

# ***DANGEROUS IDEAS ABOUT MOTHERS***

**EDITED BY CAMILLA NELSON & RACHEL ROBERTSON**



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# **Domesticating Violence**

## **Reading the Politics of the Family Court into the Luke Batty Coronial Inquest**

*Alecia Simmonds*

We all know the story by now: the unnatural stillness of a near-empty cricket pitch at night; the little boy who asks his mum if he can stay back for a few minutes to practise in the nets with his dad; the bat to his head; the knife to his neck. The figures in the story have become household names. Rosie Batty – a mother whose monumental dignity in grief we witnessed from our lounge rooms as she spoke quietly of domestic violence the day after her son’s death. Luke Batty – the sunny 11-year-old child with sandy eyebrows and a wide smile killed by the man who had spent years brutalising his mother. And Greg Anderson – father of Luke and estranged partner of Rosie, whose mental delusions left him unemployed and living out of his car. Greg’s conceits were warped, violent and murderous; he was convinced that he had divine powers. The tabloids called him a monster.<sup>1</sup>

We also know where to place the story; we know the genre. ‘I’m one of those horror stories’, Rosie thought on the night that it happened.

I’d joined the ranks of the mother that had her three children driven into a lake. I’d joined the ranks of the mum whose little girl was

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thrown over the West Gate Bridge. I'm one of those worst things that have ever happened. Oh God I've become that woman.<sup>2</sup>

We scan the collective repertoire of murder narratives in an attempt to find meaning and retrieve words like 'unfathomable', 'unbelievable' and 'tragedy'. How a father could kill his own son defies human reason. And yet we put the law – that supposed embodiment of perfect reason – to work on the issue: what could have been done to prevent this from happening? We hold the two narratives in uneasy tension: there is no way to predict the actions of a monster, but let us prepare for his next unannounced visit. 'No one person or agency could have reasonably been expected to foresee [the attack]', declared State Coroner Ian Gray when delivering his more than 100-page findings into Luke's death, but what were the missed opportunities for state agencies to intervene?<sup>3</sup> The findings of the coronial inquest into the death of Luke Batty focused on police responses to domestic violence, the inadequacies of the Department of Human Services' child protection policies, the need to amend the *Bail Act* and, ultimately, the need for an integrated response to families who are victims of domestic violence across the multiple jurisdictions with which they are engaged, including the magistrates courts, criminal law, family law, child protection and police.<sup>4</sup>

Yet curiously, in her response to the inquest, Rosie Batty focused on one area that the inquest all but ignored: she told the court about the 'unbearable' toll that custody visits placed on her and Luke. 'It seems to be that the perpetrators have rights that are not right for the child.'<sup>5</sup> Rosie previously told the inquest that she had believed it was very important for a child to have access to both parents, and, in so doing, subscribed to the myth that violent men could still be good fathers.<sup>6</sup> Further, that it was her responsibility as a mother to foster the father-son relationship, even if it meant being vulnerable to Anderson's violence.

I'd like to pick up on this statement of Rosie's to take the story out of the realm of the unutterable and into the realm of the banal. Like most of us, Rosie believed that healthy child development depended on having access to both parents, a belief that's given legal enforcement in the Family Court.<sup>7</sup> And, to this end, there is nothing

inexplicable about her story; it is rather the extreme end of a cultural script that the Family Court writes for all separating parents: it is in the best interests of the child, the law tells us, for shared parenting to be encouraged.<sup>8</sup> This ‘social fact’ operates as a rebuttable legal presumption which usually places the burden of proving otherwise on the (often abused) mother and her child. It mistrusts women who seek to protect their child by claiming sole custody – labelling them as alienating or hostile – and expects mothers and children to sacrifice their safety to the rights of the father. Without diminishing the horror of Rosie’s story, I would like to re-read the Inquest Report with a view to identifying these quotidian ‘truths’ within it, and, in so doing, highlight the everyday labour of motherhood imposed upon women by legal fantasies of the harmonious post-divorce nuclear family.

