De Facto Maternal Preference in Italian Family Courts: A Comparative Study with U.S. Custody Law and Implications for Transnational Practice

By
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Introduction

This article examines the persistent divergence between the statutory model of shared custody, formally grounded in the principle of bi-parentality, and its practical implementation in courtrooms. The study compares judicial practices and empirical patterns observed in Italian and U.S. family courts, highlighting structural differences in procedural organization, allocation of parenting time, and management of family conflict.

The analysis is particularly relevant for Italian-American transnational couples, who are frequently involved in disputes characterized by issues of international jurisdiction, recognition of judgments, and coordination between distinct legal systems. From this perspective, the article offers a comparative framework aimed at identifying more balanced procedural models consistent with the child's best interests.

Despite legislative commitments to parental equality in both Italy and the United States (from Italy's codified principle of bi-parentality to U.S. protections of parental neutrality in constitutional case law and state statutes) judicial practice often results in a de facto maternal preference, producing asymmetrical parenting arrangements that marginalize the paternal role. Drawing on qualitative forensic observation developed over two decades of practice

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in high-conflict family litigation (approximately 2005–2025) before major Italian family courts, this article offers a qualitative case-based analysis of judicial patterns. It further relies on a comparative review of U.S. appellate decisions, statutory best-interests factors, and mandatory parenting plans to identify recurring procedural patterns affecting custody determinations, parenting time allocation, housing decisions, and financial obligations.

The article further explores the psychological and systemic consequences of such practices on children, emphasizing the risk of relational disruption and procedural escalation. A comparative analysis with U.S. family law highlights alternative structural approaches designed to preserve parental balance and reduce conflict. The article further examines the Cartabia Reform of 2023 and its practical limitations, the structural role of court-appointed experts in consolidating maternal preference, and the implications of recent U.S. state-level legislative innovations in Florida, Wisconsin, and Idaho, where lawmakers have moved toward presumptions of joint or substantially shared physical custody, detailed parenting-plan requirements, and enhanced protections of parental rights aimed at constraining ad hoc judicial decision-making.

A comparative perspective with U.S. family law shows that certain jurisdictions have introduced statutory presumptions or more structured parenting time guidelines in an effort to reduce decisional uncertainty and limit the influence of implicit bias.

This article proceeds as follows. Part II sets forth the empirical foundation of the analysis, drawing on over twenty years of forensic practice in high-conflict Italian family litigation and a comparative review of U.S. appellate decisions and statutory frameworks. Part III identifies the recurrent judicial patterns through which de facto maternal preference manifests in practice in both systems. Part IV offers a comparative synthesis of the structural differences between the Italian and U.S. approaches. Part V analyzes the psychological and relational consequences of parenting time asymmetry for children. Part VI examines Italian and U.S. approaches to parenting plans, enforceability, and judicial accountability. Part VII argues for a structural reform model grounded in objective, interdisciplinary, and technology-assisted decision-making. Part VIII concludes that bi-parentality must be understood as a fundamental right of the child, and that its most effective safeguard lies in procedural transparency and institutional accountability.

The article concludes by advocating a shift away from discretion susceptible to bias toward objective, interdisciplinary, and technology-assisted decision-making models capable of safeguarding the child's best interests and ensuring genuine bi-parental participation.

I. The Gap Between Law and Judicial Practice

A. *The Statutory Framework of Shared Custody in Italy*

The Italian legal system has formally embraced the principle of bi-parentality as a cornerstone of child custody regulation. Beginning with Law No. 54/2006, subsequently incorporated into Article 337-ter and the related provisions of the Italian Civil Code governing parental responsibility and custody, the legislature established that a minor has the right to maintain a balanced and continuous relationship with both parents, to receive care, education, instruction, and moral support from each of them, and to preserve meaningful relationships with grandparents and relatives on both parental sides.

Shared custody constitutes, at the statutory level, the general rule, while sole custody represents an exception, permissible only when joint custody would be contrary to the child's best interests. The system rests on three fundamental pillars. Joint parental responsibility requires both parents to participate in major decisions concerning the child, including health, education, upbringing, and residence. Legal equality between parents reflects the mandate of Article 30 of the Italian Constitution and the principles of the United Nations Convention on the Rights of the Child, even though the statutory framework has historically been built around a heterosexual parental model.[1] The primacy of the child's best

[1] While Italian statutory law has not yet established a comprehensive framework for same-sex parentage, recent constitutional jurisprudence has progressively extended recognition to non-traditional family structures. The present analysis focuses on the dominant statutory model as applied in the overwhelming majority of contested custody proceedings, which continues to operate around a maternal-paternal dyad. *See* Corte Costituzionale [Corte cost.], sentenza 22 maggio 2025, n. 68 (It.) (holding unconstitutional the statutory framework insofar as it prevented a child born in Italy following heterologous assisted reproduction undertaken abroad by a female couple from acquiring the status of child also with respect to the intentional mother who had consented

interests serves as the overarching criterion guiding all judicial determinations.

The reform enacted through Legislative Decree No. 154/2013 further strengthened the unity of the child's legal status by eliminating the remaining distinctions between children born inside and outside marriage, and reinforced the neutrality of the custody model with respect to the parents' marital status, extending the same framework to all proceedings concerning children, regardless of whether the parents were married. From a theoretical perspective, the Italian model is thus designed as a system oriented toward parental cooperation, shared responsibility, and relational continuity with both parents. However, as will be demonstrated in the following sections, the practical judicial application of the shared custody principle often diverges from its normative framework, producing arrangements that, while formally labeled as "joint," do not always ensure effective parental equality.

B. *The Persistence of Informal Judicial Automatism*

Although the statutory framework outlines a model grounded in parental equality and case-by-case assessment of the child's best interests, judicial practice reveals the persistence of informal decision-making automatism that significantly affects procedural outcomes.

These unreflective defaults are not expressly grounded in statutory law, but rather consolidate through recurring judicial practices, implicit orientations, and standardized formulas that tend to be reproduced serially.

Italian judicial practice reveals at least four recurring automatisms.

The first is the predominant placement of the child with the mother as a default solution, even in the absence of objective elements justifying an unequal allocation of parenting time. The second is the attribution to the mother of routine management of the child's daily life, which progressively marginalizes the father's role in practical decision-making. A third pattern is the standardized allocation of parenting time (typically alternating weekends

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to the reproductive procedure); *see also* Corte Costituzionale [Corte cost.], sentenza 9 marzo 2021, n. 32 (It.) (previously identifying the lack of adequate legal protection for children born within such parental projects and calling upon the legislature to intervene).

and one or two midweek afternoons), applied irrespective of the child's age, geographic proximity, or the parents' actual availability. Finally, courts tend to implicitly associate the maternal figure with the "residential parent," which carries automatic consequences for financial determinations, including child support and assignment of the family home. These mechanisms generate a structural effect: shared custody remains formally declared, yet the practical organization of the child's life often approximates a substantially mono-parental model. Judicial discretion, rather than resulting in an individualized and interdisciplinary analysis of the case, tends to be exercised through predefined decision-making templates.

From a systemic perspective, the persistence of such implicit mechanisms fuels litigation, because the parent perceived as "secondary" is incentivized to initiate complaints, modification proceedings, and appeals. At a psychological level, the quality and continuity of children's relationships with their caregivers may influence attachment patterns and relational development. In high-conflict post-separation families, relational dynamics may also contribute to polarization, loyalty conflicts, and alignment with one parent.[2]

Overcoming these practices requires a more structured approach, based on objective criteria for the allocation of parenting time, interdisciplinary protocols, and transparent and verifiable decision-making tools capable of reducing the influence of cultural stereotypes and implicit bias in judicial determinations.

The Italian Supreme Court recently confirmed this interpretive direction: Cass. civ., ord. No. 6078/2026 held that any presumption that the mother is more suitable for the custody of young children is unfounded and that the determination of placement arrangements and parenting time requires a concrete assessment of the specific family circumstances in order to protect the child's best interests.[3]

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2 *See* John Bowlby, 1 Attachment and Loss: Attachment 177 (2d ed. 1982); Mary D. Ainsworth et al., Patterns of Attachment: A Psychological Study of the Strange Situation 149 (1978); Michael E. Lamb, The Role of the Father in Child Development 8 (5th ed. 2010); Salvador Minuchin, Families and Family Therapy 102 (1974); Janet R. Johnston, *Children of Divorce Who Refuse Visitation, in* Non-Residential Parenting 109, 114 (Charlene E. Depner & James H. Bray eds., 1993).

3 Corte di Cassazione [Cass.], sez. I civ., ord. 17 marzo 2026, n. 6078 (It.).

C. *Conceptual Definition of "De Facto Maternal Preference" and Its Origins*

The term "de facto maternal preference" is used here descriptively to identify a recurring divergence between formally gender-neutral custody rules and decisional patterns that may favor maternal placement in practice. Such a preference, when operating as a gender-based decisional presumption, has been held constitutionally impermissible in U.S. custody law.[4] Such preference is not articulated in normative terms, nor declared as an autonomous legal criterion, but emerges indirectly through the allocation of parenting time, the assignment of the family home, the determination of child support, and the designation of the "residential" or "primary" parent.

