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FOR THE LOVE OF CONTRACT

Zvi H. Triger*

MARTHA M. ERTMAN, *LOVE'S PROMISES: HOW FORMAL AND INFORMAL CONTRACTS SHAPE ALL KINDS OF FAMILIES* (BEACON PRESS 2015). PP. 280. HARDCOVER \$ 26.95.

I. INTRODUCTION

Martha Ertman's new book, *Love's Promises: How Formal and Informal Contracts Shape All Kinds of Families*, explores the role of contracts within the family.¹ It shows that contracts shape today's families and argues that family law should acknowledge that and recognize such contracts. This review essay addresses the dramatic paradigm shifts that have been occurring in contract law and family law in the last decades as a response to technological developments and to people's resourcefulness, which enable them to reimagine the family and create new forms of families. It presents and analyzes those shifts within their historical and socio-legal contexts.

Part II of this essay presents the book's terminology, and its main arguments. Distinguishing between plan A and plan B families, and between contracts and deals, Ertman urges readers—whether members of plan B families, lawyers, judges, policymakers or others—to reimagine family law and redesign it so that it better protects families and their members.

Part III discusses Ertman's use of contracts within families against the backdrop of classical contract theory and its aversion to all things domestic. It explores the notion that housework has been considered, in Western thought, as a gift, and that love and contracts have been construed as mutually exclusive.

Part IV argues that Ertman's book should encourage us to think of Families' Laws instead of Family Law, because there is no such thing as a single family model. The law should acknowledge the diversity of family models instead of tailoring itself to a single "Reasonable Family" model, as it has been doing since its early days.

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1. MARTHA M. ERTMAN, *LOVE'S PROMISES: HOW FORMAL AND INFORMAL CONTRACTS SHAPE ALL KINDS OF FAMILIES* (2015).

Part V discusses the book's methodology, and in particular its use of memoir and more traditional academic scholarship, and assesses its unique contribution.

II. RECOGNIZING PLAN B FAMILIES: THE BOOK'S MAIN THEMES AND ARGUMENTS

Love's Promises focuses on what Ertman calls "Plan B families,"² by contrast to "Plan A families," that is the more traditional (and common) family, comprised of a mother and a father who are married to each other, and children that are genetically related to both of them. The term "Plan B families," Ertman writes, "covers a wide variety of uncommon families, from repro tech [assisted reproductive technology] and adoption to cohabitation."³ Under this umbrella she includes same-sex couples (whether married or not), single parents, and families with more than two parents (like Ertman's own family). The new language that this book suggests—Plan A/Plan B—is designed

to help us think about uncommon families as exceptions to the general rule instead of unnatural or inferior. "Plan A" is what's common: more than nine out of ten kids are raised by their genetic parents, marriage is the most common family form, and most people are straight. But "common" is not the same as better. When someone veers toward the road less traveled, I call it "Plan B."⁴

Another key distinction this book utilizes is the one between contracts, which are agreements that courts enforce, and deals, which are agreements that are binding, but are legally unenforceable.⁵ Deals are what social relations are based upon on an everyday basis, but they are "just too small or vague to bring before a judge when they are breached[.]"⁶ and people do not expect to sue or be sued over breaches related to deals. "I pay the bills and you do the grocery shopping"⁷ is an example of an everyday deal between partners, roommates, or spouses. But we also make deals with friends (we share class notes if one of us is sick and cannot make it to class), and see them as binding, although not legally. That means if my classmate refuses to share her contracts notes with me from the class I had missed because I was lying sick in bed that day, despite our pact to cover for each other when we cannot come to class, I will not sue her (unless I am completely devoid of any social skills), but will consider myself exempt from sharing my own notes if she ever has to miss class. This is how deals work—the enforcement mechanism is social, not legal. Social norms such as mutuality and trust, rather than the law, make deals meaningful and binding.

2. *Id.* at xiv.

3. *Id.*

4. *Id.*

5. *Id.* at xii-xiii.

