

OF 'HOODS' AND 'SHIPS' AND CITIZENS

The Contradictions Confronting Mothers in the New Post-Separation Family

Zoe Rathus*

This article argues that the new family laws in Australia have created a tension between the good *pre*-separation mother citizen and the good *post*-separation mother citizen. With the emphasis on shared parenting, post-separation mothers must now sacrifice time with their children in favour of the fathers. This tends to obscure the past care work of mothers and to valorise fathers. Using a linguistic ploy, I reveal the identities and lived realities of the citizens of the modern family by examining their 'hoods' (their *passive* state or condition) and their 'ships' (their more *active* duties and tasks). These include their motherhood and fatherhood, their mothership and 'fathership'. The introduction of *Family Law Act 1975* (Cth) heralded a more contemporary family law in Australia, and seemed to recognise some aspects of mothers' citizenship by valuing 'wifeship' and 'mothership'. However, this was followed by the rise of fathers' rights groups and a number of transformations of parenting laws, with the most recent significant reforms occurring in 2006. After analysing two recent relocation cases, I argue that current parenting laws tend to ignore the complex realities of mothers' lives. I suggest that the concept of parental 'investment', relational theories and the theory of intimate citizenship may provide useful frameworks for reconceptualising some factors relevant to parenting decisions.

'The time has come,' the Walrus said,
'To talk of many things:
Of shoes and ships and sealing-wax,
Of cabbages and kings,
And why the sea is boiling hot,
And whether pigs have wings.'¹

* Senior Lecturer in Law, Griffith University and former Legal Coordinator of the Women's Legal Service, Brisbane (1989 to 2004). I am grateful for the mentoring of the 'Law, Power and Identity Group' of the Socio-Legal Research Centre while this article was conceived, and particularly thank our chair, Professor Paula Baron, and colleague Michelle Edgely for timely feedback and Professor Margaret Thornton for her workshop with the Group.

¹ For anyone unfamiliar with Lewis Carroll, I have taken the idea for the title of this piece from a famous verse in the poem 'The Walrus and the Carpenter' from *Through the Looking-Glass and What Alice Found There*, which was first published in 1871.

Introduction: Of 'Hoods' and 'Ships'

This article argues that there is a tension between societal expectations of the good mother citizen in an intact family, and what the new family law system demands of the good separated mother citizen. I analyse this by conceptualising the identities and characteristics of the citizens of the pre- and post-separation family through two lenses. One lens is that of their 'hood', their *passive* state or condition² – their wifeness, motherhood, womanhood, fatherhood, personhood, parenthood and self-hood. The other lens is created by substituting the suffix 'ship' for 'hood'. This makes it possible to discern the more *active* rights, duties and responsibilities – even the work – attendant upon those states or conditions.³ These concepts include the 'mothership'⁴, the rarely used 'housewifeship' (or 'wifeship' as I call it), kinship, citizenship and the invented term 'fatherhood'. It is suggested that while this linguistic diversion is intriguing in itself, it also exposes gendered realities about these identities and roles that assist in understanding the paradoxes at play in contemporary family law.⁵

I begin by demonstrating how the citizenship of women, wives and mothers has always been seen in contradictory terms through the prism of the public/private divide. Feminist writers argue that 'the liberal opposition between public life, the domain of business, economics, politics and law, and private life, the domestic sphere of the family, has both supported and obscured the structural subordination of women'.⁶ The real lives of women were defined by their work in the private sphere of the home. Here they practised their traditionally selfless wifeship and motherhood – still the societal expectation of a good mother citizen in an intact heterosexual relationship. I suggest that, for most mothers, motherhood is central to their perception of their motherhood and *time* is an essential ingredient in this.

² The *Oxford English Dictionary* ('OED') defines the suffix 'hood' as meaning 'condition' or 'state'.

³ According to the OED, when attached to a 'class of human being' the suffix 'ship' means to 'assume the sense of the qualities or character associated with, or the skill or power of accomplishment, of, the person denoted'.

⁴ A 'real' word defined in the OED as 'the office of a mother, motherly care'. I thank my Griffith colleague, Dr Diana Guillemain from the School of Languages and Linguistics, for assisting me with these derivations.

⁵ I fell upon this linguistic device when pondering ideas about motherhood and citizenship to contribute to the symposium in this issue of the *Griffith Law Review*. I wondered why we said 'motherhood' but 'citizenship' and trawled through dictionaries and on-line sources until I concluded that a passive/active dichotomy was valid. This was somewhat confirmed when I found the words 'citizenship', and 'motherhood'. These rarely (or never) used terms represent respectively the inert 'state of being a citizen' and the vigorous job of mothering as suggested by the definition set out in note 4 above. As I started to develop this framework, I was struck by its synergy with Carol Smart's (1995) insightful capturing of gendered parenting when she said fathers care *about* their children and mothers care *for* them. I hope this article adds to that earlier scholarship.

⁶ Chinkin (1999), p 389. This is a field of feminist debate. See Thornton (1995) and Boyd (1997) for examples.

But recognition of women's *motherhood* and *wifeship* with the commencement of the *Family Law Act 1975* (Cth) (the 'Act') in 1976 ultimately contributed to the emergence of a threat to the mother citizen in the form of fathers' rights groups, which began to claim firm ground in Australia towards the end of the 1980s.⁸ These groups represented, and advocated for, the concerns of fathers – particularly non-custodial fathers – in family law policy development.⁹ They arguably became a catalyst for some of the reforms of the 1990s¹⁰ and 2000s¹¹ that now underpin parenting cases in the family law system.¹² I argue that these more recent reforms to the Act demand a new kind of sacrifice of post-separation mothers, which is contrary to the sacrifice expected of pre-separation mothers. They require that post-separation mothers sacrifice time with their children to be good mother citizens. Because post-separation fatherhood is valorised, the mother's sacrifice of time is transferred directly to the father in honour of his *fatherhood*, rather than as an acknowledgement of any *fathership* he may have bestowed on the children. For many fathers, *fatherhood* is *not* necessarily *fathership*, nor necessarily about time.

I demonstrate how this occurs using two case studies, and argue that in relocation cases¹³ the sacrifices demanded of the post-separation mother are exacerbated by the failure of the family law system to understand the importance of her 'complex web of social relationships'¹⁴ beyond her motherhood, perhaps with her own family or a new partner. I suggest that these sacrifices of time with children and isolation from other significant relationships may compromise a mother's sense of motherhood and her 'intimate citizenship'.

I conclude that concepts of parental 'investment', and relational and citizenship theories, may provide useful frameworks for reconceptualising some factors relevant to parenting cases in family law.

⁷ This Act 'heralded the introduction of a new approach to divorce and associated matters in Australia' and reflected social change in Australia and elsewhere. Harrison (2002), pp 1–2.

⁸ James (2006), p 8.

⁹ Kaye and Tolmie (1998), p 21.

¹⁰ *Family Law Reform Act 1995* (Cth)

¹¹ *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

¹² The extent of the power of fathers' rights groups is somewhat contested but the groups themselves claim 'that they wield enormous political influence'. Kaye and Tolmie (1998), p 23.

¹³ The Family Law Council suggest a definition of relocation cases as involving 'a move which will result in changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent'. See Family Law Council (2006), p 5.

¹⁴ Boyd (2010), p 148.

Motherhood and Citizenship

Polar Opposites

Citizenship is a complex concept that has changed and changes over time and space. It can be understood as 'a membership status, which contains a package of rights, duties and obligations, and which implies equality, justice and autonomy'.¹⁵ It is also a 'dynamic identity',¹⁶ whose elements are drawn on by theoreticians to understand the complex web of interrelationships and intersections between and among individuals, the state and its institutions. Keith Faulks describes a powerfully contextual nature:

As citizenship is about human relationships, it defies a simple, static definition that can be applied to all societies at all times. Instead the idea of citizenship is inherently contested and contingent, always reflecting the particular set of relationships and types of governance found within any given society.¹⁷

In a traditional sense, the citizen and the mother are almost polar opposites. The citizen is all about public status and encompasses political and commercial life while the mother is all about the private sphere and deals with our intimate worlds. As Rachel Cusk captures beautifully in her personal account of motherhood, when a woman becomes a mother she 'exchanges her public significance for a range of private meanings, and like sounds outside a certain range they can be very difficult for other people to identify'.¹⁸

To understand what twenty-first century mothers' citizenship might mean, it is useful to first consider some historical examples of the citizenship of women, wives and mothers, and observe the stressors between the public and the private. It has been suggested 'that the historical exclusion of women from the "public sphere" has been a major contributor to women's oppression'.¹⁹ Further, the commitment of liberal political theory to 'spheres of individual autonomy free from state intrusion'²⁰ has concealed inequality in the home and intimate spaces. Contemporary feminist theory has sought to foreground these issues and subject family life to public scrutiny and intervention when necessary.²¹ But this reveals the ever-present conflict within feminist discourse and action – the more the *public* citizenship of

¹⁵ Faulks (2000), p 13. Its similarity to state-sanctioned norms about modern parenting and parenthood becomes apparent in the statutory definition of 'parental responsibility'. Under the *Family Law Act*, s 61B, 'parental responsibility' is defined as 'all the duties, powers, responsibilities and authority which, by law, parents have in relation to children'.

¹⁶ Faulks (2000), p 6.

¹⁷ Faulks (2000), p 6.

¹⁸ Cusk (2003), p 3.

¹⁹ Fehlberg and Behrens (2008), p 158. See also Thornton (1995) and Boyd (1997).

²⁰ Rhode (1989), p 125.

²¹ Rhode (1989), p 125.

women is progressed, it seems the more the *private* or intimate citizenship of *mothers* may be threatened.

Of Women and Wives

In early manifestations of citizenship, women's perceived place in the private home excluded them entirely from this status. Although modern citizenship is 'inherently egalitarian',²² originally it was hierarchical and exclusionary, with its genesis in ancient Greece where 'inequality of status was accepted without question'.²³ Womanhood meant exclusion from citizenship (and citizenhood), and that continued to apply largely throughout the Middle Ages in those cities that practised the concept.²⁴

It was not until the eighteenth century that the idea of women's citizenship really found expression in Mary Wollstonecraft's *Vindication of the Rights of Women*, published in 1792.²⁵ The tension of the public/private divide emerged even in her writings. Wollstonecraft advocated education for women, but the emphasis was not on them entering the public world. Rather, it was to enable a woman to be a worthy and virtuous 'companion of man' and to educate her children 'to understand the true principle of patriotism'.²⁶ She radically called for women to be granted equal civil and political rights with men, and economic independence from their husbands;²⁷ however, in conformity with her times, she explained that she 'did not mean to insinuate that they should be taken out of their families'.²⁸

Exemplifying earlier eighteenth century views about women, under the common law doctrine of 'coverture', the extinguishment of all *personhood* by *wifehood* was part of the legal fabric of England.²⁹ A wife became both invisible and indivisible from her husband. Less than 30 years before Wollstonecraft published her work, in a chapter entitled 'Of Husband and Wife', jurist Sir William Blackstone wrote in his *Commentaries of the Laws of England*:

By marriage, the husband and wife are one person in law, that is, the very being or existence of the woman is suspended during the marriage, or at least is incorporated or consolidated into that of the

²² Faulks (2000), p 3.