It is therefore a descriptive rather than a normative category: an analytical construct intended to identify a divergence between the formal principle of bi-parentality and the concrete configuration of post-separation parental relationships.

D. *Historical and Cultural Origins*

The roots of maternal preference lie in a long historical and legal evolution. In nineteenth-century European law, the father held exclusive parental authority, reflecting an authoritarian and patrimonial conception of the parental relationship. With social evolution and the affirmation of the "best interest of the child" principle in Anglo-American systems, the so-called "tender years doctrine" gradually emerged, according to which, during the early years of life, the child was presumed to benefit preferentially from maternal care.[5]

Although the tender years doctrine was formally abandoned during the twentieth century, assumptions favoring the mother as the child's primary caregiver continued to influence custody decision-making.[6]

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4 *See, e.g.,* Watts v. Watts, 350 N.Y.S.2d 285, 291 (N.Y. Fam. Ct. 1973) (rejecting a de facto maternal preference as inconsistent with the Equal Protection Clause).

5 Mary Ann Mason, From Father's Property to Children's Rights: The History of Child Custody in the United States 45 (1994); J.H. DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in the Wake of the American Law Institute's Principles of the Law of Family Dissolution*, 11 Duke J. Gender L. & Pol'y 1 (2001); *Ex parte* Devine, 398 So. 2d 686, 696 (Ala. 1981).

6 *See, e.g.,* Jessica Feinberg, *Multi-Parent Custody*, 108 Minn. L. Rev. 1489, 1522 (2024) ("Presumptions in favor of one parent over the other, however, continued to play a core role in courts' determinations of which custody arrangement

In Italy, the transition toward parental equality has been relatively recent. Only with the 2006 reform was shared custody established as the general rule. However, judicial culture developed over decades in a context in which sole custody awarded to the mother represented the ordinary solution. Such historical sedimentation has produced a form of institutional inertia: even in the presence of a formally egalitarian rule, practice tends to reproduce consolidated patterns.

De facto maternal preference may also be influenced by sociological factors, including persistent asymmetries in the distribution of family roles during cohabitation and greater female involvement in domestic and caregiving responsibilities.[7] These caregiving patterns may also shape broader social perceptions concerning custody and parental roles. Public-perception studies have reported a widespread belief that custody decision-making is biased in favor of mothers.[8]

From a psychological perspective, recourse to traditional family patterns may function as a mechanism for reducing decisional uncertainty in high-conflict contexts: assigning predominant placement to the mother may be perceived as a "prudential" or "stabilizing" choice, even in the absence of a thorough comparative analysis of parental competencies.

De facto maternal preference does not coincide with an individualized assessment of the mother's greater suitability in a particular case—which remains fully legitimate when grounded in concrete elements—but rather takes the form of a structural, repetitive, and not explicitly reasoned tendency.

Although the law affirms gender neutrality, practice sometimes continues to operate according to implicitly differentiated logics. Understanding this phenomenon is essential in

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would promote the child's best interests. Specifically, in determining what custody arrangement would further the best interests of the child, courts relied heavily on considerations relating to which party served in the role of the child's primary caretaker prior to dissolution.").

7 *See* Judith Treas & Sonja Drobnič, Dividing the Domestic: Men, Women, and Household Work in Cross-National Perspective (2010).

8 Sanford L. Braver et al, *Lay Judgments About Child Custody After Divorce*, 17 Psychol. Pub. Pol'y & L. 212, 214 (2011) ("Whatever the objective truth about judicial decision-making, several studies have shown that the public has the widespread perception that the custody process is heavily biased in favor of mothers.").

order to evaluate the effective implementation of the principle of bi-parentality and to question the need for more objective, transparent, and verifiable decision-making instruments.

E. *Research Question: Why Does Equality on Paper Fail in Practice?*

The central research question may be formulated as follows: why does a statutory model formally grounded in parental equality produce structurally asymmetrical outcomes in judicial practice?

Although the Italian legislature has established shared custody as the general rule and affirmed the child's right to maintain a balanced and continuous relationship with both parents under Article 337-ter of the Italian Civil Code, the concrete organization of parenting time and parental responsibilities may nevertheless reflect a non-equal distribution.[9] Formal equality does not automatically translate into substantive equality.

The research hypothesis operates on four levels. At the first level, institutional inertia and cultural continuity explain why normative reforms do not immediately transform judicial practice, which develops within consolidated interpretive traditions. The transition from a historically maternal-centered custody model to a genuinely shared one requires cultural change in addition to legislative reform. At the second level, the breadth of judicial discretion under the best interests standard—conceptually elastic and open to subjective assessment—creates space for implicit stereotypes and standardized solutions in the absence of objective parameters. A third explanatory factor is the persistence of pre-separation social asymmetries: the greater maternal involvement in daily caregiving during cohabitation is sometimes automatically projected into the post-separation phase, without a forward-looking evaluation of future parental capacities. Finally, the conflict-oriented procedural structure of high-conflict litigation tends to privilege solutions perceived as stabilizing or conservative, even at the cost of reducing one parent's effective participation.

The failure of "equality on paper" may therefore be understood as the outcome of a tension between a formally egalitarian

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[9] Arts. 337-ter (It.), introduced by Legge 8 febbraio 2006, n. 54 (It.), as amended by D.lgs. 28 dicembre 2013, n. 154 (It.)

norm and a decision-making system still characterized by significant discretion.[10] The issue is not the legitimacy of differentiated assessments in individual cases, but the potential existence of recurring patterns that, cumulatively, produce systemic effects.

F. *Counter-Arguments and Their Limits*

Some attachment-based scholarship has expressed concern that extended or overnight separations from a primary caregiver during very early childhood may affect attachment security, particularly in separated or divorced families.[11] Accordingly, some courts have reasoned that maintaining post-separation continuity with the primary caregiver minimizes disruption to the child's attachment bonds. This reasoning, however, conflates the identity of the primary caregiver during cohabitation with suitability for post-separation care, without conducting the forward-looking assessment required by the best interests standard. As Joan Kelly and Michael Lamb have demonstrated, young children are capable of forming and maintaining secure attachments with multiple caregivers simultaneously, and paternal involvement from an early age is independently associated with positive developmental outcomes.[12] The more recent scientific consensus, reflected in Richard Warshak's 2014 consensus report, concludes that shared parenting arrangements, including regular overnight care with both parents, are not inherently harmful to very young children and may support the development and maintenance of meaningful relationships with both parents.[13]

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10 Robert H. Mnookin, *Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 Law & Contemp. Probs. 226 (1975); Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 Law & Contemp. Probs. 69 (2014).

11 See Judith Solomon & Carol George, *The Effects on Attachment of Overnight Visitation in Divorced and Separated Families*, 38 Fam. & Conciliation Cts. Rev. 136 (1999); Marsha Kline Pruett & J. Hermes, *Protective Factors for Children of Divorce*, 53 Fam. Ct. Rev. 26, 31 (2015).

12 Joan B. Kelly & Michael E. Lamb, *Using Child Development Research To Make Appropriate Custody and Access Decisions for Young Children*, 38 Fam. & Conciliation Cts. Rev. 297 (2000).

13 Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20(1) Psychol., Pub. Pol'y & L. 46 (2014).

II. Empirical Observations from Forensic Practice

A. *Methodological Note: Qualitative Professional Observation*

The present analysis is not based on quantitative statistical research, but rather on qualitative professional observation developed through more than twenty years of legal practice in high-conflict family litigation. The empirical data derive from the direct examination of judicial decisions, including preliminary judicial orders issued under the pre-Cartabia framework (*decreti presidenziali*)[14], as well as procedural decrees, court-appointed expert reports (CTUs), transcripts of hearings involving the child, and panel decisions issued on appeal.

With regard to the U.S. system, the comparative analysis is grounded in the review of state case law, statutory best interests of the child factors, mandatory parenting plans adopted in many jurisdictions, and appellate decisions concerning custody and parenting time. Unlike the Italian system—characterized by a unified statutory framework and broad judicial discretion—the U.S. system reflects significant normative fragmentation and wide variation across states. Nevertheless, many states provide a greater statutory specification of decisional criteria and, in some cases, the introduction of legal presumptions favoring joint custody or equal parenting time, with potential effects of reducing decisional indeterminacy.

