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13 **Handbook of**
14 **Transdisciplinary**
15 **Research**
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30 Foreword by Jill Jäger
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01 **Chapter 16**
02 **Children and Divorce: Investigating**
03 **Current Legal Practices and their Impact**
04 **on Family Transitions**
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08 **Heidi Simoni, Pasqualina Perrig-Chiello and Andrea Büchler**
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13 **Abstract** The research project ‘Children and Divorce – Current Legal Practices
14 and their Impact on Family Transitions’ is part of the Swiss National Research
15 Programme ‘Childhood, Youth and Intergenerational Relationships in a Changing
16 Society’ (NRP 52). Its objective is the scientific analyses of the amended Swiss
17 divorce law, in order to get, on the one hand, an estimation of its outcomes on
18 children’s well-being and, on the other, to find out if it takes into account and
19 encourages modern forms of familial allocation of duties and responsibilities in
20 an appropriate manner. The research project is embedded in a societal evaluation
21 process of law amendment, for which the dialogue between science and practice is
22 fundamental.

23 The project, ‘Children and Divorce’, aims at following a transdisciplinary ap-
24 proach, integrating various disciplinary perspectives and methods. It is managed
25 by a jurist and a psychologist. The research team includes jurists, psychologists
26 and sociologists and is supported by a group of external experts working in the
27 field.

28 To elaborate the research questions, various mutually complementary qualitative
29 and quantitative methods of empirical social research have been applied. Data was
30 collected synchronically at three levels: (a) analysis of court files and interviews
31 with judges, (b) written interviews with divorced mothers and fathers, (c) in-depth
32 interviews with children, mothers and fathers. The analyses of the data focus on the
33 following main questions:

- 34
35 - The experiences with the revised Swiss divorce law focusing on the well-being
36 of the affected children.
37 - The decisions taken in divorce proceedings such as the award of custody (sole
38 and joint custody), the settlement of visitation rights and maintenance, the right
39 of the child to be heard, and the representation of the child.
40 - The everyday life of divorced parents and their children.
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- 01 - Interrelations between legal context, resources of divorced families and the best
02 interest of the child.
03 - The participation of children of divorced parents in the reorganisation process of
04 the family.
05

06 As to the inter- and transdisciplinary process, the elaboration of a common theoret-
07 ical framework and the integration of the results, provide the most interesting and
08 challenging parts. The aim of the following chapter is to focus on these aspects,
09 without going into the results.
10

11 **Keywords:** Welfare of the child · Divorce · Family transition · Legal practice ·
12 Social change
13

15 16.1 Background

17 *16.1.1 Social Change and Participative Rights* 18 *of Children – a Challenge for Social* 19 *Science Research* 20

21
22 The demand, over the last decades, for cross-discipline cooperation in research,
23 teaching and practice of social science comes as a reaction to the unbridled increase
24 in knowledge within the special disciplines on the one hand, and to the growing
25 complexity of social problems on the other. One example of these problems is the
26 current demographic change with its far-reaching implications (associated with a
27 fundamental change in values) particularly for the way people live together in a
28 society (Perrig-Chiello and Darbellay, 2002; Perrig-Chiello and Arber, 2002). This
29 comes out most clearly when we take the example of familial inter-generation rela-
30 tionships. Like most European countries, Switzerland over the past decades has been
31 witnessing a process of disintegration of the bourgeois marriage and family model
32 with profound repercussions for family life. This fact is reflected in the following
33 indicators (Eidg. Departement des Innern, 2004; Perrig-Chiello, 2004):
34

- 35 - The marriage rate (the number of individuals out of 100 individuals who marry at
36 least once during their lifetime) of women dropped from 87–63 from 1970–2005
37 and of men from 83–59 in the same period.
38 - The average number of children a woman gives birth to in Switzerland in the
39 course of her lifetime totalled 1.39 in 2003, the birth rate having tended to drop
40 continually over the preceding years. In order to secure the continued existence
41 of the population, a birth rate amounting to 2.1 would be needed. The birth rate
42 has remained below that figure since 1970.
43 - The percentage of children born out of wedlock, although increasing, is still rela-
44 tively low. In 2003, 12.4% of children born alive were born to unmarried women.
45 From the beginning of the 90s (1992: 6.2%), this figure has been rising steadily.

01 - Switzerland displays a high divorce rate by European standards (percentage
02 figure of divorced marriages over time). It has seen a more or less continual
03 increase over the last decades (1960: 13%, 2004: 44%). The figure reached a
04 climax in 1999 with the divorce rate reaching 51% as the result of an above
05 average number of divorce cases. When the new law came into force, the in-
06 cidence dropped to one half. Within one year (2000: 26% and 2001: 39%)
07 the divorce rate had again increased by 50%. At the same time we are wit-
08 nessing an increase of one-parent families, patch-work families, and one-person
09 households.