²³ Faulks (2000), p 18.

²⁴ Faulks (2000), p 18.

²⁵ Heater (1989), p 89.

²⁶ Wollstonecraft (1988), p 4.

²⁷ Pateman (1992), p 20.

²⁸ Heater (1989), p 89.

²⁹ Shanley (1989), p 8.

husband: under whose wing, protection and cover she performs everything.³⁰

In the following century, feminists challenged laws about divorce, married women's property, child custody and wife abuse, thereby entering into the private sphere of marriage and family. In Victorian England, husband and wife occupied 'separate spheres'.³¹ '[W]omen sustained the families, which produced healthy and loyal citizens; men took care of the business of the state (including fighting its wars), which protected the families within its borders'.³² Women's identity was tied to their *motherhood* and *mothership*. Men's seemed more in tune with their *fatherhood* and *citizenship*.

During the nineteenth century Australia inherited its family laws from England and it was not until the *Matrimonial Causes Act 1959* (Cth) that the Commonwealth government seriously exercised its Constitutional powers in respect of 'marriage; divorce and matrimonial causes; and in relation thereto, parental rights and the custody and guardianship of infants'.³³ Fast-forwarding to the 1970s, the Whitlam Labor government introduced the *Family Law Act 1975* (Cth), modernising family law with 'no-fault' divorce and the establishment of a specialist court with an integrated counselling section.³⁴ From the time of its commencement in 1976, arguably the beginnings of real legal recognition of 'wifeship'³⁵ and mothership are seen because the provisions allocating property distribution upon divorce took account of non-financial contributions to the home and the welfare of the family made by the wife/mother as well her future needs.³⁶ The Women's Electoral Lobby welcomed the fact that the new law regarded the contribution of 'homemaker and parent ... as having economic value'. It declared: 'A woman's full time and unpaid career as enforced childminder and dinner producer at last has its rewards.'³⁷

Despite these laws, the landmark research on the economic consequences of the breakdown of marriage in Australia conducted by the

³⁰ Blackstone (1979). It will later be seen in *Rosa's* case that family law now potentially renders mothers invisible, extinguishes their motherhood and enhances the father's fatherhood.

³¹ Shanley (1989), p 5.

³² Shanley (1989), pp 5–6

³³ Harrison (2002) pp 2–3. The powers are found in sections 51(xxi) and (xxii) of the Australian Constitution.

³⁴ Harrison (2002), p 1.

³⁵ Or 'wifework', as Maushart (2001) terms it in her entertaining exposé of gender relations in the home.

³⁶ For many women, these future needs would be predicated on the fact that they had the full-time care of the children of the marriage and limited capacity for 'gainful employment' (*Family Law Act*, s 75(2)(b)) as a result of those care responsibilities and her lack of recent engagement in the workforce.

³⁷ Women's Electoral Lobby (1990), p 207.

Australian Law Reform Commission and the Australian Institute of Family Studies in the 1980s³⁸ ‘demonstrated starkly the gross disparities in post-divorce living standards between women and men’. Women, whether living alone or with children, had experienced a ‘vast decline in their standards of living while men, including those who became sole parents, experienced considerable improvement’.³⁹

Although the new *Family Law Act* seemed to be about the private, by more fairly rewarding the contributions of wifeship and mothership by individual women, it was just as much about the public, as governments searched for ways to reduce the impact of single mothers and their children on the public purse. These new laws switched the wife’s dependency from the state back on to her former husband.⁴⁰ Perhaps they continued *wifehood* but without *wifeship*, and demanded the continuation of *husbandship* – if that is partly about husbands financially supporting their families – without any of the benefits of *husbandhood*. The ‘no-fault’ divorce approach also indirectly facilitated remarriage, thereby transferring the woman’s dependency from her former husband to her new husband.⁴¹ According to Brian Bix: ‘As the father “gives the bride in marriage” to her first husband, so the first husband, in a sense, gives the woman away to her second husband, at least in terms of financial duty.’⁴² The new unit then becomes the site of *wifehood* and *wifeship*, *husbandhood* and *husbandship*, and the former husband may be able to terminate *his* husbandship⁴³ (eg periodic spousal maintenance).⁴⁴

Of Mothers

In an essay about equality, difference and subordination, Carol Pateman discusses the paradox that it is the very features of motherhood – such as the capacity to bear children – that have ‘set women apart from politics and

³⁸ McDonald (1985, 1986a). These were followed up by Funder et al (1993).

³⁹ Graycar and Morgan (2002), p 99.

⁴⁰ Parkinson and Behrens (2004), pp 130–31. See also McDonald et al (1986b). This was made explicit by the *Family Law Amendment Act 1987* (Cth), which required a court to disregard any entitlement to an income-tested pension, allowance or benefit when calculating maintenance.

⁴¹ Parkinson and Behrens (2004), pp 130–31.

⁴² Bix (2010), p 35.

⁴³ Of course, there are the complex questions of his *fatherhood* and *fathership*, and how they fared in the early days of Australian family law – but that cannot be canvassed here.

⁴⁴ Periodic spousal maintenance was not commonly ordered in the early years of the operation of the Act (and this has not changed). It was sometimes ordered on an interim basis immediately after separation in wealthy marriages or where the wives were older and without marketable skills at the end of a long traditional marriage. See Family Law Council (1989), p 18. However, as it is only payable if the other party is ‘unable to support herself or himself adequately’ (*Family Law Act*, s 72), it was usually terminated if a former wife remarried.

citizenship',⁴⁵ while at the same time these attributes have allowed motherhood to be constructed as a political status'.⁴⁶ For women, their 'political duty (like their exclusion from citizenship) derives from their difference from men' and relates specifically to their capacity for motherhood.⁴⁷ For example, in eighteenth century America the 'republican mother was excluded from citizenship, but she had a crucial political part to play in bearing and rearing sons who embodied republican virtues'.⁴⁸ As Iris Marion Young explains, this paradox has continued into more recent times. The 'autonomy and personal independence' so central to modern citizenship 'is thought to require the loving attention of particularist mothers who devote themselves to fostering this sense of self in their children'.⁴⁹

This duty is constructed within the intact family where the mother is also a wife (*de jure* or *de facto*). In terms of the citizenship or social and political rights of a mother in the private sphere in contemporary times, it is at the point of separation from the father that her legal position is cast into stark relief.⁵⁰ Historically at common law, the father had absolute legal rights over his children.⁵¹ Mothers who left their husbands often lost their children altogether. In the light of the discussion in this article, it is interesting to consider that the father's rights were actually attached to his *husbandhood* rather than his *fatherhood*. Fathers had no responsibilities for children born out of wedlock, and their role in respect of legitimate children was not so much the responsibility of *fathership*, but rights to exercise *fatherhood* and ensure smooth succession of the family wealth.

During the nineteenth century, equity courts were empowered to hear applications for custody from mothers.⁵² This marked the beginning of official recognition of women's value as mothers. As the welfare of the child gained paramountcy as a principle, 'courts began to elevate motherhood into a sacred virtue'.⁵³ This led to the development of the 'tender years' doctrine that pervaded custody decisions at least through the late nineteenth and much of the twentieth century in Australia, and also in many other similar jurisdictions.⁵⁴ The concept is perfectly captured in a 1976 decision:

I am directed by authority to apply the common knowledge possessed by all citizens of the ordinary human nature of mothers ... an

⁴⁵ Pateman (1992), pp 18–19.

⁴⁶ Pateman (1992), p 19.

⁴⁷ Pateman (1992), p 19.

⁴⁸ Pateman (1992), pp 19–20.

⁴⁹ Young (1995), p 546.

⁵⁰ Although women living with a violent partner may well require state intervention before separation.

⁵¹ Graycar and Morgan (2002), p 258

⁵² Graycar and Morgan (2002), p 258.

⁵³ Graycar and Morgan (2002), p 258.

⁵⁴ Elrod and Dale (2008), pp 390–91.

understanding of the strong natural bond which exists between mother and child. It includes an awareness that young children are best off with both parents, but if the parents have separated, they are better off with their mother. The bond between a child and a good mother (as this applicant was found to be) expresses itself in an unrelenting and self-sacrificing⁵⁵ fondness which is greatly to the child's advantage.⁵⁶

This seems to me to be an acknowledgement of both *motherhood* and *motherhood*. It was her state of *motherhood* that gave the mother the 'advantage', but it was also clear that *this* mother had performed, and would continue to perform, the tasks of 'good' *motherhood*, which include self-sacrifice.

However, this case was pretty much the last gasp of the 'tender years' doctrine in Australia; three years later, in the case of *Gronow v Gronow*,⁵⁷ the High Court made it clear that the doctrine no longer applied:

But in recent times, particularly in the last twenty years, there has come a radical change in the division of responsibilities between parents and in the ability of the mother to devote the whole of her time and attention to the household and to the family. As frequently as not, the mother works, thereby reducing the time which she can devote to her children. A corresponding development has been that the father gives more of his time to the household and to the family.⁵⁸

These assertions did not, in fact, reflect real gender roles and relations in Australian homes at the time,⁵⁹ but it was in line with a growing *public* rhetoric about gender *equality* and an increasing *legal* rhetoric about gender *neutrality*. These trends seemed to equate *fathership* with *motherhood*, even if that was not a reality. The mother's *motherhood* became unremarkable – almost unspeakable. In the Canadian context, Susan Boyd suggests that it may have become 'taboo to emphasize women's issues when the interests of children are being addressed, especially in the face of expectations that mothers should be selfless in relation to children'.⁶⁰ It will be seen later in this article that one consequence of the 2006 reforms was to render the mother's actual work invisible. It is arguable that the tendency for this disappearance of 'motherhood' in parenting cases started in the 1970s and found further and deeper expression in 2006.

⁵⁵ The themes of 'good' mothers and self-sacrifice will be seen in the analysis of the two cases discussed later.

⁵⁶ Per Glass JA in *Epperson v Dampney* (1976) FLC 90-061 at 75,302.

⁵⁷ *Gronow v Gronow* (1979) 144 CLR 513.

⁵⁸ *Gronow v Gronow* (1979) 144 CLR 51, per Mason and Wilson JJ at 526–27.

⁵⁹ This will be canvassed later in the discussion of Lyn Craig's work on gender, time and children.

⁶⁰ Boyd (2010), p 142.

The Threat to Mothers' Citizenship: The Rise and Rhetoric of Fathers' Rights Groups

It was hardly surprising that in those heady political times of change and conflicting values, disaffection arose amongst some men about what they perceived as a bias against them in family law.⁶¹ Carol Smart draws attention to the fact that while the women's movement in the United Kingdom emerged out of the political and economic disadvantages of women during the industrialisation and urbanisation of the late nineteenth century, the Men's Movement (read 'fathers' rights groups') arose 'as a result of a perceived incremental loss of men's power in the private sphere/family' which only became apparent in the 1980s.⁶² Mothers' rights in the partly private/partly public world of post-separation life were under threat in a new 'gender war'.⁶³

By the mid-1980s, fathers' rights groups in Australia were already promoting the idea of 'joint custody' or shared parenting – although the exact parameters of the intended physical arrangements were not always clear.⁶⁴ When the Child Support Scheme was introduced in the late 1980s, many fathers found themselves paying much higher child support under a more efficient scheme than the old maintenance system,⁶⁵ and fathers' rights groups increased their activity.⁶⁶ They claim it was their lobbying that led to the 1991 inquiry into the Act, and the family law system more broadly, which culminated in major reforms in 1995.⁶⁷ The *Family Law Reform Act 1995* (Cth) introduced new concepts into family law, including entrenching a right for children to know and be cared for by both of their parents, even when they were separated.⁶⁸ After the reforms had been in operation for three

⁶¹ See Kaye and Tolmie (1998).