B. *Nature of the Observation in the Italian System*

Within the Italian context, the qualitative observation draws on several categories of primary material. Judicial decisions issued pursuant to Article 337-ter and the related provisions of the Civil Code governing parental responsibility and custody provide the primary evidentiary base, supplemented by procedural decrees

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[14] Before the Cartabia Reform, the decreto presidenziale referred to a provisional order issued at the outset of separation or divorce proceedings to regulate, on an interim basis, matters including the child's residential arrangements, parenting time, and financial obligations. The present Article uses the term only in this historical sense. Current family proceedings are governed by the unified procedural framework introduced by Legislative Decree No. 149/2022, including temporary and urgent measures under Article 473-bis.22 of the Code of Civil Procedure.

and panel decisions rendered on appeal. Particular attention has been devoted to the judicial reasoning concerning predominant placement, the impact of psychological court-appointed expert reports on the final custody arrangement, and the divergence between the parties' claims and the actual allocation of parenting time ultimately ordered by the court.

The observation reveals, in numerous cases, a tendency toward the standardization of parenting schedules (alternating weekends plus one or two midweek afternoons), even where objective conditions would permit a more balanced distribution.

This practice contrasts with Supreme Court jurisprudence which, at a theoretical level, clearly affirms the principle of bi-parentality. The gap between principle and practice is confirmed by a consistent line of Supreme Court authority. Italian Supreme Court jurisprudence has consistently emphasized that shared custody must preserve a meaningful relationship between the child and both parents. In particular, the Court has described bi-parentality as requiring the common presence of both parents in the child's life and has further recognized the child's right to a significant and full relationship with each parent.[15] The Court subsequently clarified that the allocation of parenting time need not be arithmetically equal, but must instead result from a reasoned judicial assessment that takes into account the child's welfare and the child's right to a significant and full relationship with both parents.[16] In 2022, the Court further clarified that the protection of bi-parentality does not automatically justify measures restricting or removing a parent's parental responsibility, but requires a concrete assessment of whether such measures are necessary and consistent with the child's best interests.[17] The Court further emphasized that bi-parentality requires a stable and continuous relationship with both parents, even if arithmetical equality of parenting time is not

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15 *See* Corte di Cassazione [Cass.], sez. I civ., ord. 8 aprile 2019, n. 9764 (It.) (describing bi-parentality as the common presence of both parents in the child's life, capable of ensuring stable and meaningful relationships with each parent); Corte di Cassazione [Cass.], sez. I civ., ord. 13 febbraio 2020, n. 3652 (It.) (emphasizing the child's right to a significant and full relationship with both parents); see also Corte di Cassazione [Cass.], sez. I civ., ord. 14 febbraio 2022, n. 4796 (It.) (recognizing the principle of bi-parentality under Article 337-ter of the Civil Code and Article 8 ECHR).

16 Corte di Cassazione [Cass.], sez. I civ., ord. 13 febbraio 2020, n. 3652 (It.).

17 Corte di Cassazione [Cass.], sez. I civ., 24 marzo 2022, n. 9691 (It.).

mandatory.[18] Most recently, in its landmark March 2026 ruling, the Court held that equal parenting time cannot be excluded solely on the basis of the child's young age, including children of pre-school age, expressly rejecting maternal preference as an inadmissible presumptive criterion and mandating concrete, individualized assessment of each parent's actual capacities.[19]

The European Court of Human Rights, in *Strand Lobben and Others v. Norway* (Grand Chamber, Sept. 10, 2019),[20] strengthened the obligation of states to preserve family bonds except in exceptional circumstances.

The qualitative observation therefore highlights the potential gap between principled judicial affirmations and the concrete allocation of parenting time in practice.

C. *Nature of the Observation in the U.S. System*

The qualitative analysis of the U.S. system draws on four principal categories of material. The primary sources are appellate decisions concerning custody and parenting time, together with a review of statutory best interests of the child factors across different states. These are supplemented by an analysis of mandatory parenting plans and an assessment of the role of custody evaluators and guardians ad litem. Finally, the study examines statutory presumptions favoring joint custody or equal parenting time in select jurisdictions, with particular attention to their practical effects on decisional consistency.

Unlike the Italian system—characterized by a unified statutory framework and broad judicial discretion—the U.S. system reflects significant normative fragmentation due to state-level legislative authority. However, in many states it offers a greater statutory specification of decisional criteria.

In the United States, the judicial presumption favoring maternal custody was formally overcome through decisions such as

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18 Corte di Cassazione [Cass.], sez. I civ., ord. 10 dicembre 2018, n. 31902 (It.) (holding that the principle of bi-parentality does not require a mathematically equal division of parenting time, but rather each parent's right to a meaningful presence in the child's life).

19 Corte di Cassazione [Cass.], sez. I civ., ord. 17 marzo 2026, n. 6078 (It.).

20 Strand Lobben & Others v. Norway, App. No. 37283/13, ¶ 207 (Eur. Ct. H.R. Sept. 10, 2019).

Ex parte Devine,[21] in which the Alabama Supreme Court held that gender-based presumptions violate the Equal Protection Clause of the Fourteenth Amendment.

Although there is no uniform federal custody model, several states have subsequently introduced legislative presumptions in favor of joint custody or, in some cases, equal parenting time. For example, the Kentucky Revised Statutes § 403.270 established a presumption of joint custody and equal parenting time, rebuttable upon specific findings.[22]

The constitutional protection of parental rights has deep roots in U.S. jurisprudence. The Supreme Court recognized parental autonomy as a liberty interest protected by the Due Process Clause in *Meyer v. Nebraska*,[23] and subsequently extended this protection to the parent-child relationship in *Stanley v. Illinois*,[24] holding that a parent's interest in the companionship and custody of their children is cognizable under the Constitution. This line of authority culminated in *Troxel v. Granville,*[25] which reaffirmed the fundamental liberty interest of fit parents in the care, custody, and control of their children and the presumption that fit parents act in their children's best interests.

The Alabama Supreme Court in *Devine*[26] specifically declared the automatic tender years presumption unconstitutional, finding it incompatible with the Equal Protection Clause of the Fourteenth Amendment. The court held that custody may not be determined on the basis of a parent's gender, but must instead rest on neutral factors relating to the best interests of the child. At the federal level, the Supreme Court had already established in *Orr v. Orr*,[27] that gender-based classifications are subject to heightened scrutiny under the Equal Protection Clause, providing a broader constitutional framework for later challenges to sex-based presumptions in family law.

Qualitative observation further indicates that in systems adopting structured presumptions or detailed parenting time

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21 398 So. 2d 686 (Ala. 1981).

22 Ky. Rev. Stat. § 403.270 (2018) as amended.

23 Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

24 Stanley v. Illinois, 405 U.S. 645, 651 (1972).

25 Troxel v. Granville, 530 U.S. 57, 65 (2000).

26 *Devine*, 398 So. 2d at 690.

27 Orr v. Orr, 440 U.S. 268, 279 (1979).

guidelines, the allocation of time tends to be less dependent on implicit patterns and more closely anchored to predefined statutory criteria.

III. Recurrent Judicial Patterns

A. *The Italian System*

An analysis of Italian judicial practice reveals, in numerous cases, the recurrence of decision-making patterns which, although formally framed within shared custody, result in substantially asymmetrical arrangements.

1. *Designation of a "Prevalent Parent"*

Although the legal framework does not formally recognize the category of a "prevalent parent," the figure of the residential parent often assumes a functional centrality that exceeds mere logistical organization. Predominant placement with one parent, frequently the mother, produces a cascade of practical consequences that reinforce the residential parent's centrality. That parent acquires greater day-to-day decisional influence, assumes primary management of the child's schooling and healthcare, and consolidates a primary reference role in the child's relational life. Over time, these functional advantages tend to entrench the asymmetry rather than correct it. The Italian Supreme Court has repeatedly emphasized that residential arrangements must preserve each parent's meaningful presence in the child's life, consistently with the principle of bi-parentality.[28] Nonetheless, in trial-level practice, the residential parent often assumes a substantially dominant role.

2. *The Role of Court-Appointed Experts and the Crystallization of Maternal Preference*

A structural element of Italian custody proceedings is the role of the court-appointed psychological expert, known as the

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28 See Corte di Cassazione [Cass.], sez. I civ., ord. 10 dicembre 2018, n. 31902 (It.) (explaining that bi-parentality entails each parent's meaningful presence in the child's life, rather than an arithmetically equal division of parenting time); *see also* Corte di Cassazione [Cass.], sez. I civ., ord. 8 aprile 2019, n. 9764 (It.) (describing bi-parentality as the common presence of both parents in the child's life, capable of ensuring stable and meaningful relationships with each parent).

consulente tecnico d'ufficio (CTU), who is appointed by the judge to provide technical expertise relevant to the court's assessment. In the author's professional observation, the practical operation of this expert-centered structure may contribute, in some cases, to the consolidation of pre-existing asymmetries in parenting arrangements.

In the author's professional observation, CTU reports may carry substantial practical weight in some proceedings, while observations submitted by party-appointed experts may have limited practical influence. The extent to which courts rely on CTU reports, however, varies by case, court, and evidentiary record.

