evaluators assess whether parents are fit to have custody over a child. This stage mainly focuses on factors like history of drug abuse, mental illness and child maltreatment, and criminal history. If both parents are deemed fit in the RA, an ICBI is conducted. This stage focuses on factors like stability in the life of the children, such as housing and proximity to school (Schiratzki, 2008). These two stages are difficult to conduct for several reasons. First, cognitive psychology research has shown for a long time that people, in general, are prone to suboptimal decision-making or judgments (Kahneman & Tversky, 1972). For instance, actuarial models (Dawes, Faust, & Meehl, 1989) and mechanical prediction (Grove, Zald, Lebow, Snitz, & Nelson, 2000) are both better than human clinical judgments. Irrelevant factors such as personal experience (Nuttall & Jackson, 1994) or gender (Sagi & Dvir, 1993) may influence custody evaluations in their current form. People tend to use heuristics that may or may not be adequate given situations in which information is insufficient (e.g., Raab & Gigerenzer, 2015). The debate on rule-based thinking and heuristics is beyond the scope of this paper, but it is safe to say that rule-based thinking is preferable when working under ideals of transparency and reproducibility. Second, the time frame given to custody evaluators to perform comprehensive investigations is typically limited. Third, the legal authority to access medical journals, criminal records, and other relevant documents may be very limited. Fourth, litigating parents are often very emotional and may present information that they believe is true (i.e., accusations about the opposing parent), but are unable to provide tangible evidence. This forces custody evaluators into making very difficult credibility judgments.

As long-lasting parental conflicts are especially harmful to children, it can be argued that resolving the conflict fast is more important than taking the time to make a difficult and possibly inaccurate recommendation based on an ICBI. Furthermore, it must be noted that the aforementioned distinction between RA and ICBI is not always made in custody evaluations (Ngaosuvan, 2012). There are cases in which custody evaluators prefer to evaluate the situation as a whole and fail to distinguish between parental risk factors, which can deem a parent unfit for custody, and less severe factors, like proximity to school, which could indicate a preference but can lead to arbitrary preferences.

## A. THE EQUALITY PRINCIPLE

Although this issue has been known since the Judgment of Solomon, few new strategies to improve negotiations in custody disputes have been presented. One exception to this is the Equality Principle, (EP; Ngaosuvan, 2018a; Ngaosuvan, 2018b) which utilizes insights from game theory and goal-setting theory (e.g., Latham & Locke, 1991) to motivate parents into negotiation. The EP has some assumptions; (1) both parents have to be individually fit, (2) there are no meaningful differences between the life situations that the parents offer the children, and (3) the parents' conflict is so infected that shared custody must be ruled out. The first assumption is obvious because unfit parents should immediately be excluded as viable options as custodians. Secondly, in every custody dispute, there is a temptation to find some difference between parents and then award custody to the advantaged parent. As parents are not identical, custody evaluators may base their recommendations on prejudiced, value-based, or irrelevant differences such as gender (Sagi & Dvir, 1993). About 23% of all Swedish custody disputes fulfill these conditions (Rejmer, 2003). The EP aims to minimize such variables in the custody dispute by putting direct responsibility for the decision-making process on the parents.

Two variants of the EP have been proposed, namely, (1) the random variant (REP) and (2) the highest bidder variant (BEP). In both variants, parents are asked how much visitation they would

allow the children and the other parent in case they would win full custody. In the random variant, if both parents offer an equal amount of visitation below 50%, they can either agree outside of court or let the court decide by randomization. If the court is to decide, both parents have a 50% chance of winning custody. If parents offer different amounts of visitation, this percentage grows in favor of the more generous parent by using the following formula:  $(X - Y)/2 + 50$ , where  $X$  is the highest amount of visitation offered. For example, if one parent offers 50% visitation (which would be translated into shared living) and the other offers zero percent, the formula would calculate that the more generous parent would have  $(50 - 0)/2 + 50 = 75\%$  chance of winning the dispute. The random version will provide a fast and distinct outcome, and thereby would reduce child suffering. Furthermore, the uncertainty of the outcome should, theoretically, motivate parents to negotiate instead of trusting randomization. In particular, this is valid for the parent who believes that he or she would win the dispute.

