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## Sharing Parenthood After Divorce

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**Sharing Parenthood After Divorce: An Enlightened Custody Guide for Mothers, Fathers, and Kids.** By Ciji Ware. New York: The Viking Press, 1982. Pp. xvii, 339, appendices, index. \$14.95.

Reviewed by CAROL SANGER\*

Ciji Ware's first sentence in the popularly publicized *Sharing Parenthood After Divorce* directs the reader to "read this book before you hire a lawyer." Because many separated and divorced parents will follow Ware's instruction, family law practitioners should be aware of Ware's approach to and recommendations regarding custody. Her position is clear. The book is subtitled *An Enlightened Custody Guide for Mothers, Fathers, and Kids* and the meaning of "enlightened" is apparent from the title of Part One, "Why You Should Choose Shared Custody." But because her message is sometimes more enthusiastic than considered, lawyers and parents should be aware not only of Ware's conclusions, but of their limitations as well.

*Sharing Parenthood* consists of three sections: "Why You Should Choose Shared Custody," "How You Can Work Out a Shared Custody Arrangement," and "Living With Shared Custody." Each section is divided into five chapters with snappy titles (Back-Seat Daddies; Negotiate, Don't Litigate; Designing a Shared Custody Parenting Plan: So Wadda Ya Want?) and snappier opening summaries ("The Nuts and Bolts Department," "Prepare to Meet Thy Former Spouse"). Ware offers advice on almost every phase of planning and implementing a shared custody arrangement. She combines information from several sources — anecdotal accounts of divorced parents, her own custody story, interviews with family lawyers and therapists, and evaluations of the current, and limited, social science data on the effects of divorce and custody. Her relentless pop-vocabulary suits the book's generally cheerful presentation. But the upbeat tone, which readers may find either engaging or extremely irritating, is more than stylistically significant. The tone relates directly to the substance of her message and to its flaw — that shared custody is best for everyone.

Ware presents parents with workable, perhaps preferable alternatives to the traditional, often inappropriate responses of the legal and

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social systems in which custody decisions have been shaped and implemented. Shared or joint custody itself has been, until recently, such an alternative.<sup>1</sup> Early in the book Ware attempts to pry parents away from any assumptions about their post-divorce custody roles. She urges women not to choose sole custody as a measure of power over a husband or as an affirmation of mothering abilities. The first motive ignores the significant findings of Drs. Judith Wallerstein and Joan Kelly, directors of the five year California Children of Divorce Project that children who maintain good relationships with both parents during and after divorce are less likely to suffer developmental interference and psychological distress.<sup>2</sup> The second motive leads to what Ware refers to as "single mother martyrdom," the status of women who have "won" custody and who, due to generally low levels of child support, also have to work outside the home.<sup>3</sup> Ware suggests that fathers, on the other

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<sup>1</sup> Ware defines *shared custody* as joint physical and legal custody, and *genuine shared custody* as "any time-sharing formula that has, as an *operating premise*, the commitment of both parents to be involved in all important decision making regarding the children, and to maintain as much frequent and continuing physical contact as circumstances and geography allow." C. WARE, *SHARING PARENTHOOD* 15-17 (1982) (emphasis in original) [hereafter C. WARE]. This comports with CAL. CIV. CODE § 4600(a) (West Supp. 1983) which states that "it is the public policy of this state to assure minor children of frequent and continuing contact with both parents . . . and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy." Joint custody is defined as "an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents." CAL. CIV. CODE § 4600.5(c) (West Supp. 1983). The court may, however, award joint legal custody without awarding joint physical custody. *Id.* The terms "joint" or "shared" custody as used in this review will refer to Ware's "genuine" shared custody, which also reflects the public policy of the state. For proposed legal definitions of joint and sole legal and physical custody, see Cal. A.B. 238 (1983) (Harris).

<sup>2</sup> C. WARE, note 1 *supra*, at 75-94; J. WALLERSTEIN & J. KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* 316 (1980) (reviewed by Bruch, Book Review, 79 MICH. L. REV. 708 (1981)).