Unlike the U.S. adversarial model, in which both parties may retain independent custody evaluators and subject the court-appointed expert to cross-examination, the Italian system provides only a limited procedural equivalent. Each party may appoint a privately retained expert (consulente tecnico di parte, or CTP) to monitor the CTU's methodology, submit written observations, and, in theory, challenge the CTU's conclusions before the court. In the author's professional observation, however, CTP objections are rarely dispositive: courts overwhelmingly defer to the CTU's findings, and the CTP's role is more often supervisory than genuinely adversarial. The absence of cross-examination rights and the structural centrality of the CTU's mandate render the Italian system substantially less contestable than its U.S. counterpart. More broadly, forensic experience reveals a systemic tendency toward the uncritical adoption of CTU conclusions by the judiciary—a pattern that, in its most pronounced form, can amount to a functional abdication of the adjudicative role itself: rather than exercising independent judgment, the court effectively delegates its decision-making authority to the technical expert, reducing the judicial function to the mere ratification of the CTU's findings.[29]

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[29] See Antonio Iudici, Francesca Rainieri & Tania Fiorini, *Court-Appointed Expert Consultation in Italy: An Ethnographic Study of Parents' Beliefs, Expectations, and Experiences*, 16 Front. Psychol. 1668693 (2025) (describing the CTU as a court-commissioned psychological assessment intended to provide judges with information relevant to custody decisions and describing the monitoring role of party-appointed consultants); *see also* Tribunale di Milano, *Indicazioni operative per la CTU su famiglia e minori* (2023) (setting out procedural and methodological guidelines governing court-appointed expert evaluations in family and minor proceedings). The observations concerning the practical degree of judicial reliance on CTU conclusions and the relative influence of CTP

This dynamic raises a critical concern that forensic experience confirms repeatedly: rather than challenging or correcting the informal maternal preference embedded in preliminary judicial orders, CTU reports tend to ratify and consolidate it. The assessment methodology frequently focuses on the child's existing attachment patterns and current relational equilibrium—factors that, by the time the expert evaluation commences, already reflect months or years of predominantly maternal placement ordered through interim measures. The CTU thus photographs a situation that the proceeding itself has created, transforming a provisional and contingent arrangement into an apparently objective finding of the child's best interests.

This circularity is structurally invisible: the interim custody orders place the child predominantly with the mother; the CTU evaluates the child in that consolidated arrangement; the final order confirms it on the basis of the CTU's conclusions. The father's reduced presence, which the system has itself produced, becomes evidence of his lesser centrality in the child's life. The result is a self-reinforcing mechanism that the formal principle of bi-parentality is unable to interrupt.

In the U.S. system, several procedural safeguards mitigate this risk. The adversarial structure allows both parties to retain independent custody evaluators, to depose the court-appointed expert, and to challenge the methodology underlying the evaluation. Some states have introduced statutory requirements specifying the criteria that evaluators must apply, reducing the evaluator's discretion and rendering the assessment more transparent and reviewable. The contrast with the Italian model is striking: where the U.S. system treats the expert evaluation as one input into a judicial decision that remains fully the judge's responsibility, the Italian system tends toward a form of functional delegation in which the CTU effectively predetermines the outcome.

Addressing this dynamic requires both procedural reform—including the introduction of adversarial expert procedures and clearer methodological standards for CTU evaluations—and a cultural shift in judicial practice toward maintaining autonomous decisional responsibility rather than deferring wholesale to technical expertise.

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objections reflect the author's qualitative professional experience in Italian family litigation.

3. *Marginal Allocation of Paternal Parenting Time*

A frequently observed pattern consists in assigning the father alternating weekends (from Friday afternoon or Saturday morning until Sunday evening), one or two midweek afternoons, and summer periods divided into segments not exceeding fifteen days, even if non-consecutive.

Although formally compatible with shared custody, this model produces a significantly asymmetrical temporal distribution, which may affect the quality and depth of the parental relationship. The Italian Supreme Court has clarified that bi-parentality does not necessarily entail arithmetical equality of parenting time, but requires a meaningful and stable presence of both parents.[30] From an empirical standpoint, however, concerns arise when such allocation becomes crystallized into standardized patterns, applied irrespective of the specific circumstances of the case or the parents' prior caregiving roles before the family breakdown. Most recently, Cass. civ., ord. No. 6078/2026[31] clarified that equal placement cannot be ruled out on the presumption of the child's young age, reinforcing the requirement for individualized judicial assessment over standardized patterns.

4. *Systematic Exclusion from the Family Home*

Assignment of the family home to the residential parent frequently produces consequences that extend well beyond housing. The non-residential parent is definitively excluded from the property, often generating a significant and lasting economic imbalance between the parties. At the same time, the assignment operates as a symbolic and material reinforcement of the prevalent parent's position, further consolidating the mono-residential dynamic that shared custody was designed to prevent.

Italian jurisprudence has consistently treated the assignment of the family home as a measure primarily directed toward protecting the child's interest in preserving the domestic environment in which family life has developed, rather than as an instrument for addressing the purely economic interests of either parent.[32]

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30 Corte di Cassazione [Cass.], sez. I civ., ord. 10 dicembre 2018, n. 31902.

31 Corte di Cassazione [Cass.], sez. I civ., ord. 17 marzo 2026, n. 6078 (It.).

32 *See* Corte di Cassazione [Cass.], sez. I civ., 22 luglio 2015, n. 15367 (It.); Corte di Cassazione [Cass.], sez. I civ., 12 ottobre 2018, n. 25604 (It.); *see also*

Nevertheless, in concrete application, it often contributes to the consolidation of a mono-residential model.

B. *The U.S. System*

In the United States, the landscape is more heterogeneous, yet distinct dynamics emerge.

1. *Designation of the "Primary Residential Parent"*

In many states, the figure of the primary residential parent exists alongside joint legal custody. Although there is no uniform federal custody model, several states have adopted statutory frameworks that structure custody determinations through presumptions favoring joint legal custody, equal time-sharing, or meaningful shared parenting, subject to exceptions based on the child's best interests and circumstances such as domestic violence.[33]

The best interests standard, illustrated in landmark decisions such as *Painter v. Bannister*, has evolved from a broad discretionary principle into an increasingly structured analytical framework, as successive state legislatures have introduced specific statutory factors to guide judicial evaluation.[34]

In certain jurisdictions, lawmakers have adopted different statutory mechanisms designed to promote shared parenting. Kentucky establishes a rebuttable presumption in favor of joint custody and equally shared parenting time, while Arizona directs courts, consistently with the child's best interests, to adopt parenting plans that provide for shared legal decision-making and

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Corte di Cassazione [Cass.], sez. I civ., 18 settembre 2013, n. 21334 (It.) (holding that the assignment of the family home cannot constitute a form of financial assistance to the economically weaker spouse, but presupposes custody of minor children or cohabitation with financially dependent adult children)

33 *See, e.g.*, Ky. Rev. Stat. Ann. § 403.270(2) (West 2018), as amended (establishing a rebuttable presumption of joint custody and equally shared parenting time); Fla. Stat. Ann. § 61.13(2)(c)1 (West 2023) (creating a rebuttable presumption of equal time-sharing); Wis. Stat. Ann. § 767.41(2)(am), (4)(a)2 (West 2023) (presuming joint legal custody and directing courts to maximize each parent's time with the child consistent with the child's best interests); Idaho Code Ann. § 32-717B(2)–(5) (West 2024) (providing for joint custody while creating a presumption against joint custody where a parent is a habitual perpetrator of domestic violence).

34 Painter v. Bannister, 140 N.W.2d 152, 158 (Iowa 1966).

maximize each parent's parenting time.[35] These presumptions do not mandate automatic arithmetical equality; rather, they establish a normative starting point that directs judicial analysis toward effective sharing of parental responsibility.

In other states, even in the absence of a presumption of equal time, the allocation of parenting time is guided by detailed statutory factors that judges are required to evaluate and expressly address in their reasoning. This framework produces a dual systemic effect: on the one hand, it limits the risk of standardized outcomes based on implicit assumptions or gender stereotypes; on the other, it enhances the transparency and reviewability of judicial reasoning, as decisions must engage with normatively defined criteria.

2. *Allocation of Parenting Time*

In states that have introduced a presumption of equal parenting time,[36] equal or substantially shared parenting time operates as the statutory starting point unless the presumption is rebutted based on the child's best interests. In these jurisdictions, temporal parity is therefore not a rigid automatism, but an initial legal presumption that shifts the burden to the party seeking a different allocation.