10
11 These changes have a direct impact on the life and potential development of children
12 and adolescents who, quite obviously, still grow up in families. A growing number
13 of children and adolescents experience change in their family relationships in the
14 course of their development (divorce or new partnership of one parent); moreover,
15 in most families both parents work full or part time. In this context, the questions
16 arise of how children and adolescents perceive and cope with these circumstances;
17 how these affect their development in the long term; and in what way they have a
18 right to participate in deciding and shaping events in these matters. How does the
19 changed situation affect the development of children and adolescents, in particu-
20 lar their attachments, well-being and health? As far as Switzerland is concerned,
21 there are hardly any valid answers that can be generalised. This complex of themes
22 has not been sufficiently studied although there exists considerable research in the
23 field. More generally, we can observe that children and adolescents constitute a
24 grossly neglected section of the population in relation to social issues and social
25 analysis, having no lobby and insufficient means and possibilities to make their
26 needs and interests heard and taken notice of in public. Moreover there is a de-
27 plorable lack of scientifically ascertained knowledge of the concrete structure of
28 everyday life in which they live and grow up. This is true to a large extent for
29 Switzerland, too.

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16.1.2 National Research Programme 52 ‘Childhood, Youth and Intergenerational Relationships in a Changing Society’

It is against the backdrop of the social changes referred to above, on the one hand, and the insufficient data base, on the other, that the National Research Programme ‘Childhood, youth and intergenerational relationships in a changing society’ (NRP 52; www.nfp52.ch) of the Swiss National Science Foundation took shape. This NRP, endowed with 12 million CHF, was embarked on in 2003. It aims at gaining scientifically established insights into the present and prospective living conditions as well as the needs of children and adolescents in Switzerland. Special attention is supposed to be given to both intergenerational and legal aspects, given that considerable gaps in research regarding this subject exist in Switzerland. On this basis, approaches shall be made to clarify the question of whether any action, and

01 if so what kind, needs to be taken within politics, the administrative bodies of the
02 federation, cantons and municipalities, corporate economy and non-governmental
03 welfare organisations and what kind of reaction is appropriate with regard to the
04 issue. Given the complexity of the issues involved, research projects using inter-
05 disciplinary and transdisciplinary approaches were suggested. In the light of these
06 objectives and intentions, NRP 52 shows all the typical characteristics of a National
07 Research Programme, in particular:

- 08
- 09 - transdisciplinary approaches to questions and interdisciplinary research methods
 - 10 - problem-related research in between pure basic and applied research
 - 11 - validation of methodology and translation of the research results into practice
 - 12 - preset financial limits and time table (5 years; deadline of NRP research: end of
13 2007).
- 14
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16 The standard of the National Research Programmes predetermines these to be a
17 suitable interface between science and society. What matters, on the one hand, is
18 to investigate socially relevant problems using a transdisciplinary approach and to
19 develop effective strategies for politics, economy and society and, on the other hand,
20 to give the public access to these research results.

21 The 29 research projects in the framework of NRP 52 had three research foci:
22 (1) living conditions of children and adolescents in the intergenerational context,
23 (2) family and systems complementary to the family, (3) learning, leisure, media
24 and consumption. It was suggested that researchers not only consider diversity and
25 variety as well as intergenerational interdependence, but also take into account the
26 children's and adolescents' competence to act (within the context of the research
27 topic). As a matter of fact, children from an early age are capable of actively par-
28 ticipating in shaping their own development. When it comes to social relationships
29 and way of life, children and adolescents have creative potentials that can be en-
30 couraged or inhibited depending on each individual's everyday world. The well-
31 adapted encouragement of the competences to act and their translation into forms
32 of shared decision-making or participation are relevant to research work on children
33 and adolescents. The children's and adolescents' reliance on parents and other adults
34 requires from the latter a sense of responsibility and a continuing adaptation to mu-
35 tual needs. In this context, particular emphasis has to be placed on the role of the
36 family and the question: what can society and the law do to strengthen the parents
37 and thus to help children and adolescents? This complex of themes is tackled mostly
38 in research focus 2 'Family and systems complementary to the family' of NRP 52.
39 One of the key questions raised is: how far are the rights of children and adolescents
40 to participate, translated into practice? According to the UN convention on the rights
41 of the child, these rights have to be honoured in all legal actions involving children
42 and adolescents. What deserves particular attention in this context is the question
43 of the juridical and psychosocial determinants and consequences of this in real life
44 practice. The project 'Children and Divorce' is meant to serve as an example in this
45 respect.