In the BEP, the parent offered the highest level of visitation is granted full custody by the court and will have to allow the offered visitation. Although the random variant is a more complete solution and has several distinct advantages over the present model (Ngaosuvan, 2018a), its mathematical nature may make the general public reluctant to introduce it. The highest bidder variant may be more acceptable in this regard. However, this variant of the EP is not a complete solution, as opposed to the random version, because both parents may offer the same amount of visitation. To solve this, there are two plausible strategies, namely, (1) repeated bidding and (2) randomization. In the repeated bidding version, the parents are asked to repeat the process until a winner is found or both parents' offers are 50%, and the resolution would be shared custody and living. Of course, randomization with an equal chance of winning for both parents would also resolve the issue. The present study aimed to test the highest bidder version because of its assumed more appeal in the general public. Despite the advantages and disadvantages compared with the present model of both versions of the EP, both versions lack empirical evidence.

This study aimed to empirically test the EP in terms of visitation generosity. It was hypothesized that visitation generosity would be higher in a decision scenario based on the EP than in a decision scenario based on the present model (PM).

## I. METHOD

### A. DESIGN & PARTICIPANTS

The study comprised a simple within-subjects design (EP vs. PM), where ratings of parental generosity were used as dependent measures. Fifty-two (26 male and 26 female) participants were recruited via Swedish social media, advertising boards, pamphlets, and online forums. The mean age was 34.0 ( $SD = 12.2$ ), ranging between 22 to 70 years.

### B. MATERIALS

#### 1. Vignette

To investigate whether people's willingness to cooperate increases in a decision scenario based on the EP as compared to a decision scenario based on the present system, an introductory text, a vignette, and other instruments were used to measure parental generosity and other variables. These instruments were designed with feedback from experts in the field and parents who have experience in custody disputes. The introductory text contained general information of Swedish Family Law, along with information and considerations from previous Swedish custody disputes. Participants were presented with information about a parental conflict. They received a gender-specific vignette in which either the mother or the father was presented as a "bad partner" (not to be confused with a bad parent). There were two versions, and each participant was presented with the vignette in which

the opposite gender parent was presented as the bad partner. The vignette consisted of three sections. The first section described general circumstances about the couple in conflict. The bad partner had betrayed the other partner for many years by having a secretive extramarital sexual relationship. Furthermore, the bad partner had used the family's shared financial resources to visit hotels and travel with the extramarital lover. Besides that, the bad partner accused the other partner of physical abuse without presenting any evidence. Also, accusations of small matters (i.e., being late to pick up the children at kindergarten and transfers) were filed to various authorities by the bad partner, which provided evidence of low ability to cooperate.

The second section explained the custody evaluators' understanding of the case, in which the accusations of the bad partner were deemed insufficient to prove that the other partner would be unfit for custody. Furthermore, the custody evaluators decided that no other given factors were of relevance for the children's best interests, but that shared custody must be ruled out because the conflict between the parents was considered harmful for the children as well as irreconcilable. Finally, it was stated that the evaluators claimed that the parents could not settle via mediation, and that custody must be settled in court.

The third section repeated the situation as unbearable for parents and children alike. The children were portrayed as suffering from the uncertainty, from the conflict itself and from their parents' attitudes towards each other.

## **2. Measures of Subjective Ratings**

Vignette quality was assessed with subjective ratings on seven-point Likert scales. Demographic variables and previous knowledge and experience of custody disputes were measured with multiple choice or free text questions. Parental generosity was measured by ratings of allowed visitation to the other parent in percentage of time, under the presumption that the participant would win custody. This was measured in both the Equality Principle (EP) and the Present Model (PM) scenario. The maximum amount of visitation that could be offered was 50%.

In the EP scenario, participants were informed that unless the parents can come to an internal agreement about custody, the court will award sole custody and living to the parent who allows the highest amount of visitation to the other parent. In the PM scenario, participants were informed about how the standard procedure is conducted. That is, custody evaluators conduct investigations of the child's best interests and provide recommendations for the court, which most likely rules according to the recommendations.

## **C. PROCEDURE**

The entire study was conducted online. Participants signed informed consent on a link. First, participants answered questions about demographic variables such as gender, age, previous experience of custody litigation, and knowledge about family law. Second, participants read one of the two vignettes, in which either the mother or the father was presented as the bad partner. If the participant was male, the bad partner was female and vice versa. Third, all participants were presented with both decision scenarios, EP and PM, presented in a randomized order. The session ended with questions of preference of model and sincere thanks from the experimenters, along with contact information.