In other states, a model based on the distinction between a primary residential parent and scheduled parenting time continues to operate. Some jurisdictions, such as Wisconsin, use the terminology of legal custody and periods of physical placement rather than traditional visitation terminology.[37]

The most significant difference from the Italian system lies in the fact that, in many U.S. jurisdictions, parenting time regulation is guided by structured parenting time guidelines and mandatory parenting plans. This normative architecture tends to render the decision-making process more transparent and verifiable, as

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35 Ariz. Rev. Stat. Ann. § 25-403.02 (West 2023); Ky. Rev. Stat. Ann. § 403.270 (West 2018) as amended.

36 *See, e.g.,* Ky. Rev. Stat. Ann. § 403.270(2), as amended (establishing a rebuttable presumption of joint custody and equally shared parenting time); Fla. Stat. Ann. § 61.13(2)(c)1 (establishing a rebuttable presumption that equal time-sharing is in the child's best interests).

37 *See* Wis. Stat. Ann. § 767.41; *see generally* Joan B. Kelly, *Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce*, 19 J. Am. Acad. Matrim. Law. 237 (2005).

judges must engage with predefined criteria and a concrete organizational framework for the child's life.

The complexity of parenting time allocation is further illustrated by relocation cases, where courts may be required to balance the custodial parent's interest in relocation against the child's continuing relationship with the other parent. In *In re Marriage of Burgess*,[38] the California Supreme Court recognized the custodial parent's presumptive right to relocate with the child, subject to the noncustodial parent's burden of demonstrating detriment to the child, a ruling that exemplifies the tension between parental autonomy and bi-parental continuity that characterizes many U.S. jurisdictions.

The diversity of state-level approaches extends well beyond the Kentucky and Arizona models. Several additional jurisdictions have developed legislative frameworks that merit attention for their structural implications. In Florida, the legislature amended its custody statute in 2023 to establish a rebuttable presumption of equal time-sharing,[39] reflecting a legislative judgment that fifty-fifty parenting arrangements serve the child's best interests absent specific findings to the contrary. The Florida model is particularly significant because it shifts the burden of proof: rather than requiring a parent to affirmatively demonstrate the benefits of equal time-sharing, it requires the party seeking a deviation to prove, by a preponderance of the evidence, that equal time-sharing is not in the child's best interests. This inversion of the burden of proof may be understood as a structural effort to translate parental equality from a general principle into an operative statutory presumption.

Wisconsin has adopted a similarly structured approach through its statutory presumption of joint legal custody, accompanied by detailed judicial standards governing the allocation of physical placement. Wisconsin courts are directed to establish physical-placement schedules that provide regularly occurring, meaningful periods with each parent and maximize the amount of time the child spends with each parent, consistent with the child's best interests.[40]

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38 913 P.2d 473 (Cal. 1996).

39 Fla. Stat. Ann. § 61.13(2)(c)1; 2023 Fla. Laws ch. 2023-301.

40 Wis. Stat. Ann. § 767.41(4)(a)2.

Idaho similarly establishes a statutory presumption favoring joint custody, subject to exceptions including cases involving a habitual perpetrator of domestic violence.[41] This statutory structure may help constrain standardized asymmetrical arrangements by anchoring the judicial starting point in a presumption favoring joint custody rather than leaving the allocation entirely to case-by-case discretion.

Taken together, these state-level innovations illustrate a broader legislative trend in U.S. family law toward the structural reduction of judicial discretion in parenting time determinations. The underlying policy rationale is consistent across jurisdictions: unconstrained discretion, however well-intentioned, creates conditions favorable to implicit bias and standardized outcomes that may not reflect the child's actual best interests or the realities of each family's specific circumstances.

3. *Family Home*

In the United States, there is no automatic mechanism comparable to the assignment of the family home provided for in the Italian system as a function of the child's residential placement. The residence generally falls within the scope of property division between spouses, according to the criteria of equitable distribution in states that adopt that model, or under the regime of community property in the relevant jurisdictions.[42] The possible continued occupancy of the residence by one of the parents may be ordered through a temporary occupancy order; however, this is normally a provisional measure, linked to the immediate needs arising during the pendency of the proceedings, and not a stable right automatically connected to the child's predominant residence.

This framework reduces the risk that ownership or exclusive use of the residence becomes a structural factor consolidating one parent's position as the dominant figure, since the housing issue is treated primarily as a patrimonial and temporary matter rather than as a permanent element of the parental arrangement.

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41 Idaho Code Ann. § 32-717B(2)-(5).

42 *See* Mark Strasser, *Dividing Up the Marital Home*, 49 S. Ill. U. L.J. 17 (2024).

IV. Comparative Synthesis

A. *Functional Differences in Italian and U.S. Shared Custody Regimes*

In the Italian system, the combination of predominant placement with one parent, assignment of the family home, and asymmetrical allocation of parenting time may, in substantive terms, result in a de facto mono-parental arrangement, despite the formal framework of shared custody. Although parental responsibility remains legally joint, the concentration of the child's habitual residence, domestic environment, and daily management with one parent produces a cumulative effect that strengthens that parent's position as the primary reference figure.

This configuration does not derive from an express statutory presumption, but from the interaction between distinct legal mechanisms which, in their coordinated application, end up significantly affecting the relational balance between parents. As a result, shared custody may assume a predominantly formal dimension, while the concrete organization of the child's life tends to gravitate steadily around a single residential and decision-making center.

In the U.S. system, although there is marked variability among the different states, the introduction in certain jurisdictions of presumptions in favor of joint custody, the adoption of detailed parenting time guidelines, and the reduced centrality of permanent assignment of the family home contribute to limiting the automatic structuring of a dominant parent. In such contexts, the normative starting point oriented toward effective sharing and the greater statutory specification of decisional criteria render the judge's reasoning process more transparent and reduce the risk of implicitly hierarchical solutions.

B. *Structural, and Not Merely Anecdotal, Nature of the Phenomenon*

The phenomenon described cannot be reduced to a mere aggregation of isolated cases or to occasional deviations from the statutory model of shared custody. Its relevance emerges, rather, from the recurrence of decision-making patterns that are systematically reproduced across different judicial contexts, suggesting

the existence of structural dynamics embedded in the architecture of the system.

The structural dimension of the phenomenon manifests itself through three principal indicators. First, the repetition of analogous reasoning formulas in different judicial decisions, often grounded in generic references to stability or environmental continuity, without an in-depth comparative assessment of parental competencies. Second, the predictability of outcomes in the presence of certain factual conditions, suggesting the operation of implicit decision-making models. Third, the internal coherence among different legal institutions—placement, assignment of the family home, calculation of child support—which, although normatively autonomous, interact in a way that produces a cumulative effect reinforcing one parent's position relative to the other.

From this perspective, the gap between "law in books" and "law in action" does not appear as an episodic dysfunction, but rather as the outcome of a systemic equilibrium among judicial discretion, interpretive traditions, and procedural configuration. Only by recognizing its systemic dimension does it become possible to assess the appropriateness of corrective interventions—whether normative, organizational, or methodological—aimed at ensuring a more effective implementation of the principle of bi-parentality.

V. Impact on Children and on the Stability of the Family System

A. *Disruption of Daily Relational Continuity*

The stability and quality of primary relationships constitute important factors in a child's development and adjustment. Psychological research indicates that children benefit from developing and maintaining meaningful relationships with both parents, and that adjustment is associated with qualities such as parental affection, consistency, reliability, responsiveness, and emotional commitment.[43]

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[43] Bowlby, *supra* note 2, at 210; Kelly & Lamb, *supra* note 12, at 303; Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, 16 Applied Developmental Sci. 98, 102 (2012).

When the post-separation arrangement results in a stable concentration of the child's daily life with only one parent, while the other parent's involvement is limited to fragmented and discontinuous periods of time, a progressive thinning of shared ordinary experiences may occur. School routines, extracurricular activities, and informal moments of domestic life, which together constitute the relational fabric through which emotional bonds are consolidated, risk becoming the exclusive domain of one parent alone.

Italian jurisprudence has repeatedly emphasized the need to ensure an "effective and meaningful" presence of both parents in the child's life,[44] implicitly recognizing that the mere formal attribution of parental responsibility is insufficient to preserve relational continuity.

B. *Effects on Emotional Security and Identity Formation*

International scientific literature indicates that the quality and stability of children's relationships with both parents are associated with important aspects of psychological adjustment and well-being.[45] A substantial reduction in the presence of one parent may therefore affect the continuity and quality of the parent-child relationship.

From a legal standpoint, the child's right to bi-parentality extends beyond the protection of the emotional bond and encompasses the safeguarding of his or her harmonious development and relational identity, as also recognized by Article 8 of the European Convention on Human Rights and the case law of the European Court of Human Rights.

C. *Escalation of Conflict and Litigation*

A further systemic effect concerns the increase of conflict and the multiplication of judicial proceedings. Arrangements perceived as unbalanced may generate a sense of exclusion or

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44 *See* Corte di Cassazione [Cass.], sez. I civ., ord. 10 dicembre 2018, n. 31902 (It.); Corte di Cassazione [Cass.], sez. I civ., ord. 8 aprile 2019, n. 9764 (It.).

