

# ALLARGANDO No. 11

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*This is a quick and dirty issue of Allargando, #11 in a series, and Obsessive Press publication #86, by Jeanne Gomoll, Box 1443, Madison, WI 53701-1443, telephone 255-9909. All material © 1987, by Jeanne Gomoll, except for the appended reprint.*  
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I have relatively few comments about the August Turboapa. I read it during the plane flight across the Atlantic, and though there are a few checkmarks, I'm afraid I'm going to have to claim a bad case of distracted attention. I checked *Kim Koenigsberg's* logo because it was so neat looking and besides that, it was incredibly legible. I laughed at what I assumed was a hoax zine, "Dungeoneering Corner," and scribbled the word "hoax" up its upper right-hand corner just in case I forgot my deduction during my trip. The words "excellent analysis" are scrawled along the lefthand margin of DadaDeMon next to *Peter Larson's* comments on how certain words empower and others degrade. There's a sad "oh..." written next to *Hope Kiefer's* explanation for the reason bicycling is hazardous for London women. ...After that, I don't know, there just aren't any more marginalia. I'm sure it's nothing any of **you** said or didn't say. My mind must have been elsewhere. And it's barely two days before the October deadline, I haven't read the September issue of the Turboapa yet, and so, you must excuse me, there's no time to go back and refresh my memory. In all likelihood I won't even make many comments about the September issue either, since I've only got a little time tonight to work on it.

No more courier italic typescript for the egoscanners. The one I used to own broke last month, and the one Dick Russell just sold me just broke a moment ago. Luckily I haven't written out a check to him yet.

Fun cover. I liked it. But shouldn't there have been a **title** somewhere on it?

As I said, I haven't read the whole issue yet, just (as you might guess) a bit of egoscanning. That I did right after I picked up the issue last month, and I think my reaction to that egoscanning probably put me off on reading it soon afterward, and so lead to my procrastination. I was real irritated by **John Peacock** and **Pete Winz's** comments in response to my little essay on the Gary Hart scandle. Most of the irritation was due to the feeling that they'd misunderstood everything I'd said, or missed it altogether, reading instead what they expected to read. I do think that there is an issue, an important issue, in the manner in which a potential presidential candidate conducts him/herself in relationships and in the manner in which he or she responds to criticism of those relationships. For too long it has been customary to be "gentlemanly" about a politician's so-called private life, ignoring it as something that cannot possibly have any effect on his or her public behavior as our representative. Included in that "private sphere" has been the candidate's or president's relationship to women. I think it is most definitely a sexist leap from the assumption that women aren't important in public life to the gentlemanly custom to ignore the candidate's attitude and behavior toward women altogether. And I think that gentlemanly custom at last began to wear

thin for Gary Hart. **Diane Martin** noted that she hadn't seen much feminist analysis of the Hart mess. I too was struck by the absence of it. But there was one really excellent article by Gloria Steinem in the issue of Ms. that I took with me to England (and left there). I read it at O'Hare, I think, which might have contributed to some of my irritation upon reading the apa. Steinem started with many of the same points I made and expanded them to make some really cogent comments on political morality of recent months in general. I recommend it to everyone. I might even have included a copy in here if I'd kept the issue. I'd really appreciate it, **John** and **Pete**, if you'd find a copy (Carrie Root has it, I know) and read it. Please? It's probably the September issue.

□ Excellent article on oppression, **Peter Larson!** When I wrote those bookreviews on Butler and Elgin, it didn't even occur to me to compare them, but the comparison that you did really explains (to me) why I get so impatient with Elgin. Elgin's fast-forwarding past the explanation of how women got oppressed in Native Tongue bothered me too. She once said that she dealt with space travel in the way many SF writers deal with linguistics, with cheating devices: i.e., they throw in a "universal translator," to indicate that the language gap between two races has been bridged, and she throws in an elipses and a few blank lines to indicate that space has been traveled, letting the reader supply the means. Well she does the same thing when she constructs the "sets" of her future worlds. She wants to extrapolate on a given idea, and that idea requires a certain culture and political set-up. Voila. Unfortunately, by not going through how they got there from where we are now, she introduces lots of logical flaws in the fabric of her worlds. It gets even worse when those worlds get stretched into multi-volume series, because the next book may require a slightly different "set" for a different extrapolated idea. Weaving inconsistencies into her worlds has never much bothered Elgin.

In any case, I don't think that Elgin has ever really written about oppression. I agree with you, that Atwood and Butler have much more realistic points of view on the subject. For instance, their awareness of how the oppressed often are the most visible and active participants in oppression, echos Mary Daly's Gynecology: Chinese mothers bind their own daughters feet. Women relatives encouraged or forced widows to join their dead husbands corpses on the funeral pyre. African women still perform or have performed on their own daughters the awful operation of clitorrectomy (the scaping off of the clitoris), and sew their daughter's hymen's shut to preserve their virginity for their future husbands, no matter what the cost in pain to their daughters.

