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# Child Visitation and Performance: The Evidence

William S. Comanor\*

## I. INTRODUCTION

In her paper on the topic of child custody, Margaret Brinig asks whether joint physical custody is really in the best interests of the children.<sup>1</sup> To answer this question, she explicitly adopts an economic approach and employs an econometric model. Unfortunately, she gets the econometrics wrong, so her conclusions do not follow. Indeed, if her empirical tables indicate anything, they offer weak support for the joint custody regimes that she seeks to disparage.

At the outset of her paper, Brinig observes that two states, Iowa and Maine, have recently moved toward a presumption for joint physical custody.<sup>2</sup> And while most states do not provide an explicit preference, many encourage some form of shared custody.<sup>3</sup> She questions whether this trend is really in the best interests of children. While theoretical or psychological arguments can be made on both sides of this question, she acknowledges that the conflicting positions can be resolved only by looking at the evidence. On this point, I agree.

Where my differences arise is how we should interpret her statistical findings. In particular, what does her regression analysis really show? In this comment, I accept her statistical tables but ask what conclusions should be drawn from them.

## II. BRINIG'S EMPIRICAL METHODOLOGY

Brinig's objective is to discover whether children fare better with joint than single custody. For this purpose, she employs a national sample of junior high school and high school-aged

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1. Margaret F. Brinig, *Does Parental Autonomy Require Equal Custody at Divorce?*, 65 La. L. Rev. 1345, 1348 (2005).

2. *Id.* at 1355.

3. *Id.*

children,<sup>4</sup> but limits its scope to those living with their mothers and not their fathers. Based on her analysis, Brinig reaches the following conclusion:

[T]he worst situation for children was when they visited their fathers infrequently. Otherwise, however, there was no increase in custodial time that made a statistically significant difference . . . . The only exception to this rule appears . . . where children seemed less likely to engage in alcohol, tobacco, and marijuana use if they stayed with their father several times a month.<sup>5</sup>

To support these conclusions, however, Brinig merely refers the reader to her statistical tables and does not even describe her findings. Indeed, there is little discussion in her article of either her empirical methodology or results. An important function of this comment is to fill that void.

A striking feature of Brinig's approach is that it is limited to adolescents and ignores younger children. Yet, a parent's input is likely to be greater at younger ages. For this reason, her analysis cannot indicate the full effect of custodial arrangements.

Furthermore, Brinig's data fails to account for the length of time under which different custodial arrangements have lasted. We do not know if the children whose performance is described have lived with both parents for long periods of time, or never knew their father. This consideration is ignored in her statistics.<sup>6</sup> What we have instead is a "snapshot" of living arrangements, where there is likely as much hidden as revealed.

Even within this limited data set, Brinig restricts her approach still further. Out of the many possibilities included in the data, she deals with only four measures of child well being. These measures are: 1) depression, as measured on a psychological scale, 2) the number of times per month drugs, alcohol and tobacco were used, 3) "juvenile delinquency" as measured on a fifteen-point scale, and 4) morbidity as reflected by the chances of dying or being killed when young.<sup>7</sup> An obvious question is why she selected these four variables from the large number of possible alternatives. For example, she did not include teenage pregnancy rates or physical activity or scholastic achievement.

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4. See *id.* at 1364. In her analysis, Brinig utilizes the National Longitudinal Study of Adolescent Health as published by the University of North Carolina. These data were collected between 1994 and 1996, and between 2001 and 2002.

5. Brinig, *supra* note 1, at 1364-65.

6. *Id.* at 1371-78.

7. *Id.* at 1371-74.