In late 2001, Rosie Batty looked upon her swelling stomach with surprise. She was 39, happy to not have kids, and her relationship with the father of the child had been short-lived.<sup>9</sup> The Inquest Findings tell us that by the time Luke was born in June 2002, ‘Ms Batty and Mr Anderson did not have any relationship, other than Mr Anderson being Luke’s father’.<sup>10</sup> The relationship had not survived Greg’s physical and psychological abuse. Yet Rosie says that she ‘never had any doubt in [her] mind that Luke should know his father’.<sup>11</sup> Rosie was Luke’s primary caregiver and in 2006, following legal advice, she signed consent orders at the Family Court of Australia that allowed Greg weekly access to Luke. She told the inquest that she thought she should

set aside animosity and acrimony between Greg and I for, um, what I believe was the best interests of Luke. I said to myself that this is a journey and that I’ll keep doing things that feel right until they don’t feel right anymore.<sup>12</sup>

Rosie spoke with the kind of magisterial self-possession for which she has become nationally renowned, yet is betrayed here by her choice of words. Appropriating the explicitly legal phrase ‘the best interests of the child’, she stumbles as she tries to fit what has become universal legal dogma into her description of a unique journey mapped according to

her personal beliefs that her child should know his father, regardless of the cost to her as a mother. Of course, like all of us, Rosie was a creature of her time. She converts ideology around the need for shared parenting into a personal journey, something that she could alter when ‘things don’t feel right anymore’. In reality, if Rosie had sought to gain sole custody in her 2006 application to the Family Court, she would have faced substantial evidentiary burdens, a legal culture suspicious of her intentions and judges who presumed to know more than she did about the welfare of her child.

Rosie stood before the Family Court of Australia in 2006, the year that John Howard introduced the *Family Law Amendment (Shared Parental Responsibility) Act*. By then, the fathers’ rights lobby had been campaigning for joint-custody rights since the mid-1980s and their narratives of fathers and children thwarted by vindictive mothers had gained significant media traction.<sup>13</sup> Their first win came in 1995, when the wide discretion that Family Court judges had in determining the best interests of the child was constrained by legislative reforms Keating had introduced, promoting the notion that it is in a child’s best interests to be cared for by both parents, subject to the child’s best interests.<sup>14</sup> Howard’s 2006 Act built on this by reifying shared parental responsibility as constitutive of the child’s best interests. The first primary consideration for judges was now the ‘benefit to the child of having a meaningful relationship with both parents’ and the second primary consideration was the ‘need to protect the child from harm caused by violence, abuse or neglect’.<sup>15</sup> As scholars have pointed out, these reforms were made in the absence of any empirical evidence suggesting either the need for change or, foundationally, that shared parenting is necessary for a child’s development.<sup>16</sup> Indeed, the extant studies on the relationship between shared parenting and the quality of the relationship between a child and parent are mixed. Far from being essential, shared care in cases of very young children, Jennifer McIntosh found in a four-year study, caused ‘repeated disruption to the primary attachment relationship whose function is to co-regulate the developing infant while emotional regulatory systems of the brain are at a critical period of establishment’.<sup>17</sup> It was also found that divorced parents who had shared-care time arrangements had higher levels of conflict than those who had custody awarded to the primary



caregiver.<sup>18</sup> Perhaps the greatest criticism of the presumption of shared parenting, however, is simply that it's based on a 'one size fits all' model that is inappropriate to the diversity of family forms and family dynamics which appear before the judges of the Family Court.

It is unclear whether the Family Court was aware of Greg's violence when Rosie sought consent orders in 2006, although a family violence intervention order had been taken out against him in the Magistrates Court in June 2004. Rosie had sought the FVIO after Greg threw one of Luke's ride-on cars at her, grabbed her 'by the hair, pushed and pulled her head back and forward, and said angrily, "If you ever stop me from seeing Luke, I will kill you"'.<sup>19</sup> Significantly, Rosie was the only person named on this intervention order, although Luke as a witness to this violence should have been named as a protected person. Greg had also declared, in February 2005, that he no longer wanted to be a father to Luke; he subsequently disappeared into a Russian Orthodox monastery and overseas for several months.<sup>20</sup> Had Rosie mentioned these facts in court, the judge would have had to determine which of the considerations were to take precedence when determining the best interests of the child: the right of the child to have a meaningful relationship with both parents, or the need to protect the child from violence and neglect. As many scholars pointed out at the time, the two considerations were in obvious conflict and courts were favouring shared parenting over protection from violence.<sup>21</sup> This was partly because of the difficulties for women in mustering sufficient evidence of often clandestine domestic violence, but also because the court now assumed that shared parenting was inherently positive. This meant that any allegation of violence was likely to be viewed with suspicion. The introduction of what became known as the 'friendly parent' provision, which required the court to consider the willingness of each parent to 'facilitate and encourage a close and continuing relationship between the child and the other parent',<sup>22</sup> further fuelled the disproportionate weight given in court to the perceived benefits of shared parenting. If the mother alleged abuse then it was likely to be taken as evidence that she was 'alienating' or 'hostile', which, in certain cases, resulted in the loss of the child.

