

How the Family Court's Purpose to Protect Children Become Inverted

By Grant Wyeth

This article comprises a powerful indictment of the failures of the family court system to meet one of its primary charges, which is to protect children from the machinations of an abusive parent. In this original piece, author Grant Wyeth places special focus on one of the prime movers of bad custody decisions—the pseudo-scientific theory known as Parental Alienation. As he aptly demonstrates, this misogynistic invention has a long history of being successfully used by Men's Rights Activists (MRAs) to shift the focus of responsibility away from the abuser and toward the victim(s). Anyone seeking to understand how and why child custody litigation so often results in the endangerment rather than the protection of vulnerable parties will find in this article a quick primer on the sordid strategies used by abusers and their collaborating authorities against our society's most vulnerable citizens.

In the early 1980s in Sydney, Australia, the family court suffered a series of brutal and ideologically driven attacks. A judge was shot dead on his doorstep, and bombs were exploded in the houses of two other judges; one killing a judge's wife, and the second injuring a judge and his children. A third bomb was exploded outside a family court building in the suburb of Parramatta, with another unexploded bomb found under the hood of the car of a family court lawyer. In a related incident, a Jehovah's Witness church hall was also bombed, killing an elder and hospitalizing 71 members of the congregation.

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For decades these attacks remained one of the great unsolved mysteries of Australian crime, until 2015 when a man named Leonard Warwick was arrested and charged for the murders and bombings. In July 2020 the Supreme Court of New South Wales found Warwick guilty of 31 of the 32 offences for which he was charged. Two months later he was sentenced to life in prison.¹

In his summary of the proceedings, Justice Peter Garling described Warwick's acts as "...an attack on the very foundations of Australian democracy."² Yet this is a far too broad depiction of the reasons for Warwick's murderous behavior; instead, his actions were an attack on a specific idea—the idea that the state has the right to intervene in domestic affairs.

Warwick was motivated by an extreme hostility towards the family court during a child custody dispute with his ex-wife. He saw the court as an impediment to his self-prescribed right to dominate his ex-wife and child; his actions served as a violent demonstration of how intensely he believed in his own absolute domestic authority. His bombing of the Jehovah's Witness church hall was due to the congregation having helped his ex-wife and child hide from him.

Warwick's crimes can be understood as acts of proto-Men's Rights Activist (MRA) terrorism.³ MRAs have a pronounced—and unfounded—grievance against family courts, maintaining that they are instinctively biased against men and are designed to undermine their ability to exercise what they see as their rightful power over their children and partners.^{4,5} MRAs obsessively advance the idea that women habitually lie about domestic abuse in order to manipulate the courts.

This argument can rarely be substantiated because it is actually a tactic of misdirection, designed to obfuscate custody hearings and elicit sympathies from judges who may share an instinctive suspicion towards women.⁶ Instead what these men actually believe is that violence is an essential component of masculinity, that it is intrinsic to their dignity, and therefore they should face no consequences for exerting it. The MRAs believe in their own fundamental right to violence with such fervor that they have even taken to arguing that

¹ Thompson, A, *Leonard Warwick Found Guilty of Family Court Bombings*, Sydney Morning Herald, July 23, 2020, First, National.

² R v Warwick (No. 94) [2020] New South Wales Supreme Court 1168.

³ Whyte, L, "Young Men Should Be Furious": *Inside the World's Largest Gathering of Men's Rights Activists*, Open Democracy, July 25, 2018. <https://www.opendemocracy.net/en/5050/young-men-should-be-furious-inside-worlds-largest-mens-rights-activism/> Accessed: January, 13, 2021.

⁴ Anti-Defamation League, *Suspect in Shooting at Judge's Home was Longtime Men's Rights Attorney*, July 23, 2020, <https://www.adl.org/blog/suspect-in-shooting-at-judges-home-was-longtime-mens-rights-attorney> Accessed: January, 14, 2021.

⁵ Sodha, Sonia, *The Idea that Family Courts are Biased Against Men is a Dangerous Fallacy*, The Guardian, March 5, 2020. Opinion.