You felt, **Peter**, that Atwood's image of oppression was the more realistic. To me, Butler's felt more "real." Atwood's world may be closer to our's and certainly more possible, but I thought that Atwood's point of view was that of someone from "outside" the oppression. She was aware of the gates coming slowly down, whereas her character was not. I had the feeling that if her character (and others like her) had just opened their eyes, had been as aware as Atwood, none of this would have been allowed to happen. That was Atwood's point, I think. It's a warning novel. She is saying to us that we must stay aware, that we must not let go of our rights little by little, thinking with each loss that it is just a little. If we hold on, stand firm, etc., this will not happen to us. With Butler's stories, the point of view is that of a person who is absolutely and completely oppressed. There is no hope, and there never was any hope, really, for escape. There is a chance for human spirit to persevere in some different way, but it will never be possible to turn the clock back and be free in the way it once was. That's the source of power in her stories, I think: that she shows us what it would be like to be absolutely enslaved.

I hope you read Dawn, **Peter**. I look forward to talking with you about it. Elgin imagines that the people in her world will accomplish a revolution by language changes. I believe that could happen. But I don't think Elgin can imagine how, which accounts for the dangling weirdness of Judas Rose's ending.

I note your comments on Clive Barker's Hellraiser, which would normally slip beneath my consciousness (as most reviews of horror literature does. I didn't read Butler for years and years because of that, and then when I suddenly decided I had to read everything she's ever written, I find that much of it is out of print.). But anyway, I heard Barker speak at Brighton, and he's a very literate, very very intelligent, fascinating, not to mention extremely attractive man. So maybe I should look into this book before he's out of print too. Barker was on a panel with George R. R. Martin and others who were talking about the growing fuzzy area between SF and Horror, which was a weird echo of Doris Lessing's interview and speech, in which she talked about the growing fuzzy area between realistic and so-called unrealistic fiction. She was great because so often she talked about the same things we talk about all the time in SF, but with a slightly different vocabulary because she really doesn't have anything to do with the SF field. But the dissonance cast light into obscure corners, which was helpful and interesting.

Great zine, Peter.

☐ Many of you seemed to enjoy my story of blood and gore last issue. Thank you. Apparently I told it badly one evening in Brighton. I was standing around at a party with a group of friends and it got to be my turn, sort of, to tell a story, and I launched into the story of how I ended up in the emergency ward while helping Scott move. So when I got to the punch line/paragraph and expectantly glanced around for grins and laughter and saw only gaping mouths and horrified expressions on the faces of my audience, I left in with reassurances.

"This is a funny story! It's OK. Look at my arm, hardly much of anything to show for it..."

"Oh that's horrible!" they moaned. "How awful for you, Jeanne," they sympathized.

"No it's supposed to be funny," I protested.

☐ Don't worry, **Hope**, Scott's being five years younger than me isn't a touchy subject with us. It's mostly a joke, if anything. He makes old age jokes at me; I make immature jokes at him. And actually, now, I'm more interested in a possible conversation on the subject when I joked about it to you, in response, in the last issue of Allargando. Since then, I've read Maggie Scarf's Intimate Partners: Patterns in Love and Marriage (which is The most significant book, The most useful volume I've ever read on the subject of relationships. I've already scribbled over 25 pages of very shorthand notes based on reading it on my own family background and relationship-history, and so I'm not going to even try to describe it here. But I recommend it to everyone who would like to do a little thinking about the patterns one tends to repeat in their relationships. I've already recommended it to a few people, and since then I've seen references to it in lots of places that suggest that Scarf is a very respected author and that Intimate Partners is an important book. It's easy to read, very direct, interesting prose.). I'd actually like to get together a few people sometime, who've all read the book, and talk about it for a few hours.

Anyway, the patterns of older children in families ending up in relationships with younger children of other families, is briefly mentioned (I'm following up some references), which is what your comments now make me think of. Because I've always gotten involved with the youngest sibling (I am the oldest sib in my family). That and much, much more, connects with my real life experience. I think you'd like the book, **Hope**.

I'm still waiting for a letter of comment, **Hope**. (This is called public humiliation. Don't take it personally.) Oh, and I've got some photo copies for you from Brighton and London. Some really good shots. I'll hold them here for you. ~~UNTIL YOU SEND A TOP.~~

I would have called a cab if I'd been injured and had no access to a car.