As it was, Rosie believed for a long time that Greg was a good father to Luke. She says that he 'never ever used physical strength or abusive

behaviour towards Luke',<sup>23</sup> and he was 'keen to be involved with Luke's life'. He 'took him to museums and art shows to broaden his education... regularly took Luke to the beach and parks and taught him how to sail'.<sup>24</sup> Unlike Rosie's own father, Greg was physically affectionate.<sup>25</sup> Yet tenderness was laced with terror. Take this moment on 3 January 2013:

Mr Anderson attended at Ms Batty's property to collect Luke for an access visit...Later that day, Mr Anderson returned Luke to Ms Batty for her to give him something to eat. Then Mr Anderson returned in the afternoon to collect Luke. Ms Batty spoke with Mr Anderson at the front gate, he was agitated and threatened: 'Right now I would really like to kill you. You think you're going to outlive me in this lifetime, but I can make you suffer. I will cut off your foot. I hope you have made a will.'<sup>26</sup>

This example is included in the findings to direct us towards Greg's violence, but there is something else going on here. It reminds me of another moment, when Rosie describes herself chiding Greg for returning Luke to her on a cold day without a jacket and Greg responding by assaulting her. Again, this is relevant to an inquest that's focusing on domestic violence, but before that violence can happen there are other, quotidian forms of harm. Why would Greg return Luke to Rosie for lunch on a day when he had access? Why would they both assume that preparing food was Rosie's labour? And how could Greg forget to put a coat on his own child in winter?

It seems fairly obvious from reading the Inquest Report that both Greg and Rosie understood fatherhood as being about personal connection and educative or recreational activities, rather than participation in the work of child care.<sup>27</sup> It's the difference, in Carol Smart and Bren Neale's words, between 'caring for' the child and the less onerous and more enjoyable act of 'caring about'.<sup>28</sup> This model of fatherhood can only work if the mother is performing the unspoken labour of care – the making of sandwiches, the dressing of children, the picking up of Lego – all the while applauding the father for the pleasurable contributions he sporadically makes.

Of course, we all know these complaints about the gendered division of care. We might have read about the Australian Bureau of

Statistics 2007 Time Use Survey, which showed that mothers spend double the time on child care and that 90 per cent of fathers' time with their children is mediated by the presence of others.<sup>29</sup> But these gendered inequalities take on a dangerous inflection when they reach the Family Court, where law elevates a thin version of paternal care into a thick form of patriarchal legal right. Law is complicit in what Carol Lacroix terms a 'cult of gratitude'<sup>30</sup> that has developed around fathering: child care and housework are not seen as men's work, so if a man gestures in any way towards these they are celebrated for being co-operative and caring. The very small percentage of the labour of parenting that fathers perform pre-separation is then likely to be converted at the point of separation into 50:50 custody rights. This can have dangerous implications for the welfare of the child even in cases where there is no domestic violence simply because, as Julie Tolmie has argued, the child can end up spending significant time with a parent who has no aptitude or knowledge about child care.<sup>31</sup> Efforts by mothers to restrict access to their child make sense when viewed in this light: who would want a vulnerable infant being placed for long periods of time in the hands of someone with no experience?

This anaemic model of fatherhood is defined against an imagining of motherhood that is at once robust and invisible. How could Greg Anderson disappear for half the year into a monastery with the pronouncement that he no longer wished to be a father to Luke, only to resume access rights upon his sudden reappearance? Because Rosie's labour of care was unspoken, assumed and, perversely, degraded when compared with Greg's parenting: he can leave because we know that she will stay. 'He was a very loving father to Luke', Rosie told the inquest. 'Greg...would do anything for Luke, would protect Luke against all the odds.'<sup>32</sup> And yet we also learn that he couldn't be expected to make Luke lunch, nor could he be relied upon to protect him from getting ill. There is nothing unusual about this model of 'ambivalent fatherhood' that Rosie describes here. Lacroix has explained it as being based on a dynamic where 'the mother's participation was guaranteed in ways that the father's was not, yet fathers were constructed as vital to the wellbeing of children in ways that mothers were not'.<sup>33</sup> Scholars have found an alarming discrepancy between couples' beliefs that they are engaged in an egalitarian distribution of care and interviews that

reveal fathers know very little about the details of their children's daily lives.<sup>34</sup> In the Family Court, this unspoken maternal care work is constructed as a prerequisite to being a good mother deserving of custody rights. If the child falls ill, or if their needs are not attended to, then it is the mother who is seen to be at fault and her rights to custody jeopardised, not the father's.<sup>35</sup> For instance, if Rosie had declared that she was going to become a nun in a convent for a few months, there is no doubt that she would have been punished for this in the Family Court. Greg, on the other hand, could claim and break custody privileges when it suited him. He obtained rights without any expectation that he would also commit to fulfilling the duties of care.