⁶ Goldstein, B, *Lies of the Fathers (Rights Groups)*, National Organization for Men Against Sexism, September 10, 2015, <https://nomas.org/lies-fathers-rights-groups/> Accessed: January 13, 2021.

government services that seek to assist battered women are discriminatory against men.⁷

Astonishingly, over the past three to four decades an ideological revolution within family courts throughout the West has seen these institutions become more sympathetic to this worldview. In doing so, they have perpetuated the violence and torment for countless women and children along with severely damaging their own reputations as ethical and dependable arbiters of disputes. In June 2020, the United Kingdom's Ministry of Justice issued an extraordinary report firmly stating that its family courts are now refusing to protect children from obviously dangerous fathers.⁸ Similar reports could be written in almost all Western capitals.

Around the same time Warwick was conducting his acts of terrorism against the family court in Sydney, an American psychiatrist by the name of Richard Gardner was devising a way for men like Warwick to legally gain the upper hand in custody hearings.⁹ Gardner's work would promote the idea of the importance of violence to masculinity within the family court system. Of course, this could never be explicitly advocated, so instead, women who reported sexual and physical abuse of children needed to be discredited in order for reports of male violence to be disbelieved, downplayed, or completely ignored.

Gardner's scheme involved exploiting a weakness in the dominant legislative framework throughout the West concerning child custody. This is known as equal shared parental responsibility, and it works on the presumption that a child's best interests are always met by both parents sharing duties towards the upbringing of children, regardless of whether they live together. Technically, the legislation includes a condition to disregard this presumption should children be at risk of harm, but Gardner found a way to not just neutralize this condition but to invert it.¹⁰

Gardner's revolution was built on devising a "theory" that could be used to create suspicion towards any attempts by mothers to report cases of child abuse. Parental Alienation Syndrome (PAS) has a simple premise: that almost all allegations of child abuse are false, and that the more a mother, or even the child, insists that abuse has occurred, the more this "syndrome"—or brainwashing of

⁷ Dragiewicz, M, *Equality with a Vengeance: Men's Rights Groups, Battered Women, and Anti-feminist Backlash*, Boston: Northeastern University Press, 2011, muse.jhu.edu/book/10536.

⁸ Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*, Hunter, R et al, London, Government of the United Kingdom of Great Britain and Northern Ireland, 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895173/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

⁹ Gumbel, A, *Dr. Richard A. Gardner*, The Independent, October 3, 2013, Obituaries. Accessed: January 10, 2021 <https://www.independent.co.uk/news/obituaries/dr-richard-gardner-36582.html>

¹⁰ Tickle, L, *Twisted Priorities Mean Cafcass has Failed to Protect Children from Abusive Parents*, The Guardian, July 28, 2020, Child Protection.

a child—is at work.¹¹ Gardner asserted that this “alienation” was itself a form of child abuse more damaging than any violence. He designed a trap, one that would silence mothers from reporting abuse or punish them if they did.¹²

All of Gardner’s writings were self-published; none of them were peer-reviewed. His ideas have been widely discredited as junk science in academic literature. They have been dismissed by all authoritative psychiatric, psychological, and medical bodies in the United States as lacking empirical or clinical evidence.¹³ Despite heavy lobbying by MRA groups, PAS has failed to meet the scientific standards for inclusion in the Diagnostic and Statistical Manual of Mental Disorders.¹⁴ This is because Gardner’s “syndrome” wasn’t designed to diagnose a mental condition in a child; rather, it was designed to help abusive fathers win their court cases. For Gardner, children were merely pawns to be used in a battle for the state to recognize the absolute domestic authority of men. Children’s predicaments were apparently inconsequential to Gardner.

Despite its lack of professional credibility, PAS has been advanced inside the family courts by an active coalition of unscrupulous therapists and lawyers working for abusive men.¹⁵ As attorney Barry Goldstein explained in the Fall 2019 issue of *Family & Intimate Partner Violence Quarterly*: “...the best way for lawyers and mental health professionals to make large incomes is to support approaches that favor wealthy abusers. The pernicious Parental Alienation Syndrome (PAS) was concocted to give these professionals an argument to support abusive fathers. This started the cottage industry that has done so much to help abusers and spread misinformation in the courts.”¹⁶

Gardner himself became an “expert witness” in over 400 custody cases throughout 25 states in the United States, with judges willingly deferring to his testimony despite his lack of academic and professional credibility. Due to the way legal processes build on precedents, once his ideas had worked their way into the legal system they easily multiplied and proliferated. The legitimacy of PAS in the eyes of judges and other legal associates stemmed solely from the frequency by which it was used, rather than from the validity of the concept itself.