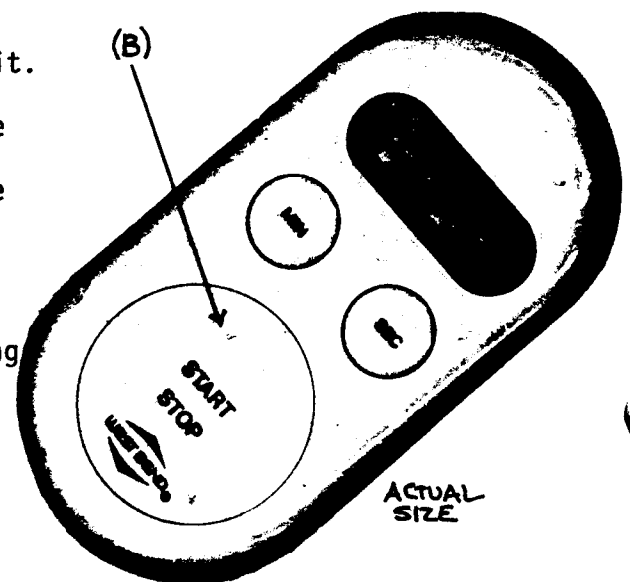
Wonderful con report, **Hope**. You weren't expecting a con report from me here were you? No, I'm only going to write that once.

- David Busch**, one of the disadvantages of being a new member is that you don't know as much about other members as the old members. Old members' behavior is dependant upon that information that you as a new member do not have. And since you don't know it, and can't tell us what it is, I can't very well suggest what an old member with all that additional information might do. The advice holds: stay out of it and let the old members do what they think they must do. There are no universal rules for sticky situations like that; there are far too many human variables.
- Julie Gomoll**, my suggestion to **Hope**, about reading Intimate Partners, will-I hope-appeal to you. I would love to talk with you about this book. I've already gushed all over the phone to Rick (our brother) about it, and on the basis of my wild gushing, he promised to go out the very next day to buy the book. Believe me, it straightened out a lot of things for me with respect to the family. It felt as though I'd been throwing things into a room in my head for years and years, and everything was all very messy in that room: all the stuff about mom and dad and why we felt the way we did when we lived at home, etc., etc. Every once in a while I'd go up to the room (it wasn't locked) and picked something up out of the mess, and maybe you and I would talk about it, examine it ("Gee, how'd that get the way it got. Gross." and throw it back in again, amazed or repulsed and confused.). But after reading this book, it suddenly felt as if that room had been magically organized, everything in order, filed, and accessable, and most of all, connected to all the other things in the room in an easily understood way. (Wow, isn't that an appropriate image for me to have for understanding something, almost Freudian.) Anyway, I think you'd like it too. I know you've got a lot of other reading to do, but try, OK? Your comment about how both you and I seem to be attracted to the other's "type," might be a real good subject to start out on after you've read it.
- My brother Danny gave me a birthday gift that all you **Pictionary fans** must know about. It's a special gaming timer, that's infinitely easier to use than either an egg timer or a digital beeping-watch. Once it's set (for a minute) you don't ever have to set it again. It keeps counting down unless someone hits, punches or kicks the big button (B). Then it stops and continues the countdown to 0 when the big button (B) is punched again. When the timer hits 0 seconds it beeps. End of round. Then someone punches the big button (B) again, and the countdown starts automatically from 1:00 minute, again. Easy. You'll love it.

- I'm including a reprint, guys. Please read it. Normally I wouldn't do this, and I know I've been a vocal complainer about reprints in the apa. But this one is special. I have never read such an excellent analysis on this issue as this one is. I've been meaning to write about the issue of baby-buying, but after reading the Nation article by Katha Pollitt (one of my favorite political writers), it seemed to me that there was absolutely nothing more to be said...

All for now.

Best, *Jeanne*



# The Nation

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CONTRACTS AND APPLE PIE

## THE STRANGE CASE OF BABY M

KATHA POLLITT

I think I understand Judge Harvey Sorkow's ruling in the Baby M case. It seems that a woman can rent her womb in the state of New Jersey, although not her vagina, and get a check upon turning over the product to its father. This transaction is not baby selling (a crime), because a man has a "drive to procreate" that deserves the utmost respect and, in any case, the child is genetically half his. The woman he pays for help in fulfilling that drive, however, is only "performing a service" and thus has no comparable right to a child genetically half hers. Therefore, despite the law's requirements in what the layperson might think are similar cases (women who change their minds about giving up a child for adoption, for example), a judge may terminate a repentant mother-for-money's parental rights forever without finding that she abused or neglected her child—especially if he finds her "manipulative, exploitive and deceitful." In other words, so-called surrogacy agreements are so unprecedented that the resulting human arrangements bear no resemblance to adoption, illegitimacy, custody after divorce, or any other relationship involving parents and children, yet, at the same time, bear an uncanny resemblance to the all-sales-final style of a used-car lot.

The State Supreme Court will hear Mary Beth Whitehead's appeal in September and has meanwhile granted her two hours of visiting time a week—a small sign, perhaps, that in jettisoning the entire corpus of family law, Judge Sorkow may have gone a bit too far. (*The New York Times* had trouble finding a single legal scholar who supported the judge's reasoning in full.)

Maybe not, though. Despite the qualms of pundits, the outrage of many feminists and the condemnation of many religious leaders, every poll to date has shown overwhelming approval of Judge Sorkow's ruling. Twenty-seven states are considering bills that would legalize and regulate bucks-for-baby deals. What on earth is going on here?