Researchers have found that ideas of good mothering in the Family Court also include the labour of nurturing the father–child dynamic,<sup>36</sup> possibly because we need mothers to be permanently responsive in order to compensate for the father's sporadic care. In Rosie's case this labour was at once exhausting and dangerous: 'It's a...weary battle', she told the inquest, 'trying to work out what's the best for everybody... All the time what's the best for Luke, what's the best for Greg, what's the best.'<sup>37</sup> Obviously missing from Rosie's fretful musings was the question of what was best for Rosie. Attending constantly to the perceived needs of Luke and Greg's relationship, Rosie evacuated the self with tragic consequences. As Coroner Gray remarked:

Ms Batty has paid a terrible price for her best efforts to facilitate Luke's relationship with his father, even when it was difficult and risky for her to allow that contact to continue.<sup>38</sup>

But it should also be remembered that if Rosie had stopped performing this labour there would have been consequences had the case reappeared in the Family Court. As Samantha Jeffries has found, in post-divorce families when women stop sustaining the father–child relationship through tasks like making the lunch during access visits, ferrying the children to and from custody visits or reminding the father of birthdays or significant occasions, 'they are seen as alienating parents'.<sup>39</sup> In certain instances, this label can result in the loss of their child. Rosie, of course, was on the opposite end of the spectrum. She was the model mother of our collective legal imaginary – a woman

who sacrificed everything in the belief that a son must have a dad – and now stands as a warning of how dangerous this fiction can be.

This is not to suggest that Rosie was unwaveringly supportive of Anderson's involvement with Luke. Between the 2006 Family Court order and Luke's death in 2014 she made countless appeals to the police, child protection authorities at the Department of Human Services and in the Magistrates Court in response to Greg's escalating violence. Each of these jurisdictions placed conflicting and ultimately contradictory demands on Rosie.<sup>40</sup> At the Family Court she was expected to remain in contact with Greg for the supposed benefit of Luke; if the criminal charges that the police brought against Greg in 2012 for assault had reached the courts (at the time of Luke's death they were still pending)<sup>41</sup> then the criminal law would have expected Rosie to have cut contact with Greg; and when she contacted the DHS in August 2013, after discovering that Greg had charges out against him for child sex abuse images, she was invested with quasi-judicial powers under a Child Protection Safety Plan. She signed an undertaking guaranteeing, among other things, that she would not allow Luke to have unsupervised visits with Greg and that Luke would not be out of her 'line of sight at any time'.<sup>42</sup> The DHS also offered counselling to Rosie and Luke. Each of these institutions placed competing demands on Rosie, but they also shared one common assumption: that Rosie Batty was responsible for managing Greg Anderson's violence. Greg, the cause of the problem, was entirely absent. In the words of Rosie herself: 'No one spoke to Greg. If he stopped being violent I wouldn't need the bloody counselling.'

Rosie, like other mothers who are victims of domestic violence,<sup>43</sup> said that she was ultimately confused by the overlapping jurisdictions: 'she didn't understand how all the orders worked'.<sup>44</sup> In 2013 Rosie made an application at the Magistrates Court to vary the conditions of the Interim Family Violence Intervention Order – this was after Luke had told her that Greg flashed a knife at him while driving home from school and said, 'It could all end with this. Cain has spoken.'<sup>45</sup> Magistrate Goldsborough, who is cast in heroic light in the Inquest Report, heard the story of the knife and declared that 'it is not in Luke's interests to have contact with Gregory Anderson and I am concerned for his safety. I can't say it more clearly than that.'<sup>46</sup> She

also attempted to explain to Rosie how family violence legislation and family law legislation worked together: 'The Family Law Act... provides for operational decisions about children but takes into account matters of best interests, including family violence.'<sup>47</sup>