## II. RESULTS & DISCUSSION

### A. DISCUSSION OF STATISTICAL TESTS

Parental aptitude, gender influence on parental aptitude, and realism of the scenario were measured on 7-point Likert ordinal scales that lack equal distances between points. For such scales, it is more mathematically sound to use non-parametric tests (e.g., Mann–Whitney U, Wilcoxon Signed-Rank Test) that analyze rankings instead of classical parametric tests (e.g., t-test, ANOVA) that analyze means and standard deviations. Furthermore, parametric tests demand that both compared data sets are normally distributed. To test this criterion, Levene's Test of Equality of Error Variances is used before parametric significance testing. If Levene's Test of Equality of Error Variances yields a statistically significant level, then the criterion of normal distributions is not met and a non-parametric test should be used even if the variable is measured on a ratio scale.

### B. VIGNETTE QUALITY

Vignette quality was measured in several aspects, namely, (1) parental aptitude, (2) gender influence on parental aptitude, and (3) realism of the scenario.

Parental aptitude was measured to control the success of the vignette in the sense that the bad partner should be viewed as less able as a parent. Across participants, the mean perceived parental aptitude rating for the bad partner (opposite gender) was 3.54 (SD = 1.13) and the mean rating for the other partner (same gender) was 5.77 (SD = 1.63). A Wilcoxon Signed-Ranks Test showed a statistically significant difference in these ratings,  $Z = .540$ ,  $p < .05$ . In line with the design of the vignette, subjective ratings of the parental aptitude of the bad partner were significantly lower than the ratings of the other parent.

Gender effects were measured to control for potential sexism. If the vignette is skewed, participant gender may be a confounding factor. The parental aptitude of the good partner (same gender) resulted in a mean rating of 5.65 (SD = 1.29) for women, and a mean rating of 5.88 (SD = 0.95) for men. Ratings of parental aptitude of the bad partner (opposite gender), resulted in a mean of 3.92 (SD = 1.67) for women and a mean rating of 3.15 (SD = 1.51) for men. A Mann–Whitney U test yielded no statistically significant gender effect on perceived parental aptitude for the good partner,  $U = 315$ ,  $p > .05$ . A similar pattern was found for the bad partner,  $U = 246$ ,  $p > .05$ . Age was not analyzed because the vast majority of the participants (33) ranged from 24 to 34 and there were too few participants in extreme ages for a meaningful statistical analysis.

To measure the credibility of the vignette, participants were asked whether the scenario in the vignette was realistic or not. The results showed that an overwhelming majority (41) answered yes, whereas only 5 said no, and 6 answered: "I do not know." Unsurprisingly, a chi-square goodness-of-fit analysis showed that this difference was statistically significant,  $\chi^2(2) = 48.50$ ,  $p < .05$ .

### C. PRIOR KNOWLEDGE OF CUSTODY DISPUTES

Of 52 participants, 26 reported to have experience of custody disputes or knew someone who had such experience. For participants with first- or second-hand experience of custody disputes, the mean visitation generosity in the EP scenario was 37.46 (SD = 13.40) and 32.23 (SD = 15.16) in the PM scenario. For participants without experience, the mean visitation generosity in the EP scenario was 41.31 (SD = 9.92) and 35.62 (SD = 13.32) in the PM scenario. In both conditions, no statistically significant difference was found. This indicates that prior experience or knowledge of custody disputes was probably not a confounding factor.

#### D. VISITATION GENEROSITY

In the EP scenario, the mean visitation generosity was 39.38 (SD = 11.83, 95% CI [34.82, 44.34]). In the PM scenario, the mean visitation generosity was 33.92 (SD = 14.23, 95% CI [28.97, 38.49]). The maximum amount of visitation (50%) was offered by 22 participants in the EP condition, and by 18 participants in the PM condition. Levene's Test of Equality of Error Variances was statistically significant within the EP scenario,  $F(1, 50) = 4.40, p < .05$ . A statistically significant difference was also found between visitation generosity means using a Wilcoxon Signed-Ranks Test,  $Z = 3.712, p < .05$ . This means that participants showed significantly more visitation generosity in the EP scenario than in the PM scenario.