Some of this support surely comes from the bad impression Mrs. Whitehead made every time she opened her mouth—most damningly, in her tape-recorded threat to kill Baby M and herself. And some comes from the ineptitude of her lawyer. (Where was the National Organization for Women? Where was the American Civil Liberties Union?) The Sterns said they would drag the Whiteheads through the mud, and they did. We learned as much about the Whiteheads' marital troubles, financial woes and quarrelsome relatives as if they were characters on *All My Children*. Distinguished experts testified that Mrs. Whitehead, who has raised two healthy, normal kids, is a bad mother and emotionally unbalanced: she was "overenmeshed" with her kids, disputed the judgment of school officials, gave Baby M teddy bears to play with instead of pots and pans (*pots and pans?*) and said "hooray" instead of "patty-cake" when the tot clapped her hands. I know that, along with two-thirds of the adult female population of the United States, I will never feel quite the same about dyeing my hair now that Dr. Marshall Schechter, professor of child psychiatry at the University of Pennsylvania, has cited this little beauty secret as proof of Mrs. Whitehead's "narcissism" and "mixed personality disorder." Will I find myself in custody court someday, faced with the damning evidence of Exhibit A: a half-empty bottle of Clairol's Nice 'N' Easy?

Inexplicably, Mrs. Whitehead's lawyer never challenged the Sterns's self-representation as a stable, sane, loving pair, united in their devotion to Baby M. And neither did the media. Thus, we never found out why Dr. Elizabeth Stern claimed to be infertile on her application to the Infertility Center of New York when, in fact, she had diagnosed herself as having multiple sclerosis, which she feared pregnancy would aggravate; or why she didn't confirm that diagnosis until shortly before the case went to trial, much less consult a specialist in the management of M.S. pregnancies. Could it be that Elizabeth Stern did not share her husband's zeal for procreation? We'll never know, any more than we'll know why a disease serious enough to bar pregnancy was not also serious enough to consider as a possible bar to active mothering a few years down the road. If the Sterns's superior income could count as a factor in determining "the best interests of the child," why couldn't Mary Beth Whitehead's superior health?

The trial was so riddled with psychobabble, class prejudice and sheer callousness that one would have expected public opinion to rally round Mrs. Whitehead. Imagine openly arguing that a child should go to the richer parent! (Mr. Whitehead drives a garbage truck; Dr. Stern is a professor of pediatrics, and Mr. Stern is a biochemist.) And castigating a mother faced with the loss of her baby as hyperemotional because she wept! But Mrs. Whitehead (who, it must be said, did not help her case by perjuring herself repeatedly) made a fatal mistake: she fell afoul of the double standard of sexual morality. Thus, in the popular mind,

Mrs. Whitehead was "an adult" who "knew what she was doing," while Mr. Stern, presumably, was not an adult and did not know what he was doing. Mrs. Whitehead was mercenary for agreeing to sell, but not Mr. Stern for proposing to buy. That victim-as-seducer mentality hasn't got such a workout since a neighborhood matron decided to stop for a drink at Big Dan's bar in New Bedford, Massachusetts.

The personalities of the Whiteheads and the Sterns, so crucial during the custody phase of the trial, will soon fade from public memory. The extraordinary welter of half-truths, bad analogies, logical muddles and glib catch phrases that have been mustered in defense of their bargain are apparently here to stay. If we are really about to embark on an era of reproductive Reaganomics—and most Americans seem to be saying, Why not?—we at least ought to clear away some of the more blatantly foolish things being said in support of it. For example:

**Mary Beth Whitehead is a surrogate mother.**

"Mother" describes the relationship of a woman to a child, not to the father of that child and his wife. Everything a woman does to produce her own child Mary Beth Whitehead did, including giving it half the genetic inheritance regarded by the judge as so decisive an argument on behalf of William Stern. If anyone was a surrogate mother, it was Elizabeth Stern, for she was the one who substituted, or wished to substitute, for the child's actual mother.\*

What's in a name? Plenty. By invariably referring to Mrs. Whitehead as a surrogate, the media, the courts and,

\* In this article I will use the terms "contract mother," "maternity contract" and their variants, except where I am indirectly quoting others.

unwittingly, Mrs. Whitehead herself tacitly validated the point of view of the Sterns, who naturally wanted to render Mrs. Whitehead's role in producing Baby M as notional as possible, the trivial physical means by which their desire—which is what really mattered—was fulfilled. And if Mrs. Whitehead was the substitute, then Dr. Stern must be the real thing.

Oddly enough, Mr. Stern, whose paternity consisted of ejaculating into a jar, was always referred to as the father or natural father or, rarely, biological father of Baby M, except by Mrs. Whitehead, who called him "the sperm donor." Although that is a far more accurate term for him than "surrogate mother" is for her (let alone "surrogate uterus," which is how the distinguished child psychologist Lee Salk referred to her), her use of it was widely taken as yet another proof of her irrational and cruel nature. Why was this harpy persecuting this nice man?

