

Co-parenting and the Ethics of Care: From the Competitive to the Collaborative Model

*Coparentalidad y ética del cuidado:
del modelo competitivo al colaborativo*

Gabriel Galán Melo

Universidad Andina Simón Bolívar, Sede Ecuador

Quito, Ecuador

gabriel.galan@uasb.edu.ec

<https://orcid.org/0009-0005-2952-7652>

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ABSTRACT

This paper employs a juridical-dogmatic methodology with a qualitative approach, based on normative and jurisprudential analysis, complemented by doctrinal review and an ethical-theoretical perspective grounded in the ethics of care. It examines the evolution of Ecuadorian law on the custody of children and adolescents, highlighting the transition from a competitive model based on maternal preference to one grounded in parental co-responsibility. The analysis centers on Judgment n.º 28-15-IN/21 of the Constitutional Court, which held that maternal preference violated the principles of equality and the best interests of the child. On this basis, the article argues that shared custody —despite not being explicitly regulated in the national legal framework— constitutes the constitutionally desirable model, provided it promotes cooperation, affectivity, and the comprehensive wellbeing of children and adolescents. Drawing on the theoretical contributions of Carol Gilligan and Nel Noddings, the paper integrates the ethics of care as a hermeneutic framework to support a relational conception of justice, capable of replacing reductionist, power-centered logics with practices of accompaniment and empathy. Finally, it advocates for a redefinition of the role of law and judges, recognizing them as facilitators of relationships whose decisions should orient family law toward a shared practice of ethical care that humanizes adjudication and strengthens substantive equality between parents, in the best interests of children and adolescents.

KEYWORDS: parental co-responsibility, shared custody, ethics of care, best interests of the child, relational justice, children, adolescents, family conflict.

RESUMEN

Este ensayo —que emplea una metodología jurídico-dogmática de enfoque cualitativo con análisis normativo y jurisprudencial, revisión doctrinal y una aproximación ético-teórica desde la *ética del cuidado*— examina la evolución del derecho ecuatoriano respecto de la tenencia de niños, niñas y adolescentes (NNA), haciendo visible el proceso de transición entre un modelo competitivo y de preferencia materna a uno basado en la co-responsabilidad parental y la ética del cuidado. A dicho efecto, inicia su análisis valiéndose de la sentencia 28-15-IN/21 de la Corte Constitucional (CC) que reconoció que la preferencia materna vulneraba los principios de igualdad y del interés superior del niño, para sostener que la tenencia compartida —a pesar de no estar explícitamente reglada en el marco normativo nacional— es el modelo constitucionalmente deseable siempre que

promueva la cooperación, la afectividad y el bienestar integral de los NNA. Para lo cual, propone integrar (e interiorizar) el enfoque de la ética del cuidado a partir de los postulados de Gilligan y Noddings, con el objetivo de fundamentar una justicia relacional que sustituya la lógica reduccionista del poder por la del acompañamiento y la empatía. Finalmente, plantea la necesidad de redefinir el rol del Derecho y de los jueces, reconociendo a estos como facilitadores de vínculos que deben orientar sus decisiones hacia una práctica ética de cuidado compartido que humanice el Derecho de familia y fortalezca la igualdad sustantiva entre los progenitores en beneficio de los NNA.

PALABRAS CLAVE: corresponsabilidad parental, tenencia compartida, ética del cuidado, interés superior del niño, justicia relacional, niños y niñas, adolescentes, conflicto familiar.

FORO

INTRODUCTION

In Ecuadorian judicial practice, within the field of child and adolescent rights, custody decisions are typically approached through a predominantly formalistic legal perspective, regularly guided by the abstract defense of rights and disputes, irrationally escalated,¹ between the father and mother. Until the issuance of Constitutional Court ruling 28-15-IN/21, such disputes² were seemingly easily resolved by the legal provision contained in Art. 118, in conjunction with numbers two and four of Art. 106, of the Children and Adolescents Code (CNA),³ which established a presumption in favor of the

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1. Mariela Checa, “Modelo de intervención integral en familias altamente conflictivas” [Comprehensive intervention model in highly conflictive families], *Revista de Estudios Jurídicos y Criminológicos* [Journal of Legal and Criminological Studies], n.º 11 (2025): 235-61, <https://doi.org/10.25267/REJUCRIM.2025.i11.08>.
 2. Ecuador Corte Constitucional [Constitutional Court]. *Sentencia n.º 28-15-IN/21* [Ruling n.º 28-15-IN/21], Caso n.º 28-15-IN/21 [Case n.º 28-15-IN/21], November 24, 2021, <https://www.corteconstitucional.gob.ec/sentencia-28-15-in-21/>.
 3. Ecuador, *Código de la Niñez y Adolescencia* [Code on Children and Adolescents], Law 2002-100, Official Registry 737, January 3, 2003, arts. 118, 106, n.º 2 and 4.