### III. GENERAL DISCUSSION

When parents fight, their children suffer. This is especially true when a conflict leads to separation and a custody dispute. Currently, in Sweden, custody disputes take a long time, which makes them even more harmful (Bergman & Rejmer, 2017). Government officials are appointed to perform a custody evaluation and based on the results, a judge will decide on the future of the family (Ngaosuvan, 2012, 2018a). This brings a risk of multiple drawn out processes in courts. Furthermore, the custody evaluations that heavily influence court rulings (Kunin, Ebbesen, & Konechi, 1992; Rejmer, 2003), may be value-based (Sagi & Dvir, 1993). In the present system, parents are not the ones who resolve the disputes, and some parents may mistrust the custody evaluation or the integrity of the court. Also, some custody disputes may take months between the completion of the custody evaluations and court hearings. Some parents use time as a strategy to win. Parent A accuses parent B of some form of child abuse and sues for single custody. An interim decision is made that the child should stay at parent A full-time. Parent B has to wait for the risk assessment in the custody evaluation. The RA has completed with the result that both parents are fit. Parent A can then prolong the time between completion of the custody dispute and the court hearing by obstructing the process. For instance, parent A may decide to call in sick, which adds weeks to the time between completion of the custody dispute and court hearing. Then, parent A appeals to the court that the child has been living alone with parent A for a significant time and that the principle of continuity (Schiratzki, 2008) should be applied. Maybe it does not have to be this way. The recently introduced Equality Principle (EP) has been proposed to speed up the process and to motivate parents into a negotiation (Ngaosuvan, 2018a). Even if no parent is as devious as parent A in the example above, the EP speeds up the process because negotiation can take place hours after the custody evaluations have been completed and there is no need for court hearings. In the present system, there is waiting time between completion of custody evaluations and court hearings. During this time, children live in painful uncertainty, and the EP speeds up the process. Naturally, this time advantage is varied across the world. Some countries may have a well-funded legal system and the time between completion of the custody evaluation and court hearing is very limited, but in many countries, this is not the case. Furthermore, transparency is increased by the EP principle because the sole reason a parent loses a custody dispute is that he or she simply offered less visitation than his or her counterpart. In theory, this should deter parents from appealing the case.

To investigate whether parents are more willing to cooperate in custody disputes if the EP is used, as compared to the present model (PM), a vignette study was performed. Participants were presented with parental conflict and asked to rate how much visitation they would offer the other parent if they were to win sole custody. All participants were asked this question for two situations: in a process that follows the PM and in one that follows the EP. The results indicated that visitation generosity was higher in the EP scenario than in the PM scenario, as was hypothesized. In both conditions, no difference was observed between men and women in visitation generosity nor parental aptitude. This indicates that the EP would not be benevolent for either gender. It should be noted

that the vignette presented a heterosexual relationship. No information was gathered as to whether participants had experience of or preference for heterosexual or other kinds of (sexual) relationships.

## A. WEAKNESSES

As the EP is a newly suggested strategy, there are important weaknesses in the present study as well as the principle itself, namely, (1) representation of the present model, (2) preference for ICBIs instead of EP, (3) equal amount of visitation offered, (4) more visitation time may not always be better for the children, (5) limited ecological validity, (6) uncertainty of who should apply the Equality Principle, (7) lack of children's opinions, (8) appellant's rights, (9) unequal resources between parents, and (10) lack of perfect information about participants. A potential weakness of the study is the representation of the present model. In actuality, there is no clearly defined model for conducting custody evaluations in Sweden. Furthermore, there are 290 municipalities in Sweden, and each has sovereign power and responsibility for the quality and structure of their custody evaluations. For these reasons, it is virtually impossible to provide a simple description of how a custody evaluation is conducted. However, the presentation in the present study was based on the observations of an experienced reviewer of custody evaluations, and the participants rated the vignette as realistic.

Other critics may argue that informed ICBIs are preferable over randomization or generosity competition when deciding a family's future. However, people are susceptible to personal values, bias, and prejudice, even when making professional and supposedly objective judgments (e.g., Sagi & Dvir, 1993). This means that different custody evaluators will not judge one family's situation in the same way, especially when the differences between parents are small or seem arbitrary. Repeating similar research in Sweden could provide more insight into to what extent ICBIs are useful here and how custody evaluators could benefit from support.