The major difficulty with her analysis, however, is not with the dependent variables she selects but rather with her explanatory variables. Her primary variables reflect the number of times during the prior year that the child stayed overnight with his or her biological father.<sup>8</sup> As might be expected, nearly half of the valid observations in her sample indicate that they never did so. On the other hand, only fifteen percent report that they stayed overnight at least once a week, while an additional seven percent report staying overnight about once a month.<sup>9</sup> Thus, more than three-fourths of the respondents in her sample state that they rarely if ever spent long periods of time with their fathers. As a result, there are few observations from which to derive the impact of joint custody arrangements, which presumably would require substantial amounts of time with both parents. Given this shortcoming of her data set, she cannot measure the effects of visiting time with much precision. This being so, the fact that she reports largely negative results in which few variables seem to make a difference is expected, and follows from the limited number of useful observations included in her data set.

An even more important methodological issue arises from the nature of survey data. Invariably, as stated in an introductory econometrics text, "Even carefully constructed survey data do not always conform exactly to the variables the analysts have in mind for the regression . . . . At worst, there may be no physical measure corresponding to the variable in our model."<sup>10</sup> As a result, survey variables are inevitably measured with some degree of error. This factor is important because of the well-known econometric result that measurement error leads to estimated regression coefficients that are biased toward zero, a problem termed "attenuation."<sup>11</sup>

Note the practical effects of this problem. With measurement error, the regression estimates are biased toward zero so that finding a low coefficient that is not significantly different from zero may be due to measurement error rather than the absence of an underlying effect. Therefore, a regression coefficient that is significantly different from zero indicates that there is an underlying relationship in the data set that is strong enough to withstand any bias created by measurement error. On the other hand, finding a zero coefficient does not mean the reverse, that there is no underlying effect. *A non-significant variable does not indicate the absence of an underlying effect, which is precisely the error that Brinig makes.*

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8. *See id.* at 1371.

9. *Id.* at 1371, Table 1.

10. William Green, *Econometric Analysis* 435 (3rd ed. 1993).

11. *Id.* at 437.

## III. BRINIG'S EMPIRICAL RESULTS

For the most part, Brinig reports regression coefficients that are not significantly different from zero. However, and despite her discussion, these results do not indicate the absence of an underlying effect. Still, there are some conclusions that can be drawn from her results.

Since Brinig's focus is on the prospective gains from joint custody rules, her attention should be directed toward the final two categories in her sample, accounting for about fifteen percent of the observations, where the child or children remained with their father on average one or more times per week.<sup>12</sup> Since there are four dependent variables and two categories, there are eight reported coefficients. Of these eight coefficients, five have negative signs, which indicates that greater visitation frequency is less associated with the measured bad results. While five negative signs out of eight hardly indicate a clear effect, these findings suggest if anything that greater visitation frequency has a salutary effect on the performance of these children.

Far more striking are the estimated coefficients she reports that relate the child's answer of the following question to the selected measures of performance. The question is: "How close does the child feel to the biological father?" where a higher score indicates a more positive response.<sup>13</sup> The four reported coefficients for this variable are always negative, indicating beneficial effects, and always greater than their associated standard errors. Indeed, these coefficients are statistically significant at the conventional five percent level in three cases out of four, and statistically significant at the ten percent level in the final case. *Despite the presence of measurement error, and the resulting bias of the estimated coefficients toward zero, these results imply a significant beneficial effect for children with close ties to their father.*

The essential goal of joint custody arrangements is not as much to foster increased visitation, although that is a desirable effect, as it is to promote close family ties between the child and the absent parent. Brinig's data demonstrate the important effects of these ties. To the extent, therefore, that joint custody arrangements promote these ties, her empirical results support the adoption of these arrangements.

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12. See Brinig, *supra* note 1, at 1371, Table 1.

13. *Id.* at 1371-74, Tables 2-5.

## IV. CORRELATIONS BETWEEN VISITATION ARRANGEMENTS AND CHILD SUPPORT PAYMENTS

To study this relationship, Brinig gathers data from divorce settlements in Oregon both prior and subsequent to enactment of a statute promoting joint custody arrangements.<sup>14</sup> From these data, she reports that the new statute increased joint custody awards by about thirty percent,<sup>15</sup> but also led to differences in child support awards. Her conclusion follows: “[S]eparation after the custody statute took effect, holding other things constant, was statistically significantly related to a decrease in the absolute dollars of child support awards, with the difference of about eighty dollars a month.”<sup>16</sup> This amount represents a decline of about twenty-two percent. Brinig bemoans this result by suggesting that children are then forced to live in more meager circumstances.