mother in the allocation of custody.⁴ This was declared unconstitutional by judicial decision as it violated the principles of parental co-responsibility, the best interests of the children and adolescents and the right to equality,⁵ all of which are expressly contained in the Constitution of the Republic of Ecuador (CRE)⁶ and in the international legal framework of human rights.⁷

To that end, the objective of this essay is to link the normative framework of these principles —co-parenting and the best interests of children and adolescents— with the moral framework of the ethics of care, in order to promote a shift in focus toward shared custody models that reframe parental care as an act of co-responsibility, one that recognizes affective networks, vulnerabilities, and the ethical duty to respond to the comprehensive well-being of children and adolescents. With this in mind, after specifying the methodology used, we will begin by establishing the normative and conceptual framework of shared custody in Ecuador and then delve into the ethics of care.⁸

METHODOLOGY

We have employed a qualitative juridical-dogmatic methodology, focused on the critical analysis of the most relevant norms, principles, and jurisprudential decisions regarding co-parenting and shared custody in Ecuador. This approach has been pertinent because the object of study is not empirical or

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4. María Cedeño-Cárdenas and Denny Zambrano-Quiroz, “El sesgo a la madre en otorgamientos de tenencia de menores: un problema de derechos constitucionales” [Maternal bias in child custody awards: a constitutional rights problem], *Revista científica Retos de la Ciencia* [Retos de la Ciencia Scientific Journal], n.º 20 (2025): 99-114, <https://doi.org/10.53877/rc9.20-588>.
 5. Ecuador Corte Constitucional [Constitutional Court], *Sentencia n.º 28-15-IN/21* [Ruling n.º 28-15-IN/21], 61.2.
 6. Ecuador, *Constitución de la República* [Constitution of the Republic], Official Registry 449, October 20, 2008, arts. 69, n.º 1 and 5; 67; 66, n.º 4; 44; and 11, n.º 2.
 7. UN, Office of the High Commissioner, “Los derechos humanos de los niños, niñas y adolescentes” [The human rights of children and adolescents], *OHCHR*, February 1, 2025, acnudh.org/wp-content/uploads/2022/02/07-Los-derechos-humanos-de-los-ninos-ninas-y-adolescentes.pdf.
 8. Bianca Monteiro, “Ética del cuidado: el papel de los padres y madres en el cuidado de un(a) niño(a) enfermo(a)” [Ethics of care: the role of fathers and mothers in caring for a sick child], *Revista DELOS* [DELOS Journal], n.º 62 (2024): 5-7, <https://doi.org/10.55905/rdelosv17.n62-017>.

statistical, but rather normative and interpretative, and is intended to reconstruct the constitutional meaning of shared custody in our country. To this end, we have first employed the normative analysis method through the systematic examination of the constitutional and legal provisions applicable to the custody and parental co-responsibility regime in Ecuador. Second, we have incorporated jurisprudential analysis, particularly of the Ruling n.º 28-15-IN/21 of the Constitutional Court, which constitutes an interpretative milestone in the constitutional redefinition of child and adolescent custody in our country. And third, we have conducted a specialized doctrinal review to contextualize the debate through relevant theoretical dialogue.

We therefore identify, explain, and critically examine the evolution of Ecuador's legal framework regarding child and adolescent custody models in order to highlight the limitations and tensions that exist between the traditional, exclusionary custody model and contemporary approaches to shared parental responsibility. Finally, we incorporate a theoretical-ethical approach, based on the contributions of the ethics of care, primarily from the works of Carol Gilligan and Nel Noddings, to develop a hermeneutical tool that enriches the legal interpretation of co-parenting in Ecuador, redefines the role of judges in family law proceedings, and proposes a substantive understanding of care that goes beyond a merely distributive logic of co-parenting time.

CO-PARENTING IN ECUADOR: THE NORMATIVE MODEL OF SHARED CUSTODY

Usually, the organization of living arrangements and care of children and adolescents after a couple's separation presents an inevitable tension between family autonomy, equality between parents, and the effective protection of the best interests of children and adolescents. For this reason, in Ecuador, the CRE and the CNA have established a regulatory framework that allows—and sometimes requires (particularly after Ruling 28-15-IN/21⁹)—flexible solutions focused on the comprehensive development of children and adolescents. Within this range of possibilities, shared or joint custody has become established, precisely as a result of regulatory and jurisprudential evolution, as a valid alternative that best ensures the continuity of emotional bonds, stability, and

9. Ecuador Corte Constitucional [Constitutional Court], *Sentencia n.º 28-15-IN/21* [Ruling n.º 28-15-IN/21], paras. 226-8.

protection of children and adolescents, to reconcile their rights with the principles of parental co-responsibility and equality between parents.¹⁰