Furthermore, the highest bidder version of the Equality Principle is not perfect. In this version, the parent offering the highest amount of visitation to the other parent (the highest bidder), wins full custody and must allow the offered amount of visitation to the other parent. This poses difficulties when both parents offer the same amount of visitation. To avoid the randomization solution discussed in the introduction, having more rounds of bidding could be a viable strategy because it may lead to a shared living arrangement (where both parents offer 50% visitation time). Further research could provide further insights into this.

The EP is designed under the assumption that more visitation is better for children. Some critics may argue that this is not always the case. For instance, if one parent is unable to care for the child every other week, then shared living is not in the child's best interests. However, comprehensive risk assessments and investigations of the child's best interests should have detected any such relevant differences. If so, the assumptions of the Equality Principle are not met.

Furthermore, critics may argue that the EP simply transforms custody disputes into a game of visitation generosity. For instance, the fact that so many participants (22) offered the maximum visitation in the EP condition may be an indication that the study caused participants to "win the game" as opposed to honestly assess their desired amount of visitation. If so, the EP may not improve parental cooperation at all. To discuss this critique, one has to understand that parents in a custody dispute invariably have poor cooperation to begin with. Often, parental cooperation is reduced to the degree of adherence to court rulings. Within the EP framework, the amount of visitation offered is not only a promise to the other parent but the children and courts as well. The EP creates an important potential difference as a parent must keep his or her promises to their children in combination with court rulings. However, it is an empirical question whether this promise makes a difference or not.

In all vignette studies, ecological validity can be questioned because reading a story and imagining being in a situation is not the same thing as personally experiencing the situation. It would be

better to do an actual test in a real-world setting with litigating parents. However, this demands a lot more resources and the social services must accept the Equality Principle to test it. The present study provides an important empirical step between theory and practice because it strengthens the notion that the EP is promising. Therefore, vignette studies of novel ideas are very important to convince practitioners, who may be cautious of using game theory and goal-setting theory in practice. Furthermore, vignette studies have been used in previous literature to evaluate family law interventions (e.g., Freeman, Abel, Cowper-Smith, & Stein, 2004; Zelechowski, Fuhrmann, Zibbell, & Cavallero, 2012) or investigate custody disputes in other areas such as moral disengagement (Clemente, Espinoza, & Padilla, 2019). Also, vignettes have been used to investigate value-based bias (Sagi & Dvir, 1993), effects of extra-marital affairs (Votrouba, Braver, Ellman, & Fabricius, 2014), effects of accusations of domestic violence (Hans, Hardesty, Haselschwerdt, & Frey, 2014), and the validity of a decision-making guide (Saini & Birnbaum, 2015).

A vignette was used to generate negative emotions similar to those that are common in custody disputes. Participants only read vignettes where the bad parent had the opposite gender to avoid same-sex favoritism.

Nonetheless, the maximum amount of visitation was offered by approximately one-third of the participants in both conditions. This may demonstrate that the vignette was unable to evoke an emotional state similar to that of litigating parents. After all, a lack of cooperation is what caused the litigation. However, these findings do not align with participants' parental aptitude ratings. Participants rated the bad partners significantly less fit than the same-gender partners. Furthermore, participants rated the vignette to be credible. Also, the results indicate that previous experience of custody disputes was not a confounding factor as no statistically significant difference was found between participants with or without experience. It could be argued that this, too, lends support to the credibility of the vignette. In addition, the notion that one-third of the participants in the present study allowed maximum visitation (i.e., shared living) may not be a sign of poor vignette quality, as custody disputes can consist of one parent suing for sole custody and the other parent objecting to this and proposing shared custody and living.

The EP is based on theoretical aspects of game theory, goal-setting theory (e.g., Latham & Locke, 1991), and knowledge or assumptions of human cognition in both parents and custody evaluators. The principle is not designed with the judicial system in mind. For instance, the principle does not decide who should apply it. One alternative would be to let custody evaluators recommend the courts to apply the Equality Principle. Another would be to empower custody evaluators to apply it without any contact with the courts. Depending on each country's legal system, the application of the Equality Principle may vary.

Furthermore, more qualitative research should be done on the opinions of children of litigating parents, both before and after custody disputes. Despite differences in the maturity and rationality of different children, listening to their views can provide useful insights (Birnbaum & Saini, 2012). In particular, it would be interesting to know what the children think and feel about the Equality Principle.

