

1998

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Recommended Citation

Saul Levmore, Response, "Joint Custody and Strategic Behavior", 73 *Indiana Law Journal* 429 (1998).

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Joint Custody and Strategic Behavior

SAUL LEVMORE*

I. BONDING THEORY AND JOINT CUSTODY

A. Brinig and Buckley

Professors Brinig and Buckley have written a splendidly provocative paper¹ that starts with the idea of joint custody as promoting monitoring and bonding, which is to say postdivorce and predivorce behavior. The monitoring argument builds on the fairly straightforward idea that the (partly) custodial parent can monitor the uses to which his financial contributions are put.² The bonding argument is that the prospect of joint custody will cause some parents in the predivorce time period to expend greater child-rearing effort because that effort will earn a variety of rewards associated with the joint-custody regime.³ The most important of these rewards is that the parent will enjoy the return from this “investment,” in the form of a lasting, emotional bond with the child. This predivorce effort might seem wasted, or might lead to greater emotional pain, in the event that custody in the postdivorce period is granted entirely to the other parent. Among other things, the authors test the bonding theory by assessing whether the prospect of joint custody in a given jurisdiction does in fact seem to lower divorce levels. The theory’s claim is that the increased emotional ties will feed back and lower the divorce rate itself. The empirical contribution to this is data supportive of—or at least not inconsistent with—this claim.

Brinig and Buckley’s work is both sophisticated and brave. It not only offers a subtle theory and prediction, but also examines several alternative explanations of the data that are presented. It brushes aside some competing explanations by offering solid evidence.⁴ I assume that any reader of this Response has read Brinig and Buckley’s piece; readers will therefore hardly need this Response to attest to the effort, care, ingenuity, and insight in that article.

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1. See Margaret F. Brinig & F.H. Buckley, *Joint Custody: Bonding and Monitoring Theories*, 73 IND. L.J. 393 (1998).

2. See *id.* at 408-11. In the interest of expositional clarity, and following the Brinig and Buckley paper, my pronouns will refer to the marginal, potentially noncustodial parent as the father and the sole or jointly custodial parent as the mother.

3. The behavior is easier to fathom the shorter this period lasts, but inasmuch as Brinig and Buckley do not specify when the (alleged) bonding investments take place, I will ignore this matter.

4. Note, for example, the check on marriage rates themselves in order to meet a claim that divorce rates are lower under joint custody because marriage rates are lower. See Brinig & Buckley, *supra* note 1, at 413. The prospect of joint custody (if it can be gauged and if Brinig and Buckley have characterized jurisdictions correctly) is apparently not so awful that people avoid marriage. See *id.*

*B. The Puzzling Link Between Bonding Theory and
Divorce Rates*

There are, to be sure, problems with the bonding theory that Brinig and Buckley work with—and therefore with any test of it. If the parties desire family-centered attachments (as a kind of end in itself), and if these attachments are linked to or simply facilitated by a continuing marriage, then it might seem as if parents ought to invest in their children regardless of the rule regarding custody. And if, to the contrary, a parent attaches great priority to exiting from a marriage, then that rational parent ought to learn (from data or friends' experiences perhaps) that it is unwise to invest in anything that might increase emotional ties and “mislead” them into a second step (remaining in marriage) they wish to avoid. Following this logic, any statistical connection between joint custody and divorce rates is accidental or suggests irrational investors. But this sort of irrationality seems inconsistent with the very sort of decisionmaking implicitly required by the bonding theory.

Fortunately, Brinig and Buckley seem to have mapped a way out of this logical maze. A parent may avoid investing in emotional ties with a child because there is some significant probability of losing that child. The prospect of joint custody lowers that probability and therefore increases the earlier investment.⁵ Thus, a rational parent who prefers to exit from a marriage might invest in emotional ties, even knowing that this investment would increase the chance of staying in the marriage, because if the marriage does end the investment in the child will not be lost. The greater the likelihood of joint custody and the greater the likelihood that the marriage will (anyway) end, the greater the return from predivorce investment. In turn, the prospect of joint custody could indeed lead to lower divorce rates—even as an unwanted by-product—through the mechanism posited by the bonding theory. I am comfortable with this connection, but I think that other observers might conclude that there are too many hoops to jump through here and that a statistical connection between joint custody and decreased divorce rates does not really tell us much about bonding theory.