⁶² Smart (2003), p 24. Fathers' rights groups arose in a number of countries as contemporary family law made advances into male dominance in the private sphere. See, for example, Bertoia and Drakich (1993) and Cohen and Gershbain (2001) for the situation in Canada; Coltrane and Hickman (1992) for developments in the United States; and Collier and Sheldon (2006) for an international perspective.

⁶³ See, for example, Graycar (2000).

⁶⁴ Regina Graycar points to lobbying at an Australian Law Reform Commission Inquiry in 1984: Graycar (1989), pp 168–69. In 1987, the Family Law Council published a report that dealt 'the desirability of making specific provision in the [*Family Law*] Act for a scheme of joint custody or joint parenting'. This was a response to the newly insistent fathers' rights groups which had expressed 'considerable resentment' about the prevailing "'custody and access" model': Family Law Council (1987), pp 10–11.

⁶⁵ Scutt (1990), p 314.

⁶⁶ James (2006), p 8.

⁶⁷ See Kaye and Tolmie (1998), p 24, where Barry Williams of the Lone Fathers' Association claims to have initiated the 1991 Joint Select Committee Inquiry into the Operation and Interpretation of the *Family Law Act*.

⁶⁸ *Family Law Reform Act*, s 60B(2). Significant scholarship and research were devoted to studying the impact of these reforms, including Rhoades et al (1999), Rhoades et al (2000), Dewar et al (1999) and Rendell et al (2002).

years, research demonstrated that a ‘pro-contact’ culture had emerged.⁶⁹ It was harder to have contact refused at interim hearings despite allegations of domestic violence,⁷⁰ and there was a clear belief amongst parents – men in particular – that they now had rights to shared parenting or even equal time.⁷¹

However, despite the inroads being made in political influence by fathers’ rights campaigners, the reality was that, in intact families in the mid- to late 1990s, it was still mothers doing most of the work. This is demonstrated in Lyn Craig’s study, which used data from the Australian Bureau of Statistics’ Time Use Survey in 1997 to undertake calculations into how mothers and fathers spent time with their children.⁷² In terms of absolute time spent on child care as a ‘primary activity’, men spent about one hour per day and women spent three hours per day. The kinds of activities undertaken by fathers and mothers are also different. Fathers invest more time *proportionately* in the ‘fun’ activities – reading, playing, doing things together. In fact, mothers put more actual time into these activities than fathers, but for them it represents a minority of their time. Mothers put more time into physical care and just being around with the children than actively doing things with them. They are also more likely to do two things at once (eg supervise homework while preparing the evening meal). Mothers spend much more time alone with children. They spend nearly half their time with children alone with them, whereas fathers – who spend less time with their children anyway, are only alone with them for 16–18 per cent of that time.⁷³

These statistics represent the actual mothership and fathership of parenting. Due to some different recording practices, it is difficult to directly compare the results of the 1997 Time Use Survey with the most recent one in 2006. However, in 2006 fathers were recorded as spending more time with their children than at previous times, increasing gradually through the 1992, 1997 and 2006 surveys. However, mothers’ time with children has also increased, and they still spend more than twice as much time on child care-related activities than men.⁷⁴

According to Craig, there is ‘dissimilarity in the way fathers and mothers parent’,⁷⁵ and it would seem that there is more *mothership* than *fathership* – although some of the fathership is no doubt the time spent in earning much of the income of the family.⁷⁶ But these figures demonstrate the crux of *motherhood* – it is a lot about *mothership* and a lot about *time*.

⁶⁹ See Rhoades et al (2000) and Rendell (2002). ‘Contact’ was the new term for what used to be called ‘access’ or is sometimes called ‘visitation’.

⁷⁰ Rhoades et al (1999), p xi.

⁷¹ Rhoades et al (2000), p 39.

⁷² Craig (2003).

⁷³ Craig (2003).

⁷⁴ Australian Bureau of Statistics (2008).

⁷⁵ Craig (2006), p 270.

⁷⁶ According to the 2006 Time Use Survey, men spend nearly twice as much time per day than women on employment-related activities. See Australian Bureau of Statistics (2008).

Fatherhood is *less* about fatherhood and less about time, and some children may only start to spend significant time alone with their father after their parents separate. As will be seen, the reforms of 1995 and 2006 have increasingly taken time away from mothers.⁷⁷ I postulate that for some mothers the loss of time they experience feels like a surrender of something deeper than mere time.⁷⁸

Notwithstanding the 1995 reforms, and given the fundamental gendered differences in actual caring roles, shared physical care arrangements did not become commonplace in Australia. Even by 2003, only approximately 6 per cent of Australian children with separated parents lived in equal or nearly equal parenting arrangements.⁷⁹ In 2000, fathers' rights groups loudly expressed their anger and frustration to the Family Law Pathways Advisory Group, which reported that men 'felt that the system was unfair and biased against' them and demanded a 'presumption in law ... that children live with each parent on an equal-time basis (often expressed as "50:50")'.⁸⁰ By 2003, fathers' rights groups were able to organise a forum at Parliament House entitled 'Turning the Tide of Fatherlessness in Australia', which was attended by 'prominent politicians'.⁸¹

Although family law reform seems to be ongoing and never-ending, the official beginning of the process towards the 2006 reforms was the Inquiry into Child Custody Arrangements in the Event of Family Separation.⁸² By the time of its announcement in 2003, the rhetoric of the fathers' rights groups had become insistent about a number of key themes. Fathers' claims for equal time were presented as being about equality – it was a 'justice claim'.⁸³ I suggest that the equality claim is all about *fatherhood* and not *fatherhood*. The right is based on the fact or state of being a father. It is not intended to reflect the time or emotional investment by the father in his children before separation, although he may now be promising to exercise fatherhood in the future.

⁷⁷ The major evaluation of the 2006 reforms reported that 43 per cent of mothers who reached a parenting agreement at family dispute resolution after the reforms claimed that the agreement increased the father's time with the child(ren). Only 11 per cent said their own time had increased, and 47 per cent said it was the same. See Kaspiew et al (2009), p 98.

⁷⁸ An empirical study about shared care following the 2006 reforms found that the mothers in the study were the main carers of the children prior to separation. Post-separation shared care 'often involved mothers' sense of loss of their daily position as primary carers and fathers taking on an expanded parenting role'. Fehlberg et al (2010), p 263.

⁷⁹ Smyth and Chisholm (2006), p 195.

⁸⁰ Family Law Pathways Advisory Group (2001), p 6.

⁸¹ Flood (2009), p 342.

⁸² It was conducted by the House of Representatives Standing Committee on Family and Community Affairs.

⁸³ Rhoades (2006), p 8.

By this time, fathers' rights groups were experienced at drawing on the social sciences to support 'the benefits of paternal involvement in families'.⁸⁴ This synergy between fathers' rights' claims and the social sciences was noted in the late 1980s and early 1990s. Martha Fineman argued convincingly in the United States in the early 1990s that the social sciences had contributed to a new norm around post-separation children's arrangements where it was considered 'necessary to save children from the harms associated with divorce, particularly the loss of the noncustodial parent occasioned by the designation of a sole custodian'.⁸⁵ One consequence of a focus on the 'father/child relationship' is that the 'helping profession's discourse undervalues a mother's real life role, assuming it to be no different than a father's',⁸⁶ perhaps equating *mothership* with *fatherhood*. Robert Van Krieken observes that:

in moving from a pre-separation reality of an unequal division of child-caring labour to a post-separation ideal of equality, the construction of the importance for the 'best interests of the child' of contact with both parents functions to ... effectively turn ... the child's rights to contact into the father's.⁸⁷

The problem is that the social science about what works for children after family breakdown is complex and contested.⁸⁸ One size does not fit all. As Michael Flood notes: 'The relationship between father absence and children's well-being is far more complex than fathers' rights groups claim.'⁸⁹ The uncertainty about the consequences of the 2006 reforms and desire to understand them is manifested in the seven evaluations and projects that have been commissioned by successive governments, both before and after their commencement.⁹⁰ The research findings in these reports are not entirely consistent – highlighting the nuanced nature of this field. However, it is clear that sharing care time does not work in all circumstances, and that

⁸⁴ Flood (2004), p 268.

⁸⁵ Fineman (1991), p 5. For a detailed account of the Canadian experience of this synergy between the social sciences and the claims of fathers' rights groups, see Cohen and Gershain (2001).

⁸⁶ Fineman (1988), p 735.

⁸⁷ Van Krieken (2005), p 36.

⁸⁸ I have recently written about the gap between the social science research on shared care time and the provisions of the 2006 reforms, which legislatively link the presumption that equal shared parental responsibility is in the best interests of children to shared care time outcomes. See Rathus (2010).

⁸⁹ Flood (2004), p 268.

⁹⁰ Kaspiew et al (2009); McIntosh et al (2010); Cashmore et al (2010); Bagshaw et al (2010); Chisholm (2009); Family Law Council (2009); Australian Law Reform Commission (2010).

factors like the child's age, parental conflict and family violence are relevant issues.⁹¹

Another consequence of this intertwining of the social science literature with fathers' rights groups' claims was that it allowed their advocacy to be couched in terms of what Carol Smart calls 'care talk',⁹² in which 'a father may base his rights' claim [eg to a 50:50 time arrangement] on the basis that he asserts how much he cares for and about his child'. As Smart says:

because [fathers'] claims are based on care talk and because, at this particular cultural moment, fathers are redefined as central to children's welfare, fathers' definitions of gender relations in families are in the ascendant.⁹³

In the language of this article, it suggests that fathers have found a way to publicly conflate *fatherhood* with *fathership*: 'I am the father, therefore I care *about* and should be entitled to care *for* my children.'⁹⁴ Smart explains that within this narrative: 'Mothers ... become defined as an obstacle to justice for fathers and, to a lesser extent, as obstacles to their children's welfare if they (appear to) fail to recognise the importance of care provided by fathers.'⁹⁵ This is clearly seen in the case of *Rosa*,⁹⁶ which is discussed in the case analysis.

The image of the malicious mother denying contact for no reason also permeated men's submissions to inquiries.⁹⁷ In fact, Helen Rhoades' research into contact enforcement litigation in 1999 uncovered only a few cases in which there was a finding that a mother had breached her orders. More frequent were decisions to vary the contact orders to provide safer arrangements for the children. Rhoades concluded that the 'paradigm "bad" mother of Australian family law was the "no-contact" mother'.⁹⁸ This tactic applied by fathers shifted the site of scrutiny in parenting cases from the care dynamics during the intact relationship to the conduct of the mother post-separation. Those who denied contact fulfilled the new narrative of 'selfish motherhood'⁹⁹ – the epitome of the bad post-separation mother citizen. It will

⁹¹ See particularly McIntosh et al (2010).