The right to appeal is an essential democratic aspect of many judicial systems. The Equality Principle infringes on that right in the sense that it would be of little use to have parents appeal their negotiations. Like public elections, citizens cannot change their votes just because they did not like the outcome of the election. In the same way, the Equality Principle assumes that the judicial system will not allow appeals to the negotiation part of the process. The Equality Principle is designed to be a swift and permanent solution with the health and well-being of children in mind. However, the risk assessments in custody evaluations are of limited durability and must be appealable. The most obvious way to appeal the risk assessment would be to contact Child Protective Services, and the following investigation may conclude that a parent is unfit. Such an outcome would, of course, provide solid grounds for re-litigation in the custody dispute.

As several legal systems connect visitation and child support payment, there is a risk that money matters too much in custody disputes which affect the Equality Principle. For instance, in some countries, poor parents cannot simply afford 50% visitation, and then the Equality Principle



would certainly favor rich parents. Other countries, like Sweden, have stronger support systems for poor parents, and this situation is not as pronounced. Without delving into a lengthy political discussion on population wealth distribution, Governmental support or gender salary gaps, mediators and custody evaluators should carefully analyze if the entire custody dispute is not, in actuality, a “child support dispute.” If so, negotiation strategies should be very different. In all cases, the equality principle is useful to either resolve the custody dispute or help to identify child support disputes.

Another weakness in the study is the lack of perfect information about the participants. It would, of course, be better if the vignette also had asked about marital status, longevity or relationship, number of relationships, history of high-conflict divorces, the experience of high-conflict divorces as children and so on. However, given the relatively small scope of the study, the number of participants would be too small to do meaningful statistical analyses. In order to do a meaningful analysis of marital status which has several variations (e.g., married, divorced, single, living with significant other, not living with significant other, etc.) the study must recruit enough participants in the respective alternative. So, for practical reasons, only age, gender, and previous (vicarious) experience were measured. For future and larger studies, such variables are of greater interest.

## **B. ADVANTAGES**

Despite the mentioned weaknesses, we argue that the Equality Principle is superior to the present model because it provides clear transparency and reproducibility. This could benefit parents in conflict, their children, judges, and custody evaluators. The EP applies to custody disputes in which both parents are regarded fit, no meaningful difference for the child’s best interests is present, and shared custody must be ruled out. It is based on a few simple rules to which no exceptions are made. This means that the EP is reproducible. Furthermore, all parties will know the exact reasons for the outcome. The outcome is based on direct input from both parents and is not influenced by bias or values of external parties. This means that the EP is completely transparent. Both reproducibility and transparency contribute to the fairness of the principle.

Furthermore, the transparency and reproducibility of the Equality Principle have other benefits. First, they may increase parents’ tendency to negotiate before litigation. Parents may understand that unless they can prove that the other parent is unfit, they will most likely end up competing for custody by offering visitations. Realizing this, they may simply do the same without any contact with any authorities at all. This is, of course, speculation that needs to be empirically investigated. Second, parents’ actions will have a directly visible effect when using the EP, rather than leaving the decision to be made by external parties. Both of these qualities can be argued to motivate higher parental generosity, as the risks of losing custody can become greater when parents do not cooperate and if they offer low visitation. This may lead to higher visitation offerings, which means that children may get to spend more time with both of their individually fit parents. Furthermore, the benefits can be advantageous for parental adherence to the outcome of the dispute. The present model (PM) contains several points that can cause doubt on the fairness of the court rulings. For example, in the PM, there is a high likelihood that losing parents are subjected to self-serving bias (Verrastro et al., 2016; Zhang, Pan, Li, & Guo, 2018). This bias occurs when a person explains a negative outcome compared to a positive. When explaining a negative outcome, people tend to blame external factors rather than personal or internal factors. The pattern is reversed when explaining a positive outcome. Presumably, feeling unfairly treated motivates people to re-litigate. In contrast, the EP offers a transparent process in which the outcome is not influenced by external parties, and the risk of bias, discrimination, and misinformation is reduced. If this can make parents feel more fairly treated, it could decrease the number of re-litigations and accusations of custody evaluators and judges being prejudiced. Hopefully, it will also motivate parents to adhere to the outcome they have actively and consciously contributed to. This may

seem like wishful thinking, but given the problems the present model brings, there is not much left to lose.