A second problem concerns the cause of any association between divorce rates and joint custody. The likelihood of joint custody might lead to an investment in emotional ties, but joint custody itself might be so unattractive that people who detest legally imposed arrangements will avoid the legal nicety of divorce. Such a distaste for joint custody would confuse our testing of the bonding theory.

As I have already suggested, Professors Brinig and Buckley are pragmatic and sensible. They spin out several explanations for the statistical connections they observe, and they make a plausible case for their own interpretation. At a minimum, most readers will come away thinking that bonding theory explains the

5. See *id.* Infant (or youthful) mortality might be another reason to alter one's investment in children, so there might be a connection between mortality rates and (through investment rates and bonding theory) divorce rates.

statistical connection between joint custody and lower divorce rates at least as well as any other, more obvious theory.⁶

But is there really a robust connection between joint custody and (lower) divorce rates? An unfortunate problem with finding this connection is that there is not much variation across states. One who looks for the presence or absence of this connection would, ideally, like to compare jurisdictions that use joint custody regularly with other jurisdictions that rarely or never offer that legal rule. In reality, however, the legal evolution in family and divorce law (as well as social norms) has been fairly similar in our fifty states because we have (more or less) one legal and social culture.⁷ The small variation among states makes testing difficult, and the fact that the variation arises from the application of laws more than it does from their literal content leaves room for dispute as to how to characterize the regimes found in the different states. I would rather not carp about this, in part because I have no constructive suggestion⁸ and in part because this path only leads to the familiar state of affairs in which those of us who do not do empirical work admire, but complain about, our colleagues who do.

One last problem returns us to the essence of bonding theory and to the indirect, perhaps weak, theoretical relationship between lower divorce rates and the expectation of joint custody. If the statistical evidence were reversed, and joint-custody states were associated with *higher* divorce rates, proponents of the bonding theory might have said that the expectation of joint custody encouraged divorce at the margin because one who contemplated divorce would see that divorce need not mean a loss of ties with one's children. States that leaned toward sole custody, by contrast, might induce a parent who had invested in emotional ties with children to avoid divorce for fear of being the loser in the custody determination. It is thus possible that high divorce rates in joint-custody states would lead some researchers to credit bonding theory even while a positive correlation between low divorce rates and joint custody leads Brinig and Buckley to credit bonding theory.

Generally speaking, a test of a theory is fairly weak if the theory's proponent can claim victory however the test comes out. On the other hand, Brinig and Buckley (and others) might genuinely believe that the bonding-theory story which connects joint custody to lower divorce rates is much more convincing than the one which ties joint custody to higher divorce rates. Assuming this is the case, the fact that bonding theory would not necessarily be mortally wounded by a finding of higher divorce rates in joint-custody states may weaken, but should

6. It is of course always possible that some third factor causes (or is associated with) joint custody as well as lower divorce rates.

7. More accurately, to the extent that we encounter diverse practices, these are identified with ethnic, racial, and religious groups more than they are with state boundaries.

8. It would, however, be interesting to ask Brinig and Buckley to characterize states (as joint custody or not) and then look at a subsequent year's judicial custody decisions to see whether the earlier characterization was robust. I fear that even such a mild check would prove troubling.

not cause us to dismiss the Brinig and Buckley findings.⁹ I suppose that a theorist could claim that *either* high or low divorce rates in joint-custody jurisdictions is a credit to bonding theory, and that the theory is falsified only if jurisdictions with different custody rules have the same divorce rates.¹⁰ Again, it is easier to criticize than to carry out empirical work of this sophisticated kind.

II. MANDATORY RULES AND STRATEGIC BEHAVIOR

A. Mandatory Joint Custody

I turn now to my major focus in this Response: the relationship between custody rules and strategic behavior. I suggest here that there is value to mandatory-custody rules and then, in Part II.C, I focus on strategic behavior with regard to relocation by a custodial parent. Both subjects may inform the choice of custody rules.