01 **16.2 Children and Divorce – an Inter- and Transdisciplinary** 02 **Challenge**

03 *16.2.1 Starting Point and Development of the Project*

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06 When the National Research Programme 52 ‘Childhood, adolescence and
07 intergenerational relationships in social change’ requested research proposals both
08 managers of the project discussed in this chapter, independently from one another,
09 were motivated to submit research proposals focusing on ‘the amended Swiss divorce
10 law’ as well as ‘rights of the child and welfare of the child’. Rather remarkably,
11 one of them is a jurist, holding a chair for private law at Zurich University,
12 while the other has graduated in psychology and works as the head of the practical
13 research department of the Marie Meierhofer Institute in Zurich, which deals with
14 conditions of development of children and families in our society. This initial situation
15 is enough to make it clear that quite similar questions ought to be empirically
16 investigated starting from each individual discipline. Obviously, we are dealing with
17 a complex of themes that suggests both an interdisciplinary (legal science & psychology)
18 and a transdisciplinary (theory & practice; university & institute of applied
19 science; science & society) approach. Taking a look at the initial situation of the
20 scheduled projects with regard to their research topic is intended to make this point
21 come out more clearly.

22 The amended divorce law, which came into force in 2000, introduced some substantial
23 legal amendments equally affecting the children and adolescents involved
24 and the divorcee parents. The most substantial amendments deal with the competence
25 of the court:

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- 28 - to either directly hear the children in the course of the divorce proceedings of
29 their parents and/or to have them represented in order to safeguard their interests
- 30 - to leave parental responsibility with the mother and the father jointly upon application
31 by the parents.
- 32

33 This means that the amended divorce law has given children the status of legal
34 subjects, thereby honoring a principle of the UN Convention on the Rights of the
35 Child (UN CRC, 2007). In addition to this, an attempt was made to take into consideration
36 the fact that children benefit from both parents feeling responsible for their
37 children’s wellbeing despite them being divorced.

38 The legal principles regarding this issue explicitly provide for the matter to
39 be based on other disciplines. To illustrate this point, the related articles of the
40 Swiss Civil Code (ZGB) as well as an article of the UN CRC will be quoted.
41 Passages such as ‘welfare of the child’, ‘form/express an opinion’, ‘appropriate’,
42 ‘commensurate to age’ refer to topics the clarification of which, when dealing
43 with general and particular cases, requires specialist knowledge and the expert
44 knowledge of specialists trained in developmental psychology and educational
45 theory.

Art. 133 Swiss Civil Code [ZGB]

1. The court attributes parental responsibility to one parent, regulating the claim to personal access and the contribution to the child's maintenance by the other parent according to the provisions on the effects of the parent and child relationship. The amount of the maintenance payment may be fixed beyond the attainment of legal age.
2. All circumstances relevant for the welfare of the child have to be considered when attributing parental responsibility and regulating personal access; joint application by the parents and, as far as it is feasible, the opinion of the child have to be taken into account.
3. If the parents in an approvable settlement have agreed on their shares in the maintenance of the child and the sharing of the maintenance costs, the court, upon joint application, leaves parental responsibility with both parents, insofar as this can be reconciled with the welfare of the child.

Art. 144 Swiss Civil Code [ZGB]

1. If orders concerning children have to be issued, the court hears the parents in person.
2. The children are heard in person in an appropriate manner by the court or by a mandated third person, unless their age or other substantial reasons make it seem inadvisable to do so.

Article 12 UN CRC

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 of the UN CRC makes it clear that the participative rights of children in court proceedings are taken to constitute a mere specification of a more fundamental right to have their voices heard. This means that in the case of a divorce, besides the hearing of children in the course of the divorce proceedings, what matters is whether they can make their own contribution to the reorganisation process of the family and if so, how they can contribute. On the international level, the altered legal position of the child is indeed undisputed in principle. Honouring the right of the child to participate, however, still falls short of constituting an established practice. The regulation of parental responsibility is currently the subject of a controversial and highly emotional debate. This is true for Switzerland as well as for other Western countries where differing legal models are being applied. The fairly heated debates show that children's welfare and parental divorce is still a highly explosive issue for society. All in all, it is not only a matter regarding questions of legal practice,

01 but involves more fundamental issues: what kind of legal model regarding parental
02 responsibility really makes everyday life of divorcee families and the shaping of
03 relationships of children with their divorced mothers and fathers easier? Or to put
04 it the other way round: are there legal guidelines regularly providing additional fuel
05 for conflict, thereby making the reorganization process of the families following the
06 separation of the parents even more difficult? Furthermore, it is still not clear what
07 relation the rights of children have with the rights of adult women and men, for
08 questions of equality and the sharing of duties between the sexes are a further issue
09 regularly mixed up with questions of parental responsibility and the welfare of the
10 child.