However, while the CNA formally and declaratively seeks to maintain the socio-emotional relationships of children and adolescents with both parents, it normatively provides —visibly and regularly— a model of exclusion in which the parent presumed to be the better parent is chosen, essentially —and *prima facie*— leading to a competitive model between the disputing parents that ultimately objectifies the children and adolescents. Nevertheless, although the CNA does not explicitly mention the shared custody model, Art. 106 of the same code, to which Art. 118 expressly refers, sets as a priority, prior to setting out the conditions for choosing the better parent, the need to first listen to the children and adolescents who are able to express their opinion on the custody arrangement¹¹ and then accept what “the parents agree upon, provided that it does not harm the rights of the child”.¹²

Therefore, only if: i. the children and adolescents (reasonably) request it, or ii. in the absence of agreement between the parents, or iii. the agreement between them becomes detrimental to the best interests of the children and adolescents, the judge would necessarily have to entrust custody to one of the parents, excluding the other: the one “who demonstrates greater emotional stability and psychological maturity and who is in a better position to provide the children with the dedication they need and a stable family environment for their comprehensive development”.¹³ *Contrario sensu*, with particular attention to Arts. 21 and 22 of the CNA, judges could promote and/or preferentially and appropriately order a favorable shared custody arrangement.¹⁴ They are able, in any case, to structure a flexible and equitable arrangement that reflects the reality of the family unit, in which the children or adolescents, and not either parent, remain the central focus of the proposed arrangement. Therefore, despite the apparent rigidity of the standard exclusion model as normatively structured, it is clear that shared custody in our country is not only possible but also desira-

10. Violeta Badaraco, “La tenencia compartida en el Ecuador, ¿una necesidad?” [Shared custody in Ecuador: a necessity?], *Espirales. Revista multidisciplinaria de investigación* [Espirales Multidisciplinary Research Journal], n.º 19 (2018): 30-9, <https://doi.org/10.31876/re.v2i19.330>.

11. Ecuador, *Código de la Niñez y Adolescencia* [Code on Children and Adolescents], art. 60.

12. *Ibid.*, art. 106, n.º 1.

13. *Ibid.*, n.º 3.

14. *Ibid.*, art. 100.

ble, provided it benefits the emotional and psychological development of the children and adolescents and aligns with their reasonable wishes.¹⁵

However, there is no single, unambiguous legal definition of what should be understood as the shared custody model in Ecuador. In judicial practice, shared custody has been applied with prudence, taking into account the particular circumstances of each case and based on the following prerogative: “shared custody, also known as joint custody or joint guardianship, is an agreement in which both parents share equally and responsibly the responsibility of raising and caring for their children after a separation, divorce or other situation in which they live in separate homes”.¹⁶

According to Ruling n.º 28-15-IN/21, for example, shared custody in our country does not correspond to a model of arithmetic distribution of time nor is it an automatic right of the parents, but rather a relational model of care founded on parental co-responsibility, the principle of equality, and the best interests of children and adolescents, which inevitably requires a case-by-case evaluation of the actual care conditions. Therefore, for the Constitutional Court, shared custody necessarily requires the active, balanced, and responsible participation of both parents in the upbringing and relevant decision-making of their children, always guaranteeing the continuity of affective bonds and the comprehensive well-being of children and adolescents. In this case, shared custody in Ecuador does not constitute *per se* an automatically applicable rule, nor does it imply the mechanical equality of time or space in homes, and it could not be imposed if there were serious conflicts, violence, or if it were contrary to the best interests of the children and adolescents. Therefore, this ruling (n.º 28-15-IN/21) has established the following limits and/or conditions for shared custody in our country: i. the absence of domestic or vicarious violence, ii. the actual capacity of both parents to exercise care, iii. listening to the opinion of children and adolescents in accordance with their age and maturity, and iv. the need for the judicial decision to be oriented towards protecting effective care relationships and not to reproduce, in any way, any logic of power or gender stereotype.¹⁷

15. *Ibid.*, art. 106, final paragraph.

16. Shirley Ceballos-Cabrera and Eliana Rodríguez-Salcedo, “La tenencia compartida como ejercicio del principio de interés superior del niño” [Shared custody as an exercise of the best interests of the child principle], *593 Digital Publisher CEIT*, n.º 3-1 (2024): 106, www.593dp.com/index.php/593_Digital_Publisher/article/view/3013.

17. Ecuador Corte Constitucional [Constitutional Court], *Sentencia n.º 28-15-IN/21* [Ruling n.º 28-15-IN/21], paras. 36, 137-9.