6. ERTMAN, *supra* note 1, at xiii.

7. *Id.*

The main argument of the book is that families of all types are shaped by both contracts and deals, that contracts help create and maintain families, and that they are especially important for Plan B families.⁸ As Ertman writes, “[c]ontracts and deals allowed me to become one of three parents—all gay—raising a beloved boy named Walter.”⁹

Moreover, contracts, if properly thought out and drafted, can also help in the unfortunate situations of break ups, and assist the parties in avoiding damaging and acrimonious legal disputes. Ertman calls those clauses for rainy days “jerk insurance” clauses.¹⁰ They are known also as “Ulysses contracts” among behavioral economists.¹¹ As Ertman explains, “a Ulysses contract strikes a deal between your present self and your future self, binding your future self not to do something stupid or self-destructive.”¹² Similarly, a “jerk insurance” clause, such as an inconvenient and costly choice of law clause in the contract, makes it so cumbersome to litigate conflicts that the parties will be likely to choose a more collaborative way to resolve any issues that arise between them.¹³

This leads to the other important theme explored in the book: the connection between contracts and love, which will be discussed in Part II of this essay. Ertman’s argument joins a long strand of feminist scholarship of contract law that has rejected the classical view of contracts and love as mutually exclusive.¹⁴ As I mentioned above, Ertman shows how contracts can secure love and be the product of love (the “jerk insurance” clause being one of the means to remind the fighting parties of the love that leads them to sign the contract and make the deals in the first place).¹⁵

There are two aspects of the family that are explored in the book, and it is organized around them: Part I (chapters 2-5) explores Plan B parenthood, and Part II (chapters 6-9) discusses Plan B partnership. Both parts show how diverse families are (in Ertman’s own words, “love comes in different packages”),¹⁶ and therefore how important it is to release family law from its fixation on one model, namely the marital heterosexual model, or the Plan A model. Family law is increasingly recognizing that,¹⁷ but it has much more to offer in terms of accommodating and promoting Plan B families. The book’s goal is, among other things, to unleash law’s full potential in this regard.

Plan B parenthood is achieved either by technological (reproductive technologies) or legal (adoption) means. Both ways are alternatives to the sexual relations between husband and wife, which create Plan A parenthood. Plan B parenthood is varied: from heterosexual couples who cannot conceive, to LGBT and single women who need gamete donations, and gay men who also need gestational surrogacy in order to become fathers. All these forms require contracts: between the intended parents (if they are more than one);

8. *Id.* at xi-xii.

9. *Id.* at xv.

10. *Id.* at 167.

11. ERTMAN, *supra* note 1, at 167.

12. *Id.* See also IAN AYRES, CARROTS AND STICKS 15 (2010).

13. ERTMAN, *supra* note 1, at 167.

14. See *infra* Part II.

15. ERTMAN, *supra* note 1, at 167.

16. *Id.* at 109.

17. *Id.*

between the intended parents and healthcare providers; between the intended parents and the egg or sperm donors (or egg/sperm bank), etc. Contracts between birth and adoptive parents, and their enforceability, are also extremely sensitive and complex, and are discussed in chapters 4 and 5. Of particular interest is the discussion of the evolution in the enforceability of post-adoption contact agreements (PACAs).¹⁸ PACAs are an exception to the general rule that “[a]doption completely severs the relationship between birth parents and the child.”¹⁹ They can create open adoptions, in which the birth parents stay in touch with their child to varying degrees.²⁰

Part II of the book, which discusses Plan B partnership, is divided into two sections as well; the first explores cohabitation and the second looks at marital agreements. The cohabitation chapters (chapters 6 and 7) discuss the role of contracts between unmarried couples, and present a nuanced and balanced picture of the historical, social, and legal background of the related issues. It shows the vulnerability of the financially weaker partner within a life partnership that is viewed as inferior compared to marriage²¹ and discusses various way in which it can be remedied.

Similarly, the marriage chapters (chapters 8 and 9) discuss the importance of contracts within the context of what is seemingly a Plan A partnership, but show how marriage has become much more diverse than we usually think it is—due to the gradual growing recognition in same-sex marriages, culminating in the repeal of Section 3 of the Defense of Marriage Act (DOMA) in 2013²² and the Court’s decision (issued about a month after the publication of *Love’s Promises*), recognizing same-sex couples’ fundamental right to marry as stemming from both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment.²³

Ertman weaves her personal story throughout both parts of the book. As I discuss in Part VI, the personal stories are, to my mind, an important methodological choice. They serve both to humanize the issues and to show how concrete the issues discussed throughout the book are. The personal stories, just like the cases discussed in the book, demonstrate how these issues pertain crucially to the lives of actual people—women, men, and children—and are not mere theoretical concerns. Human creativity concerning familial attachments was not followed closely enough by legal creativity, and while the law, on both the state and federal level, is attempting to keep up with social innovations, it does not do enough. The personal narrative effectively demonstrates how it can do more and what it should stop doing.

In the next part, I turn to exploring some of those themes and offer an assessment of the book’s unique contribution to the scholarship on these issues.

18. *Id.* at 88.

19. *Id.* at 89.