⁹² She actually identifies a 'three-cornered debate' ongoing between "rights talk", "welfare talk" and "care talk". Smart (2006), p 125.

⁹³ Smart (2006), p 126.

⁹⁴ With acknowledgement to Carol Smart's earlier observation. See note 5.

⁹⁵ Smart (2006), p 126.

⁹⁶ *Rosa and Rosa* [2009] FamCAFC 81 (original trial in the Federal Magistrates Court), *Rosa and Rosa* [2009] FamCAFC 81 (appellate decision of the Full Court of the Family Court) and *MRR v GR* [2010] HCA 4 (High Court of Australia decision).

⁹⁷ This is further linked to the idea that mothers make up allegations of abuse by the fathers to advantage their claims in the family courts (see Flood, 2009). This article cannot pursue that complex issue.

⁹⁸ Rhoades (2002), p 74.

⁹⁹ Rhoades (2002), p 71.

be seen that it is indeed the post-separation circumstances that are overwhelmingly considered in the case studies I present.

The 2006 Reforms to the *Family Law Act*

In essence, the 2006 reforms introduced a rebuttable presumption that it is in the best interests of children for their parents to have equal shared parental responsibility.¹⁰⁰ It is rebuttable on the basis of family violence and abuse, and also, tautologically, where such an order would *not* be in the best interests of the child. Critically, in terms of the lived experiences of post-separation mothers, the presumption is linked to time outcomes. Where it is applied, the court is required to consider making an order for the children to live with each parent for equal time or for ‘substantial and significant’ time.¹⁰¹ In fact, according to the cases, the courts are required to consider these time possibilities even where the presumption has been rebutted.¹⁰² The reforms have resulted in an increase in shared parental responsibility and shared care time orders from the family courts.¹⁰³

It is not possible to cover the developing legal scholarship around these reforms, but it paints a picture of complex jurisprudence emerging as judicial officers try to apply the somewhat repetitive, complicated and lengthy provisions of the new Part VII of the Act to the facts of the cases before them.¹⁰⁴ Despite, or because of, this actual complexity, ‘many people continue to misunderstand the 2006 provisions as creating a right to equal time, or a presumption favouring equal time’.¹⁰⁵ It is this aura of the goodness of ‘shared parenting’ that some mothers transgress when they are not seen as happily participating mother citizens in the new shared care time arrangements. Linda Bosniak suggests that, when conceptualising citizenship, it is important to remember its exclusionary nature.¹⁰⁶ I argue that the *Family Law Act*, its jurisprudence and the surrounding public rhetoric

¹⁰⁰ *Family Law Act*, s 61DA.

¹⁰¹ See *Family Law Act*, s 65DAA(3).

¹⁰² See *Goode and Goode* [2006] FLC 93-286, paras 46–48.

¹⁰³ Shared care time orders have increased from 4 per cent to 34 per cent (when taken as a proportion of cases when contact hours are specified). Equal shared parental responsibility outcomes have also increased from 76.3 per cent to 86.5 per cent post-reform. (These figures include judicially determined outcomes and consent orders.) Although the statistics in the general population are complex to interpret, it is clear that there has been an overall increase in shared time arrangements being implemented from about 3 per cent in 1997 to 8 per cent in 2007 and 16 per cent after the reforms. It is not possible, however, to ascribe all the latest increase to the reforms. See Kaspiew et al (2009), pp 132, 187 and 129–30 respectively.

¹⁰⁴ See, for example, Parkinson (2006); Chisholm (2007); Rathus (2008).

¹⁰⁵ Chisholm (2009), p 127. Chisholm goes on to suggest ‘that these intricate provisions, linking a rule about decision-making with a rule about time, have contributed to that misunderstanding’.

¹⁰⁶ Bosniak (2006), p 96.

have carved a border between the good post-separation mother citizen and the bad one. As Bosniak explains:

The notion of belonging is insistently inclusive within the community, yet it also presupposes community boundaries – boundaries that ultimately divide insiders from outsiders.¹⁰⁷

In family law, it is at the point of separation – when the *Family Law Act* is triggered – that mothers risk exclusion from membership of community of ‘good’ mother citizens. In an intact heterosexual nuclear family, ‘good’ mother citizens are expected to maximise their time with their children, their *motherhood*, and risk criticism if they do not. But the mother who has separated from the father will face a different set of expectations. She is likely to have contact with some part of the family law system where shared parenting is promoted in terms of both parental responsibility and time.¹⁰⁸ This mother’s code of behaviour is now prescribed for her in the law. Although she is still the same woman, and mother, she is now expected to behave differently to be a ‘good’ post-separation mother citizen. While she must still love her children, she is expected to willingly and graciously relinquish time with them in favour of the father.

Another key aspect of the reforms is the idea that children should have the ‘benefit of a meaningful relationship’ with both their parents.¹⁰⁹ This places an emphasis on children spending time with both parents in their new post-separation lives. As can be gleaned from the Australian Bureau of Statistics research cited earlier,¹¹⁰ in effect this increases the time many fathers spend with their children and decreases the mothers’ time. I have argued previously that these reforms generally have a future-orientated focus,¹¹¹ and the Full Court of the Family Court has now confirmed a ‘prospective’ interpretation of the idea of ‘meaningful relationship’.¹¹² In other words, the Full Court held that the court should, where appropriate, frame orders that would facilitate the development and maintenance of a meaningful relationship in the future.¹¹³ This can render *motherhood* invisible.

¹⁰⁷ Bosniak (2006), p 96.

¹⁰⁸ See *Family Law Act*, ss 61DA and 65DAA.

¹⁰⁹ This concept is contained in the objects section (s 60B), and is also the first ‘primary’ consideration (s 60CC(2)(a)) in the checklist of considerations used to determine what is in the best interests of the child. For scholarly work on this aspect of the Act, see Chisholm (2008); Moloney (2009); Trinder (2009).

¹¹⁰ See notes 72, 74 and 76. The foundations of Craig’s work were confirmed by other research in Squire and Tilly (2007).

¹¹¹ Rathus (2007).

¹¹² *McCall and Clark* (2009) FLC 93-403 at 119–20.

¹¹³ The Full Court said: ‘the court should consider and weigh the evidence at the date of the hearing and determine how, if it is in a child’s best interests, orders can be framed to ensure the particular child has a meaningful relationship with both parents (“the prospective approach”). We conclude that the preferred interpretation of benefit to a child

Future living arrangements are made for children with little or no reference to the (usually gendered) past practices within the family prior to separation.

The final provision to mention for the purposes of this article is the ‘friendly parent’ section.¹¹⁴ It was condemned by women’s groups¹¹⁵ and endorsed by the Shared Parenting Council of Australia – a key umbrella organisation for fathers’ right groups.¹¹⁶ This provision requires courts to consider the ‘willingness ... of each of the child’s parents to facilitate, and encourage, a close and continuing relationship [with] other parent’. It is clear that this law sits neatly with fathers’ claims of wrongful contact denial by mothers.¹¹⁷ One out-of-court consequence of this provision has been to discourage some parents ‘affected by violence from disclosing that violence to the court’.¹¹⁸ This means that some mothers who are hesitant about the children spending time with their father because of past abuse are prevented from actually exercising the mothership of protection from further possible abuse.

The extent to which the government planned to affect the real lives of the citizens of the post-separation family is openly displayed in its evaluation framework for the reforms. It noted that the legislation ‘contains numerous specific directions as to how different categories of people should behave: parents, litigants, lawyers, counsellors, and judicial officers’.¹¹⁹ The legislative intention was to reach tentacles of influence into the decisions made by parents, their professional advisers and those who populate the institution of the court.¹²⁰ Rhoades postulates that the reforms constrain the autonomy of separated parents by introducing an ‘element of compulsion’ in the way that professional advisers give effect ‘to the law’s aspirational policy messages’.¹²¹ A philosophy of shared parenting and shared time, with qualifications, was intended to infiltrate the culture of the family law system.

In undertaking a comparative study of UK and German family laws and social policy, Mary Daly and Kirsten Scheiwe note that while modernity and

of a meaningful relationship in s 60CC(2)(a) is “the prospective approach” although, depending upon factual circumstances, the present relationship approach may also be relevant.’

¹¹⁴ *Family Law Act*, s 60CC(3)(c). The repeal of this section may be imminent. See the Attorney-General’s Exposure Draft: Family Law Amendment (Family Violence) Bill 2010: Consultation Paper.

¹¹⁵ House of Representatives Standing Committee on Legal and Constitutional Affairs (2005), p 54.

¹¹⁶ de Simone (2008).

¹¹⁷ And also, again, the claim that women make up allegations of abuse.

¹¹⁸ Chisholm (2009), p 103.

¹¹⁹ Australian Government and Australian Institute of Family Studies (2007), pp 18–19.

¹²⁰ This is partly achieved through *Family Law Act*, s 63DA, which requires ‘advisers’ (legal practitioner, family counsellors, family dispute resolution practitioners and family consultants) to talk to parents about considering equal time and substantial and significant time arrangements.

¹²¹ Rhoades (2010).

individualisation may have weakened patriarchal control, 'external control of family functioning and behaviour of individual members is even strengthened and reinforced (often in the name of the child's best interest)'.¹²² The effect of the reforms is insidious. Although the face of family law is egalitarian and gender neutral, this hides a deeper tendency for the state to use the law to speak directly to the behaviour expected of post-separation mothers, fathers and children after divorce.

It seems to me that what the new family law system requires of many post-separation mothers is a loss of time with their children.¹²³ If, as the research data suggest, motherhood, mothership and time are interwoven, this loss may be experienced by some women as a (partial) loss of motherhood and selfhood – a sort of disenfranchisement as a mother citizen. In the meantime, the father is bolstered. Often already secure in his more public forms of citizenship,¹²⁴ he now also reaps rewards in the private sphere of his fatherhood. It will be seen in the case of *Rosa* that the mother's primary carer role (her mothership) disappears whereas the father's public citizenship (his career) is honoured.

Losing Citizenship

The Intersection of Family Law and Mothers' Lives

Two relocation cases heard since the 2006 reforms demonstrate the difficulty of mothers' citizenship in the new family law system. From my reading of many cases since the 2006 reforms, I suggest that neither of these is an aberrant case. Although the original decision of Coker FM in *Rosa's* case¹²⁵ was ultimately set aside by the High Court of Australia,¹²⁶ the mother's initial appeal to the Full Court of the Family Court was not successful¹²⁷ – suggesting that the decision was in line with the authorities. There is no record of an appeal in *Corrochio*¹²⁸ and the decision is not unexpected in the current case law.

I suggest that intimate citizenship and relational theory may assist in understanding the impact of the decisions on the mothers in these cases, and validating their undoubted unhappiness and even grief.¹²⁹ 'Intimate citizenship' is an emerging concept, which is seen as a way of enhancing

¹²² Daly and Scheiwe (2010), p 182.