However, despite the obvious compatibility of the shared custody model with the constitutional aims and principles of co-parenting, the best interests of the children and adolescents, as well as parental equality, concerns remain regarding the practical realities of this model in everyday practice—in each individual case—a model that is grounded in the rational and reasonable agreement between parents regarding their children’s care. Ceballos-Cabrera and Rodríguez-Salcedo argue that “in a shared custody arrangement, children spend significant time with both parents, and both parents share important decisions related to the children’s education, health, and well-being”;¹⁸ but “shared custody can vary in terms of the distribution of time between the parents. In some cases, parents may alternate custody weekly or monthly, while in others [...], children may live half the time with one parent and the other half with the other [...]”.¹⁹ In other words, shared custody is not reduced—as we have already stated—to a single standard of identical distribution of time,²⁰ since the children or adolescents are not objects to be possessed by their parents,²¹ but rather correspond to a regime that guarantees that both parents will have an active and significant participation in the lives of their children and, likewise, that their children will have an active and meaningful participation in the lives of their parents.²²

Therefore, parents should be the ones who go to where their children live, not the other way around, thus transforming the conventional, static view. As this is a flexible model, there are many possible agreements, but those that offer the greatest overall benefit to children and adolescents should take precedence. For example, Ibáñez-Valverde lists at least five co-habitation agreements

18. *Ibid.*

19. *Ibid.*, 106-7.

20. Rafaela Lehtme and Karmen Toros, “Bird’s nest parenting as a child-centered solution in the context of shared parenting,” *The Child Welfare System: Perspectives, Challenges and Future Directions*, ed. by Boyd Wolfe (New York: Nova Science Publishers Incorporated, 2019), 2, https://www.researchgate.net/publication/336588882_Bird's_nest_parenting_as_a_child-centered_solution_in_the_context_of_shared_parenting.

21. Maricruz Gómez de la Torre, “Las implicancias de considerar al niño sujeto de derechos” [The implications of considering the child a subject of rights], *Revista de Derecho* [Law Journal], n.º 18 (2018): 117-37, <https://doi.org/10.22235/rd.v18i2.1703>.

22. Eduardo Vistín-Castillo, “Ventajas de la custodia compartida en tiempos de desintegración familiar en el Ecuador” [Advantages of shared custody in times of family breakdown in Ecuador], *Revista científica Dominio de las Ciencias* [Dominio de las Ciencias Scientific Journal], n.º 2 (2019): 512-35, <https://doi.org/10.23857/dc.v5i2.1105>.

between co-responsible parents, among which one of them stands out, the so-called *bird's nest parenting or arrangement*,²³ in which it's the children who remain in the family home and the parents who take turns caring for them, coordinating their visits to the homes where the children and adolescents live.²⁴

In this regard, Lehtme and Toros assert that shared custody is an increasingly common solution for preserving parent-child relationships after divorce, and that one of the main negative aspects of subsequent shared parenting is that children and adolescents often lose their stable home as a result of their parents' separation, being forced to move frequently between their parents' homes and adapt to different conditions and environments.²⁵ This undeniably affects their stability and calls into question this model's approach, since shared custody involving frequent moves between different homes can be a significant source of stress, especially for infants and preschool-aged children.²⁶ Therefore, an alternative way of living within the context of shared care is, precisely, bird's nest custody: a co-parenting arrangement –as previously stated– in which the children remain in the family home and the parents take turns living with them, coming and going according to a regular schedule, like birds arriving to and leaving the nest.²⁷

From this brief example, we can conclude that the shared custody model does not necessarily equate to distributing identical amounts of time with each parent, but rather to equitably distributing parental responsibilities and ensuring the active presence of both parents in the children and adolescents' daily lives.²⁸ Therefore, we should strive—in most cases—for an alternative and functional shared custody model in which both parents assume active and equitable responsibilities in raising and caring for their children and adolescents and in making decisions about their children's daily lives, instead of simply dividing time between them.

23. Vicente Ibáñez-Valverde, “El laberinto de la custodia compartida. Claroscuros de un solo nombre con varios significados” [The labyrinth of shared custody: light and shadow of a single name with multiple meanings], *Boletín de Derecho de Familia* [Family Law Bulletin] 4, n.º 40 (Madrid: El Derecho Editores, 2004), 5.

24. Lehtme and Toros, “Bird's nest parenting as a child-centered solution”, 1-19.

25. *Ibid.*, 2.

26. *Ibid.*

27. *Ibid.*

28. *Ibid.*

In this case, this model, beyond its technical legal aspect based on rational and reasonable agreements between parents, fostered by creativity, flexibility, and judicial oversight to guarantee the best interests of children and adolescents,²⁹ is actually an ethical commitment grounded in the need to recognize the child or adolescent —*the other*— as a legitimate part of the parental bond. It promotes relational responsibility and articulates the interests of children and adolescents as the central focus, which should not and cannot be exploited in the dispute between parents during a separation. From the perspective of the ethics of care, shared custody represents a concrete application of the relational principle,³⁰ ensuring that children and adolescents do not *belong* to only one parent, but rather exist in relation to both. In this case, the decision regarding custody should be based on mutual recognition and the willingness to jointly ensure the child's well-being, rather than simply on a legal interest or the desire to winning the dispute. In this renewed approach, care cannot be conceived unilaterally, but as a shared project.³¹

To that end, in the following section we will briefly review the philosophical foundation of the ethics of care in order to integrate it into the previously established notions on shared custody in our country.