However, efforts have been made to counteract these lazy judicial practices. As recommended by a 2008 report issued by The National Council of Juvenile and Family Court Judges (NCJFCJ): “Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation

¹¹ The Leadership Council on Child Abuse & Interpersonal Violence, *What is Parental Alienation Syndrome (PAS)?* <http://www.leadershipcouncil.org/1/pas/faq.htm>, Accessed: January 23, 2021.

¹² Schmidt, S., “A Gendered Trap”: *When Mothers Allege Child Abuse by Fathers, the Mother Often Loses Custody, Study Shows*, The Washington Post, July 19, 2019. Social Issues.

¹³ O’Donohue, W et al, *Examining the Validity of Parental Alienation Syndrome*, *Journal of Child Custody*, Vol. 13, Issue 2-3, (2016) pp. 113–125.

¹⁴ Bensussan, P, *Parental Alienation, Child Psychological Abuse, and DSM-5, L’Encephale*, 43(6), 510–515. <https://doi.org/10.1016/j.encep.2017.08.003>

¹⁵ Barnett, A, *A Genealogy of Hostility: Parental Alienation in England and Wales*, *Journal of Social Welfare and Family Law*, Vol. 42, Issue 1. (2020) pp. 18–29.

¹⁶ Goldstein, B, *Confirmed: Custody Courts Fail Children*, *Family & Intimate Partner Violence Quarterly*, Vol 12-2, (2019) pp. 8–40.

syndrome.” The report further added that “...quite apart from its scientific invalidity, [PAS] inappropriately asks the court to assume that the child’s behaviors and attitudes toward the parent who claims to be “alienated” have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent.”¹⁷

With the deceptive nature of PAS gaining legal recognition, in hopes of circumventing this controversy, the cottage industry described by Goldstein introduced into family courtrooms an uninventive yet arguably even more insidious idea. This is, quite simply, the notion called Parental Alienation (PA). By dropping the term “syndrome,” advocates of PA attempted to distance themselves from Gardner’s assertion that children who are reluctant to engage with an abusive father are suffering from a mental condition. They also sought to broaden the concept by moving away from Gardner’s primary goal of discrediting allegations of child sexual abuse¹⁸ toward a focus on the actions taken by a parent to exclude the other parent from their child’s life.

This realigned concept of PA sounds more reasonable; one can easily imagine scenarios in which a parent acts in ways that will exclude the other parent. However, in its legal usage, both the general and the gendered sentiment remain the same: a “hostile mother” is acting to undermine the perceived domestic rights of a father. PA has become beloved among MRAs, as it provides legitimacy to their paranoid, conspiratorial thinking that mothers are “poisoning” children against them while they fail to recognize their own abusive behavior as harmful and fear-inducing. The concept easily plays into medieval conceptions of women as “irrational” and “hysterical,” which can be used to paint women as vindictive, manipulative, and prone to fabrication in custody hearings.

These types of tactic used to mislead the court have proven to be incredibly successful. Once PA is raised in a custody case, it has the power to overshadow all other arguments as it negates the evidence of both child and partner abuse in the eyes of the court. Such is the concept’s sway that it is able to reassign victimhood to the abusive fathers, rather than their children, while it deems the mothers who are seeking to protect their children as the real perpetrators. A 2019 empirical study of over 2000 custody cases in the United States by the George Washington University Law School found that when mothers report child abuse, a counter claim of parental alienation by the father doubles the rate at which mothers end up losing full custody of their children.¹⁹

¹⁷ Bowles, J et al, *A Judicial Guide to Child Safety in Custody Cases*, National Council of Juvenile and Family Court Judges, University of Nevada, (2008). https://www.ncjfcj.org/wp-content/uploads/2012/02/judicial-guide_0_0.pdf Accessed: January 24, 2021.

¹⁸ The Leadership Council on Child Abuse & Interpersonal Violence, Overview of Dr Richard Gardner’s Opinions on Pedophilia and Child Abuse, <http://www.leadershipcouncil.org/1/pas/RAG.html> Accessed: January 26, 2021.

¹⁹ Meier, J et al, *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations*, George Washington University Law School Public Law Research Paper No. 2019-56, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062 Accessed: 14 January, 2021.