¹²³ Given the fact that most mothers spend a considerable amount of time with their children in intact families, a post-separation shared care time regime will reduce the time most mothers spend with their children.

¹²⁴ Economic, civil and social at least.

¹²⁵ *Rosa and Rosa* [2008] FMCAfam 427.

¹²⁶ *MRR v GR* [2010] HCA 4.

¹²⁷ *Rosa and Rosa* [2009] FamCAFC 220.

¹²⁸ *Corrochio & Corrochio* [2008] FamCA 220.

¹²⁹ In *Rosa*, the federal magistrate commented on the mother's depression and anguish (at [50]) and in *Corrochio* the judge mentions the likelihood of unhappiness for the mother (at [51]).

citizenship by applying its principles to interpersonal relationships.¹³⁰ Faulks describes intimate citizenship as a way of linking the ethic of care to citizenship and suggests that feminists have turned to this model to bridge ‘the dualism between reason and the emotion’¹³¹ (which could arguably be seen as a mirror of the public/private divide). However, for Faulks the concept is intended to permeate the personal:

The challenge that intimate citizenship presents us is to combine a strengthening of traditional expressions of rights and responsibilities in formal terms with a sense of compassion and obligation that informs all relationships in both the public and private worlds.¹³²

In a paper examining the ‘inequalities [that] invade and structure personal life across the world’,¹³³ Ken Plummer expounds on how ‘new theorising’ over citizenship has arrived at the idea of intimate citizenship. It ‘implies the rights and obligations surrounding different *intimate life styles*, the participation of different *intimate groupings* and the recognition of people’s different *intimate identities*’.¹³⁴

The two cases I examine here expose the complex lives and web of relationships of family members in this modern mobile age. These very private and personal matters can play out in devastating ways when the parents of children do not wish to live in the same city or vicinity after a separation.¹³⁵ In the cases I present, it is particularly the mothers (and perhaps the children) whose intimate citizenship is jeopardised; however, it is clear that this concept can be used to understand and consider the position of all members of a post-separation family. Both cases involve families with one five-year-old daughter. The mothers were seeking to relocate – one to return to her family in Sydney from Mt Isa, the other to join her partner on the Central Coast from Sydney. I will analyse how the 2006 reforms have impacted on the citizenship of these mothers – the social, civil, economic, relational and intimate aspects of their real lives.

¹³⁰ Faulks (2000), p 124.

¹³¹ Faulks (2000), p 129. Susan Okin has questioned ‘the wisdom of distinguishing between and ethic of care and an ethic of justice. See Okin (1989), p 247. She emphasises the importance of practising gender justice within the family, and the critical influence of parental role-modelling in that regard. Okin (1994), pp 35–36.

¹³² Faulks (2000), p 130.

¹³³ Plummer (2005), p 76.

¹³⁴ Plummer (2005), pp 78–79.

¹³⁵ The dilemma created for decision-makers by relocation cases is well documented. See Family Law Council (2006) and Behrens et al (2008).

The Case of 'Megan' Rosa

The inspiration for this article came while I was being interviewed by a journalist for a newspaper article about a relocation case called *Rosa*.¹³⁶ I started to say something about the mother's paid employment (or lack of it) and I realised that, despite having read the original federal magistrate's¹³⁷ decision and the appeal to the Full Court of the Family Court, I did not know whether she worked because that information was absent from both those judgments. It occurred to me that 'Megan'¹³⁸ Rosa was practically invisible. Her personhood, womanhood and motherhood were all largely missing.

'Gary' and Megan Rosa had been living together since 1991 and married in 2000. Their daughter, 'Martha', was born in 2002 in Sydney, Megan's home town and Gary's home for eighteen years. The couple lived there for the all of her life until Gary took a job in Mt Isa¹³⁹ in early 2007. The separation occurred seven months later, after Gary put Megan's possessions outside on the deck of their home. Megan then took Martha back to her family in Sydney. Gary brought 'recovery' proceedings and an interim order was made for equal shared parental responsibility and the return of Martha to Mt Isa. If Megan also returned, it was to be equal time (the detail to be agreed between the parties); otherwise, by default Martha would live with her father.

On more careful scrutiny of the judgment, it is possible to discern how the various actors were cast in particular roles – ultimately with direct relevance to the application of the 2006 reforms. We learnt early that Gary was an engineer who was about halfway through a two-year contract with a mining company which was likely to be renewed. By paragraph 12 of a 122-paragraph judgment, Gary has been established as an economic and social citizen – a professional man. Further, his mother (with his father) had moved to Mt Isa 'to provide support and nurture for her son who was lonely and no doubt distressed at the breakdown in the relationship' with Megan.¹⁴⁰ So the father's own mother was established as an actor – a mother citizen to her adult son, and a self-sacrificial one too, fulfilling the ideal of traditional motherhood.

In contrast, early facts given about Megan were that she was now living in a caravan park¹⁴¹ and that her family was critical of the father – a serious infringement of the rules of contemporary family law, where a party's whole

¹³⁶ Original trial in the Federal Magistrates Court, *Rosa and Rosa* [2008] FMCAfam 427, appellate decision of the Full Court of the Family Court, *Rosa and Rosa* [2009] FamCAFC 81 and High Court Decision, *MRR v GR* [2010] HCA 4.

¹³⁷ For the purpose of easier reading, and to make consistency with the next case, I have used the term 'judge' for Federal Magistrate Coker.

¹³⁸ For the case studies, I have made up first names for the main characters because I find the generic use of 'the mother' and 'the father' and the tendency to call children by letters such as 'X' and 'A' totally dehumanising.

¹³⁹ A remote mining town in far north-west Queensland.

¹⁴⁰ *Rosa and Rosa* [2008] FMCAfam 427 at [23].

¹⁴¹ This information came through the evidence of the paternal grandmother.

family may be implicated in any failure to facilitate a relationship with the other parent.¹⁴² Here were the beginnings of rendering Megan a ‘bad’ mother citizen – or certainly an imperfect mother citizen – in the early post-separation period. While the negative attitudes of Megan’s family towards the father should not be condoned, the new family law philosophy seems to inhibit some judicial officers from attending to the very real relational dynamics between the actors. From the point of view of Megan’s family, Gary – who had been Megan’s partner for sixteen years – had just thrown her out of their home after moving her and Martha to remote Mt Isa. Megan’s father explained why the family decided that Martha should stay in Sydney when the mother and child first arrived there after the separation:

the situation sounded very volatile and at this point it was unnecessary to subject [Martha] to the potential trauma and stress which awaited in [Mt Isa].¹⁴³

Megan is their loved and cherished daughter/step-daughter, sister. She was left isolated and without support.¹⁴⁴ Her family members were engaging in authentic fatherhood, motherhood, ‘stepmotherhood’ and ‘siblingship’ – kinship – by supporting and protecting her!¹⁴⁵ But the anger directed at Gary by Megan’s family is not remarked upon by the judge as understandable, if regrettable. It is cited as the very reason why Martha will not be entitled to move back to Sydney with her mother.

The judge’s more comprehensive assessment of the parties commenced with the words: ‘I was particularly impressed with both parents’,¹⁴⁶ but even by the end of that sentence his gaze shifted entirely to the father, who was described as ‘a man of very determined views, particularly intelligent, and a man who had set out to improve his and his family’s lot by the gaining of academic qualifications and the provision of a stable and financially sound household for he and the children of their relationship’.¹⁴⁷ Gary is multi-dimensional – a clever man who has gone to great lengths to be an excellent breadwinner for his family – what husband- and father-ship – the perfect father citizen. The fact that he seemed to have expelled that family from

¹⁴² See *Family Law Act*, s 60CC(3)(c) – ‘friendly parent’ provision – *Family Law Act*, s 60CC(3)(c) discussed previously in this article.

¹⁴³ *Rosa and Rosa* [2008] FMCAfam 427 at [15].

¹⁴⁴ It now seems clear that Megan had only casual work, was living in a caravan park, had no family support and, as she had only been living in Mt Isa for seven months, it can be presumed that she would not yet have a circle of deeply intimate friends. Her poor mental health was a discussion point in the judgment.

¹⁴⁵ In a research study relating to the reforms and women who have experienced violence, one woman tells of how the admonition to be a ‘friendly’ parent spread to her parents. ‘You are asking someone to be inhuman. It’s my parents’ right to grieve for what has happened to me.’ Laing (2010), p 53.

¹⁴⁶ *Rosa and Rosa* [2008] FMCAfam 427 at [62].

¹⁴⁷ *Rosa and Rosa* [2008] FMCAfam 427 at [62].

their home was explained away as something of a misunderstanding, despite the fact that he 'had certainly packed [her] goods and chattels ... outside the internal structure of the home'.¹⁴⁸

The judge found that Gary's 'sole motivation' for the case 'was not in any way arising from a need for control but rather, more specifically, was directed to ensuring that the best interests and the welfare of the child were met by the opportunity to continue a positive relationship with both parents'.¹⁴⁹ But perhaps extraordinarily, despite acknowledging that Gary may be somewhat 'dogmatic',¹⁵⁰ the judge considered it acceptable that he refused to move to Sydney and would stay to continue his job in Mt Isa even if Martha were allowed to move. This acceptance significantly meant that the judge therefore dealt with the father's continued presence in Mt Isa as a 'given'.

There was no mention of Megan for the next ten paragraphs after the opening statement about 'both parents'. When the judge eventually returned to her, he importantly stated that she had 'taken on a very significant role in relation to the parenting of this child and has in almost all respects ensured that Martha's best interests have been met'.¹⁵¹ That sentence completed he returned to his concern 'with the mother's [lack of] recognition and appreciation of the importance of the role of the father in relation to the child'.¹⁵² As noted in the earlier discussion, it is observable that the role of mother as primary carer was rendered almost invisible and seemingly irrelevant.

The judge also 'gained the distinct impression' that the mother was 'inclined to see negatives in relation to what the father had done' in terms of putting her possessions out of their joint home.¹⁵³ Further, because Sydney was her first preference, and despite the fact that Megan said she would stay in Mt Isa if Martha were ordered to stay there, the judge found that she 'was far more centred on her own wishes and desires in relation to this matter than an appreciation of the father's wishes, or most importantly and significantly of all, the child's best interests and needs'.¹⁵⁴ How interesting that, even after separation, it was considered that she should be more concerned about the father's (or her husband's) wishes than her own! It sounds like Blackstone's wifehood revisited.

Presumably there was some evidence about Megan's parenting during the subsistence of the relationship that was unremarkable – she must have been the generic 'good' or 'good enough' mother¹⁵⁵ who needed no judicial

¹⁴⁸ *Rosa and Rosa* [2008] FMCAfam 427 at [73].

¹⁴⁹ *Rosa and Rosa* [2008] FMCAfam 427 at [70]. Here the judge seems to be engaging in Smart's 'care talk' on behalf of the father.

¹⁵⁰ *Rosa and Rosa* [2008] FMCAfam 427 at [71].

¹⁵¹ *Rosa and Rosa* [2008] FMCAfam 427 at [72].

¹⁵² *Rosa and Rosa* [2008] FMCAfam 427 at [72].