<sup>3</sup> C. WARE, note 1 *supra*, at 45. In D. CHAMBERS, *MAKING FATHERS PAY* (1979), Professor Chambers analyzes the economics of divorce. His study of child support payments in Michigan reveals that when there is no increase in family income following divorce, the standard of living of only the women and children decline, even when the father is making payments. *Id.* at 48. When women supplemented support payments by working outside the home, the family's standard of living was still much lower than it was before divorce, due largely to the lower earnings received by women. *Id.* at 53. For many divorced women, particularly those not employed at the time of divorce and those with very young children, public assistance (an alternative not mentioned by Ware), provided the primary, though modest income for the family. *Id.* at 58-63. Only women

hand, may be unused to thinking of themselves in a significant post-divorce parenting role and she urges wives to emphasize to their former husbands the importance to both father and child of a continuing father-child relationship.<sup>4</sup>

Many of Ware's suggestions, from her consumer oriented approach in hiring an attorney to the importance of involving the extended family in custody arrangements,<sup>5</sup> foreshadow issues to be faced by parents in the unfamiliar zone of divorce and custody resolution. Ware does more than list issues. As the title word "Guide" promises, she leads parents through the chronological and to some extent psychological stages of a custody determination. Useful quizzes and questionnaires are included

who remarried were able to maintain their pre-divorce standard of living.

In warning mothers of the burdensome consequences of "single mother martyrdom," Ware notes that "[i]ronically some feminist organizations . . . counsel women to use child custody as a means of gaining leverage in fights with their former husbands about money or control . . ." C. WARE, note 1 *supra*, at 45. Ware thus apparently disapproves of women agreeing to joint custody as a means of obtaining increased support, which Ware has already described as "minor or non-existent." *Id.* at 44. She next states that "many women are understandably suspicious that joint custody may be merely another trick by men who . . . want to pay less child support." *Id.* at 45. But if their suspicion is "understandable," then perhaps women should not be faulted for trying to secure more satisfactory levels of child support.

Is there support for the "understandable suspicion"? Under the heading "Financial and emotional truths about divorce and fathers," Ware repeats that in the traditional "custody to mother, visitation to father arrangement,"

[Fathers] quickly discover it takes an estimated 25 to 35 percent more income to support two households, and that it is the man's income that will most likely be tapped for the difference. In addition, they find that some courts allow ex-wives, under certain circumstances, to share a husband's pension benefits acquired during the marriage and even share in his *future* earnings from projects conceived or executed during the marriage.

*Id.* at 60 (emphasis in original). Fathers could well conclude from this description of "financial truth" (which is silent as to comparative sizes of parental income or as to the nature of marital property law, which actually controls pension division without regard to custody dispositions) that joint custody may be less onerous financially. Ware seems to be sending very mixed messages to each parent about the other's possible economic motives.

<sup>4</sup> Ware's description may be outdated, as fathers are increasingly seeking custody of their children. Chang & Deinard, *Single-Father Caretakers*, 52 AM. J. ORTHOPSYCHIATRY 236, 236 (1982). She may, however, be referring to noncustodial fathers who are already in the role of visitor. See SURVIVING THE BREAKUP, note 2 *supra*, at 121-31.

<sup>5</sup> Involvement by the extended family, such as caretaking by grandparents, may provide valuable continuity in a shared custody arrangement. Steinman, *Joint Custody: What We Know, What We Have Yet to Learn, and the Judicial and Legislative Implications*, *this issue supra* 739, at 753 [hereafter Steinman].

throughout for parents to evaluate their sensitivities and involvement on various custody issues.<sup>6</sup> For parents still involved in the stressful crises of marital separation (a condition Ware refers to as being “certifiably wacko”) these exercises encourage a more detached consideration of issues and choices rather than impulsive or emotional response.<sup>7</sup> For example, before instinctively demanding sole custody, Ware’s quizzes require parents to calculate how much time they currently spend with their children and in what activities, how parental use of time may differ as a single person, and how these differences relate to custody preferences and possibilities.

Similar exercises, such as “Am I Ready to Mediate?,” appear in the chapter on custody mediation in which Ware discusses the benefits of alternative forms of dispute resolution — arbitration, conciliation, and mediation. She supplements these materials with useful appendices containing national and state divorce mediation sources, and a bibliography<sup>8</sup> containing references on divorce mediation. The book thus offers more than an introduction to the notion of a nonadversarial (or less adversarial) process, but a sense of how the process works, as well as names and addresses to contact when getting started.

Because continued involvement in important decisions concerning the child is a premise of shared custody, communication is central not only to the development of a custody plan, but also to its maintenance. Much of Part Three, “Living With Shared Custody,” is devoted to facilitating the on-going contact between divorced parents sharing children. Ware gives pointers on which clothes to divide, how to plan

<sup>6</sup> Similar exercises are found in an earlier book on custody, P. WOOLLEY, *THE CUSTODY HANDBOOK* (1979). Although Woolley also recommends shared custody, she is less evangelistic than Ware, acknowledging that “shared custody is [not] the only valid means of raising youngsters once the nuclear family has divided . . . . It is important, however, to explore the options that are available so that you can make an informed choice . . . .” *Id.* at 28.