11 The legal system reacts to social change by amending the law, while at the same
12 time acting upon it. This suggests that an analysis of interpreted and applied legal
13 practice is necessary to answer questions of how smoothly and effectively it can
14 contribute to the solution or defuse actual problematic situation. Besides this, the
15 question arises of whether legal science adapts to the diversity of real situations
16 and how consistent it is perceived to be by the specialists and individuals involved.
17 This is particularly interesting where it touches upon fields of tension in which var-
18 ious discursive levels intermingle, as is the case of parental responsibility. From
19 a psychological perspective, the questions that come to the fore are whether legal
20 processes correspond to the perception and behaviour of the adults and children in-
21 volved and are felt to make sense; whether they are helpful in potentially conflictive
22 or critical situations in life; and finally, whether regulations can be found that are
23 well adapted to the realities of everyday life and that have a relieving effect on the
24 psycho-social situation.

25 Pursuing a transdisciplinary approach was intended in both research programmes
26 as an exchange between science and practice. Science that claims to provide poten-
27 tially relevant results has to rely on questions and suggestions from practice. On
28 the other hand, science has an advantage over the latter in so far as the scientific
29 perspective makes it possible to study the research object systematically, objectively
30 and in detail at the same time. Empirical research steps back to observe both social
31 and individual events from a distance. This makes it possible to adopt various per-
32 spectives and to distinguish – expected or unexpected – patterns from a bird’s eye
33 view, as it were. The systematic view allows for in-depth study of selected aspects.
34 Both taken together helps the researcher stay detached from preconceived opinions
35 and convictions and to start searching for contexts on the assumption that things
36 may well be completely different from what they were supposed to be.

37 The management team of NRP 52 has appreciated the outlined transdisciplinary
38 dimension of the subject and the need for an interdisciplinary empirical approach.
39 They have also recognised the potential for synergy provided by both project pro-
40 posals submitted. This is why both researchers were asked jointly to work out
41 a research application. Relying on international experts’ reports, the management
42 team of NRP 52 granted the application ‘Children and divorce; the impact of legal
43 practice on familial transitions’. The crucial factor in the decision, besides the scien-
44 tific quality, was the interdisciplinary and transdisciplinary approach intended in the
45 project. The research project aims at understanding the psycho-social situation of

01 children during divorce proceedings as well as following the divorce of the parents
02 and to relate this reality to the 'child's welfare'. Science can take up past or urgent
03 questions of practice, creatively reformulating them, preparing them for further in-
04 vestigation, and in this way contribute substantially to clarifying them in the best
05 of cases. This is where the potential of the proposed project lies with regard to the
06 subsequent usability of its results.

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09 ***16.2.2 Elaboration of a Common Theoretical Framework***

10

11 The project 'Children and Divorce' is part of a social process involving the evalu-
12 ation of an amendment of law, while going far beyond it. In order to back up and
13 ground the project broadly, exchange with further experts from research and practice
14 had already been sought at a very early stage of its realisation and is maintained in
15 the form of a supporting team of specialists and of individual experts. This team is
16 made up of specialists from all over the world, including experts pursuing scienti-
17 fic and practical activities in the fields of family law as well as child and family
18 psychology.

19 It was a vital condition for the realisation of the project to develop a common
20 basis or a common theoretical framework notwithstanding the differing perspectives
21 of the disciplines involved. The particular challenge in this process was to connect
22 the potentials of the special disciplines with each other and make them interact.
23 The specific perspectives and analytical levels of the disciplines involved were not
24 intended to be dissolved, but to be explicitly made use of. The following aspects
25 constitute the basis of the research project:

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- juridical, sociological and psychological knowledge of familial transitions
- legal comparisons regarding the regulation of the interests of children in the course of divorce proceedings of the parents
- psychological knowledge of risk or defensive factors, processes of coping, development of the child, development during the course of life
- data on demographic development in Switzerland.

35 The overall concepts of 'divorce law, child law and welfare of the child' were fixed
36 as a common denominator. It soon became evident that 'process orientation' rep-
37 resented an additional common interest with three differing aspects connected to
38 it: one, from a perspective of legal science and another from the perspective of
39 psychology. The third one is related to the former two, concerning the temporal
40 structure of the period in question during which changes are to be investigated. The
41 first concerns the aspect of 'translation into practice', and the second that of 'familial
42 transition'.

43 From a primarily juridical perspective, the core issue of an evaluation of an
44 amendment of law concerns its translation into practice: how are the guidelines
45 being taken into consideration in judicial custom and the options provided for fully

01 made use of? Psychology, on the basis of the idea of translation into practice, may
02 ask whether, when and how judicial custom is reflected in the everyday lives of the
03 families.