On one level, she was right. Julia Gillard had enacted changes to the *Family Law Act* in 2012 after sufficient evidence amassed by judges and scholars had demonstrated that Howard's shared parenting amendments were failing to protect women and children from domestic violence. Gillard removed the 'friendly parent' provisions, broadened the definition of domestic violence and prioritised protecting children from physical and psychological harm.<sup>48</sup> Yet despite these positive changes the same stories persisted, and continue to circulate today, as our family law regime remains wedded to the idea that contact with the non-residential parent is crucial to the child's wellbeing.<sup>49</sup> It would be heartening to think that if Rosie had gone to the Family Court she would have encountered a judge as enlightened as Goldsborough, but certain evidence appears to suggest otherwise.<sup>50</sup>

Like litigants in Family Court proceedings, Rosie and Luke were surrounded by a chorus of counsellors and psychiatrists who drifted back and forth from the shadows of their private hell, assessing Greg's violence but not challenging it. Luke and Rosie had a risk assessment conducted by Detective Lieutenant Senior Constable Deborah Charteris and Ms Tracie Portelli, who was an advanced child protection practitioner working with the sexual assault investigation team at the DHS. Batty had contacted the DHS after she had learned of the knife incident and Greg's child sex abuse image charges, and they promptly sent Portelli and Charteris to conduct interviews. After a series of home visits it was decided by the DHS that Luke was in fact safe from violence; their reasoning was based on the operation of the Family Violence Interim Order, Rosie's demonstrated ability to report a breach of the order and her written 'undertaking' to protect Luke from Greg. As a result, they not only declared the 'file to be closed', but wrote to Anderson to tell him so. Anderson, of course, was never interviewed or held accountable by the DHS and through the final letter was made to feel that he had been completely absolved of responsibility.<sup>51</sup> Portelli's decision to 'close the file' was not simply a one-off bureaucratic bungle, but rather the product of a lack of

training and expertise in how to deal with domestic violence. 'Ms Portelli', the Coroner noted,

had not received training in how to undertake a risk assessment since she had undertaken her degree in social work; had never been trained in the Common Risk Assessment Framework (that aims to help practitioners and professionals identify and respond to family violence); and had never been trained in the content of the Child Protection and Family Violence Guide 2005.<sup>52</sup>

If Rosie came to feel that she was responsible for Greg's violence then the police and DHS counsellors did nothing to disabuse her of this notion.

Social workers and psychologists also hover in the wings of Family Court custody disputes, although here their role is different: they are ushered in not as counsellors but as expert assessors; they compile family assessment reports on the likelihood of abuse and on how families might achieve the goal of shared parenting. They are summonsed because the law has never trusted women to tell the truth.<sup>53</sup> Their report then forms a crucial piece of evidence when determining the best interests of the child. As Jeffries has shown, family assessment reports were used in one-third of pre-2006 cases, when children tended to be awarded to the primary caregiver. But now, with the presumption of shared parenting, they are used in half of all cases.<sup>54</sup> The process by which determinations are made is shocking. In south-east Queensland, for instance, the assessment process occurs in sterile office blocks for anywhere between a few hours and, at most, one day. 'How can a woman go into a room and feel comfortable enough to talk to a complete stranger about her domestic violence history when the man who has hurt her is sitting waiting for his turn to go in?' queried one participant.<sup>55</sup> The children are also affected:

We drop them into a room with a complete stranger and they ask them some of the most intimate, frightening, scary questions that the kids have ever heard...Putting children in a room with a father who is extremely violent and then asking them to play at a table with him, what is that? I think it's abuse of children.<sup>56</sup>

The process is clearly the punishment, presided over by amateur family report writers who act as judges. Jeffries's study found that family report writers demonstrated little understanding of domestic violence and frequently reconfigured domestic violence as mutual parental conflict.<sup>57</sup> As a result, they misread abused women's nervousness in interviews as mental fragility – and thus an inability to parent – rather than fear of their former partner. In contrast, a composed father with calm infants was interpreted as someone who has the children under control, rather than someone accustomed to public posturing whose children are obedient out of terror.<sup>58</sup> Jeffries, along with her interviewees, concluded that more 'comprehensive and ongoing training specifically in domestic violence conducted by experts in the field' was needed.<sup>59</sup>

Why have counsellors and child psychologists come to stand in as the most credible sources of evidence? Because, as Batty herself acknowledged, gendered assumptions mean that women lose their credibility in court more easily than men: 'You're not supposed to show emotion in court', she explained, exasperatedly, to the Coroner,

you're not supposed to get upset, you've got to keep it together all of the time because if you show your true emotion the police will lose interest, they're dealing with an irrational woman.<sup>60</sup>