<sup>7</sup> Even for clinicians, assessing the potential of parents for successfully entering into a joint custody arrangement is extremely difficult during the acute phase of separation crisis. Steinman, note 5 *supra*, at 751.

<sup>8</sup> Three of the book’s four appendices, Divorce Mediation Services, Sample Shared Custody and Property Settlement Agreement, and Suggested Readings, are useful. The fourth, Shared Custody Laws in the United States, lists each state under one of three broad headings — states with joint custody laws, states supportive of joint custody, and states hostile to joint custody, thus providing only the vaguest sense of what the law is in a specific jurisdiction.

The index is generally helpful, despite the inclusion of such entries as “*New York Times*, *The*, 287” where one reads “As one parent in an extended family explained frankly to a *New York Times* reporter . . . .”

birthday parties, and what rules to follow regarding pick-ups and deliveries of children. Socks get an entire paragraph because "in a joint custody household, missing socks can literally drive parents around the bend."<sup>9</sup> The recommended solution is for each household to have many, many cheap socks, and not to worry when they disappear. I read this paragraph with conflicting responses. Either Ware is giving parents valuable advice, or any arrangement which may self-destruct when socks get lost is not on sure footing to start.

Perhaps more important than these suggestions from the "Nuts and Bolts Department" are the two chapters devoted to successful bargaining techniques. These chapters again focus on the process of dispute resolution. While they may suffer from the same pop-language zest which pervades the book (for example, a goal of the techniques is to transform oneself from a "Passive Papa" to a "Straight Shooter Spouse"), they underscore for parents the continuing obligations, interactions, and skills required in a joint custody arrangement.<sup>10</sup>

For parents attempting to order their own and their children's lives during and after divorce, Ware's emphasis on the *process* of negotiating a custody plan is the book's most valuable contribution, or "tip" as she would probably prefer. Ware states the alternative to a cooperative approach bluntly: let strangers within the adversary legal system declare one parent the winner. As Mnookin and Kornhauser discuss in "Bargaining in the Shadow of the Law: The Case of Divorce," private ordering (private decisions with legal effect reached between the parties) is particularly appropriate in formulating a custody plan.<sup>11</sup> Private ordering will more likely result in a product respected and upheld by the parties which they have created through a process more harmonious,

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<sup>9</sup> C. WARE, note 1 *supra*, at 228.

<sup>10</sup> Although Ware does not directly discuss what should happen when "Win-win Negotiating" fails, she includes two sample custody agreements which contain future dispute provisions stating that before either party seeks modification from a court, the parents will try to resolve the conflict through mediation. *Id.* at 211-19 and appendix c. Another alternative to unresolved parental disputes in joint custody arrangements has recently been proposed in the California Legislature. In cases in which the parties have failed to allocate residual decision making authority in their agreement, the proposal would place residual authority to make decisions in the parent with physical custody. Cal. S.B. 452 (1983) (Torres).

<sup>11</sup> Mnookin & Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 955-56 (1979). Although courts in most cases will approve private custody settlements, continued judicial distrust of parental agreements may be reflected in a double standard of review used for modifications. Sharp, *Modification of Agreement-Based Custody Decrees*, 68 VA. L. REV. 1263 (1982).

and cheaper, than litigation.<sup>12</sup> The result will also be superior to a court-ordered plan since parents generally know more about their own preferences, abilities, and children, than does the judge.<sup>13</sup> Thus, although no bargaining process is free from influences of legal rules, finances, emotions, or negotiation skills, custody plans privately developed and agreed to by the parties should result in a better product for the children and for the parents responsible for both the plan and the children. *Sharing Parenthood*, however, fails to separate process from result. Ware presents negotiation and mediation not merely as a superior process of dispute resolution, but as the means to a superior and specific result, shared custody.

To demonstrate the superiority of a shared arrangement, Ware relates the experiences of numerous divorced couples. For some readers the accounts of the "34 year old man I shall call Grant Treadwell"<sup>14</sup> and others may be personalized and inspiring, and therefore an effective means to reach many currently despairing over a custody situation. But I found statements such as "What was most surprising to Jo Ann was that the hostility she and Conrad had felt for each other had virtually disappeared,"<sup>15</sup> or "Don and Sara Gilbert and thousands of shared custody pioneers did [learn to work together]"<sup>16</sup> overly testimonial. Jo Ann and Conrad, and Don and Sara probably did improve their lives through shared custody, but their experiences seem too selected and personal for wider applicability.