20. ERTMAN, *supra* note 1, at 88-89. Ertman discusses the enforceability of PACAs, and shows how more and more states view them now as binding contracts and not as mere deals, with about half of the states enforcing them as of 2013. *Id.*

21. For a recent discussion of marital status discrimination, see generally Courtney G. Joslin, *Marital Status Discrimination 2.0*, 95 B.U. L. REV. 805 (2015).

22. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

23. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015).

III. CLASSIC CONTRACT THEORY, LOVE, AND THE FAMILY: THE GIFT ECONOMY AND ITS BIASES

A. *The Gift Economy within the Family*

In the late 1800s, Nancy Miller was desperately struggling to make ends meet. Her husband, Robert, “improperly spending money upon other women,”²⁴ had left her with no other choice but to have him sign a written agreement to “provide for the necessary expenses of the family” and in addition pay her \$16.66 per month for her own personal expenses.²⁵ The agreement also included non-monetary promises. The Millers agreed “to live together as husband and wife and observe faithfully the marriage relation, and each to live virtuously with the other,”²⁶ and “to refrain from scolding, fault-finding and anger in so far as relates to the future, and to use every means within their power to promote peace and harmony, and that each shall behave respectfully, and fairly treat each other.”²⁷ Nancy promised to “keep her home and family in a comfortable and reasonably good condition.”²⁸

Robert failed to keep his contractual obligations, forcing Nancy to petition the court asking it to enforce the contract that she and Robert had signed. The Court deemed the contract between Nancy and Robert unenforceable for lack of consideration and for being against public policy.²⁹ Under classic contract theory, a promise is not binding unless the promisee gave consideration in return for the promise,³⁰ and housework is viewed as a gift, having no economic value,³¹ therefore, it cannot be proper consideration. Moreover, courts have deemed housework as part of the wife’s legal duties, and thus, not as something that she could give in exchange for the husband’s financial support.³² A wife’s “promise to observe marital duties”³³ is not a proper consideration for a husband’s promise to support her, and therefore the agreement between Mr. and Mrs. Miller is unenforceable.³⁴ This ruling reflected a well-established doctrine in many common law jurisdictions according to which contracts entered into between spouses are unenforceable.³⁵

24. *Miller v. Miller*, 78 Iowa 177, 179 (1889).

25. *Id.*

26. *Id.*

27. *Id.* at 178.

28. *Id.* at 178–79.

29. ERTMAN, *supra* note 1, at 120.

30. RESTATEMENT (SECOND) OF CONTRACTS § 71 (1979). An important exception to the consideration requirement is the doctrine of promissory estoppel. Under this doctrine, a promise will be binding and enforceable despite lack of consideration if the promisee relied on it and changed his or her position based on the promise to his or her detriment. *Id.* at § 90. For a critical discussion, see generally Orit Gan, *Promissory Estoppel: A Call for a More Inclusive Contract Law*, 16 J. GENDER RACE & JUST. 47 (2013).

31. ERTMAN, *supra* note 1, at 120.

32. *See, e.g., Miller v. Miller*, 78 Iowa 177, 181-82 (1889).

33. *Id.* at 182.

34. *Id.*

35. *See, e.g., Balfour v. Balfour*, (1919) 2 K.B. 571 (C.A.) (Eng.) (a British case ruling that contracts between husband and wife are not legally binding and therefore unenforceable). For an interesting discussion on the tension between family autonomy and state intervention (and responsibility), see LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* 15-49 (2006).

B. Love and Contracts: A (Surprising) Match Made in Heaven

Contract law, according to this doctrine, is foreign to family relations and to love.³⁶ The underlying rationale is Western political thought's view of love as something that can exist only in the absence of law, rights, and contracts.³⁷ "Love," according to this notion, "is open-ended and generous . . . while contracts are selfish, cold, and calculating."³⁸

Feminist critique beginning in the 1970s has called attention to the various fallacies of this doctrine.³⁹ It has pointed out the prevalent cultural notion of the family as a "women's issue" and therefore as antagonistic to the realm of contract, which has been culturally encoded as a "men's issue." Classic contract theory envisioned transactions between men (i.e., it envisioned contracts happening in the public sphere), whereas the family and all that is going on within it was part of the private sphere.⁴⁰ Indeed, under the common law doctrine of coverture, married women could not own property, sign contracts or do other legal actions without their husbands' consent and approval.⁴¹ According to this notion, dealings within the family had to be motivated by love and derived from it, and not motivated by enforceable contractual obligations. This was, of course, a one-sided view of family life, because the husbands' work (outside of the home) had economic value, while the wives were expected to give the gifts of caring, cleaning, and all the other home-making chores. To sum, the love affair with contracts has been reserved under classic contract theory to men. In this sense, it was indeed a one-sided love affair.