¹⁵³ *Rosa and Rosa* [2008] FMCAfam 427 at [74].

¹⁵⁴ *Rosa and Rosa* [2008] FMCAfam 427 at [80].

¹⁵⁵ This term was coined by Donald Winnicott. See Adram (2008).

observation or comment. Neither the original nor the appellate judgment shed much light on the pre-separation parenting of either parent. In terms of post-separation parenting, there was a sense of determined involvement by the father and obstruction of this by the mother. The focus was on the parents' and their families' attitudes towards each other, which was relevant to the likely future facilitation of the relationship of Martha with the other parent.¹⁵⁶ Megan and her family were deemed wanting. The family report writer¹⁵⁷ recommended equal time and the judge found that this was in the best interests of Martha. He therefore ordered her to stay in Mt Isa and live week about with each of her parents. If Megan were to return to Sydney, Martha was to live with her father.

These orders stripped Megan of many of her citizenships. In the arrangements prescribed by the court, Megan would have to live in Mt Isa, remote from her family and friendship networks – her intimate citizenship and relational familial web thwarted. Her economic citizenship was also compromised. She was living in a caravan, surviving on Centrelink payments,¹⁵⁸ casual employment and, presumably, child support (which would be calculated on the basis of the 50:50 care order). And her mother citizenship was punctured. Megan had been found lacking as a good post-separation mother citizen and was now required to live her most intimate life in a way detailed by a court order. It was openly acknowledged that Megan was depressed by the circumstances of her life, and the family report writer suggested that she should seek counselling.

As already noted, the Full Court of the Family Court refused to interfere with the exercise of the judge's discretion,¹⁵⁹ so the mother appealed the case to the High Court of Australia, which upheld her appeal.¹⁶⁰ The ramifications of this case are still unclear. It is being referred and discussed in many relocation cases,¹⁶¹ there is new scholarship¹⁶² and even a Bill before Federal Parliament aimed at ensuring the validity of existing orders that may have been affected by the case.¹⁶³ What is important for the purposes of this article is that it was held that the judge did not properly consider whether it was 'reasonably practicable'¹⁶⁴ for Megan to remain in Mt Isa. If he had

¹⁵⁶ *Family Law Act*, s 60CC(2)(a) and s 60CC(3)(c).

¹⁵⁷ Generally a social worker or psychologist who prepares an independent social report about the family in answer to an order made under *Family Law Act*, s 62G.

¹⁵⁸ Which will be reduced in amount because of the 50:50 care order.

¹⁵⁹ *Rosa and Rosa* [2009] FamCAFC 81.

¹⁶⁰ *MRR v GR* [2010] HCA 4.

¹⁶¹ See, for example, *Klein & Klein* [2010] FamCAFC 150, *Collu & Rinaldo* [2010] FamCAFC 5; *Foster & Foster* [2010] FamCAFC 49; *Hepburn & Noble* [2010] FamCAFC 111.

¹⁶² Dickey (2010); Chisholm and Parkinson (2010).

¹⁶³ Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010 (Cth)

¹⁶⁴ This is a statutory requirement under section 65DAA(1)(b) before making an order for equal time.

considered that question, the High Court said, there was 'only one conclusion' that could be reached.¹⁶⁵ After all, the mother was living in a caravan with little prospect of alternative accommodation, she had Martha there with her every second week (not an 'environment ... ideal for a child'),¹⁶⁶ there were limited opportunities for employment, whereas she had a job offer in Sydney, and the family report writer's evidence was that she was 'definitely despondent'.¹⁶⁷

Commenting on *MRR v GR*, Anthony Dickey suggests that in contemporary debates about parenting laws, the 'spotlight has been directed almost exclusively on the rights of the child' and 'recognition of parental rights or claims ... has been too often ignored or ... downplayed'. In his view: 'The interests of the child do not override the interests of the parents; they have to co-exist with them.'¹⁶⁸ This framework would enable a consideration of the relationships and intimate citizenship of all family members in a relocation case, and seems to be the approach taken by the High Court in its application and interpretation of the reasonable practicability section.

The invocation by the High Court of the mother as an economic, civil and social citizen and a person within a web of relationships represents a vital shift in the legal understanding of what is important in mothers' lives post-separation. Parents as economic citizens are likely to become more complex players in the family law system as dual working parents, global citizens, with highly mobile careers become more common. In the newspaper article by the journalist who interviewed me, Caroline Overington insightfully asked, in the context of the original decision, 'What happens if Mr Rosa decides to take a mining job in a different remote location? Must the mother go with him?'¹⁶⁹

The Case of 'Sarah' Corrochio

The case of *Corrochio*¹⁷⁰ also involved a five-year-old girl, 'Isabella', this time living in Sydney. Her parents, 'Sarah' and 'Marco', were married in 1995 after a four-year de facto relationship. Sarah was 39 years of age at the time of the hearing and Marco 44. Marco commenced an affair with a woman named 'Gemma' shortly after Isabella was born in 2002. The parties separated early in 2003, reconciled briefly the following year and finally separated in November 2004, when Marco moved in with Gemma.

Isabella resided with her mother as her primary carer during all of that time, always spending time with her father on a regular basis. Since May 2006, the parents had adopted a parenting arrangement whereby Isabella

¹⁶⁵ *MRR v GR* [2010] HCA 4 at [16].

¹⁶⁶ *MRR v GR* [2010] HCA 4 at [16].

¹⁶⁷ *MRR v GR* [2010] HCA 4 at [18].

¹⁶⁸ Dickey (2010), p 297.

¹⁶⁹ Overington (2009).

¹⁷⁰ *Corrochio & Corrochio* [2008] FamCA 220.

spent alternate weekends and two nights each alternate week with her father. Sarah commenced a relationship with ‘Steve’ in mid-2006 and in early 2007 she informed Marco that she intended to move with Steve to the Central Coast – a distance of about 100 kilometres (or perhaps a bit more) from Sydney.¹⁷¹ Sarah proposed that Isabella live with her on the Central Coast and spend two out of every three weekends with her father during the school term.¹⁷² Like Megan Rosa, Sarah informed the court that if an order were made that necessitated Isabella staying in Sydney, she would ‘resign herself to such fate rather than relinquish primary care of her child’.¹⁷³

The court accepted that Marco and Gemma could not realistically move to the Central Coast, and nor could Steve move to Sydney, because of their respective employment circumstances. Their economic citizenship was prioritised. The family report writer suggested that ‘in spite of Sarah’s love for Isabella as well as Isabella’s love for her, Sarah lacks the ability to recognise, let alone fulfil, all of Isabella’s needs’.¹⁷⁴ He inferred that each of the parents played a complementary role. Although Isabella should live with Sarah, they should be in close proximity to the father so the court could ‘substantially increase the amount of time’¹⁷⁵ Isabella spent with him. It was apparent that a ‘particularly strong bond exists’¹⁷⁶ between Isabella and the father.

The court recognised that: ‘The nature of the relationship of the child with each parent reveals both a qualitative and quantitative difference. It ought not be forgotten that the child has primarily lived with the wife for the overwhelming bulk of her short life to date.’¹⁷⁷ Honouring the primary carer role of Sarah (her motherhood), the judge steered away from equal time orders, describing such an arrangement as ‘quantum shift ... relative to the history of Isabella’s upbringing to date’.¹⁷⁸ However, concerned that, on the evidence, a reduction in Marco’s ‘role in the child’s life might ... leave a capacity deficit’,¹⁷⁹ the court ordered that Isabella stay in Sydney, live with her mother and spend time with her father for five nights each fortnight – three nights one week and two the next – from Friday to Monday morning one week and Wednesday and Thursday night the next.

The judge found that it was ‘not impossible, nor even impracticable’ for Sarah’s proposal to be implemented – but having regard to the times of travel and Marco’s employment it would ‘be onerous if the burden fell upon

¹⁷¹ It is not possible to tell from the judgment exactly where in Sydney the parties lived or to where on the Central Coast the mother hoped to move.

¹⁷² With, it seems, standard provisions for school holidays – that is, half each.

¹⁷³ *Corrochio & Corrochio* [2008] FamCA 220 at [3].

¹⁷⁴ *Corrochio & Corrochio* [2008] FamCA 220 at [34].

¹⁷⁵ *Corrochio & Corrochio* [2008] FamCA 220 at [35].

¹⁷⁶ *Corrochio & Corrochio* [2008] FamCA 220 at [37].

¹⁷⁷ *Corrochio & Corrochio* [2008] FamCA 220 at [47].

¹⁷⁸ *Corrochio & Corrochio* [2008] FamCA 220 at [47].

¹⁷⁹ *Corrochio & Corrochio* [2008] FamCA 220 at [54].

him'.¹⁸⁰ But what is the difference between the two arrangements? Assuming both involved the same school holiday arrangements, in total time spent during the school term Sarah's offer represents one night less per fortnight.¹⁸¹

It is instructive to consider the realities of this case. Sarah's time will mostly be spent without the support of her partner while mothering her child. It will be hard for her to engage in a social life due to her artificial 'singlehood'. She does not drive and suffers from an (unnamed) medical condition which clearly affects her mobility. Being with Steve would presumably facilitate a real partnership with companionship at home and the ability to participate more easily in the wider world. Critiquing the limits of the 'welfare' principle that operates in the United Kingdom – or 'best interests of children' principle as it is called in Australia – Jonathan Herring reveals that it can 'require the court to make an order which would very slightly improve the welfare of a child even where that would cause a huge level of harm to others' (such as Sarah).¹⁸²

In this case, the mother is not rendered invisible. Her traditional selflessness in ensuring that her daughter developed a relationship with her father, despite what must have been a very hurtful and distressing set of circumstances, was valued and applauded. As the judge remarked: 'It could be suggested by the wife that she is in a sense to some extent the victim of her own success in devising and implementing a very beneficial caring regime for the child over the five years since the parties first separated.'¹⁸³ But this did not grant her freedom of choice of where she lived. In fact, now she is required to remain the self-sacrificial mother in perpetuity. The judge noted that requiring Sarah to stay in Sydney would 'undoubtedly cause her some unhappiness, or at least the curtailment of the pursuit of residence and, as she genuinely believes, a more satisfying and secure financial existence'.¹⁸⁴ The orders also diminish Steve's quality of life, taking away much of his husbandship and stepfatherhood.

It seems that the benefit of Isabella spending one more night per fortnight with her father (and the inclusion of week-night time),¹⁸⁵ and the avoidance of imposing a somewhat burdensome driving regime on Marco, mean that he can continue to live with Gemma in their chosen location, near to their work, while Sarah must live in rented (probably public) housing away from her partner, who could have supported her financially and

¹⁸⁰ *Corrochio & Corrochio* [2008] FamCA 220 at [68]. Sarah does not drive and, if she were permitted to relocate, presumably the drive between the homes would be about two hours.

¹⁸¹ To be fair to the judge, he was also concerned that Sarah's offer did not comply with the statutorily defined idea of 'substantial and significant' time, which requires that a parent spend time with their child on 'days that do not fall on weekends or holidays' and 'allows the parent to be involved in ... the child's daily routine' in accordance with s 65DAA(3).

¹⁸² Herring (2005), p 166.