45 Lamb, *supra* note 43, at 102; Linda Nielsen, *Joint Versus Sole Physical Custody: Children's Outcomes Independent of Family Income or Parental Conflict*, 62 J. Divorce & Remarriage 1, 5 (2021); Warshak, *supra* note 13, at 52.

marginalization in the parent with less presence, thereby encouraging appeals, requests for modification of conditions, complaints, and enforcement actions for non-compliance.

Comparative scholarship has emphasized the substantial indeterminacy inherent in the best-interests standard used in child-custody adjudication.[46]

The child is not a party to the proceedings in a technical sense, yet he or she is the subject directly affected by the consequences of judicial decisions and conflictual dynamics. When proceedings are prolonged over time or structured as a permanent adversarial confrontation, the child may become an indirect victim of procedural imbalance, exposed to tensions, pressures, and conflicting loyalty dynamics.

The United Nations Convention on the Rights of the Child (Arts. 3 and 12) and the case law of the European Court of Human Rights reiterate that the child's best interests must constitute a primary consideration in every decision affecting him or her. The structural dimension of the phenomenon therefore assumes relevance not only in terms of balancing parental rights, but above all in relation to the stability of the family system and the protection of the child's psycho-emotional development.

D. *The Role of Social Services, Supervision, and Neutral Settings*

When signs of deterioration in the parental bond emerge, judicial intervention may be structured through progressive and proportionate measures. In the Italian system, referral to social services, activation of parental support programs, and the provision of meetings in neutral settings constitute tools frequently used to monitor and reconstruct a compromised relationship.

The system at times reveals inefficient functioning and, above all, a tendency toward excessive delegation of the decision-making function. When supervisory or monitoring measures extend over time without rigorous verification of their necessity, the precautionary intervention ultimately crystallizes the relational arrangement rather than re-envisioning it. The judge, by contrast, is called upon to exercise a fully decisional, proportionate, and reasoned

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46 Mnookin, *supra* note 10, at 255–56, 262 (critiquing the indeterminacy of the best-interests standard).

function, using services as auxiliary tools rather than as substitutes for his or her jurisdictional responsibility.

In the United States, family courts resort to supervised visitation, therapeutic reunification programs, and guardians ad litem to ensure a protected and controlled context in which to restore or rebuild the parent–child relationship. A further problematic aspect concerns the duration of these ostensibly temporary measures: supervision orders or therapeutic programs originally conceived as precautionary interventions may persist over time in the absence of strict verification of their proportionality and continuing necessity. These patterns suggest that tools formally designed as short-term safeguards may, in practice, evolve into de facto long-term arrangements that reshape the parent–child relationship and partially shift effective decision-making power from the judge to auxiliary services, without the level of individualized judicial scrutiny and transparent reasoning that constitutional standards of parental rights would require.

This tendency raises an issue of institutional balance: the U.S. system, grounded in high evidentiary standards and constitutional protection of parental rights, requires that any significant limitation of the relationship be supported by rigorous findings and autonomous reasoning. When the technical component prevails over legal evaluation, the system risks a form of "functional delegation" that attenuates the judge's direct responsibility and renders the process less transparent and more dependent on local variables.

E. *Long-Term Effects of Relational Interruption*

The scientific literature indicates that children who are deprived of a meaningful relationship with one parent may face increased psychosocial risks, even when they maintain a relationship with the other parent.[47] Research on children following parental separation indicates that child adjustment is associated with the quality of the parent-child relationship, parental involvement, parenting time, and the level of interparental conflict.[48]

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47 Kelly & Lamb, *supra* note 12, at 303; Warshak, *supra* note 13, at 52.

48 *See* Marsha Kline Pruett et al., *Family and Legal Indicators of Child Adjustment to Divorce Among Families With Young Children*, 17 J. Fam. Psychol. 169, 169–80 (2003); Karey L. O'Hara et al., *Parenting Time, Parenting Quality,*

From a legal perspective, this entails that any suspension or compression of the parental relationship must be assessed with the utmost caution and must be subject to constant re-examination in light of the evolution of the concrete circumstances. Within this framework, moving beyond diagnostic labels in favor of a rigorous evaluation of conduct and of its effects allows the judge to maintain focus on the child's best interests.

VI. Comparative Perspective: Italy and the United States

A. *Overview of U.S. Approaches to Parenting Plans*

In many U.S. jurisdictions, parenting plans are required to address detailed aspects of parenting time and parental decision-making, including regular schedules, holidays and school vacations, education and health-care decisions, transportation and exchange arrangements, communication and information-sharing arrangements, and procedures for resolving future disputes.[49] This framework is operational rather than merely declaratory: parenting plans translate parental responsibility and parenting time into specific arrangements governing the child's day-to-day life.

In the Italian system, on the contrary, there is no uniform model of mandatory parenting plan with standardized content at the national level. Moreover, the concept of a parenting plan was only introduced with the Cartabia Reform in 2023. The timing and terms of the relationship are mainly defined in the court order,

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Interparental Conflict, and Mental Health Problems of Children in High-Conflict Divorce, 33 J. Fam. Psychol. 690, 690–703 (2019).

[49] *See, e.g.*, Ariz. Rev. Stat. Ann. § 25-403.02(C) (requiring parenting plans to address legal decision-making, education and health-care responsibilities, parenting-time schedules including holidays and school vacations, child exchanges and transportation, dispute-resolution procedures, and parental communication); Wash. Rev. Code § 26.09.184(2), (4)–(6) (requiring permanent parenting plans to address future dispute resolution, decision-making authority, including education and health care, and residential schedules including holidays and vacations); Fla. Stat. §§ 61.13(2)(b), 61.046(14), (23) (2025) (requiring court-approved parenting plans in time-sharing proceedings and defining parenting plans and time-sharing schedules to include parental decision-making and specified parenting time, including holidays).

often in summary terms. The lack of a standardized tool can leave more room for discretion and subsequent interpretative conflict.

B. *Emphasis on Enforceability and Accountability*

In several U.S. jurisdictions, court-approved parenting plans are enforceable through statutory mechanisms. Depending on the jurisdiction and circumstances, a parent's unjustified noncompliance with a residential or time-sharing provision may result in contempt proceedings, compensatory parenting time, attorneys' fees, costs, or monetary penalties and, where statutory modification standards are met, modification of the plan.[50] Violation of provisions relating to parenting time may result in civil sanctions, modification of the custodial arrangement, compensatory time, or, in more serious cases, contempt of court. The judicial order is conceived as binding and immediately enforceable, with expedited procedural mechanisms available to address noncompliance.

In Italy, remedies for violations of parental-responsibility and parenting arrangements are now governed within the unified family-procedure framework, including Article 473-bis.39 of the Code of Civil Procedure. The difference does not concern only the statutory provision, but also the culture of enforcement: in the United States system, responsibility for compliance with the plan is more explicitly structured, whereas in the Italian system effectiveness depends to a significant extent on the initiative of the parties and on the subsequent intervention of the judge.

C. *Judicial Tools Aimed at Minimizing Discretionary Bias*

In several American states, the legislature has introduced mechanisms aimed at reducing excessive judicial discretion, such

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50 *See, e.g.*, WASH. REV. CODE § 26.09.160(2)–(3) (authorizing contempt proceedings for noncompliance with residential provisions of a parenting plan and providing for additional residential time, attorneys' fees, costs, and monetary penalties); FLA. STAT. § 61.13(4)(c)–(d) (2025) (requiring compensatory time-sharing when a parent unjustifiably refuses to honor a time-sharing schedule and authorizing related remedies); TEX. FAM. CODE ANN. § 153.007(c) (providing that agreed-parenting-plan terms incorporated into an order may be enforced through remedies available for enforcement of a judgment, including contempt); *see also* WASH. REV. CODE § 26.09.260(2)(d) (permitting modification in specified circumstances where a parent has been found in contempt at least twice within three years for failure to comply with residential-time provisions).

as presumptions of joint custody, equal parenting time, or detailed lists of statutory factors that must be mandatorily evaluated. Such mechanisms do not eliminate discretion, but they delimit its scope, imposing a structured and reviewable reasoning process.

In the Italian system, notwithstanding the existence of a general principle of bi-parentality, the absence of binding national guidelines concerning parenting time leaves broad space for case-by-case evaluation. This allows for flexibility that is theoretically positive, but it may also foster heterogeneous outcomes dependent on local practices. In comparative terms, the United States system tends to favor a preventive structuring of conflict through detailed normative instruments and incisive enforcement mechanisms, whereas the Italian system relies more heavily on judicial discretion and on subsequent corrective interventions.