Feminist critics of this one-sidedness, that treats men's contribution to the family household as having economic value while women's contribution, like love, has no price (literally), have shown how the exclusion of contract (and law) from the family served men's interests.⁴² For example, Susan Moller Okin argued that the notion of unenforceability of spousal agreements magnified the vulnerability of women within the family and

36. SUSAN MOLLER OKIN, *JUSTICE, GENDER AND THE FAMILY* 121 (1989).

37. *Id.* at 32.

38. ERTMAN, *supra* note 1, at xi.

39. *See, e.g.*, LENORE J WEIZMAN, *THE MARRIAGE CONTRACT: SPOUSES, LOVERS, AND THE LAW* (1981); Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 YALE L. REV. 997 (1985); CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988); Mary Joe Frug, *Rescuing Impossibility Doctrine: A Post-modern Feminist Analysis of Contract Law*, 140 U. PA. L. REV. 1029 (1992); JOANNA L. GROSSMAN & LAWRENCE M. FRIEDMAN, *INSIDE THE CASTLE: LAW AND THE FAMILY IN 20TH CENTURY AMERICA* 129-36 (2011); *see, e.g.*, Linda McClain, "Atomistic Man" Revisited: *Liberalism, Connection, and Feminist Jurisprudence*, 65 S. CAL. L. REV. 1171 (1992) (arguing that feminist critique of liberalism and its stance on, among other things, the family, is based on a caricatured version of liberalism in general, and of the "Atomistic Man" concept in particular).

40. *See* ERTMAN, *supra* note 1, at 98, 156; OKIN, *supra* note 36, at 30.

41. *See generally* Reva B. Siegel, *Home As Work: The First Woman's Rights Claims Concerning Wives' Household Labor*, 103 YALE L.J. 1073, 1850-80 (1994); GAIL COLLINS, *WHEN EVERYTHING CHANGED: THE AMAZING JOURNEY OF AMERICAN WOMEN FROM 1960 TO THE PRESENT* 250 (2009) (discussing that in some states, as late as the 1970s, married women could not get a credit card or open a bank account without their husbands' signature, even if the women were the breadwinners).

42. *See, e.g.*, Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81 (1997); Katharine B. Silbaugh, *Gender and Nonfinancial Matters in the ALI Principles of the Law of Family Dissolution*, 8 DUKE J. GENDER L. & POL'Y 203, 205 (2001).

serves the interests of men.⁴³ Contracts and legal commitments, in this view, not only will not poison marital relationships but will promote and ensure more justice and equality for women.⁴⁴

Ertman's analysis, which distinguishes between contracts (binding and enforceable) and deals (binding but unenforceable) within the family (and between friends), helps us rethink and reimagine the family economy and treat more seriously some obligations which the traditional doctrine views as non-binding promises.⁴⁵ Labeling an agreement as a deal rather than a contract does not necessarily mean that it is economically worthless. Moreover, in the context of the family, where "the common swap of financial support for homemaking"⁴⁶ takes place on a daily basis, one cannot view one's own part of an agreement as contract, while proclaiming the other's a mere deal. Ertman calls this swap a "pair-bond exchange."⁴⁷ If a husband contracts out of his duty to share the marital property, argues Ertman, then the law should treat him as though he gave up his right to treat his wife's homemaking as a gift, and compensate her accordingly.⁴⁸ It seems that Ertman suggests that any one-sided invocation of a contract-deal relationship should be presumed to be made in bad faith. This is a true paradigm shift because the view of a husband's contribution as a contract and the wife's homemaking as a deal-derived gift is still prevalent in many jurisdictions.⁴⁹

Ertman's call to respect the pair-bond exchange, and cancel the hierarchical relationships between contracts and deals resonates with Carol Gilligan's call to abandon the cultural hierarchy that puts the ethic of justice, culturally encoded as masculine, on top and belittles the ethic of care, culturally encoded as feminine.⁵⁰ Both ethics are essential for human relationships,⁵¹ and in the same vein, both contributions to family life—income and housework—are essential for families. Families cannot do without having both monetary income and housework. The two reflect joint effort and investment in the family.⁵²

The hierarchy between contract (binding, enforceable, serving an ethic of justice) and deals (binding but unenforceable, derived from the feminine—and therefore inferior in a patriarchal society—ethic of care) serves men. As we saw in the *Miller* case, husbands who promised to pay their wives for their work at home could easily avoid enforcement of their promises by arguing that a husband and a wife cannot, by definition, enter a legally binding promise with each other.