**Surrogacy is a startling new technological development.**

This claim is a favorite of columnists and other instant experts, who, having solemnly warned that reproductive science is outstripping society's ability to deal with it, helplessly throw up their hands because—what can you do?—progress marches on. But a maternity contract is not a scientific development; it is a piece of paper. Physically, as Mary Beth Whitehead pointed out, it involves merely artificial insemination, a centuries-old technique which requires a device no more complicated than a turkey baster. And artificial insemination itself is a social contrivance, the purpose of which is to avert not infertility but infidelity.

What is new about contract motherhood lies in the realm of law and social custom. It is a means by which women sign away rights that, until the twentieth century, they rarely had: the right to legal custody of their children, and the right not to be bought, sold, lent, rented or given away. Throughout most of Western history and in many countries even today, there has been no need for such contracts because the father already owned the child, even if the child was illegitimate (unless the child's mother was married, in which case her husband owned the child). If a father chose to exercise his right to custody, the mother had no legal standing. In most societies, furthermore, a man in William Stern's position could have legally or semilegally acquired another female whose child, as per above, would be legally his: a second (or third or tenth) wife, a concubine, a slave, a kept woman. This is the happy state of affairs to which the maternity contract seeks to return its signers.

Those who comb history, literature and the Bible for reassuring precedents ignore the social context of oppression in which those odd little tales unfold. Yes, Sarah suggested that Abraham impregnate Hagar in order "that I may obtain children by her," but Hagar was a slave. What's modern about the story is that once pregnant, Hagar, like Mary Beth Whitehead, seemed to think that her child was hers no matter what anyone said. The outcome of that ancient domestic experiment was, in any case, disastrous, especially for Baby Ishmael. So perhaps the Bible was trying to tell

us something about what happens when people treat people like things.

### Surrogacy is the answer to female infertility.

It has widely and properly been noted that only the well-to-do can afford to contract for a baby. (The Sterns, with a combined income of more than \$90,000, paid \$25,000 all told for Baby M, with \$10,000 going to Mrs. Whitehead.) Less often has it been remarked that contract maternity is not a way for infertile women to get children, although the mothers often speak as though it were. It is a way for men to get children. Elizabeth Stern's name does not even appear on the contract. Had Mr. Stern filed for divorce before Baby M was born, had he died or become non compos, Dr. Stern would have been out of luck. Even after she became Baby M's primary caretaker, until the adoption went through, she had no more claim on the child than a baby sitter. Rather than empower infertile women through an act of sisterly generosity, maternity contracts make one woman a baby machine and the other irrelevant.

And there is no reason to assume that contracts will be limited to men married to infertile women—indeed, the Sterns have already broken that barrier—or even to men married at all. I can hear the precedent-setting argument already: Why, your honor, should a man's drive to procreate, his constitutional right to the joys of paternity, be dependent on the permission of a woman? No doubt, this further innovation will be presented as a gesture of female altruism too ("I just wanted to give him the One Thing a man can't give himself"). But take away the mothers' delusion that they are making babies for other women, and what you have left is what, in cold, hard fact, we already have: the limited-use purchase of women's bodies by men—reproductive prostitution.

### So what? A woman has the right to control her body.

The issue in contract motherhood is not whether a woman can bear a child for whatever reason she likes, but whether she can legally promise to sell that child—a whole other person, not an aspect of her body—to its father. Judge Sorkow is surely the only person on earth who thinks William Stern paid Mary Beth Whitehead \$10,000 merely to conceive and carry a baby and not also to transfer that baby to him.

Actually, maternity contracts have the potential to do great harm to the cause of women's physical autonomy. Right now a man cannot legally control the conduct of a woman pregnant by him. He cannot force her to have an abortion or not have one, to manage her pregnancy and delivery as he thinks best, or to submit to fetal surgery or a Caesarean. Nor can he sue her if, through what he considers to be negligence, she miscarries or produces a defective baby. A maternity contract could give a man all those powers, except, possibly, the power to compel abortion, the only clause in the Stern-Whitehead contract that Judge Sorkow found invalid. Mr. Stern, for instance, seemed to think he had the right to tell Mrs. Whitehead's doctors what drugs to give her during labor. We've already had the spectacle of policemen forcibly removing 5-month-old Baby M from the arms of Mrs. White-

head, the only mother she knew (so much for the best interests of the child!). What's next? State troopers guarding contract mothers to make sure they drink their milk?

Even if no money changed hands, the right-to-control-your-body argument would be unpersuasive. After all, the law already limits your right to do what you please with your body: you can't throw it off the Brooklyn Bridge, or feed it Laetrile, or even drive it around without a seat belt in some places. But money does change hands, and everybody, male and female, needs to be protected by law from the power of money to coerce or entice people to do things that seriously compromise their basic and most intimate rights, such as the right to health or life. You can sell your blood, but you can't sell your kidney. In fact, you can't even donate your kidney except under the most limited circumstances, no matter how fiercely you believe that this is the way you were meant to serve your fellow man and no matter how healthy you are. The risk of coercion is simply too great, and your kidney just too irreplaceable.