Ware's own successful shared custody experience is also suspect as a basis for general comment. First, as a successful journalist she seems removed from the economic stresses many divorcing couples face. Ware's Parent's Time Survey, an exercise designed to reveal how much workday time a parent can spend with a child, showed that on days when Ware had custody of her son Jamie, she spent a total of about five hours in her home studio writing, broadcasting, and returning telephone calls. Ware's job and economic status seem in part related to her success as a co-parent. Yet for those with more traditional work schedules and environments; and unable to obtain a more flexible situation, Ware's example may be enviable but isolated. In one of the few cases in which income was directly related to shared custody arrangements, Ware relates the story of a father who could not afford to hire after-

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<sup>12</sup> Mnookin & Kornhauser, note 11 *supra*, at 956-58.

<sup>13</sup> *Id.*

<sup>14</sup> C. WARE, note 1 *supra*, at 55.

<sup>15</sup> *Id.* at 50.

<sup>16</sup> *Id.* at 17.

school help and so left his nine and eleven year old children alone for two hours every weekday. The father reported that as a result of the arrangement, his children were responsible and helped each other with their homework. Perhaps independence and cooperation did result for these children, but it is also possible that they may have been put at some risk because of a custody plan lacking adequate economic support. Of course, similar childcare problems exist for married working parents.<sup>17</sup> The example is used not to make a judgment about a particular shared custody arrangement, but rather to illustrate Ware's persistence in drawing only positive conclusions about shared custody. Her discussion of factors such as economics which parents should consider when evaluating a custody plan might be more useful if presented more neutrally.

A second basis of skepticism regarding the author's personal example is that Ware's evaluation of her own experiences may not always be accurate, and because she culls from her experience advice for others, that advice may be erroneous. In the chapter on age-appropriate sharing plans, Ware describes how her son Jamie, on turning age seven, began regularly forgetting his belongings as he traveled the mile-and-a-half distance between his parents' homes, spending Tuesdays and Thursdays with his father. "Alarmed by his apparent confusion," Ware and her former spouse proposed to their son that he alternate homes on a weekly basis, a proposal rejected by Jamie who replied, "Oh, no! Then I would miss both of you too much." Ware concluded from this that, "Our son was apparently going through a quite normal phase — for him — of 'the forgets.'"<sup>18</sup> The lesson she draws from the episode is that parents "should get the facts" before making any assumptions when a "snag" in a particular plan develops. But is Ware's diagnosis correct? Dr. Susan Steinman, director of a two year study on joint custody families, reports that although most children in the study were able to handle switching homes, two groups were not and exhibited anxiety, forgetfulness, and instability.<sup>19</sup> One of the groups was seven- to nine-year-old boys. Maybe Jamie was simply undergoing "the forgets" (whatever that is), as Ware concludes. On the other hand,

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<sup>17</sup> Although the *parens patriae* power of the state to intervene on behalf of divorced parents properly exceeds permissible intervention into the workings of an intact family, requiring divorced couples to be "super parents" may not be justified in terms of actual detriment to the child or in a court's ability to assess and supervise a specific custody plan. Kelly, *Further Observations on Joint Custody*, *this issue supra*, 762, at 769.

<sup>18</sup> C. WARE, note 1 *supra*, at 172.

<sup>19</sup> Steinman, *The Experience of Children in a Joint-Custody Arrangement: A Report of a Study*, 51 AM. J. ORTHOPSYCHIATRY 403, 408 (1981).

he may have fit into a category, apparently not uncommon for his age and sex, in which switching homes was in fact burdensome and perhaps inappropriate. Because Ware characterizes his behavior as a snag to which his parents wisely did not overreact, she may encourage other parents to make less of signs of discomfort relating to shared custody than is properly indicated.<sup>20</sup>