04 The term 'familial transition' denotes that the nuclear family may see changes
05 involving fundamental role reversals (birth of a child, separation, divorce) over time.
06 These typically act both 'from inside out' and 'from outside in'. Familial transitions
07 are coped with in different ways according to the resources available. Although
08 the reorganisation processes related to this can provide an opportunity for the per-
09 sons affected (from an individual and social aspect), they also have considerable
10 potential for crisis in the short and middle term (Cowan, 1991; Perrig-Chiello and
11 Perren, 2005). What matters in the long term, however, is whether actual adverse
12 consequences could be overcome and whether the changes could be coped with. In
13 connection with separation and divorce, legal practice and the wellbeing of the indi-
14 viduals affected are dynamically interrelated. Environment, judicial custom, societal
15 value judgments and social resources, besides personal psychological resources, af-
16 fect coping with divorce and thus the wellbeing of the individuals involved. Their
17 perceptions, feelings and attitudes in their turn influence the everyday life and be-
18 haviour of the environment, i.e. external conditions. The concept of transition in the
19 familial life cycle perfectly serves the purpose of empirically utilising the variety of
20 perspectives adopted by jurists, sociologists and psychologists to view the 'inside'
21 and 'outside', understand structural and psycho-dynamic characteristics of the tran-
22 sition 'parental divorce' and thereby overcome the additional juxtaposition of the
23 differing approaches.

24 The temporal structure given to the period under investigation is based both on
25 juridical and psychological considerations. What matters from the juridical perspec-
26 tive is the division into the separation, divorce and post-divorce phases. On the one
27 hand, this is because the phases referred to differ with the competence of the court
28 and of the guardianship authority to regulate the child's interests as well as in other
29 respects. What matters on the other hand, is the question of continuity of regulations
30 at different points in time such as the relevance of regulations applying to the period
31 of separation and everyday life as experienced by the individuals concerned with the
32 divorce decree. An important issue from a psychological perspective is determining
33 where, when and how often the investigation is conducted. Taken together these
34 determine what can be understood in retrospect only and what can be understood
35 actually or prospectively. It has to be taken into account that retrospective inter-
36 views are valid only with qualification and with regard to selected questions because
37 objective human memories do not exist. The coming to terms with events and the
38 course things have taken always affect memory. Furthermore, assuming that divorce
39 is a transition period, existing knowledge of the working of such reorganisation
40 processes has to be included. As a case in point, it had to be taken into consideration,
41 at about what point following a divorce decree can coping with the altered family
42 situation be expected in most families.

43 Methodologically speaking, the common basis is provided by the scientifically
44 backed up agreement that data collection using multiple informants and perspec-
45 tives, promises to serve the complex of topics best (Kraemer et al., 2003).

01 ***16.2.3 Drafting of Common Research Questions***

02

03 Finally, the following research questions were drafted and made serviceable for
04 empirical treatment:

05

06 - What are the experiences Switzerland has had with the amended divorce law with
07 special regard to the welfare of the children involved?

08

09 - What is the legal practice for dealing with divorce with regard to: parental respon-
10 sibility (sole and joint parental responsibility), care and custody, visiting rights,
11 hearing of the child, representation of the child, child maintenance?

12

13 - What is the situation in life of divorced parents and their children?

14

15 - How are divorce decrees translated into the everyday life of children and parents?

16

17 - What changes and constants become visible in the course of time, as for example
18 in the contact between the child and both parents?

19

20 - Are there any connections between overall legal conditions, resources of the
21 family and welfare of the child?

22

23 - How can children affected by divorce appropriately participate in the reorganisa-
24 tion process of the family?

25

26 - What are the experiences and the condition of children and adolescents during
27 and following the divorce of their parents?

28

29 - Do gender-specific differences emerge in the context of the issues concerning
30 children and adolescents?

31

32 This is to say that the research project 'Children and Divorce', on the one hand,
33 investigates the translation of the divorce law in force in Switzerland from 2000
34 into court custom, and on the other, investigates the translation of the divorce de-
35 crees into the everyday life of the families involved. The catchphrase 'welfare of
36 the child' focuses on the regulation of the child's interest in the course of divorce
37 proceedings and in everyday life, the participation of the children and adolescents
38 affected in the reorganisation process of the family as well as the satisfaction and
39 condition of children and parents in the post-divorce period. Special attention is
40 given to answering the question of whether including the perspective of the child as
41 laid down by law can in fact be found to be part of the divorce situation.