Joint custody is a convenient illustration of the point I have in mind about an advantage of mandatory rules over weaker default rules, but the important thing will be to see that other custodial norms might do just as well. Consider, first, joint custody itself. Both theory and anecdotal evidence suggest that a serious problem in acrimonious divorces—if not a cause of such divorces—is that a parent (let us imagine it to be the father) may claim interest in child custody in order to extract a better property settlement from his (soon to be ex-) spouse. Thus, the father might feign interest in sole custody, going so far as to make allegations supporting the assertion that the mother is an unfit parent. These allegations may be used in order to torment the mother, perhaps, and to extract a compromise settlement in which the father eases the way for the mother to obtain custody in return for reduced demands by the mother for support payments, alimony, or other forms of property division. Even where the mother is certain that the father has no interest in custody of the children, it may be difficult to convince the judge of the father's insincerity. The father may be willing to carry through with some custodial behavior in the event that the mother calls his bluff and the judge awards him partial or sole custody; property arrangements can of course be renegotiated in or out of court. In terms of bonding theory, we might say that the father invests in emotional ties or feigns such bonding behavior in order to impress the court with his parenting skills or, more directly, in order to frighten the mother into material compromises.

It has been suggested that this problem would be reduced if custody were based formulaically on actual behavior by the parents over a somewhat extended

9. The question is whether bonding theory is supported by the empirical test. I find this to be a difficult question. On the one hand, I do not have a better theory with which to explain the decline in divorce rates. On the other hand, I find the causal argument fairly roundabout, and would have thought that bonding theory was more likely to suggest an increase in divorce rates as discussed in the text. The empirical work does, however, credit the view associating lower divorce rates with joint custody.

10. The argument would be that it is too unlikely that the two bonding arguments (and effects) precisely offset one another.

predivorce time period.¹¹ The strategic father might fake paternal interest for some time, but unpracticed, disingenuous behavior is difficult to sustain.¹² Moreover, the decision to divorce may not be made with sufficient foresight to allow bonding in contemplation of divorce; a court that inspected behavior over the preceding two years, for example, may find it easy to recognize strategic behavior on the eve of divorce. Unfortunately, this solution is imperfect both for the obvious reason that the inspection period and process are imperfect and because a parent's relationship with a child is inconstant over time and family structure. Even absent strategic behavior, parental relationships are mercurial, which creates the possibility that a parent is much more willing to spend time with a child when the other parent is away from the scene.

In any event, a different or perhaps more extreme solution is to make the expected custody award independent of the parties' bargains and statements to the court. If, for example, joint custody is mandatory, then it will do the father no good to threaten that he will push for sole custody. Nothing will depend on his (honest or strategic or vengeful) stated preferences. Similarly, if the parents cannot bargain away from joint custody before they go to court, then there will be no incentive to threaten custody in order to extract property. My simple point is that mandatory rules reduce strategic behavior and attendant costs.

There are two costs to such a mandatory policy. The first is that the child's welfare may be worsened through joint custody in some cases. One parent may, for instance, be truly unfit. A partial solution is to make the custody award independent of the parties' claims and bargains but dependent on prior arrests or criminal convictions. There is some danger of missing out on valuable information, but I suspect that there is actually more to be gained in terms of encouraging spouses or neighbors or other observers to report actual criminal behavior (such as child abuse).¹³ We might thus regard the suggestion as something short of mandatory joint custody because a court should look out for the best interests of the children by taking into account independent evidence of wrongdoing by a parent. More generally, the trade-off is reminiscent of others dealing with judicial discretion. The better judges are as fact finders, the greater the costs of mandatory rules.

The second cost is that the near-mandatory rule may sacrifice gains from trade (and perhaps children's welfare as well). Reasonable, nonstrategic parents might benefit from a bargain for another kind of custody. My proposal suggests that we

11. See Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CAL. L. REV. 615 (1992) (suggesting that perpetuating patterns of parental care will serve the best interests of the child, but recognizing that a mandatory rather than a best-interests standard reduces strategic behavior).

12. Indeed, that may be part of the point of bonding theory. Note that strategic behavior can be of a strong form, such that the parent feigns interest in order to extract a concession from a spouse who is fearful of a court's inability to recognize the motive for the sudden behavioral change. The behavior may also be of a weak form, such that the parent changes his behavior because he really wants additional custodial rights.

13. Thus, I might decline to call the police if *A* abuses *B*, but I might be more inclined to intervene in the *A-B* marriage in this manner if I knew that without my intervention, and *A*'s likely arrest, *A* would gain joint custody of the couple's children.

absorb this cost in order to avoid the cost of strategic behavior. Ideally, we would assess and compare this benefit and cost—but I fear that intuitions and theory will generate more wisdom than an empirical study because this is not an easy study to design.