¹⁸³ *Corrochio & Corrochio* [2008] FamCA 220 at [77].

¹⁸⁴ *Corrochio & Corrochio* [2008] FamCA 220 at [51].

¹⁸⁵ Considered important under the *Family Law Act* – see section 65DAA(3), the definition of 'substantial and significant' time.

emotionally. For Sarah, it was her social and intimate citizenship that was damaged by the court order, which effectively prohibited her from moving – thereby inhibiting her ‘ability to get on with her own life’.¹⁸⁶ Although superficially this does not present as an attack on Sarah’s motherhood, requiring her to exercise her mother citizenship disconnected from her chosen partner will have a profound impact on her happiness and relational life.

Exploring ‘the tensions between women’s autonomy and modern expectations of mother-caregivers who do not live with the fathers of their children’,¹⁸⁷ Boyd concludes that there is a need for the legal system to ‘rely less on a notion that rights should automatically accompany genetic definitions of parenthood and focus more on relational aspects of parenting, including the wider social context’.¹⁸⁸ The importance of these relational concepts will be returned to shortly in the conclusion to this article.

It is fascinating to consider whether the High Court decision in *Rosa* means that *Corrochio* would be decided differently now. Would the existence of a genuine partner in another town mean that it would not be considered reasonably practicable for Sarah to continue to live in Sydney? The case may not overtly be a recognition of citizenship, personhood, selfhood or autonomy, but it may provide a pragmatic avenue for considering the real lives of the real citizens in the post-separation family.

Conclusion

I suggest that the linguistic pursuit behind this article has served to underline two aspects of the citizens of the post-separation family: their various ‘hoods’ – identities; and their ‘ships’ – the active work or participatory functions of those ‘hoods’. The different meanings and realities of motherhood and mothership, fatherhood and fathership, have crystallised. It also seems to me that, while the ‘hoods’ are about self, there is often some kind of connectedness as well as action in the meaning of the ‘ship’ words. With mothership, it is perhaps the connectedness that comes from nurturing and caring for one’s children – the mundane tasks, the profound joys, the just ‘being there’. But the words partnership, relationship and citizenship are also about connection. For example, each partner may have their own *personhood*, but what connects them to each other is their *partnership*. I tentatively suggest that where people have the opportunity to exercise their ‘ships’, this may allow them to be happier and more content in their ‘hoods’.

This is where the new family law system creates stressors for mothers. I argue that it fails to acknowledge the realities of mothers’ complex lives inside and outside their families – their ‘ships’ of the past, present and future.¹⁸⁹ These, importantly, include their mothership, their kinship and

¹⁸⁶ *Corrochio & Corrochio* [2008] FamCA 220 at [30].

¹⁸⁷ Boyd (2010), p 138.

¹⁸⁸ Boyd (2010), p 154.

¹⁸⁹ Obviously fathers also have complex relational lives.

friendship networks (their relational world) and maybe a new partnership. The case studies presented demonstrate the disjunction between these features of the mothers' lives and the orders made.

In terms of honouring and acknowledging the past, and often the present, mothership of mothers, feminist scholars have considered the benefits of a presumption in favour of the primary carer in parenting cases,¹⁹⁰ but have also been concerned that the existence of a presumption gives rise to scrutiny of a 'decontextualised selection of "incidents" by which the father seeks to show [the mother's] failure to meet the standard of the "good mother"'.¹⁹¹ Julie Wallbank advocates the recognition of 'parental investment' in family law.¹⁹² She suggests that 'both the relative investments and types of responsibilities assumed by mothers and fathers ... prior to the relationship breakdown' should be taken into account in decision-making about children's arrangements.¹⁹³ According to Wallbank, this proposal is not simply about creating arrangements that mirror the pattern of care from the intact family, but rather that the 'responsibilities which were assumed during the relationship should provide a starting point for negotiations'.¹⁹⁴ An aspect of this concept that I find appealing is that it seems to offer the possibility of honouring the mother's mothership rather than taking it for granted as part of her motherhood.

In endeavouring to find expression for mothers' kinships and friendships, it is worth examining ideas from relational theories. Boyd contends that relational theorists seek to 'understand individuals as socially embedded and as developing their identities and capacities within the context of a complex web of social relations'.¹⁹⁵ In terms of parenting laws, she argues that 'it is not adequate to consider only the relationship between those involved in a parenting dyad, but rather the wider relational context must be brought into sight'.¹⁹⁶ Such an approach may well have permitted the relocation of both Megan Rosa and Sarah Corrochio.

There is an attractiveness about these concepts that seems to take family law beyond the current dominant discourse of shared parenting. Melding these ideas together might assist in finding a way forward in the family law system that is more sensitive to the various 'hoods' and 'ships' of mothers – and fathers. There may also be something to gain from a consideration of intimate citizenship theory. Plummer suggests that a 'basic feature of human existence' is the 'right to pursue a "personal and intimate life" of some

¹⁹⁰ Boyd (2003), p 162.

¹⁹¹ Boyd et al (1999), p 246.

¹⁹² Wallbank (2010), p 110. This seems similar to the concept of the *approximation rule* recently embraced by the American Law Institute, 'in which postdivorce parenting arrangements would approximate parenting involvement in the marriage'. See: Emery et al (2005), p 17.

¹⁹³ Wallbank (2010), p 110.

¹⁹⁴ Wallbank (2010), p 114.

¹⁹⁵ Boyd (2010), p 158.

¹⁹⁶ Boyd (2010), p 153.

contentment'.¹⁹⁷ He has contemplated the kinds of individuals who may emerge in postmodern, intimate citizenship debates and includes 'new family citizens' such as post-divorce citizens, children and step-family citizens, grandparent citizens and single parent citizens.¹⁹⁸

I suggest that we need to find a way to reform family law that combines investment, relational and intimate citizenship ideas. In this model, past contributions to the children's welfare – 'parentship' – would be recognised and rendered relevant to future arrangements. Further, the past, present and future relationships of both parents and their children with each other and with other family members would all be relevant to the decision-making. The intimate citizenship of all parties would be respected so that the citizens of the new post-separation family would have the ability 'to pursue a "personal and intimate life" of some contentment'.¹⁹⁹

The sun was shining on the sea,
 Shining with all his might:
 He did his very best to make
 The billows smooth and bright –
 And this was odd, because it was
 The middle of the night.²⁰⁰

References

Secondary Sources

- Jan Adram (2008) 'Donald Woods Winnicott (1896–1971): A Brief Introduction' 89 *International Journal of Psychoanalysis* 1189.
- Attorney-General's Department (2010) Exposure Draft: Family Law Amendment (Family Violence) Bill 2010: Consultation Paper, November.
- Australian Bureau of Statistics (2008), *How Australians Use Their Time: 2006*, www.abs.gov.au/ausstats/abs@.nsf/ProductDocumentCollection?OpenAgent&productno=4153.0&issue=2006.
- Australian Government and Australian Institute of Family Studies (2007) *A Framework for the Evaluation of the Family Law Reform Package*, Commonwealth of Australia.
- Australian Law Reform Commission (2010) *Family Violence: A National Legal Response*, Commonwealth of Australia.

¹⁹⁷ Plummer (2005), p 94.

¹⁹⁸ Plummer (2005), p 91.

¹⁹⁹ Plummer (2005), p 94.

²⁰⁰ This is the first verse of *The Walrus and the Carpenter*. Reading this poem to me many times over was, without a doubt, part of my own mother's sense of motherhood and her mothership. My father also exercised his fathership through reading to me. Being read to by both my parents is one of the enduring memories of my childhood.

- Dale Bagshaw et al (2010) *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006*, Commonwealth of Australia.
- Juliet Behrens et al (eds) (2008) *Symposium Proceedings – Relocation Disputes in Australia: What Do We Know, and What are the Implications for Family Law Policy?* Australian National University.
- Carl Bertoia and Janice Drakich (1993) 'The Fathers' Rights Movement: Contradictions in Rhetoric and Practice' 14(4) *Journal of Family Issues* 592.
- Brian Bix (2010) 'Law and Language: How Words Mislead Us' 1 *Jurisprudence* 25.
- William Blackstone (1979) 'Of Husband and Wife', Book 1, Chapter 15, *Commentaries on the Laws of England, 1765–1769*, University of Chicago Press, www.lonang.com/exlibris/blackstone/bla-115.htm#fn36d.
- Linda Bosniak (2006) *The Citizen and the Alien: Dilemmas of Contemporary Membership*, Princeton University Press.
- Susan Boyd (ed) (1997) *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*, University of Toronto Press.
- Susan Boyd, Helen Rhoades and Kate Burns (1999) 'The Politics of the Primary Caregiver Presumption: A Conversation' 13 *Australian Journal of Family Law* 233.
- Susan Boyd (2003) *Child Custody, Law, and Women's Work*, Oxford University Press.
- Susan Boyd (2010) 'Autonomy for Mothers? Relational Theory and Parenting Apart' 18 *Feminist Legal Studies* 137.
- Judy Cashmore et al (2010) *Shared Care Parenting Arrangements Since the 2006 Family Law Reforms*, Social Policy Research Centre, University of New South Wales.
- Michelle Cazzulino and Angela Kamper (2003) 'Give Dad a Go', *Daily Telegraph*, 20 June.
- Christine Chinkin (1999) 'A Critique of the Public/Dimension' 10 *European Journal of International Law* 387.
- Richard Chisholm (2007) 'Making It Work: The Family Law Amendment (Shared Parental Responsibility) Act 2006' 21 *Australian Journal of Family Law* 143.
- Richard Chisholm (2008) The Meaning of 'Meaningful': Exploring a Key Term in the Family Law Act Amendments of 2006' 22 *Australian Journal of Family Law* 175.
- Richard Chisholm (2009) *Family Courts Violence Review*, Attorney-General's Department.
- Richard Chisholm and Patrick Parkinson (2010) "'Reasonable Practicability" as a Requirement: The High Court's Decision in *MRR v GR*' 24 *Australian Journal of Family Law* 255.
- Jonathan Cohen and Nikki Gershain (2001) 'For the Sake of the Fathers? Child Custody Reform and the Perils of Maximum Contact' 19 *Canadian Family Law Quarterly* 121.
- Richard Collier and Sally Sheldon (eds) (2006) *Fathers' Rights Activism and Law Reform in Comparative Perspective*, Hart.
- Scott Coltrane and Neal Hickman (1992) 'The Rhetoric of Rights and Needs: Moral Discourse in the Reform of Child Custody and Child Support Laws' 39(4) *Social Problems* 400.
- Lyn Craig (2003) 'Do Australians Share Parenting? Time-diary Evidence on Fathers' and Mothers' Time with Children', paper presented at the 8th Australian Institute of Family Studies Conference.
- Lyn Craig (2006) 'Does Father Care Mean Fathers Share? A Comparison of How Mothers and Fathers in Intact Families Spend Time with Children' 20(2) *Gender and Society* 259.
- Rachel Cusk (2003) *A Life's Work: On Becoming a Mother*, Picador.