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38 ***16.2.4 Interdisciplinary Empirical Methods and Perspectives*** 39 ***Concerning Data Collection***

40

41 Using an interdisciplinary approach to the research topic requires the sustained
42 communication of explicit and implicit assumptions related to specific subject ar-
43 eas. This leads to the specifying and clarifying of concepts, research questions and
44 interpretations within and between disciplines at every stage of the project. The
45 empirical phase has particular significance in this process: what matters is to make
sure that questions and perspectives in the fields of legal science, psychology and

01 sociology are given due consideration in all parts of the investigation, and in the
02 related instruments of data collection. They have to be interconnected in a way
03 that will allow for the interconnection of the maximum amount of collected and
04 evaluated data and the integration and communication of the results. Making op-
05 timum use of interdisciplinary resources and establishing the connections between
06 the collections of data, suggested the following procedure: overall control of two of
07 the three parts of the investigations was to be with the jurists (analysis of records)
08 or the psychologists (interviews). The instruments used for data collection were
09 complemented, whenever necessary, by the other part of the team and all of them
10 coordinated with each other. The third level of data collection, which is the large
11 scale written interviews, was designed to serve as a hinge for method and subject
12 matter: the data collected helps make it possible to inter-relate the quantitatively
13 evaluated juridical-social data of the record analysis and the qualitatively evaluated
14 psycho-social data of the interviews.

15 What follows is a description of the methods and categories used to collect data.
16 The resources available did not allow for a comprehensive investigation covering
17 the whole of Switzerland. Since both rural and urban contexts had to be taken into
18 consideration, all data collection was conducted in the three cantons of Basel-Land,
19 Basel-Stadt and Zurich.

20 *Record analysis and interviews with female and male judges:* Analysis of a ran-
21 dom sample from one out of five court records dealing with divorce decrees from
22 2002 to 2003 is designed to yield information on agreed regulations regarding chil-
23 dren at the moment of divorce. In the process, divorce records are investigated sys-
24 tematically for substantial and procedural measures involving children in the course
25 of divorce proceedings (attribution of parental responsibility to one parent or leaving
26 joint parental responsibility with both parents, regulation of care and custody and of
27 personal access, payment of maintenance for the child, hearing of the child, appoint-
28 ment of a representative for the child, etc.). Record analysis was mainly developed
29 and conducted by the legally trained members of the research team. The trained
30 psychologists and the team of experts supported the process in an advisory capacity.
31 In order to compare the regulations found in the decrees with the perception of
32 court custom by the court officials, the project managers conduct interviews with
33 divorce judges parallel to record analysis. These interviews are expected to give us
34 some clues as to the applicability and the smooth translation of the law into practice.
35 A semi-structured interview guideline was jointly worked up by the team as a whole.

36 *Written interviews with divorced mothers and fathers:* A structured questionnaire
37 was used to interview all parents of under-age children who got divorced in the
38 three cantons in 2002 and 2003 concerning the regulation of the child's interests in
39 the divorce decree and its translation into practice. The question of how families
40 organise their everyday life after divorce and how children, mothers and fathers feel
41 in this situation is of particular interest. The net feedback of 40% makes it safe to
42 say that, with regard to subject matter and form, we have most happily succeeded
43 in establishing contact with the parents affected. The drafting of the questionnaire
44 was done by the whole team, in cooperation with two scientifically experienced
45 sociologists who carried out the preliminary evaluation of the data. The data was

01 returned to the research team for in-depth analysis. The scientific team of experts
02 supported the process in an advisory function. Drafting and conducting the written
03 interviews jointly has proved highly helpful for interdisciplinary communication
04 and continuous exchange.

05 *In-depth oral interviews with families:* In order to connect our understanding
06 of familial reorganisation processes as closely as possible with the experience and
07 behaviour of divorced mothers, fathers, children and adolescents affected, inter-
08 views focusing on specific topics were conducted. We aimed at having at least
09 one parent and one child per family tell us about their personal experiences and
10 wellbeing in connection with separation and divorce. This method makes available
11 information based on self-perception as well as on the perceptions of others. The
12 interviews are the only category of data collection allowing children to speak up
13 for themselves directly. This will make it particularly interesting to compare their
14 view of the situation and their experiences of participation in the family reorgan-
15 isation process, with information from court records, parents and judges. Special
16 importance was given to including children of various ages and parents involved
17 in various regulations concerning legal parental responsibility. Special attention is
18 given to the question of coping with changes and coming to terms with the sit-
19 uation. All the elements referred to provide clues to adverse and protective pro-
20 cesses affecting the development of the children and adolescents interviewed. The
21 oral interviews with children and parents are mainly being developed and con-
22 ducted by the psychologists on the research team. The legally trained members
23 of the team and the fellow team have been assisting the process in an advisory
24 function.