THE ETHICS OF CARE: TOWARDS RELATIONAL JUSTICE IN THE RIGHTS OF CHILDREN AND ADOLESCENTS

Children and adolescent rights have undergone an undeniable transformation in recent decades. In Latin America, for example, we have moved beyond the paradigm of the irregular situation of minors —which viewed the child as a problem— to embrace the paradigm of comprehensive child and adolescent

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29. Francisca Fariña et al., “Custodia compartida, corresponsabilidad parental y justicia terapéutica como nuevo paradigma” [Shared custody, parental co-responsibility and therapeutic justice as a new paradigm], *Anuario de Psicología Jurídica* [Yearbook of Legal Psychology], n.º 1 (2017): 107-13, <https://doi.org/10.1016/j.apj.2016.11.001>.
30. Iñaki Bolaños, “Custodia compartida y coparentalidad: una visión relacional” [Shared custody and co-parenting: a relational perspective], *Psicopatología Clínica, Legal y Forense* [Clinical, Legal and Forensic Psychopathology], n.º 1 (2015): 57-72, <https://produccioncientifica.ucm.es/documentos/5d399a482999520684463fc2>.
31. Constantino González, “Ética del cuidado” [Ethics of care], *Revista CONAMED* [CONAMED Journal], n.º 4 (2015): 187-90, <https://biblat.unam.mx/hevila/RevistaCONAMED/2015/no4/5.pdf>.

protection.³² Therefore, we have shifted, or should shift, from a system of ownership (assimilated within the conceptual framework of patriarchy)³³ to a relational one, centered on co-responsibility and the best interests of the child. It is within this process that the ethics of care should consolidate itself as a highly relevant theoretical and practical framework that establishes a moral and legal vision and approach based on interdependence, empathy, and mutual responsibility. This will allow us to rethink traditional child custody arrangements in cases of parental separation or divorce, as the tension between parental rights/obligations and the well-being of children and adolescents inevitably demands complex and humanized responses.³⁴

But what is the *ethics of care*? In the history of moral philosophy, ethical reflection has been dominated for centuries by rationalist and universalist paradigms that have consistently exalted autonomy, justice, and duty as pillars of moral behavior.³⁵ However, at the end of the 20th century, a movement emerged that redefined the foundations of this tradition and vindicated the value of human relationships, empathy, and vulnerability as essential components of an ethical life: the *ethics of care*.³⁶ This approach —originally formulated by Gilligan and Noddings in the 1980s— did not in any way intend to replace the ethics of justice approach —of Piaget and Kohlberg (in psychology)— but rather to complement it, providing a perspective that recognizes the centrality

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32. Gisela Cardozo and Alejandro Michalewicz, “El paradigma de la Protección Integral de los Derechos de Niñas, Niños y Adolescentes: en la búsqueda de la plena implementación” [The Comprehensive Protection of the Rights of Children and Adolescents paradigm: in search of full implementation], *Derecho de Familia, Revista Interdisciplinaria de Doctrina y Jurisprudencia* [Family Law, Interdisciplinary Journal of Doctrine and Jurisprudence], n.º 82 (2017): 1.
 33. Victoria Camps, “Presentación” [Foreword], *La ética del cuidado* [The Ethics of Care], Carol Gilligan, Cuadernos de la Fundació Víctor Grífols i Lucas [Notebooks of the Víctor Grífols i Lucas Foundation], n.º 30 (Barcelona: Fundació Víctor Grífols i Lucas, 2013): 7.
 34. Marcelo Borghini, “Introducción a la evolución socio-jurídica de la infancia: desde la época pre-industrial hasta la Convención Internacional de Derechos del Niño, en el contexto de América Latina” [Introduction to the socio-legal evolution of childhood: from the pre-industrial era to the International Convention on the Rights of the Child, in the Latin American context], *Revista Anuario del Área Socio-Jurídica* [Yearbook Journal of the Socio-Legal Area], n.º 1 (2024): 114-5, https://doi.org/10.26668/1688-5465_anuariosociojuridico/2024.v16i1.10860.
 35. Jeverson Quishpe and Jonathan Pizarro, “Evolución histórica de la ética hasta nuestros días” [Historical evolution of ethics to the present day], *Revista Caribeña de Ciencias Sociales* [Caribbean Journal of Social Sciences], n.º 9 (2018): 1-6, <https://www.eumed.net/rev/caribe/2018/09/evolucion-historica-etica.html>.
 36. Alejandra Alvarado, “La ética del cuidado” [The ethics of care], *Revista Aquichan* 4, n.º 1 (2004): 31-2, <https://aquichan.unisabana.edu.co/index.php/aquichan/article/view/47>.