D. *The Cartabia Reform and Its Practical Limits*

The Italian legislature's most recent structural intervention in family proceedings—Legislative Decree No. 149 of October 10, 2022, commonly referred to as the Cartabia Reform and effective as of March 1, 2023, introduced a series of procedural innovations that, at least at the normative level, move the Italian system closer to the structured approaches characteristic of U.S. jurisdictions. The reform's most significant contributions include the formal introduction of the parenting plan (*piano genitoriale*) as a mandatory element of separation and divorce proceedings, the enhanced procedural role of family mediation, and the expansion of sanctioning mechanisms available under Article 473-bis.39 of the Code of Civil Procedure for non-compliance with custody orders.

The parenting plan, in particular, represents a conceptual shift of genuine importance. For the first time in Italian procedural law, the legislature has required parties to articulate—in concrete and detailed terms—the organizational arrangements for the child's daily life, including school routines, healthcare management, holiday schedules, and communication between households. The explicit purpose is to reduce the vagueness of court orders and to minimize subsequent interpretive conflict between parents. In this respect, the reform reflects the same programmatic logic that has long characterized mandatory parenting plans in U.S. jurisdictions:

predictability, specificity, and enforceability as preconditions for genuine shared parenting.

However, forensic experience in the three years since the reform's entry into force suggests that its practical impact remains substantially limited. Several structural factors explain this gap between normative aspiration and judicial reality. First, the parenting plan submitted by the parties is rarely the product of genuine cooperative negotiation; in high-conflict proceedings, it is typically drafted unilaterally by each party's counsel and reflects adversarial positions rather than agreed arrangements. Second, courts retain broad discretion in modifying or disregarding the parties' proposed plans, and the absence of national guidelines on minimum parenting time standards means that judicial practice continues to reproduce the standardized asymmetrical arrangements documented in this article. Third, the mediation framework introduced by the reform appears to have had limited practical uptake in high-conflict cases, based on the author's professional observation.

The Cartabia Reform thus confirms a pattern that comparative analysis consistently reveals: legislative reform, even when well-designed, does not automatically modify entrenched judicial culture. The structural inertia of a system accustomed to discretionary, expert-delegated decision-making resists normative innovation unless accompanied by binding operational criteria, mandatory training for judicial officers, and robust mechanisms for appellate review of parenting time allocations. Until these complementary elements are in place, the gap between the reform's stated objectives and its concrete outcomes is likely to persist.

VII. Structural Reform and the Role of Technology

A. *Limits of a Merely Normative Reform*

U.S. child-custody law has progressively moved away from relatively specific categorical rules toward more open-ended best-interests standards, leaving courts substantial discretion in individual cases.[51] The proclamation of the principle of bi-parentality

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[51] *See* Mnookin, *supra* note 10, at 231 (describing the historical shift from relatively specific custody rules toward less determinate, child-centered legal standards); Elizabeth S. Scott & Robert E. Emery, *Gender Politics and*

or the affirmation of parental equality criteria, although essential at the level of values, risk remaining statements of principle when they do not affect the concrete modalities through which decisions are formed. From this perspective, purely normative reform reveals its limits: without a change in decision-making processes, the system may continue to generate heterogeneous and scarcely predictable outcomes.

B. *Need for Objective and Interdisciplinary Decision-Making Models*

The complexity of family disputes requires instruments capable of integrating legal, psychological, and social expertise within a clear methodological framework. An objective decision-making model does not entail the elimination of judicial evaluation, but rather its structuring around explicit, graded, and reasoned criteria. Interdisciplinarity must translate into shared protocols, verifiable indicators, and transparent evaluation parameters capable of reducing arbitrariness and strengthening consistency across analogous cases. These tools are intended to guide judges, court-appointed experts, and social services in structuring their assessments within a common, reviewable framework, and can be embedded in technology-assisted decision-support systems. The objective is not to standardize families, but to standardize the method of analysis, ensuring that evaluative criteria remain transparent and subject to appellate review.

C. *Potential of Technology-Assisted Dispute Resolution*

Digital decision-support tools may improve the consistency, documentation, and transparency of structured decision-making processes. Any use of such tools, however, should remain subject to clear design, meaningful human oversight, and rigorous auditing for disparate effects.[52] In family-court proceedings, digital

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Child Custody: The Puzzling Persistence of the Best-Interests Standard, 77 Law & Contemp. Probs. 69, 75 (2014) (explaining that legislatures have retained the best-interests standard rather than adopting a rule favoring joint physical custody).

52 See Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 671–73, 694–714 (2016) (discussing both the potential of data-driven systems to formalize decision-making and limit opportunities for

case-management systems and structured parenting-plan platforms may serve as supplementary tools for organizing information and promoting the consistent application of transparent, predefined criteria, without displacing individualized judicial assessment.

Technology offers three distinct contributions to the reform of family adjudication. First, structured decision-support tools may assist courts in systematically identifying and documenting factors relevant to parenting arrangements, while preserving the individualized assessment required because the significance of those factors varies across children and families.[53] Second, traceable reasoning pathways may enhance transparency by making the relationship between relevant inputs and decisional outputs more intelligible and open to scrutiny by affected parties and human decision-makers.[54] Third, structured decision-support systems may make evaluative criteria more explicit and can facilitate the identification of potential disparate effects. They do not, however, eliminate the risk that biases embedded in data, model design, or fairness assumptions will affect decision-making.[55]

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individual bias and the risk that such systems may reproduce or generate discriminatory effects); Sorelle A. Friedler et al., *A Comparative Study of Fairness-Enhancing Interventions in Machine Learning*, *in* Proceedings of the 2019 Conference on Fairness, Accountability, and Transparency 329, 329–30 (2019) (examining different approaches to fairness-enhancing interventions and emphasizing that assessments of algorithmic fairness depend on methodological choices and assumptions).

53 *See* Dep't of Justice Can., Considerations for Determining Parenting Arrangements: Factors That Contribute to Positive Outcomes for Children (2017) (explaining that parenting arrangements should take account of multiple factors relevant to children's adjustment and that the significance of those factors varies with the characteristics and circumstances of individual children and families).

54 *See* Finale Doshi-Velez & Been Kim, *Towards a Rigorous Science of Interpretable Machine Learning*, arXiv:1702.08608, at 1–2 (2017) (discussing interpretability as the ability to explain or present a system's reasoning in terms understandable to humans and explaining its role in assessing safety and nondiscrimination); Sandra Wachter, Brent Mittelstadt & Chris Russell, *Counterfactual Explanations Without Opening the Black Box: Automated Decisions and the GDPR*, 31 Harv. J.L. & Tech. 841, 842–45, 860–62 (2018) (arguing that explanations can help affected persons understand automated decisions and provide grounds to contest undesirable outcomes).

55 *See* Sina Fazelpour & David Danks, *Algorithmic Bias: Senses, Sources, Solutions*, 16 Phil. Compass e12760, at 1–7 (2021) (explaining that algorithmic

None of this implies delegation to the machine: the objective is to use technology as a methodological support to human judicial decision-making, not as a substitute for it.

D. *From Reactive Litigation to Preventive Justice Models*

Early family-dispute-resolution processes may help parents address parenting and support issues outside court proceedings.[56] A preventive approach to family justice would seek to identify and address foreseeable sources of conflict at an early stage, through clear parenting arrangements and appropriate dispute-resolution mechanisms, while preserving individualized safeguards for cases involving violence, coercion, or severe conflict. This entails the adoption of instruments that promote predictability of decisions, standardization of evaluative criteria, and early activation of mediation or parenting coordination pathways.

In the United States, some jurisdictions use parent-education programs, parenting coordination, mediation, and other family-dispute-resolution mechanisms to address parenting conflict and facilitate post-separation arrangements.[57] In Italy, the reform of family procedure and the enhanced role attributed to mediation represent an initial step, but the system remains predominantly

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bias may arise from problem specification, data, modeling, validation, and deployment, and that data-driven systems can preserve or exacerbate existing inequities); Sahil Verma & Julia Rubin, *Fairness Definitions Explained*, *in* Proceedings of the 2018 IEEE/ACM International Workshop on Software Fairness 1, 1–3 (2018) (explaining that multiple fairness definitions rest on different assumptions, can yield divergent results, and may be mutually incompatible).

56 *See* Dep't of Justice Can., Family Dispute Resolution: Resolving Family Law Issues Out of Court (May 17, 2024) (describing negotiation, mediation, collaborative law, arbitration, and other family-dispute-resolution processes as means of resolving parenting and support disputes outside court proceedings).

57 *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 22, §§ 144.1–.3 (establishing a parent-education program addressing the effects of parental breakup and conflict on children and providing for court-ordered participation in specified family matters); Fla. Stat. § 61.21(2), (4) (2025) (requiring parents in specified proceedings involving minor children to complete a Parent Education and Family Stabilization Course); Fla. Stat. § 61.125(2)–(3) (2025) (providing for a child-focused alternative-dispute-resolution process through which a parenting coordinator assists parents in creating or implementing a parenting plan and resolving parenting-plan disputes); N.Y. Unified Ct. Sys., *Custody & Visitation Mediation* (describing mediation as a voluntary process through which parents may create a parenting plan and avoid going to court).

centered on judicial intervention following the emergence of conflict.