It is also argued that using the EP will speed up the process of custody disputes in comparison to using the present model (Ngaosuvan, 2018a) because the need for lengthy and detailed investigations of the child's best interests is reduced. In the present model, relative differences between the parents in stability, parental engagement, distance to school, proximity extended family and close friends, and relevant recreation facilities must be carefully measured and analyzed together into a final recommendation. This process takes time in the present model. Within the EP framework, the need to recommend a parent is reduced because the ICBIs should not affect recommendations unless there are obvious and clear differences that could be swiftly identified. Furthermore, the EP can be applied hours after the completion of the custody evaluation and resolve the case without any court ruling. This would be a major advantage over the PM because it will make the process less harmful for affected children (Bergman & Rejmer, 2017).

Regardless of the version, the EP makes the parents compete in generosity to win. In the PM, judges decide the level of visitation. Presumably, this keeps both the outcome and the conflict more focused on the children and the parents themselves. That is, instead of potential finger-pointing and blaming the other parent of unfavorable behavior, parents are forced to focus on the future of the children and to look at their willingness to cooperate first. In the present model, there is no such explicit component. However, some legal systems use a "friendly parent rule" where parents' attitudes about visitation should be taken into account when deciding custody. For instance, the Canadian Department of Justice (2001) suggested that maximum visitation could be weighed against other factors. While this notion is similar to the Equality Principle, there are some principal differences. First, within the EP framework, visitation generosity is not something to be compared to other factors but the last deciding aspect when all other meaningful variables of the child's best interests have been exhausted. Second, the EP formally quantifies how visitation generosity should be used. Without the formal, transparent and reproducible application of a factor, there is a risk for non-systematic or biased use of it.

Furthermore, parents may continue to litigate because they cannot fully accept the outcome of the risk assessment. Part of this could be that parents confuse the concept of a bad partner with an unfit parent. A partner that treats the other parent disrespectfully, like the "bad partner" presented in the vignette, is unquestionably unpopular. However, this does not mean that they are unfit for parenting in the sense that they pose a relevant risk to their children in terms of abuse or neglect. Risk assessments are conducted in the light of child maltreatment and spousal abuse, not moral standards. Mediators or negotiators are probably benefited by explaining this difference when applying the EP. Further research could point out whether parents are willing and able to accept the judgments made in RAs.

#### IV. CONCLUSION

The present vignette study provided preliminary empirical evidence for greater parental generosity in custody disputes based on the Equality Principle (EP) rather than the present model (PM). Combined with the theoretical advantages of the EP, this speaks for considering the EP as a viable alternative to the PM in custody disputes in which both parents are individually fit, no meaningful differences between both parents in the child's best interests can be found, and shared custody must be ruled out. However, given the sample used in the present study and the lack of replications, readers should show great caution and treat the EP as a theoretical model at this stage. Further testing using actual litigating or divorcing parents, as well as dyads of parents who are disputing with one another, is needed before the Equality Principle could be regarded as fully empirically supported. Also, future studies could benefit from using between-subjects designs. At this stage, the EP is only a preliminary researched principle.

## V. FUTURE IMPLICATIONS

Assuming that the Equality Principle is efficient in real life settings, the future implications of a wide implementation of the Equality Principle are many. First, parents can be motivated to offer higher amounts of visitation to the other parent, which could help in conflict resolution and can be argued to be better for affected children. Second, parental adherence to the outcome of the litigation is expected to be higher because of the transparency and negotiation aspects of the EP. The EP is unquestionably fair in the sense that both parents were given the same chance to bid the highest bid. Presumably, this would increase parental adherence. Finally, when discussing the Equality Principle, one can object by arguing that the general public would not accept such a harsh idea to put an end to the seemingly endless conflicts. However, despite the age of the problem that the Equality Principle addresses, very few attempts have been made to solve the issue. With this in mind, it can be argued that the EP seems radical only because the present model (PM) has barely changed over a long period of time. The outcomes of the PM are usually undesirable with long conflicts and re-litigations. Considering this, the Equality Principle is a strategy with high potential for transparency, reproducibility, fairness as well as empirical evidence of more parental generosity, and should therefore be subject for further investigation.

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