Supporters of contract motherhood talk about having a



baby for pay as if it were like selling blood, or sperm, or breast milk. It is much more like selling a vital organ. Unlike a man, who produces billions of sperm and can theoretically father thousands of children at zero physical risk to himself, a woman can bear only a small number of children, and the physical cost to her can be as high as death. She cannot know in advance what a given pregnancy will mean for her health or for her ability to bear more children. (Interestingly, both the Sterns, who delayed parenthood until they found pregnancy too risky, and the Whiteheads, who foreclosed having more children with Mr. Whitehead's vasectomy, show just how unpredictable extrapolations from one's reproductive present are as guides to the future.) How can it be acceptable to pay a woman to risk her life, health and fertility so that a man can have his own biological child, yet morally heinous to pay healthy people to sacrifice "extra" organs to achieve the incomparably greater aim of saving a life? We're scandalized when we read of Asian sterilization campaigns

in which men are paid to be vasectomized—and not just because of the abuses to which those campaigns are notoriously subject but because they seem, by their very nature, to take advantage of people's shortsightedness in order to deprive them forever of something precious. Why is hiring women to have babies and give them away any better?

The question of payment is crucial because although contract mothers prefer to tell the television cameras about their longing to help humanity, studies have shown that almost nine out of ten wouldn't help humanity for free. (Well, it's a job. Would you do your job for free?) But women to whom \$10,000 is a significant amount of money are the ones who live closest to the economic edge and have the fewest alternative ways of boosting their income in a crisis. Right now contract motherhood is still considered a rather *outré* thing to do, and women often have to talk their families into it. But if it becomes a socially acceptable way for a wife to help out the family budget, how can the law protect women from being coerced into contracts by their husbands? Or their relatives? Or their creditors? It can't. In fact, it can't even



insure uncoerced consent when no money changes hands. *The New York Times* has already discovered a case in which a family matriarch successfully pressured one relative to produce a child for another.

If contract motherhood takes hold, a woman's "right to control her body" by selling her pregnancies will become the modern equivalent of "she's sitting on a fortune." Her husband's debts, her children's unfixed teeth, the kitchen drawer full of unpaid bills, will all be her fault, the outcome of her selfish refusal to sell what nature gave her.

#### A deal's a deal.

This is what it's really all about, isn't it? To hear the chorus of hosannas currently being raised to this sacred tenet of market economics, you'd think the entire structure of law and morality would collapse about our ears if one high-school-dropout housewife in New Jersey was allowed to keep her baby. "One expects a prostitute to fulfill a con-

tract," intoned Lawrence Stone, the celebrated Princeton University historian, in *The New York Times*. (Should the poor girl fail to show up at her regular time, the campus police are presumably to tie her up and deliver her into one's bed.) Some women argue that to allow Mrs. Whitehead to back out of her pledge would be to stigmatize all women as irrational and incapable of adulthood under the law. You'd think she had signed a contract to trade sow bellies at \$5 and then gave premenstrual syndrome as her reason for canceling.

But is a deal a deal? Not always. Not, for instance, when it involves something illegal: prostitution (sorry, Professor Stone), gambling debts, slavery, polygyny, sweatshop labor, division of stolen goods and, oh yes, baby selling. Nor does it matter how voluntary such a contract is. So if your ambition in life is to be an indentured servant or a co-wife, you will have to fulfill this desire in a country where what Michael Kinsley calls "the moral logic of capitalism" has advanced so far that the untrained eye might mistake it for the sort of patriarchal semifeudalism practiced in small towns in Iran.

Well, you say, suppose we decided that contract motherhood wasn't prostitution or baby selling but some other, not flatly illegal, transaction: sale of parental rights to the father or some such. Then a deal would be a deal, right? Wrong. As anyone who has ever shopped for a co-op apartment in New York City knows, in the world of commerce, legal agreements are abrogated, modified, renegotiated and bought out all the time. What happens when contracts aren't fulfilled is what most of contract law is about.

Consider the comparatively civilized world of publishing. A writer signs up with one publisher, gets a better offer from another, pays back his advance—maybe—and moves on. Or a writer signs up to produce a novel but finds she'd rather die than see it printed, although her editor thinks it's a sure-fire best seller. Does the publisher forcibly take possession of the manuscript and print 100,000 copies because it's his property and a deal's a deal? No. The writer gives back the advance or submits another idea or persuades her editor she's such a genius she ought to be given even more money to write a really good book. And, somehow, Western civilization continues.