of affective relationships, interdependence, and interconnection between individuals.³⁷ This perspective originated from the questions raised by Gilligan, in particular, regarding Kohlberg's studies of moral development, which placed women at a lower level of moral maturity due to a supposed limitation in their ability to value formal justice and obedience through abstract rules as maxims of ethical judgment.³⁸

In this regard, Gilligan demonstrated that women are not less moral than men, but rather they simply reason and judge ethically in a different way. This includes prioritizing responsibility towards others, empathy, and preserving intersubjective relationships over a set of impersonal principles, emphasizing closeness and care rather than confining themselves to an abstract recognition of impartiality and distance—characteristic of the concept of individualism—.³⁹ Later, Noddings developed and systematized Gilligan's proposal, combining “the recognition of ethics with perspectives on women's moral development and focusing her ideas on the value of care and the solicitous attitude, which we find from the moment of birth, when we are totally dependent on the care of others”,⁴⁰ thus articulating an alternative paradigm that vindicates the morality of interdependence.

In this view, care is understood not as an act of assistance or protection, but as an ethical disposition toward the other. This care necessarily implies recognizing human vulnerability within the relational sphere,⁴¹ assuming responsibility for the well-being of others, and responding to their specific needs with empathy and due attention.⁴² For Noddings, caring is synonymous with acting morally, and in learning to care we must inevitably participate in

37. *Ibid.*, 31-3.

38. *Ibid.*, 31.

39. Nicolasa Durán, “La ética del cuidado: una voz diferente” [The ethics of care: a different voice], *Revista Fundación Universitaria Luis Amigó* [Luis Amigó University Foundation Journal], n.º 2 (2015): 12-21, <https://doi.org/10.21501/23823410.1476>.

40. Alvarado, “La ética del cuidado” [The ethics of care], 31.

41. Anasuya Adhikari, Birbal Saha, and Subir Sen, “Nel Noddings' theory of care and its ethical components”, *International Research Journal of Education and Technology*, n.º 8 (2023): 204, [https://www.irjweb.com/user_upload/Nel%20NoddingsTheory%20of%20Care%20and%20its%20Ethical%20Components_Anasuya%20Adhikari%20\(3\).pdf](https://www.irjweb.com/user_upload/Nel%20NoddingsTheory%20of%20Care%20and%20its%20Ethical%20Components_Anasuya%20Adhikari%20(3).pdf).

42. Victoria Vázquez, “La educación y la ética del cuidado en el pensamiento de Nel Noddings” [Education and the ethics of care in the thought of Nel Noddings] (doctoral thesis, University of Valencia, 2009), 39-53, https://www.researchgate.net/publication/50819403_La_educacion_y_la_etica_del_cuidado_en_el_pensamiento_de_Nel_Noddings.

a long and progressive process involving four essential elements: i. attention, the active commitment to perceive and understand the needs, feelings, and desires of the other person; ii. responsibility, the moral commitment to respond (reciprocally) for the care offered to us and for the well-being of those we care for; iii. competence, the set of practical skills and emotional empathy indispensable for responding to the needs of the other; and iv. responsiveness, aimed at an appropriate and timely reaction to the needs of the other.⁴³

Therefore, for Noddings, care is a dynamic relationship between the caregiver and the one being cared for, who together participate in a reciprocal moral process: the former through active attention and a willingness to act, and the latter through receptivity and response.⁴⁴ In this regard, it is also possible to infer, with apparent ease, that the ethics of care challenges the traditional Cartesian separation between reason and emotion, as it considers emotions—such as empathy, compassion, and/or tenderness—to be valid sources of ethical knowledge, without which we could not understand the concrete needs of others.⁴⁵ Now, in light of the above, contemporary children and adolescents' rights law should recognize the social value of caregiving tasks and the centrality of affection in structuring legal relationships. Therefore, from this perspective, care should not be conceived as a domestic burden for women, but rather as a shared responsibility and an essential component of children's well-being.⁴⁶

Thus, the Ecuadorian normative framework—in line with international trends—would approach an ethics of care insofar as it recognizes that family justice—and matters concerning children and adolescents—cannot be reduced to abstract rules of power, property, or authority, but must instead focus on permanent support and sufficient affective attention. In this case, care would become a transversal legal category that tends toward the reconfiguration of relationships among family members, redefining in particular the traditional notions of parental authority and custody. Under this renewed premise, the sha-

43. Adhikari, Saha, and Sen, “Nel Noddings’ theory of care”, 198-204.

44. Victoria Vázquez, “La perspectiva de la ética del cuidado: una forma diferente de hacer educación” [The ethics of care perspective: a different way of doing education], *Educación XXI*, n.º 1 (2010): 177-97, <http://www.redalyc.org/articulo.oa?id=70618037008>; Adhikari, Saha, and Sen, “Nel Noddings’ theory of care”, 198-204.