To be clear, I do not fault Ware for personally choosing or generally advocating joint custody. The research of Wallerstein and Kelly reported in *Surviving the Breakup*<sup>21</sup> documents the serious and varied detrimental effects of the divorce process on children. But Ware overstates her case. In addition to the limited applicability of the personal experiences recounted in *Sharing Parenthood*, Ware selectively and uncritically uses the available social science information to fortify her theme that shared custody is best. For example, Ware reports that in a recent California study, only sixteen percent of families with joint custody orders returned to court to relitigate custody issues, as compared with thirty-two percent of sole custody parents.<sup>22</sup> Because relitigation was viewed as an objective measure of parental conflict, the researchers concluded that a joint custody arrangement was more beneficial in terms of lack of subsequent parental conflict and thus an indication of the success of the scheme.<sup>23</sup> But is lack of parental conflict so clearly a measure of success of a joint custody plan? The study did not record or differentiate among the physical or decision making involvement actually practiced by subject families. The families were designated as sharing parenthood because they had been awarded legal joint custody. But whether they were engaged in the genuinely shared parenting process advocated by Ware is unknown. Without knowing more, the lower relitigation statistics might reflect a lack of involvement rather than a lack of conflict. Moreover, while the joint custody *parents* may have been more satisfied because their own parenting and scheduling needs were accommodated, the physical and psychological burdens of the arrangement may have been passed down to the joint custody children. In short, relitigation may not measure success as the plan is experienced by children.

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<sup>20</sup> Steinman reports that a parent's perception of a child's adjustment may be distorted by the parent's own satisfaction or dissatisfaction with the custody arrangement. Steinman, note 5 *supra*, at 760-61.

<sup>21</sup> SURVIVING THE BREAKUP, note 2 *supra*.

<sup>22</sup> C. WARE, note 1 *supra*, at 102-03.

<sup>23</sup> Ilfeld, Ilfeld & Alexander, *Does Joint Custody Work? A First Look at Outcome Data of Relitigation*, 139 AM. J. PSYCHIATRY 62 (1982).

Similarly, Ware's statement that "It is within your power to make shared custody work for your family,"<sup>24</sup> does not accurately reflect information now available on shared custody. Shared custody is not the best arrangement for *all* families, a fact recognized by Wallerstein and Kelly, who assessed the parents of only one-fourth of the children in their study as appropriate candidates for joint custody;<sup>25</sup> and by Steinman, who reported that one-third of the children in her study were "overburdened by the demands of the arrangement."<sup>26</sup> By stressing the power of a positive attitude as a key to successful and shared parenting, Ware confuses actual likelihood of success with optimism. As Steinman has concluded, joint custody is at greatest risk of failure when it is ordered based on the *hope* that parents will learn to cooperate.<sup>27</sup> Currently, factors more reliable than hope are emerging as indicators of when joint custody will work. These factors include similar parental views on raising children, parental respect for one another as parents, parental flexibility in behavior, children's age, and geographical distance between homes.<sup>28</sup>

By presenting shared custody as the resolution of choice for all families of divorce, Ware contributes to an undermining or distortion of the process of private ordering. That process is favored because it allows the participants, rather than a less informed, less accountable judicial system, to structure a family's post-divorce lives. But parents who negotiate toward joint custody with an incomplete or overly optimistic view of its components may agree on a plan not indicated by the characteristics and circumstances of their own family. In response, it has been argued that even if parents should err in their conclusions, so will judges, and therefore parents should have the primary authority to decide.<sup>29</sup> The answer is not, of course, to reinstate or to prefer judicial decision making in this area. Rather, lawyers, therapists, mediators,

<sup>24</sup> C. WARE, note 1 *supra*, at 17.

<sup>25</sup> SURVIVING THE BREAKUP, note 2 *supra*, at 310.

<sup>26</sup> Steinman, note 19 *supra*, at 414.

<sup>27</sup> Steinman, note 5 *supra*, at 751. A distinction might be that while Steinman refers to court-ordered sharing, Ware discusses shared custody negotiated by the parties. Steinman states, however, that even a negotiated agreement does not necessarily mean the parents have the resources to implement joint custody. *Id.* On the other hand, Wallerstein and Kelly report some evidence that legal accountability may bolster psychological and financial responsibility. SURVIVING THE BREAKUP, note 2 *supra*, at 310. Professor Chamber's research also suggests a tentative link between visitation and child support payments and concludes that "[paternal] involvement [with their children] is a good sign for high lifetime payments." MAKING FATHERS PAY, note 3 *supra*, at 127-29.

<sup>28</sup> Steinman, note 5 *supra*, at 745-46, 752-57.

<sup>29</sup> Mnookin & Kornhauser, note 11 *supra*, at 958.

judges, and journalists should attempt to provide parents with as much accurate information about the factors more likely to secure a *successful* shared custody arrangement.