Note, however, that the (nearly mandatory) award of joint custody need not be carried out by the parties once their day in court is done. Willing and nonopportunistic parents could simply agree not to abide by the court's imposition of the (nearly) mandatory rule. The divorced parents can choose not to enforce the terms of the joint custody that are imposed. They might, for example, simply agree that they will live in different states and that the father will have custody only during summer vacations. A significant problem with this bargain, in the direction of *de facto* sole custody, is that the parties' good faith may be too severely tested by the need to refashion financial arrangements as well. The court is likely to have awarded insufficient child support because it contemplated fewer days in which the children would be in the mother's care. The parties may, of course, adjust these payments voluntarily as much as they hypothetically revised the decision as to custody, but there is reason to fear that two bargains are more difficult to reach than one. Moreover, the impracticality of pure progress payments suggests that enforcement concerns may be a hurdle to bargaining over payments. It is possible, therefore, that judges should be encouraged not only to regard joint custody as mandatory but also to announce child-support awards as a function of actual time spent with the recipient parent.¹⁴ Support can thus be determined largely *ex post*.

One obvious problem with this sort of *ex post* award is that it might be perceived by either or both parties as too high or too low such that it affects their behavior as to the bargain about *de facto* custody. The parties can, however, agree (subject to enforcement problems) to modify the judge's award (because it is just the custody decision that they cannot both modify and expect to have judicially enforced). Moreover, this problem itself seems rather minor compared to that of strategic behavior and false bonding in the shadow of an uncertain and manipulable child-custody decision. A second problem with financial awards that are a function of postdivorce custodial behavior is that because a party needs to go to court to have an award enforced, there is again the prospect of generating strategic behavior. A father might agree to a modification of the custody arrangement in favor of the mother only if she refrains from asking for the extra support I have suggested she receive. The best that can be said regarding this problem is that the idea of *ex post* awards does not itself exacerbate the strategic behavior problem. It is, after all, the modification in custody behavior that generates the problem.

14. Thus, a given mother might be told to expect \$60 per day for each day she has custody of her child, or a lump sum plus \$60 for every day beyond 183 days per year.

B. Mandatory Custody Rules More Generally

The ability of a mandatory joint-custody rule to cut off destructive strategic behavior at its root does not have much to do with joint custody. It is the mandatory nature of the rule that makes false claims, as well as feigned bonding, nearly worthless.¹⁵ We could, for example, instruct judges always to award custody to the mother, primary caregiver, or lower earner (as a proxy for caregiving and in order to remove subjectivity). Support payments might again be awarded on a per diem basis in order to facilitate bargains around this rule. With such a mandatory rule there is again no incentive to denigrate or extort from the other parent, partly because nothing turns on impressing the court as to one's relative suitability, and mostly because the position one takes before the court does not affect the custody decision. As I have already indicated, the argument against discretion is familiar in other areas and depends a good deal on what one thinks of judges' skills—where the litigants have incentives to dissemble.

The same claim regarding mandatory rules might of course be made for a ludicrous rule, such as one which instructed that sole custody be awarded to the parent who showed the least interest in caring for the children. The important inquiries, after all, are the best interests of the child and, perhaps, the likely arrangement that nonstrategic parents would reach through bargaining or simple civilized accommodation. We can be fairly sure that neither of these inquiries leads to custody for the uncaring parent. But, as between joint custody and sole custody for the (past) primary caregiver, for example, the real question is which is likely to be a better (strong form) default rule.¹⁶ The modern trend seems to favor joint custody.

From the perspective of monitoring and bonding, a useful way to think of the preference for joint custody is that it assumes that two "partly" involved parents will invest more and better than one entirely responsible parent. A proponent of sole custody might have argued that a mother would now reduce her investment in emotional ties because she will see less of her child (when joint custody means that the child will be at the father's home instead of virtually entirely in her care as may have been the case sans divorce). If bonding theory can be taken to suggest this possibility, then I wonder how Brinig and Buckley might test it. Indeed, I wonder whether instead of looking at divorce rates as a function of joint-custody awards it might not be more revealing to compare divorce rates in those states most emphatically associated with joint custody, on the one hand, and those states with courts most likely to award sole custody to the mother or primary caregiver. Bonding theory could explain any result—but the results might tell us a great deal about which rule to prefer.