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27 ***16.2.5 Integration of the Results: The Major Challenge*** 28 ***with Transdisciplinary Consequences***

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31 As the research process has shown, the phases of data evaluation and especially the
32 integration of the results call strongly for interdisciplinary cooperation and com-
33 munication. Of course, the research questions drafted and the method used in data
34 collection set the direction to be followed. This still did not specify sufficiently how
35 the scientific answers to the societal discourse dealing with the topic of divorce
36 and welfare of the child could be brought to fruition. The questions drafted at the
37 beginning of the research process moreover still draw upon the interdisciplinary
38 potential in a supplementary rather than an integrative manner while both the spec-
39 ification of the questions and utilisation of the interdisciplinary potential are vital
40 for the project to succeed. What mattered at that was to formulate and balance
41 the crucial questions' so that the scarce resources of time and personnel could be
42 maximised.

43 The difference in focus between 'events and decisions' and 'condition and be-
44 haviour of individuals' presented a challenging obstacle at this stage of research:
45 legal science is primarily concerned with the legal institute of the right to be heard,

01 the regulation of parental responsibility, maintenance and their effects, in a manner
02 geared towards translation into practice, in order to deduce recommendations
03 regarding court custom. On the other hand, it is more in line with the psycholog-
04 ical concept to start from the persons involved, trying to understand the multiple
05 experiences of children, parents and judges in the light of certain aspects related to
06 the topic. This means that fusing together analyses and results once more required
07 an interdisciplinary effort and exchange, highlighting the need to keep working
08 from our common base. This, however, proved yet another obstacle which turned
09 out to be an opportunity once the team succeeded in integrating both preferences
10 referred to above. The higher degree of orientation toward practical application
11 shown by the jurists proved to be a strong point at this stage of the project be-
12 cause it helped use the abundant data base in an object-directed way. Eventually,
13 the overall guideline for the focusing of the evaluation and integration of the results
14 was phrased to read: '*Separation and divorce as a (re)organization process of fam-
15 ily life from the perspective of children, parents and judges*'. In a further step, we
16 jointly defined with which priority to analyse the data of the various collection cat-
17 egories with regard to which research questions. The priorities have been ranked as
18 follows:

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- 21 1. 'parental responsibility and care and custody as experienced in real life' from the
22 perspective of children, parents and judges and in the conflicting relationship of
23 arrangements agreed on in court (Büchler and Simoni, 2006)
- 24 2. participation of the children in separation and divorce from the perspective of
25 children, parents and judges
- 26 3. state intervention in the interests of the child from the aspect of the welfare of
27 the child.

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29 The method agreed on is designed to make sure that evaluation can be carried out
30 with all necessary focus and care while nevertheless making the results available
31 for intra-, inter- and transdisciplinary use as soon as possible. Once the available
32 data referring to the first complex of themes have been analysed, the results are
33 due to be communicated in the form of papers in scientific journals, articles in the
34 daily print media and in lectures, etc. Concentrating data analysis on these three
35 foci regarding the research is in line with the intention of the project to pursue
36 a transdisciplinary approach. Besides this, it will provide jurists and psycholo-
37 gists with data specific to their disciplines and create interdisciplinary 'heightened
38 value'.

39 On the whole, the experiences made so far with the realisation of the project
40 'Children and Divorce' have confirmed the researchers in their conviction that by
41 using the potential of an interdisciplinary approach they can in fact contribute to
42 clarifying questions. The answers are eagerly awaited by the specialists of each
43 discipline, the experts in applied science and the wider public. At the same time,
44 the inspirational effect of inter- and transdisciplinary dialogue on any individual
45 specialist field ought not to be underestimated.

16.3 Recommendations

The project 'Children and Divorce' claims to clarify socially relevant questions that were formulated by the scientists as the result of a dialogue with experts in the field of social practice. After the empirical evaluation, the research results will be communicated to the scientific community and also fed back into practical application in the form of recommendations and implementations.

The research level itself requires the utilisation of various scientific perspectives and methods in order to make the topics empirically manageable without sacrificing its complexity. An important precondition for this is that it remains possible for the different research collaborators to stay rooted in their own disciplines, adopting a methodical and substantially precise working 'state of the art' process. In this respect, the project 'Children and Divorce' represents an interdisciplinary endeavour attempting explicitly to utilise the professional idiosyncrasies of each of the disciplines involved. The boundaries of each discipline are not removed but overlap in the process: for the disciplinary identity and the curiosity to go beyond it are equally indispensable. From the very outset, the working out of a common theoretical framework for the subject of parental divorce and welfare of the child proved both challenging and rewarding. Interdisciplinary communication has been upheld during the entire period of the project so far, constantly resulting in adding to its accuracy. The fascinating point is that the specific assets of the disciplines involved make themselves felt in accordance with the requirements of the individual stages of the project. Examples are the contribution of the powerful concept of 'biographical transition' and of methodological know-how of psychology, and the effectiveness of the high degree of systematic and practical orientation of jurisprudence.