Carefully packaged books like *Sharing Parenthood* may also influence individual choice indirectly as well as directly. When a popular idea becomes a legal rule, its impact on subsequent private decision making increases.<sup>30</sup> For example, California has enacted legislation creating a presumption that joint custody is in the best interests of children when parents have agreed to such an award either privately or in open court.<sup>31</sup> Further, joint custody may be awarded upon the application of only one parent. Such legislation surely influences the process of private ordering, perhaps encouraging joint custody by "agreement" since the law may throw a very deep shadow when one form of custody is obtainable without mutual parental consent.<sup>32</sup>

In the absence of parental agreement, would a legal presumption for joint custody be warranted? Steinman's evidence indicates it is not.<sup>33</sup> The effects on children of joint custody ordered or agreed to as a result of the legal presumption will likely be unknown until the first sets of shared children have matured. What can be observed now is the process whereby popular opinion and commentary may influence legislation which in turn influences private negotiation. Thus, sources that initially influence individual opinion reappear to influence private ordering indirectly at the last stage. Informative, accurate contributions to the decision making process, at whatever stage, should enable parents to resolve the difficult problem of restructuring a family more successfully.

*Sharing Parenthood* is informative; the book breaks down the overwhelming issue of custody into chronologically, psychologically, and structurally smaller, more manageable parts. But its accuracy is

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<sup>30</sup> Urging consideration of specific factors likely to contribute to a successful joint custody plan, Benedek and Benedek write that: "It is natural that the appeal of joint custody has been embraced by the popular press. The possible impact cannot be ignored because laypeople and judges alike are more likely to read and respond to newspapers and magazines than to scientific journals." Benedek & Benedek, *Joint Custody: Solution or Illusion*, 136 AM. J. PSYCHIATRY 1540, 1540 (1979).

<sup>31</sup> CAL. CIV. CODE § 4600.5(a) (West Supp. 1983).

<sup>32</sup> If a parent unreasonably withhold consent to joint custody, an award of joint custody over the objection of that parent may be justified despite the continuing friction between parents. Kelly, *supra* note 17, at 769 (asserting that women particularly withhold consent improperly). *Contra*, Committee on the Family, *Divorce, Child Custody, and the Family*, 10 GROUP FOR THE ADVANCEMENT OF PSYCHIATRY 785 (1980); Steinman, note 5 *supra*, at 751. Moreover, parental hostility decreases significantly in the first year following divorce. Kelly, note 17 *supra*, at 763.

<sup>33</sup> Steinman, note 5 *supra*, at 758-60.

clouded by Ware's premise that "perhaps we have come to a time when, unless there are compelling reasons to the contrary, asking for *anything less* than shared custody will be considered a form of child abandonment, and asking anything more than shared custody, a form of child abuse."<sup>34</sup> Against that philosophical backdrop Ware is unable to evaluate objectively the different parts of a custody decision as they relate to the final plan. No factor, whether geographical distance, child's age, relations between parents, or location of socks is insurmountable.

For some families, a shared living arrangement which provides continued natural contact and involvement between children and their divorced parents, a "binuclear family structure,"<sup>35</sup> is the superior form of custody. Even for families whose parents, children, and circumstances are less than clinically indicated, shared custody might be a less detrimental alternative to traditional sole custody.<sup>36</sup> That determination would depend on knowing whether the reported negative consequences of sole custody — depression, guilt, sense of loss — are worse for most children in duration and impact than the reported negative consequences of shared custody — confusion, anxiety, and conflicts of loyalty. But if parents are allowed to structure their own custody plans, aided by knowledgeable professionals the parents choose to involve, there is no need to rely on the least detrimental approach. Parents can instead order their own and their children's post-divorce lives guided by their needs and preferences as well as by the developing responsible literature on shared custody.

Returning to Ware's opening directive, parents facing a custody decision or dissatisfied with present custody arrangements probably should read *Sharing Parenthood*. They will learn that alternatives exist to litigation and to sole custody with visitation two weekends a month. But parents who want to make an informed decision, not just an enthusiastic or stylish one, will have to learn more.

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<sup>34</sup> C. WARE, note 1 *supra*, at 71 (emphasis in original).

<sup>35</sup> Ahrons, *The Continuing Coparental Relationship Between Divorced Spouses*, 51 AM. J. ORTHOPSYCHIATRY 415-25 (1981).

<sup>36</sup> The least detrimental alternative analysis was developed in J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 53-54 (1973). Although their procedural analysis may survive, their theory (the preference for one parent with extensive and exclusive decision making power) is being challenged, if not dismantled, by the more recent studies on the effects of divorce. *SURVIVING THE BREAKUP*, note 2 *supra*, at 311.