- Mary Daly and Kirsten Scheiwe (2010) 'Individualisation and Personal Obligations: Social Policy, Family Policy and Law Reform in Germany and the UK' 24 *International Journal of Law, Policy and the Family* 177.
- John Dewar et al (1999) 'Parenting, Planning and Partnership: The Impact of the New Part VII of the Family Law Act 1975', Working Paper No 3, Family Law Research Unit, Griffith University.
- Tracey de Simone (2008) 'The Friendly Parent Provisions in Australian Family Law: How Friendly will You Need to Be?' 22 *Australian Journal of Family Law* 56.
- Anthony Dickey QC (2010) 'Reflections on *MRR v GR*' 84 *Australian Law Journal* 296.
- Linda Elrod and Milfred Dale (2008) 'Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance' 42(3) *Family Law Quarterly* 381.
- Richard Emery, Randy Otto and William O'Donohue (2005) 'A Critical Assessment of Child Custody Evaluations' 6(1) *Psychological Science in the Public Interest* 1.
- Family Law Council (1987) *Access – Some Options for Reform*, Commonwealth of Australia.
- Family Law Council (1989) *Spousal Maintenance: Discussion Paper*, Commonwealth of Australia.
- Family Law Council (2006) *Relocation: Discussion Paper*, Commonwealth of Australia.
- Family Law Council (2009) *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues*, Commonwealth of Australia.
- Family Law Pathways Advisory Group (2001) *Out of the Maze: Pathways to the Future for Families Experiencing Separation*, Commonwealth of Australia.
- Keith Faulks (2000) *Citizenship*, Routledge.
- Belinda Fehlberg and Juliet Behrens (2008) *Australian Family Law: The Contemporary Context*, Oxford University Press.
- Belinda Fehlberg, Christine Millward and Monica Campo (2009) 'Shared Post-separation Parenting in 2009: An Empirical Snapshot' 23 *Australian Journal of Family Law* 247.
- Martha Fineman (1988) 'Dominant Discourse, Professional Language, and Legal Change in Child Custody Decision-Making' 101(4) *Harvard Law Review* 727.
- Martha Fineman (1991) *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform*, University of Chicago Press.
- Michael Flood (2004) 'Backlash: Angry Men's Movements', in Stacey Elin Rossi (ed), *The Battle and Backlash Rage On: Why Feminism Cannot be Obsolete*, Xlibris.
- Michael Flood (2009) "'Fathers' Rights'" and the Defence of Paternal Authority in Australia' 16(3) *Violence Against Women* 328.
- Kathleen Funder et al (1993) *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies.
- Regina Graycar (1989) 'The Child Custody Debate in Australia', in Carol Smart and Selma Sevenhuijsen (eds), *Child Custody and the Politics of Gender*, Routledge.
- Regina Graycar (2000) 'Law Reform by Frozen Chook: Family Law Reform for the New Millennium?' 24(3) *Melbourne University Law Review* 737.
- Regina Graycar and Jenny Morgan (2002) *The Hidden Gender of Law* (2nd ed), Federation Press.
- Margaret Harrison (2002) 'Australia's Family Law Act: The First Twenty-five Years' 16 *International Journal of Law, Policy and the Family* 1.
- Derek Heater (1989) *What is Citizenship?* Polity Press.

- Jonathan Herring (2005) 'Farewell Welfare?' 27(2) *Journal of Social Welfare and Family Law* 159.
- House of Representatives Standing Committee on Family and Community Affairs (2003) *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of a Family Separation*, Commonwealth of Australia.
- House of Representatives Standing Committee on Legal and Constitutional Affairs (2005) *Report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005*, Commonwealth of Australia.
- Colin James (2006) 'Media, Men and Violence in Australian Divorce' 31(1) *Alternate Law Journal* 6.
- Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand and Lixia Qu (2009) *Evaluation of the 2006 Family Law Reforms*, Australian Institute of Family Studies.
- Miranda Kaye and Julia Tolmie (1998) 'Fathers' Rights Groups in Australia and Their Engagement with Issues in Family Law' 12 *Australian Journal of Family Law* 19.
- Leslie Laing (2010) *No Way to Live: Women's Experiences of Negotiating the Family Law System in the Context of Domestic Violence*, University of Sydney, South Eastern Sydney Illawarra Health and Benevolent Society.
- Susan Maushart (2001) *Wifework: What Marriage Really Means for Women*, Text.
- Peter McDonald (1985) *The Economic Consequences of Marriage Breakdown in Australia*, Australian Institute of Family Studies.
- Peter McDonald (ed) (1986) *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies and Prentice Hall.
- Peter McDonald, Kathleen Funder, Margaret Harrison and Ruth Weston (1986) 'Directions for Law Reform and Social Policy', in Peter McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies and Prentice Hall.
- Jennifer McIntosh et al (2010) *Post-separation Parenting Arrangements and Developmental Outcomes for Infants and Children – Collected Reports*, Family Transitions, Commonwealth of Australia.
- Lawrie Moloney (2009) "'Meaningful Relationships" in the Family Law Act Amendments of 2006: A Socio-legal Perspective on Fathers, Mothers and the "Sharing" of Parenting After Separation' 15 *Journal of Family Studies* 9.
- Susan Moller Okin (1989) 'Reason and Feeling in Thinking About Justice' 99(2) *Ethics* 229.
- Susan Moller Okin (1994) 'Political Liberalism, Justice and Gender' 105(1) *Ethics* 23.
- Caroline Overington (2009) 'Fair Share?' *The Weekend Australian Magazine*, 5–6 September, 2009.
- Oxford English Dictionary* (2nd ed) (1989) prepared by J Simpson and E Weiner, Clarendon Press.
- Patrick Parkinson and Juliet Behrens (2004) *Australian Family Law in Context: Commentary and Materials*, 3rd ed, Law Book Company.
- Patrick Parkinson (2006) 'Decision-making About the Best Interests of the Child: The Impact of the Two Tiers' 20 *Australian Journal of Family Law* 179.
- Carol Pateman (1992) 'Equality, Difference, Subordination: The Politics of Motherhood and Women's Citizenship', in G Bock and S James (eds), *Beyond Equality and Difference: Citizenship, Feminist Politics and Female Subjectivity*, Routledge.
- Ken Plummer (2005) 'Intimate Citizenship in an Unjust World', in M Romero and E Margolis (eds), *Blackwell Companion to Social Inequalities*, Blackwell.

- Zoe Rathus (2007) 'Shifting the Gaze: Will Past Violence be Silenced by a Further Shift of the Gaze to the Future Under the New Family Law System?' 21 *Australian Journal of Family Law* 87.
- Zoe Rathus (2008) 'How Judicial Officers are Applying New Part VII of the *Family Law Act*: A Guide to Application and Interpretation' 20 *Australian Family Lawyer* 5.
- Zoe Rathus (2010) 'Social Science or "Lego-Science"? Presumptions, Politics, Parenting and the New Family Law' 10(2) *Queensland University of Technology Law and Justice Journal* (forthcoming).
- Kathryn Rendell et al (2002) *An Unacceptable Risk: A Report on Child Contact Arrangements Where There is Violence in the Family*, Women's Legal Service.
- Helen Rhoades (2002) 'The "No Contact Mother": Reconstructions of Motherhood in the Era of the "New Father"' 16 *International Journal of Law, Policy and the Family* 71.
- Helen Rhoades (2010) 'Revisiting Australia's Parenting Laws: A Plea for a Relational Approach to Children's Best Interests' 22(2) *Child and Family Law Quarterly* 172.
- Helen Rhoades (2006) 'Yearning for Law: Fathers' Groups and Family Law Reform in Australia', in Richard Collier and Sally Sheldon (eds), *Fathers' Rights Activism and Law Reform in Comparative Perspective*, Hart.
- Helen Rhoades et al (1999) *The Family Law Reform Act 1995: Can Changing Legislation Change Legal Culture, Legal Practice and Community Expectations? Interim Report*, University of Sydney and Family Court of Australia.
- Helen Rhoades et al (2000) *The Family Law Reform Act 1995: The First Three Years*, University of Sydney and Family Court of Australia.
- Deborah Rhode (1989) *Justice and Gender: Sex Discrimination and the Law*, Harvard University Press.
- Jocelyne Scutt (1990) *Women and the Law: Commentary and Materials*, Law Book Company.
- Mary Lyndon Shanley (1989) *Feminism, Marriage, and the Law in Victorian England, 1850–1895*, Princeton University Press.
- Carol Smart (1995) 'Losing the Struggle for Another Voice: The Case of Family Law' 18 *Dalhousie Law Journal* 173.
- Carol Smart (2003) 'Towards an Understanding of Family Change: Gender Conflict and Children's Citizenship' 17 *Australian Journal of Family Law* 20.
- Carol Smart (2006) 'The Ethic of Justice Strikes Back: Changing Narratives of Fatherhood', in A Diduck and K O'Donovan (eds), *Feminist Perspectives on Family Law*, Routledge-Cavendish.
- Bruce Smyth and Richard Chisholm (2006) 'Exploring Options for Parental Care of Children Following Separation: A Primer for Family Law Specialists' 20 *Australian Journal of Family Law* 193
- Sally Squire and Jo Tilly (2007) *It's About Time: Women, Men, Work and Family – Final Paper*, Human Rights and Equal Opportunity Commission.
- Margaret Thornton (ed) (1995) *Public and Private: Feminist Legal Debates*, Oxford University Press.
- Liz Trinder (2009) 'What Might Children Mean by a "Meaningful Relationship"'? 15 *Journal of Family Studies* 20.
- Robert Van Kriecken (2005) 'The "Best Interests of the Child" and Parental Separation: On the "Civilising of Parents"' 68(1) *Modern Law Review* 25.

- Julie Wallbank (2010) '(En)gendering the Fusion of Rights and Responsibilities in the Law of Contact', in Julie Wallbank, Shazia Choudry and Jonathan Herring (eds), *Rights, Gender and Family Law*, Routledge.
- Mary Wollstonecraft (1988) 'A Vindication of the Rights of Women', in C Poston (ed) *A Vindication of the Rights of Women*, 2nd ed, WW Norton and Company.
- Women's Electoral Lobby (1975) 'International Women's Year Bulletin', in Jocelyne Scutt (ed), *Women and the Law: Commentary and Materials*, Law Book Company.
- Iris Marion Young (1995) 'Mothers, Citizenship and Independence: A Critique of Pure Family Values' 105(3) *Ethics* 535.

Cases

- Collu & Rinaldo* [2010] FamCAFC 5
- Corrochio & Corrochio* [2008] FamCA 220
- Epperson v Dampney* (1976) FLC 90-061
- Foster & Foster* [2010] FamCAFC 49
- Goode and Goode* (2006) FLC 93-286
- Gronow v Gronow* (1979) 144 CLR 513
- Hepburn & Noble* [2010] FamCAFC 111
- Klein & Klein* [2010] FamCAFC 150
- McCall and Clark* (2009) FLC 93-403
- MRR v GR* [2010] HCA 4
- Rosa and Rosa* [2008] FMCAfam 427
- Rosa and Rosa* [2009] FamCAFC 81

Legislation

- Australian Constitution*
- Family Law Act 1975* (Cth)
- Family Law Reform Act 1995* (Cth)
- Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth)
- Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010
- Matrimonial Causes Act 1959* (Cth)