The problem with Brinig’s argument is that it conflicts with the basic premise of a joint custody arrangement, which is that both parents accept the responsibility to directly support their children. The goal of these arrangements is precisely to promote continued and expanded contact with the nonresident parent, who will then provide for his child directly, as well as, through support payments. Assume that this arrangement is achieved and visitation is expanded. For purposes of discussion, let visitation expand by, say, 1.5 days per week. That amount of time could be represented by a Wednesday night and all day Saturday. One and a half days out of seven represents 21.4 percent of a child’s week, which is rather similar to the percentage decline in support payments that Brinig finds. Presumably, the father is supporting his child directly during this period of time. *The important point here is that lower child support payments do not necessarily mean lower support for the child.* Brinig’s discussion confuses these issues and fails to recognize that joint custody arrangements are designed specifically to promote the absent parent’s direct support for his children.

Equally significant is that Brinig’s data relate only to the amounts awarded and not the amounts actually paid. Since only thirty-five percent of all single mothers actually receive child

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14. *Id.* at 1365–67.

15. *Id.* at 1367.

16. *Id.* at 1368.

support payments,<sup>17</sup> regardless of any amounts awarded by the court, Brinig's findings largely miss the point. The relevant issue is the amount actually paid and not that which is awarded; and her data has no bearing on that factor.

This matter is important because there is considerable evidence that fathers who see their children more frequently make child support payments more regularly than fathers who do not. Seltzer reports data from a national survey conducted in 1987–88 which indicate that only sixteen percent of fathers who do not see their children pay any support, while sixty-four percent of fathers who see their children more frequently than several times a year do so.<sup>18</sup> Another study examined the relationship between joint custody arrangements and support payments.<sup>19</sup> The authors report that “joint custody increases the regularity of voluntary transfers by 19 percent and the regularity of mandated child support by 8 percent.”<sup>20</sup> There is evidence that joint custody arrangements lead to support payments that are more frequently paid, so Brinig's finding regarding the amounts that are awarded is of little consequence.

#### V. SOME CONCLUSIONS

Toward the end of her paper, Brinig disparages the movement toward joint custody by raising as many questions as she can. She writes that this trend “is likely to harm children in many ways,”<sup>21</sup> but then relies on varied suppositions rather than actual evidence. The three sentences that follow this statement all start with the words “they may,” which simply indicates her lack of evidence.<sup>22</sup> What is striking is that her conclusions rest so little on the evidence she seeks to provide.

Brinig's conclusions are directly opposite to those of Geoffrey Miller, who instead offers an extensive review of the relevant social science literature.<sup>23</sup> He details the major problems

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17. William S. Comanor, *Child Support Payments: A Review of Current Policies*, in *The Law and Economics of Child Support Payments* 5–7 (William S. Comanor ed., 2004).

18. Judith A. Seltzer, *Relationships Between Fathers and Children who Live Apart: The Father's Role after Separation*, 53 *J. Marriage & Fam.* 86 (1991).

19. Daniela del Boca and Rocio Ribero, *Transfers in Non-Intact Households*, 9 *Structural Change and Economic Dynamics* 469–78 (1998).

20. *Id.* at 477.

21. Brinig, *supra* note 1, at 1369.

22. *Id.*

23. Geoffrey P. Miller, *Parental Bonding and the Design of Child Support Obligations*, in *The Law and Economics of Child Support Payments* 210–33 (William S. Comanor ed., 2004).

associated with parental absence and concludes: "child support obligations [should] . . . reflect patterns of visitation by non-custodial parents."<sup>24</sup>

Brinig's paper is discouraging, because it rests so much on her prior beliefs and so little on the evidence she seeks to provide. Policy-makers require a stronger foundation for their decisions.

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24. *Id.* at 229.