The closer we get to the murky realm of human intimacy the more reluctant we are to enforce contracts in anything like their potential severity. Marriage, after all, is a contract. Yet we permit divorce. Child-support agreements are contracts. Yet a woman cannot bar the father of her children from leaving investment banking for the less lucrative profession of subway musician. Engagement is, if not usually a formal contract, a public pledge of great seriousness. Yet the bride or groom abandoned at the altar has not been able to file a breach of promise suit for almost a hundred years. What have we learned since desperate spouses lit out for the territory and jilted maidens jammed the courts? That in areas of profound human feeling, you cannot promise because you cannot know, and pretending otherwise would result in far more misery than allowing people to cut their losses.

When Mary Beth Whitehead signed her contract, she was



promising something it is not in anyone's power to promise: not to fall in love with her baby. To say, as some do, that she "should have known" because she'd had two children already is like saying a man should have known how he'd feel about his third wife because he'd already been married twice before. Why should mothers be held to a higher standard of self-knowledge than spouses? Or, more to the point, than fathers? In a recent California case a man who provided a woman friend with sperm, no strings attached, changed his mind when the child was born and sued for visitation rights. He won. Curiously, no one suggested that the decision stigmatized all his sex as hyperemotional dirty-dealers.

### **Fatherhood and motherhood are identical.**

It is at this point that one begins to feel people have resigned their common sense entirely. True, a man and a woman contribute equally to the genetic makeup of a baby. But twenty-three pairs of chromosomes do not a baby make. In the usual course of events the woman is then pregnant for nine months and goes through childbirth, a detail overlooked by those who compare maternity contracts to sperm donation. The proper parallel to sperm donation is egg donation.

Feminists who argue that respecting Mrs. Whitehead's maternal feelings will make women prisoners of the "biology is destiny" arguments should think again. The Baby M decision did not disclaim the power of biology at all; it exalted male biology at the expense of female. Judge Sorkow paid tribute to Mr. Stern's drive to procreate; it was only Mrs. Whitehead's longing to nurture that he scorned. That Baby M had Mr. Stern's genes was judged a fact of supreme importance—more important than Mrs. Whitehead's genes, pregnancy and childbirth put together. We might as well be back in the days when a woman was seen merely as a kind of human potting soil for a man's seed.

Speaking as a pregnant person, I find the view of maternity inherent in maternity contracts profoundly demeaning. Pregnancy and delivery are not "services" performed for the baby's father. The unborn child is not riding about inside a woman like a passenger in a car. A pregnant woman is not, as one contract mother put it, "a human incubator"; she is engaged in a constructive task, in taxing physical work. Some of this work is automatic, and no less deserving of respect for that, but much of it is not—an increasing amount, it would appear, to judge by doctors' ever-lengthening list of dos and don'ts.

Now, why do I follow my doctor's advice: swill milk, take vitamins, eschew alcohol, cigarettes, caffeine, dental X-rays and even the innocent aspirin? And why, if I had to, would I do a lot more to help my baby be born healthy, including things that are uncomfortable and wearisome (like staying in bed for months, as a friend of mine had to) or even detrimental to my own body (like fetal surgery)? It's not because I want to turn out a top-of-the-line product, or feel a sense of duty to the baby's dad, or have invested the baby with all the rights and privileges of an American citizen whose address just happens to be my uterus. I do it because I love the baby. Even before it's born, I'm already forming a relation-

ship with it. You can call that biology or social conditioning or a purely emotional fantasy. Perhaps, like romantic love, it is all three at once. But it's part of what pregnancy is—just ask the millions of pregnant women who feel this way, often to their own astonishment, sometimes under much less auspicious circumstances than Mrs. Whitehead's. It makes my blood boil when it is suggested that if contract mothers delivered under anesthesia and never saw their babies they wouldn't get a chance to "bond" and would feel no loss. I suppose the doctor could just tell them that they gave birth to a watermelon.

And so we arrive at the central emotional paradox of the Baby M case. We accept a notion that a man can have intense fatherly emotion for a child he's never seen, whose mother he's never slept with, let alone rubbed her back, or put his hand on her belly to feel the baby kick, or even taken her to the hospital. But a woman who violates her promise and loves the child she's had inside her for nine months, risked her health for, given birth to . . . She must be some kind of nut.

### **Women need more options, not fewer.**

To suggest that female poverty can be ameliorated by poor mothers selling their children to wealthy fathers is a rather Swiftian concept. But why stop at contract motherhood when there's still a flourishing market for adoptive babies? Let enterprising poor women take up childbearing as a cottage industry and conceive expressly for the purpose of selling the baby to the highest bidder. And since the law permits parents to give up older children for adoption, why shouldn't they be allowed to sell them as well? Ever on the reproductive forefront, New Jersey recently gave the world the sensational case of a father who tried to sell his 4-year-old daughter to her dead mother's relatives for \$100,000. Why he was arrested for doing what Mary Beth Whitehead was forced to do is anybody's guess.