The present chapter allows insights into a process of research still under way, which therefore cannot yet be conclusively evaluated. However there is much evidence suggesting that the inter- and transdisciplinary approach adopted for the project 'Children and Divorce' has an advantage over a monodisciplinary method in content as well as structure. Although the project is still in its final stage, the experiences so far in connection with the most important milestones are sufficient and convincing enough to draw some conclusions concerning the heightened value of the scientific approach adopted.

- The interdisciplinary orientation allows for the treatment of complex and multifaceted research topics on the one hand, thereby contributing to a comprehensive perception of the facts and to clarifying complex research questions. On the other hand, generating interdisciplinary knowledge does not prevent the scientific discourse (related to a special field) from making headway. This project involves – besides the interdisciplinary points of intersection – very specific clusters of disciplinary topics that could be followed up.
- The transdisciplinary orientation contributes to gathering valid and socially relevant results. Furthermore, it encourages the formation of networks, especially the improvement of cooperation within and among research institutions, inside and outside academia, as well as between science and practice.

01 To develop and conduct projects with a complex design, the researchers are in need –
 02 apart from their commitment – of overall conditions and infrastructure allowing
 03 them, firstly, to pursue a dialogue among themselves and with the experts in the
 04 practical fields, and secondly, to bring the project to fruition with some form of
 05 cooperation. This necessarily includes subsidies that encourage research earmarked
 06 for that very goal, duly valuing, honouring and promoting the transdisciplinary in-
 07 tentions and efforts in evaluating research results. In order to allow inter- and trans-
 08 disciplinary projects to shape and maximise the research process, the timetable fixed
 09 for the project must not be set too tight. The integration of the project ‘Children and
 10 Divorce’ into the National Research Programme 52 shows how this complementary
 11 cooperation, between research and subsidies encouraging research, can work out in
 12 a way that adds value at the project and programme level. This manifests itself in
 13 results like:

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- the stimulation of national and international research cooperation
- the formation of junior scientists (PhD students)
- an issue-related and more comprehensive dialogue between science and society.

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25 References

- 26
27 Büchler, A. and Simoni, H.: 2006, July 15, Scheidungskinder zwischen Wohnmüttern und
 28 Besuchsvätern. Elterliche Sorge und Kindeswohl – Modell und Alltag (Children of divorced
 29 parents between residential mothers and non-residential fathers. Parental responsibility and
 30 welfare of the child – models and daily life), *Neue Zürcher Zeitung*, Nr. 162, S. 65.
- 31 Cowan, P.: 1991, Individual and family life transitions: a proposal for a new definition. In: P. Cowan
 32 and M. Hetherington (eds), *Family transitions: a proposal for a new definition*, Lawrence
 33 Erlbaum Associates, Hillsdale, pp. 3–30.
- 34 Eidg. Departement des Innern (ed.): 2004, *Familienbericht 2004: Strukturelle Anforderungen an
 35 eine bedürfnisgerechte Familienpolitik*, Bern.
- 36 Kraemer, H., Measelle, J., Ablow, J., Essex, M., Boyce, W. and Kupfer, D.: 2003, A new approach
 37 to integrating data from multiple informants in psychiatric assessment and research: mixing and
 38 matching contexts and perspectives, *Am J Psychiatr* 160, 1566–1577.
- 39 National Research Programme 52: n.d., Retrieved June 11, 2007, from <http://www.nfp52.ch>.
- 40 Perrig-Chiello, P. and Perren, S.: 2005, Biographical transitions from a midlife perspective, *J Adult
 41 Dev* 12, 169–181.
- 42 Perrig-Chiello, P.: 2004, Soziale Integration im Spiegelbild lebenszyklischer Übergänge (Social
 43 integration as reflected in life-cycle transitions). In: Ch. Suter (ed.), *Sozialbericht 2004* (Social
 44 Report), Seismo, Zurich, pp. 129–154.
- 45 Perrig-Chiello, P. and Arber, W.: 2002, *Inter- und Transdisziplinarität – zwischen akademischem
 Anspruch und gesellschaftlichem Bedürfnis* (Inter- and transdisciplinarity – between academic
 intention and social need), Réalités Sociale, Lausanne.
- Perrig-Chiello, P. and Darbellay, F. (eds): 2002, Qu’est-ce que l’interdisciplinarité?, *Réalités
 Sociale*, Lausanne.

01 Schweizerisches Zivilgesetzbuch (Swiss Civil Code, ZGB) of May 1, 2007, Retrieved June 11,
02 2007, from <http://www.admin.ch/ch/d/sr/c210.html>.

03 UN Convention on the Rights of the Child, Office of the United Nations High Commissioner for
04 Human Rights, Retrieved June 11, 2007, from <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

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