The transition toward a preventive model requires a cultural as well as a normative shift: from crisis management to the design of relational arrangements; from episodic response to the construction of stable and transparent decision-making systems.

E. *Practical Implications for U.S. Family Law Practitioners*

U.S. family law practitioners representing clients in Italian-American transnational disputes face a legal landscape that differs substantially from domestic custody frameworks. Several practical considerations deserve particular attention.

First, Italian shared custody orders, even those formally labeled *affidamento condiviso*, frequently result in arrangements that U.S. practitioners would characterize as primary physical custody with limited visitation. When seeking recognition or enforcement of an Italian custody order in a U.S. court, practitioners should carefully analyze the actual parenting time allocation embedded in the order, not merely its formal denomination, as the practical asymmetry documented in this article may affect the child's best interests analysis under applicable state law.

Second, disputes involving the wrongful removal or retention of a child between Italy and the United States fall within the framework of the Hague Convention on the Civil Aspects of International Child Abduction, which focuses on the child's habitual residence immediately before the alleged wrongful removal or retention.[58] The Convention establishes a return mechanism designed to secure the prompt return of children wrongfully removed to or retained in a Contracting State. Practitioners should also account for jurisdiction-specific procedural rules and protective measures available in Hague return proceedings. The HCCH Country Profiles for Italy and the United States identify distinct domestic mechanisms for interim protection during such proceedings.[59]

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58 *See* Hague Convention on the Civil Aspects of International Child Abduction arts. 3–4, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89; 22 U.S.C. §§ 9001–9003; Monasky v. Taglieri, 589 U.S. 68, 72–73 (2020).

59 *See* Hague Convention on the Civil Aspects of International Child Abduction, *supra* note 58, at art. 1, (providing that the Convention seeks to secure the prompt return of children wrongfully removed to or retained in a Contracting State); Hague Conference on Private International Law, *1980 Child*

Third, the maternal preference patterns documented in this article have direct evidentiary relevance in relocation disputes. A U.S. practitioner seeking to demonstrate that an Italian custody arrangement fails to ensure meaningful paternal involvement may find support in the structural analysis developed here, particularly in light of the Italian Supreme Court's 2026 ruling expressly rejecting maternal preference as a legitimate decisional criterion.

Finally, practitioners negotiating parenting agreements for Italian-American couples at the outset of a separation should consider incorporating the structural elements associated with more balanced outcomes in U.S. jurisdictions—detailed parenting plans, defined holiday schedules, dispute resolution mechanisms, and explicit provisions addressing relocation—rather than relying on the more summary dispositional style typical of Italian court orders. Proactive planning at this stage can significantly reduce the risk of subsequent cross-border enforcement conflicts.

A further structural feature of Italian family proceedings that U.S. practitioners should understand, not to intervene directly but to advise their clients effectively and coordinate with Italian counsel, is the system of temporary and urgent measures that the judge may issue at an early stage of the proceeding.[60] These measures may provisionally regulate the child's residential arrangements, parenting schedule, and financial provisions pending further adjudication. In the author's qualitative professional observation, however, these interim arrangements are rarely modified. Italian courts are strongly disinclined to disturb a functioning status quo, and the CTU evaluation, when ordered, typically assesses the

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Abduction Convention—Country Profile: Italy § 10.5 (last updated Mar. 2016) (describing available protective measures before and during return proceedings); Hague Conference on Private International Law, *1980 Child Abduction Convention—Country Profile: United States of America* § 10.5 (last updated 2024) (describing protective authority under 22 U.S.C. § 9004, including measures to protect the child and prevent further removal or concealment).

60 *See* Codice di Procedura Civile [C.p.c.] art. 473-bis.22 (It.) (providing that, if conciliation is unsuccessful, the judge, after hearing the parties and their counsel and gathering summary information where necessary, may issue temporary and urgent measures deemed appropriate in the interests of the parties and the children); *see also* Decreto Legislativo 10 ottobre 2022, n. 149 (It.) (introducing the unified procedural framework for family proceedings as part of the Cartabia Reform).

child's situation as configured by the preliminary judicial order rather than against a neutral baseline. The first judicial act in the proceeding therefore tends to determine its outcome: in the author's professional observation, in many cases, the parent granted predominant placement under the interim order retains that arrangement in the final judgment. This dynamic is particularly acute in high-conflict proceedings, where the child's residential arrangement is effectively determined before the substantive hearing has even commenced.

For U.S. practitioners, this dynamic has immediate practical consequences. When a client reports that an Italian court has just issued a preliminary order granting the other parent predominant placement, that should not necessarily be treated as a merely temporary setback pending a fuller hearing; in practice, it may substantially shape the subsequent custody determination. Communicating this reality to the client, and coordinating promptly with Italian counsel to assess whether the preliminary temporary and urgent order under Article 473-bis.22 can be challenged or supplemented at the earliest procedural stage, is far more valuable than waiting for the full hearing. Understanding when the critical window has opened, and when it has already closed, is the kind of cross-system literacy that transnational family law practice demands.

VIII. Conclusions—Bi-Parentality as a Fundamental Right of the Child

A. *Moving Beyond Gender-Based Polarization*

The debate on custody and the organization of parenting time has often been polarized by gender-based narratives, which tend to frame the conflict as a confrontation between maternal rights and paternal rights. Such an approach, in addition to being reductive, risks obscuring the constitutional and conventional core of the issue: the child's right to maintain meaningful, stable, and continuous relationships with both parents, absent proven circumstances of harm. Bi-parentality does not constitute an identity-based claim of one party, but rather a systemic principle oriented toward safeguarding the harmonious development of the person during childhood. The most recent pronouncement of the Italian Supreme

Court, *Cass. civ.*, ord. No. 6078/2026,[61] represents a significant step in this direction, expressly rejecting the maternal preference as an inadmissible presumptive criterion and mandating concrete, individualized assessment of parenting capacities—a doctrinal development fully consistent with the structural reform advocated in this article.

B. *Bi-Parentality as a Systemic Safeguard*

Bi-parentality assumes relevance not only as an ethical or programmatic principle, but as a structural safeguard of balance within the post-separation family system. It operates as a mechanism for preventing dynamics of exclusion, marginalization, or unilateral concentration of decision-making power.

Constitutional and supranational case law has recognized that the child's right to maintain relationships with both parents falls within the sphere of fundamental protections of family life, pursuant to Article 8 of the European Convention on Human Rights and the provisions of the United Nations Convention on the Rights of the Child.

C. *Cultural and Institutional Responsibility of the Judicial System*

The family justice system is not merely a mechanism for dispute resolution, but an institutional actor with a cultural function. Judicial decisions contribute to defining models of parental responsibility, shaping social expectations, and influencing the perception of fairness within the system. Institutional responsibility entails the adoption of transparent, coherent, and verifiable decision-making criteria capable of reducing the risk of disparate applications and implicit bias.

The comparative analysis developed in this article suggests a broader lesson for family law systems on both sides of the Atlantic: the effective implementation of shared parenting requires not only normative commitment but operational architecture. Legislative presumptions and structured parenting time guidelines, where introduced—as in Florida, Wisconsin, and several other U.S.

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61 *See* Cass. civ., sez. I, ord. 17 marzo 2026, n. 6078 (It.) (holding that, in proceedings concerning separating spouses, no presumption exists that a mother is inherently more suitable for placement of young children; requiring a case-specific assessment of the family circumstances and the child's best interests).

jurisdictions—may help narrow the gap between formal equality and substantive equality. The Italian experience, and in particular the landmark ruling in Cass. civ., ord. No. 6078/2026, expressly rejecting maternal preference as a legitimate decisional criterion, confirms that judicial culture can shift, but that shift is most durable when anchored in procedural frameworks that constrain discretion and require explicit justification for departures from a baseline of meaningful shared parenting. For U.S. practitioners advising clients in transnational disputes, this convergence of Italian and American doctrine offers a shared argumentative foundation: bi-parentality is not a partisan claim but a structural safeguard, and its effective protection depends less on the good intentions of individual judges than on the design of the systems within which they operate.

D. *Protecting Children from the Risk of "Procedural Collateral Damage"*

The child is not a party to the conflict, yet bears its consequences. When proceedings are prolonged, fragmented, or structured in an excessively reactive manner, the child risks becoming a form of "procedural collateral damage": a passive recipient of delayed decisions, repeated temporary measures, or serial judicial conflicts. Effective protection of the child requires that the judicial system maintain a perspective oriented toward relational stability and the prevention of deterioration of family bonds. Bi-parentality, understood as a fundamental right of the child rather than as a partisan claim, represents the point of balance between protection, responsibility, and proportionality of public intervention.