15. I say nearly worthless because a claim of interest might still lead the other party to fear that the strategic behavior would lead to true emotional ties—and then a genuine interest in one's judicially awarded share of custody, as opposed to an inclination to give it away after the day in court.

16. It is a default rule in the sense that the parties might agree on de facto custody arrangements that do not match those given by the law.

Note in this regard that a proponent of mandatory, sole custody for the mother or primary caregiver might argue that the father would still have an incentive to invest, predivorce, in the creation of emotional ties because mothers who care about their children and who read or absorb conventional wisdom will be happy to agree to de facto shared custody following the award to them by a court. The sole custodian will still want the other parent to be involved, and knowledge of this preference will cause the parent who expects to be denied custody to invest in emotional ties (because the investment will not be wasted). Indeed, the argument continues, mandatory sole custody need not seem inconsistent with monitoring theory because the noncustodial parent can expect to be able to monitor his expenditures when the other parent voluntarily includes him in postdivorce child rearing.

C. Custody Awards and Relocation

The preceding discussion suggests that, at least from the perspective of monitoring and bonding theories, the real difference between custody rules may materialize where postdivorce relocation is an issue.¹⁷ Virtually all custody arrangements that anticipate involvement by both parents are vulnerable to strategic threats on a variety of fronts, but those associated with relocation introduce a good deal of (previously unexplored¹⁸) complexity. More accurately, unless there is a fixed-custody rule—with no room for judicial or even privately bargained-for reconfiguration with respect to relocation—there is room for a parent to threaten to relocate (when the other parent can be expected to grant a concession in order not to lose access to the children). There may also be an opportunity for a strategic parent to exaggerate an objection to the other parent's relocation or even the possibility of both these threats. Additionally, there is the possibility of a threat and counterthreat of the kinds just sketched. The relocation threat can be thought of as a kind of moral hazard. The parent with sole or primary physical custody may be tempted to relocate in order to extract a concession from the other parent, in return for a promise not to relocate. The concession may involve enhanced support payments, alterations in visitation rights, or even modifications of legal custodial rights.

In the case of sole custody, the relocation threat is fairly straightforward because courts typically permit the sole custodian to relocate; relocation will not

17. I am assuming relocation to a distant location which makes an earlier sharing arrangement unworkable.

18. There is, however, very occasional mention of the problem of relocation threats. *See, e.g., D'Onofrio v. D'Onofrio*, 365 A.2d 27, 30 (N.J. Ch. 1976) (granting relocation or "removal" of children from New Jersey to South Carolina despite general "anti-removal" policy and noting that a factor for courts to consider in these matters is the "integrity of the noncustodial parent's motives in resisting the removal and . . . the extent to which . . . opposition is intended to secure a financial advantage in respect of continuing support obligations").

generally lead a judge to modify the preexisting sole custodianship.¹⁹ Indeed, a strategic sole custodian, who can make no credible threat regarding relocation, may be able to benefit by threatening to deny the other parent mere visitation rights. The threatened parent can appeal for judicial intervention, but courts have been reluctant to enforce visitation arrangements with alterations in financial support.²⁰

Most joint-custody arrangements will seem less vulnerable to strategic threats of relocation because as compared to a sole custodian, a relocating (joint-custody) parent, P1, is less securely in possession of custodial rights and is less likely to threaten the other parent, P2, with reduced access to children. But inasmuch as courts may in fact be sympathetic to the reasons for relocation—and may even grant increased custody rights to the relocating parent, P1²¹—a strategic joint custodian may gain by threatening relocation. We might think of this threat as more valuable the more P2 is risk averse, and therefore especially fearful that P1 will gain, rather than lose, custody rights to the children upon relocation. In turn, there is the possibility that P2 gains from strategically objecting to P1's (genuine or strategic) relocation more than P2 is otherwise inclined to object. P2 can threaten to object strenuously to the relocation in order to encourage the court to modify custodial rights in the conventional manner, favoring the "stable" nonrelocating parent.