Even leaving aside the fact that maternity contracts involve the sale of a human being, do women need another incredibly low-paying (around \$1.50 an hour) service job that could damage their health and possibly even kill them, that opens up the most private areas of life to interference by a pair of total strangers, that they cannot get unless they first sign an ironclad contract forgoing a panoply of elementary human rights? By that logic, working in a sweatshop is an option, too—which is exactly what sweatshop employers have always maintained.

### **But people are going to do it anyway. Shouldn't they be protected?**

There are some practices (drinking, abortion, infidelity) so entrenched in mass behavior and regarded as acceptable by so many that to make them illegal would be both undemocratic and futile. Contract motherhood is not one of them. In ten years only about 500 women have signed up. So the argument that we should legitimize it because it's just human nature in its infinite variety is not valid—yet.

Now, it's probably true that some women will bear children for money no matter what the law says. In the privacy

of domestic life all sorts of strange arrangements are made. But why should the state enforce such bargains? Feminists who think regulation would protect the mother miss the whole point of the maternity contract, which is precisely to deprive her of protections she would have if she had signed nothing. If the contracts were unenforceable, the risk would be where it belongs, on the biological father and his wife, whose disappointment if the mother reneges, though real, can hardly be compared with a mother's unwilling loss of her just-born child. The real loser, of course, would be the baby-broker. (Noel Keane, the lawyer who arranged for Baby M, made about \$300,000 last year in fees for such services.) And that would be a very good thing.

**But most surrogates have been pleased with their experience. Perhaps the Baby M trial is just a hard case making a bad law.**

It's possible to be horrified by what happened to Mary Beth Whitehead and still think that contract motherhood can be a positive thing if carefully regulated. If there had been better screening at the clinic, if the contract had included a grace period, if actual infertility had been required of Elizabeth Stern, we would never have heard of Baby M. If, if, if.

Regulation might make contract motherhood less haphazard, but there is no way it can be made anything other than what it is: an inherently unequal relationship involving the sale of a woman's body and a child. The baby-broker's client is the father; his need is the one being satisfied; he pays the broker's fee. No matter how it is regulated, the business will have to reflect that priority. That's why the bill being considered in New York State specifically denies the mother a chance to change her mind, although the stringency of the Stern-Whitehead contract in this regard was the one thing pundits assured the public would not happen again. Better screening procedures would simply mean more accurately weeding out the trouble-makers and selecting for docility, naiveté, low self-esteem and lack of money for legal fees. Free psychological counseling for the mothers, touted by some brokers as evidence of their care and concern,

would merely be manipulation by another name. True therapy seeks to increase a person's sense of self, not reconcile one to being treated as an instrument.

Even if the business could be managed so that all the adults involved were invariably pleased with the outcome, it would still be wrong, because they are not the only people involved. There are, for instance, the mother's other children. Prospective contract mothers, Mrs. Whitehead included, do not seem to consider for two seconds the message they are sending to their kids. But how can it not damage a child to watch Mom cheerfully produce and sell its half-sibling while Dad stands idly by? I'd love to be a fly on the wall as a mother reassures her kids that of course she loves them no matter what they do; it's just their baby sister who had a price tag.

And, of course, there is the contract baby. To be sure, there are worse ways of coming into the world, but not many, and none that are elaborately prearranged by sane people. Much is made of the so-called trauma of adoption, but adoption is a piece of cake compared with contracting. Adoptive parents can tell their child, Your mother loved you so much she gave you up, even though it made her sad, because that was best for you. What can the father and adoptive mother of a contract baby say? Your mother needed \$10,000? Your mother wanted to do something nice for us, so she made you? The Sterns can't even say that. They'll have to make do with something like, Your mother loved you so much she wanted to keep you, but we took you anyway, because a deal's a deal, and anyway, she was a terrible person. Great.

**Oh, lighten up. Surrogacy fills a need. There's a shortage of babies for adoption, and people have the right to a child.**

What is the need that contract motherhood fills? It is not the need for a child, exactly. That need is met by adoption—although not very well, it's true, especially if parents have their hearts set on a "perfect baby," a healthy white newborn. The so-called baby shortage is really a shortage of those infants. (Shortage from the would-be adoptive parents' point of view; from the point of view of the birth mothers or Planned Parenthood, there's still a baby surplus.) What William Stern wanted, however, was not just a perfect baby; the Sterns did not, in fact, seriously investigate adoption. He wanted a perfect baby with his genes and a medically vetted mother who would get out of his life forever immediately after giving birth. That's a tall order, and one no other class of father—natural, step-, adoptive— even claims to be entitled to. Why should the law bend itself into a pretzel to gratify it?

The Vatican's recent document condemning all forms of conception but marital intercourse was marked by the church's usual political arrogance and cheeseparating approach to sexual intimacy, but it was right about one thing. You don't have a right to a child, any more than you have a right to a spouse. You only have the right to try to have one. Goods can be distributed according to ability to pay or need. People can't.

It's really that simple. □

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