Where men's tears or expressions of emotion are seen as redemptive, women's are read as hysterical, as indicative of their inability to parent. Jeffries also found that women's presumed lack of credibility means that in their efforts to protect their children they are 'portrayed as dishonest, manipulative, unreasonable, unfriendly or alienating parents. This construction supports the maintenance of father/child relationships and provides an avenue for dismissing mothers' evidence of domestic violence.'<sup>61</sup> I agree with Jeffries but I also think that there are larger competing discourses of motherhood that influence these presumptions. In making a claim for a no-contact order, mothers shift from the exalted position of mother in the nuclear family unit to the socially suspect position of single mother – someone who supposedly rorts governments and men for money, or makes false allegations of domestic violence as a ruse to punish fathers. It seems that the historical mistrust that



greet women's words in court<sup>62</sup> is exacerbated for single mothers in the Family Court by a wilful involvement in their declining social status. Alternatively, if a mother appears with a new partner, then her sexuality is scrutinised: one cannot, after all, be both a mother and sexually active.

Rosie Batty's story has been popularly read as a story of monstrous violence, extraordinary resilience and of the failure of our system to offer an integrated approach to victims of domestic violence. But it is also a story that hinges upon a banal social and legal truism: the universal belief in shared parenting. 'I always felt', Rosie told the inquest, that 'from a legal point of view as well, there is a – a child is not a possession – it's entitled to both parents. It's important for his development.'<sup>63</sup> Of course, in instances where there has been an egalitarian and harmonious distribution of parental labour before separation there is no reason why parenting should not be shared between two caregivers. Most parents would probably appreciate some time to themselves. But cases that make it to the Family Court are not of this variety. Research conducted by the Australian Institute of Family Studies, before the 2006 reforms, found that allegations of family violence and/or child abuse were made in 57 per cent of litigated cases and in over 72 per cent of judicially determined cases. After the 2006 reforms, it is estimated that 50–70 per cent of children's cases involved family violence and/or child abuse. Further, families with a history of violence were just as likely to have shared care arrangements as those with no history of family violence.<sup>64</sup> In this context the belief in shared parenting to which Batty and the courts subscribed places the onus on the abused mother to protect herself and her child from violence. It asks women to accommodate male coercion and to sacrifice their own safety and welfare to the supposed greater good of a child knowing his father, and it can feed into the myth that a violent man can also be a good parent. Ultimately, Rosie Batty's body bore the burden of our failure to make men responsible for their violence, our belief that women should sacrifice themselves for the family, and our conviction that children need two parents, regardless of the cost to the mother and the child.

Rosie's story is also about other forms of more quotidian harms. It shows how the courts convert weak forms of paternal care into

strong legal rights, guaranteeing access visits, decisional authority or even in some cases full custody to fathers with no moral claim to the child. How did we get to this point? When did we begin to believe in joint custody as a timeless, universal good? The answers lie partly in the dangerous impact that fathers' rights groups can have upon public policy, but also in a strange fantasy of the post-divorce nuclear family to which we subscribe. At the very moment that the nuclear family shows its fissures and flaws we invent the most marvellous fictions to stitch it up, woven with the invisible threads of women's domestic and emotional labour. In the realm of the family, where gendered divisions of care are at their most pronounced and unshifting, we impose a fiction of equality without any foundation in fact. Further, we mistrust the voices of primary caregivers with the most expertise in the welfare of their child, and we elevate the credibility of counsellors and psychiatrists who are often ill-trained and constrained by time to the most cursory observations of family dynamics.

But it doesn't need to be like this. Prior to the 1995 and 2006 reforms, judges in the Family Court were given wide enough discretion to accommodate the multiplicity of stories and family forms that appeared before them. In most cases, children were awarded to the primary caregiver, thus guaranteeing the welfare of the child and rewarding the partner who often had to forgo a fulfilling career in the marketplace. The financial and vocational sacrifices that primary caregivers make cannot be suddenly recuperated after divorce. And nor should someone who has no significant experience in child care be trusted with an infant when the relationship dissolves. If we are genuinely committed to preventing the death of children like Luke Batty, then we need to acknowledge the danger that lurks behind our belief in joint custody as an inherent right to be enjoyed by all parents, rather than a privilege that must be earned.