It goes almost without saying that the solution to this problem of strategic threats regarding relocation would hardly seem to be a fixed rule in favor of nonrelocation, even though that is a rule that minimizes strategic threats. Such a rule is both unfair, especially to one who simply wishes to leave the jurisdiction she moved to for the sake of her (now ex-) spouse's career, and inefficient, by (geographically) locking in custodial parents in a world in which relocation is common. Moreover, to have the desired behavioral effect, such a lock-in rule would need to be absurdly inflexible, lest any room allowing the parties to bargain around it or appeal to a court for modification reintroduce the temptation to make threats. Even when both parents appeal to the court for relocation in the "best interests" of the child, their plea must be ignored if the goal is to eliminate strategic threats—because to allow such claims is to empower a parent to

19. See Brett R. Turner, *The Price of Stability: Recent Case Law on Relocation of the Custodial Parent*, 3 DIVORCE LITIG. 49 (1991). Note that although the discussion in the text generalizes about the relationship between custody regimes and relocation modifications, the analysis does not depend on the suggested links.

20. See IRA M. ELLMAN ET AL., FAMILY LAW 558-59 (2d ed. 1991). Reexamination of this potential link between visitation rights and child-support obligations appears, however, to be underway. See Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2475 n.210 (1995).

Note that the noncustodial parent may in some relationships be able to threaten that he will fail to visit as scheduled. The custodial parent may need some time alone or may be convinced that parental visits (even from a parent of this caliber) are important for the children's well-being and may, therefore, grant something material in return for timely visits.

21. See Nadine E. Roddy, *Joint Custody in the 1990s: Parental Relocation*, 6 DIVORCE LITIG. 193 (1994) (collecting cases dealing with relocation and joint custody).

threaten disagreement.²² I argued earlier that a fixed, or mandatory, rule as to custody might be defensible, despite the costs of inflexibility, but the suggestion now is that the case for a fixed rule regarding the effect of relocation, while similar in terms of reducing strategic threats, is much weaker.

The remaining question is whether these strategic-threat possibilities should lead us to prefer sole custody or some form of joint custody in the first place. If strategic threats of the kind imagined here are made only by persons with deficient personalities, then perhaps we should prefer sole custody because it reduces the probability of suffering at the hands of a strategic, mean-spirited player. After all, joint custody opens the door for all strategic parents, while sole custody gives the noncustodial parent little to play with. On the other hand, sole custody may be more dangerous than joint custody because it allows the simplest and most credible threat, relocation in a world where judges are likely to allow relocation with no loss of custodial rights.

Nor is the ease of ferreting out dishonest claims in court likely to make the case for one kind of custody or another. It is arguable that the strategic threats made possible by the sole-custody regime are easier to unearth in court because concessions made by the noncustodial parent may provide fairly good evidence of the earlier threat (to relocate) made by the sole custodian. But it may well be the case that concessions are (and will seem) benign. Imagine, for example, a mother who threatens to relocate, but reconsiders when greater support payments are promised. It is plausible that the inclination to relocate was motivated by the prospect of a better job and that this attraction was made less important by the ex-spouse's agreement to increase payments. All parties may now be better off than they would with relocation, and it will be difficult to distinguish this case from a hollower, strategic threat to relocate followed by identical negotiations.

The problems touched on here, which are obviously complex and require further study, make it apparent that relocation is an extremely difficult issue for normative thinking about custody rules. Here, empirical work could prove quite valuable as it might provide evidence regarding such things as the sensitivity of relocation decisions to custody rules, time lapses between divorces and relocations, and so forth. Without more information, it is obviously not possible to be more than suggestive. But, as a first cut, it seems that the choice is between reducing strategic threats and undoing the lock-in effects of a fixed rule in favor of nonrelocation.²³ If the modern trend is to permit relocation (which is to say to attempt not to penalize relocation), then the question is which custody rule minimizes the costs of strategic threats. Joint custody is attractive on this ground only if one is convinced that the increased credibility of threats by a sole custodian makes that rule relatively undesirable.

22. On the potential for strategic behavior under a best-interests standard, see Scott, *supra* note 11, at 653-54. As far as I can tell, relocation threats are virtually ignored in the literature (although it is possible that they are implicitly incorporated), and no one goes so far as to suggest a complete bar on relocation.

23. Thus, a joint, shared-custody rule, with parents alternating weeks or days of the week, that is revised against the relocating parent, locks in the parents much as older custody rules did.

In sum, there is a good case to be made for a mandatory custodial rule, but the introduction of (efficient and reasonable) relocation makes the precise character of the best rule unclear. Inasmuch as ours is a world in which people who are unconstrained by courts relocate with some regularity, it seems wise to consider some of the questions explored here when weighing the advantages of various custody regimes.