Such irrational decisions lead to horrific subsequent outcomes. Over the past decade, the Center for Judicial Excellence has been tracking the murders of children in custody disputes in the U.S. According to its data, there have been 109 murders of children in cases where judges knowingly placed the children in dangerous environments.²⁰ This is not just an astonishing institutional failure to prevent violence against children; it is also a failure to recognize how abusive men take their legal victories as endorsements of their behavior. When family courts reward abusive men with custody of their children, they often intensify the violence that those children experience.

The influence of PA and the narrative of suspicion towards mothers have become pervasive in family courts through the West. In January, 2020, the *Journal of Social Welfare and Family Law* dedicated a special issue solely to this phenomenon, highlighting how the concept was skewing custody cases in the United Kingdom, Canada, Australia, New Zealand, Spain and Italy, along with the U.S. Several authors described how the concept was undermining both domestic law and international convention on child safety.²¹

Due to the concept's success at obscuring cases of domestic and child abuse, parental alienation has now become the standard defence for any fathers who are accused of domestic violence and child abuse.²² As a result, family courts have become so hostile to mothers and children that lawyers—cowed by the process—often now recommend that mothers do not report child abuse because they know that this will lead to custody being granted to the abusive father.²³

Parental Alienation has become a highly effective tool for abusive men due to the way it has attached itself to the legislative framework. The concept has skewed the interpretation of children's presumptive "right of contact" to both parents—with the overriding caveat of child safety and welfare—towards an affirmation of the "right to contact" for fathers, regardless of their behavior. Extraordinarily, Gardner's contention that "alienation" is a form of child abuse more harmful than violence has succeeded in convincing judges that, in awarding custody to abusive men, they are actually acting in the child's best interests.

The perverse "genius" of PA's deception has been the way it backs mothers into a corner, preys on her fears, and turns her maternal instincts to protect her children into a pitfall.²⁴ The more PA manipulates the justice system to

²⁰ Center for Judicial Excellence, *US Divorce Murder Data: Reported System Failures*, <https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/> Accessed: January 27, 2021.

²¹ Hitching, E et al, *Special Issue on Parental Alienation*, *Journal of Social Welfare and Family Law*, Volume 42, Issue 1 (2020).

²² Oppenheim, M, *Domestic Abusers Winning Time with Children by Accusing Mothers of Parental Alienation*, *Study Finds*, *The Independent*, January 21, 2020. Home News.

²³ Carman, T, *Survivors of Domestic Abuse Told to Keep Quiet About it in Court or Risk Jeopardizing Child Custody*, Canadian Broadcasting Corporation, September 27, 2020. CBC Investigates. <https://www.cbc.ca/news/canada/survivors-of-domestic-abuse-punished-for-talking-about-it-in-child-custody-cases-1.5738149> Accessed: March 23, 2021.

²⁴ Sheehy, E et al, *Penalizing Women's Fear: Intimate Partner Violence and Parental Alienation in Canadian Custody Cases*, *Journal of Social Welfare & Family Law*, Vol. 42, Issue 1, (2020) pp. 80–91.

endanger her children, the more desperate a mother becomes, because now it is not only an abusive man who is the threat to her children, but also the state itself with all its coercive powers. This desperation is not viewed by judges as evidence of a mother's genuine fears for her children; rather, it is considered a further example of a mother's "alienating" behavior and a confirmation that she is not to be trusted.

Of course, this ideological conversion of the court has relied heavily on judges and custody evaluators—who strongly influence judicial decisions—being susceptible to PA's underlying assumptions.²⁵ These include not only a conceptualization of women as instinctively deceitful but also an adherence to primitive familial gender roles. PA's philosophical core is built around the MRA's misguided sense of male dignity, which requires both the submission of women and children to paternal authority as well as the use of violence to enforce this submission. These may seem like archaic notions that intellectually sophisticated professionals within the legal system would easily dismiss, but subconsciously, they are proving to be remarkably resilient.

Due to PA's dominant role within family court proceedings, a "good mother" has become not one who is loving, caring, and responsible towards her children but rather one who actively encourages contact with a father, whether or not he is violent.²⁶ This demand made upon mothers is not just an abdication of the court's responsibility to protect children but is also a clear demonstration of the backsliding of women's rights within the justice system. It is a reversion of women to a state of coverture in which her obligations as a citizen are in sole service to men.