45. Vázquez, “La perspectiva de la ética del cuidado” [The ethics of care perspective], 180-8.

46. UN, General Assembly, *Convention on the Rights of the Child*, Resolution 44/25 November 20, 1989, art. 18, <https://bit.ly/48t3eFG>.

red custody model must guarantee that both parents participate actively and equally in the daily lives of their children after separation or divorce, distributing time in an orderly manner, but above all, responsibly and equally assigning and allocating the obligations of care and decision making regarding the education, health, emotional well-being, etc., of children and adolescents. From this perspective —that of the ethics of care— shared custody would break with the hierarchical possessive scheme of the *primary custodian* and the *secondary visitor*, which have traditionally reinforced gender roles and weakened —and continues to weaken— parent-child bonds.⁴⁷

And although its practical application continues to face cultural and logistical resistance, we must value and defend its ethical foundation, since the well-being of children and adolescents necessarily depends on the shared and complementary exercise of care.⁴⁸ Therein lies the virtue of the ethics of care and its inseparable transformative component,⁴⁹ because it directly challenges the patriarchal structures that assign caregiving almost exclusively to women,⁵⁰ due to the persistence of multiple social and legal prejudices that presuppose the mother is the natural caregiver and the father the distant provider.⁵¹ Therefore, we must adopt a shared custody model that aims to dismantle such prejudices.⁵² In this way, emotional co-education would be promoted, in which children and adolescents would perceive egalitarian parenting models as examples. This would also favor the economic and social autonomy of women, as it

47. Irma Giraldo, Cecilia Mayorga, and Carmenza Sánchez, “Reflexiones sobre la perspectiva de género en el proceso legal de custodia y cuidado personal de niños, niñas y adolescentes” [Reflections on the gender perspective in the legal process of custody and personal care of children and adolescents], *Dictamen Libre* [Free Opinion], n.º 30 (2022): 137-50, <https://doi.org/10.18041/2619-4244/dl.30.8824>; Carol Gilligan, “La resistencia a la injusticia: una ética feminista del cuidado” [Resistance to injustice: a feminist ethics of care], *La ética del cuidado* [The Ethics of Care], Cuadernos de la Fundació Víctor Grífols i Lucas [Notebooks of the Víctor Grífols i Lucas Foundation], n.º 30 (Barcelona: Fundació Víctor Grífols i Lucas, 2013): 42-64.

48. Alvarado, “La ética del cuidado” [The ethics of care], 32.

49. Ecuador Corte Constitucional [Constitutional Court], *Sentencia n.º 28-15-IN/21* [Ruling n.º 28-15-IN/21], Caso n.º 28-15-IN/21 [Case n.º 28-15-IN/21], concurring opinion (Constitutional Justice Ramiro Ávila), November 24, 2021, paras. 14-8, <https://www.corteconstitucional.gob.ec/sentencia-28-15-in-21/>.

50. Giraldo, Mayorga, and Sánchez, “Reflexiones sobre la perspectiva de género” [Reflections on the gender perspective], 142-6.

51. *Ibid.*, 138.

52. *Ibid.*, 147.

would allow them to reconcile the upbringing of children and adolescents with their own professional and personal development, without having to bear exclusively the domestic and parental responsibilities, thus positively promoting substantive gender equality.⁵³

Nevertheless, despite its many virtues, the shared custody model is not without its drawbacks. As previously stated, the ethics of care warns that it is not enough to simply divide parental time or rights mathematically,⁵⁴ since what is essential is preserving the quality of the bond and the emotional stability of children and adolescents.⁵⁵ Therefore, when parents maintain conflictive relationships or use caregiving as an instrument of power or revenge, there is a risk that care will become an empty legal obligation. For this reason, the ethics of care demands a genuine relational disposition, based on communication, empathy, and mutual recognition.⁵⁶ In such cases, the function of the law cannot be to correct an irregular situation but rather to facilitate a culture of dialogue by promoting family mediation, parental education, and public policies that support a balance between family and professional life. Hence, the incorporation of the ethics of care into family justice implies a necessary epistemic redefinition of the law, since it is not enough to impose decisions from an abstract rationality, rather it must build contextualized, sensitive and dialogued solutions, in which the judge must be a facilitator of bonds and not an arbitrator resolving disputes.

Relational justice,⁵⁷ inspired by care, conceives of family conflicts not as a clash or opposition of rights or interests, but as a relational crisis requiring

53. *Ibid.*, 145-6.