It is this re-establishment of female servitude to men that has been at the core of the success of MRAs in capturing the family courts. These groups have specifically targeted the family court because it is a court that trades in gender roles and because the household is deemed an area in which male supremacy ought to still endure. With their profound sense of grievance and victimhood, MRAs have a brute zero-sum understanding of human interaction. They perceive that the rights so painfully gained by women have come at their expense. The ideological conversion of the family court is retribution for these female social advancements, hitting women where it hurts them the most: their maternal protective instincts.

With the institutionalization of PA within family courts, abusive men have successfully been able to weaponize legal proceedings against their children

²⁵ David, M et al, *Custody Evaluations When There Are Allegations of Domestic Violence: Practices, Beliefs, and Recommendations of Professional Evaluators*, Report for the National Institute of Justice, 2010. <https://www.ojp.gov/pdffiles1/nij/grants/234465.pdf> Accessed: March 17, 2021.

²⁶ Dore, M, *The "Friendly Parent" Concept: A Flawed Factor for Child Custody*, Loyola Journal of Public Interest Law, Volume 6, pp 41- 56 (2004) <http://www.thelizlibrary.org/liz/Dore-friendly-parent.pdf> Accessed: March 18, 2021.

and former partners.²⁷ The family court has now become an extension of these men's coercive control, making it almost impossible for women and children to escape from abusive environments.²⁸ The organizing principle of the family court has become one that sees male violence as something that women and children simply need to endure for the sake of their societies.

Through this perspective, the contest to define masculinity as simply—and approvingly—brutish and chaotic is being won. The state is relinquishing its monopoly on violence and conceding that domestic violence is outside of its purview—which was the precise goal of Warwick's acts of terrorism against the family court in Sydney. At best, the family court seems to believe that setting behavioral standards for men is unfair, that love, care, and responsibility are beyond their capabilities, and that, therefore, custodial judgements need to compensate for these natural male deficiencies.²⁹

But by consistently rewarding abusive men, the law is giving no value to those men who are loving, caring, and responsible partners and parents.³⁰ The state is signalling that masculinity doesn't need to find its dignity in love, kindness, and compassion, and that parenthood—for men—is effectively a neutral concept devoid of any ideals to strive towards. Within this lies the assertion that a man's biology carries far greater legal weight than his actions.

The conviction of Leonard Warwick offers family courts the opportunity to self-assess, to understand what has happened over the past three decades to allow terrorists like him to gain ideological ascendancy in their courtrooms, to comprehend how they have surrendered to an unscientific ruse that would be deemed inadmissible in any law-abiding court, and to recognize that their core purpose—the protection of children—has now been extraordinarily inverted.^{31,32} It is an opportunity for family courts to grasp that, just as the New South Wales Supreme Court ruled that Warwick's acts of public terrorism were unacceptable, so too should they hold that private acts of terrorism are equally intolerable.³³

²⁷ Campbell, E, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How the Courts Can Put a Stop to It*, UCLA Women's Journal, Vol 24, Issue 1. (2017) <https://escholarship.org/uc/item/31z272j1> Accessed: March 21, 2021.

²⁸ Klien, J, "How Abusers Use the Courts Against Their Victims", The Atlantic, July 18, 2019. Family. <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/> Accessed: March 22, 2021.

²⁹ Loofbourow, L, *The Myth of the Male Bumbler*, The Week, November 15, 2017. Opinion. <https://theweek.com/articles/737056/myth-male-bumbler> Accessed: March 24, 2021.

³⁰ Joyce, K, *She Said Her Husband Hit Her, She Lost Custody of Their Kids*, Longreads, July 2020. <https://longreads.com/2020/07/08/domestic-violence-custody-family-court-disputes/> Accessed: March 25, 2021.

³¹ Hoult, J, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy*, Children's Legal Rights Journal, Vol. 26, Issue 1, (2006).

³² Bruch, C, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, Family Law Quarterly, Vol. 35, Issue. 3 (Fall 2001), pp. 527–552.

³³ McGorry, P, et al, *Coercive Control is a Form of Intimate Terrorism and Must be Criminalised*, The Guardian, October 6, 2020. Opinion. <https://www.theguardian.com/commentis-free/2020/oct/06/coercive-control-is-a-form-of-intimate-terrorism-and-must-be-criminalised> Accessed: April 02, 2021.



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