54. Isabel Espin, “Custodia compartida y mejor interés del menor: criterios de atribución de la custodia compartida en la doctrina jurisprudencial del tribunal supremo” [Shared custody and the best interests of the child. Criteria for awarding shared custody in the jurisprudential doctrine of the supreme court], *Revista Internacional de Doctrina y Jurisprudencia* [International Journal of Doctrine and Jurisprudence], n.º 21 (2019): 65-85, <https://doi.org/10.25115/ridj.v0i21.2964>.

55. Giraldo, Mayorga, and Sánchez, “Reflexiones sobre la perspectiva de género” [Reflections on the gender perspective], 147.

56. Gilligan, “La resistencia a la injusticia: una ética feminista del cuidado” [Resistance to injustice: a feminist ethics of care], 42-64.

57. Antonio Márquez, “La justicia relacional como círculo virtuoso” [Relational justice as a virtuous circle], *Recerca Revista de Pensament i Anàlisi* [Recerca Journal of Thought and Analysis], n.º 14 (2014): 117-34, <https://doi.org/10.6035/Recerca14.6>.

repair and support.⁵⁸ Therefore, the shared custody model should be embedded within a justice system that integrates the emotional and legal aspects with the ethical and normative, in order to effectively uphold the principle of the best interests of children and adolescents. In this way, the ethics of care and shared custody converge on the same aspiration: to humanize family law, since both are grounded in the recognition that individuals are constituted per se by their relationships, and that the well-being of children and adolescents inevitably requires stable, affective, and equitable bonds with both parents.⁵⁹

Therefore, care —understood as both a moral practice and a legal principle— orients us toward a more empathetic, participatory, and restorative justice system. Consequently, the enormous challenge facing justice systems and public policies in our country today is to consolidate this paradigm not only in discourse but also in daily practice, ensuring that custody decisions authentically reflect the spirit of shared care. For, ultimately, the ethics of care urges us to conceive the law as a form of responsible love,⁶⁰ in which the norm does not separate us but unites us; where the judge does not punish but accompanies us; and where parents do not compete, but cooperate so that their children can grow up in an environment of respect, balance, and tenderness.

CONCLUSIONS

1. The findings of this research confirm that the child and adolescent custody regime in the Ecuadorian legal system has undergone a significant transformation following a constitutional interpretation that has shifted from a competitive and exclusionary model —based on maternal preference— to an approach of shared parental responsibility. The Constitutional Court Ruling n.º 28-15-IN/21 has been the main turning point in this transition. In this context, shared custody is configured as a constitutio-

58. Rosario Esteinou, “Fragilidad y recomposición de las relaciones familiares. A manera de introducción” [Fragility and recombination of family relationships. By way of introduction], *Desacatos*, n.º 2 (1999): 1-17, <https://www.redalyc.org/articulo.oa?id=13900201>.

59. *Ibid.*, 12.

60. Carol Gilligan, “El daño moral y la ética del cuidado” [Moral damage and the ethics of care], *La ética del cuidado* [The Ethics of Care], Carol Gilligan, Cuadernos de la Fundació Víctor Grífols i Lucas [Notebooks of the Víctor Grífols i Lucas Foundation], n.º 30 (Barcelona: Fundació Víctor Grífols i Lucas, 2013): 25.

nally desirable alternative, insofar as it is perceived as an ethical-relational practice of care and not as a tool for the mechanical distribution of time or parental responsibilities. This analysis also shows that the ethics of care provides a suitable theoretical framework for strengthening the legal understanding of co-parenting, in which care —understood in relational terms— constitutes a shared, contextual responsibility always oriented toward the comprehensive well-being of children and adolescents.

2. The implications of this study are both legal and institutional. From a judicial perspective, the proposed approach requires rethinking the role of the judge, who must assume the function of a facilitator aimed at promoting viable parental agreements and designing care arrangements tailored to the specific circumstances of each family. From a material equality perspective, on the other hand, co-parenting —based on the ethics of care— should contribute to dismantling entrenched gender stereotypes and redistributing more equitably the material and emotional burdens of care between both parents. And, from a purely institutional perspective, this essay concludes by identifying that the need for complementary public policies —family mediation, parental education, etc.— that would make co-responsibility effective beyond the confines of an indifferent normative framework.
3. Finally, the limitations of this research are linked both to the conditions for applying the shared custody model and to its analytical scope. Shared custody is not a universal solution, nor can it be applied automatically, especially in contexts of high conflict, violence, or the instrumentalization of care, where it could be contrary to the best interests of children and adolescents. Furthermore, there persists in everyday practice the risk of reducing co-parenting to a merely quantitative logic, in which the quality of the bond and emotional stability do not prevail over certain formal criteria. Finally, we must point out that the juridical-dogmatic approach adopted in this study does not empirically analyze any specific judicial practice or family experience. Therefore, future research should integrate empirical and comparative methodologies in order to deepen the understanding of effective implementation of co-parenting in Ecuador.

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El autor declara no tener ningún conflicto de interés financiero, académico ni personal que pueda haber influido en la realización del estudio.