In the same vein, Patricia Williams has powerfully demonstrated how important it is for one's sense of personhood to be considered legally competent to become a party to an

43. OKIN, *supra* note 36, at 122-23.

44. *Id.* at 125.

45. ERTMAN, *supra* note 1.

46. *Id.* at 118.

47. *Id.*

48. *Id.* at xxii.

49. *Id.* at 178-81.

50. CAROL GILLIGAN, JOINING THE RESISTANCE 17-18 (2011).

51. *See also* McClain, *supra* note 39, at 1227-28.

52. *See* ERTMAN, *supra* note 1, at 136 (invoking partnership law and the idea of business partnership as a metaphor to life partnership).

enforceable contract; her now classic 1987 article *Alchemical Notes* discussed the importance of contracts to African Americans, who had been, as slaves, subjects of contracts, but never parties to them (and like *Love's Promises*, it weaved memoir into the academic discussion).⁵³ Jeremy Waldron has made a related point, arguing that formal rights that are protected by contract form the basis for human relations, especially for those ostracized by society.⁵⁴ The seemingly alienating formal rights, according to Waldron, have an empowering potential for the disenfranchised.⁵⁵ In the context of the family, Okin argued, in her now classic 1989 book, *Justice, Gender, and the Family*, that women, wives to be more precise, needed formal rights within the family; they needed the law to treat their husbands' obligations as binding and enforceable and not as mere gifts. This will not hinder love, but promote and secure equality between husbands and wives, and as a result, equality between men and women, because their children, who will then grow up in an egalitarian family, will take gender equality, and not inequality, for granted.⁵⁶

Love's Promises thus joins this important lineage of scholarly paradigm-shifting works on the importance of contracts for minorities and disenfranchised individuals and communities, showing the inherent connection among family law, contract law, and the recognition of the full humanity of LGBT persons and other individuals who want to create the families of their choice.

IV. THINKING OF FAMILIES' LAWS INSTEAD OF FAMILY LAW: THE DIFFERENT PACKAGES FAMILIES COME IN

From Ertman's book it is clear that current family law offers a one-size-fits all package of legal tools. Family law has historically developed based on one model, "The Reasonable Family," and has ignored, or banned, many actual families that were not shaped according to this narrow model. I would like to borrow Daphna Hacker's suggestion to shift our discussion from "family law" to "families' laws."⁵⁷ Hacker argues that if we want to do justice to all families, we should stop thinking in terms of "the Family" as well as in terms of "the Law."⁵⁸

Both Ertman' and Hacker's suggestions resonate with psychological, sociological, and anthropological research, which has shown that there has never been, throughout human history, a single model of family, and that what we call now "the nuclear family" (thinking of husband, wife, and children who are genetically related to both of them) is a relatively new social construct.⁵⁹ Multiple parents, non-biological parental caregivers, and same-sex unions have been with us since the dawn of history. In fact, evolutionary anthropological research has shown that the multiple-parent model, called by Sarah Blaffer Hrdy

53. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); see also PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

54. JEREMY WALDRON, *LIBERAL RIGHTS: COLLECTED PAPERS: 1981-1991* 376-77 (1993).

55. *Id.*

56. OKIN, *supra* note 36, at 21.

57. DAPHNA HACKER, *LEGALIZED FAMILIES IN THE ERA OF BORDERED GLOBALIZATION* (forthcoming).

58. *Id.*

59. Zvi Triger, *Introducing the Political Family: A New Road Map for Critical Family Law*, 13 THEORETICAL INQ. L. 361, 364 (2012).

“alloparenting,” was the dominant parenting model among early hominids.⁶⁰ The involvement of non-biological parents in the raising of a child was “central to the success of early hominids,”⁶¹ without which “there never could have been a human species.”⁶²

Thinking about families’ laws, as stemming from the recognition that “love comes in different packages,” should open up the discussion on other types of families, which are currently not even recognized as such. In the past I have raised the following dilemma:

In many Western middle- and upper-middle class families, care for the young as well as for the elderly is outsourced to paid professional caregivers, who are very often labor migrants from less affluent countries. On the one hand, paid caregivers are employees. On the other hand, in many cases they are really companions, or perform very intimate chores, which even the care recipients’ relatives do not perform. This duality is fascinating: an economic relationship that has the seed of emotional attachment. Should this be taken into consideration when we think about families? Most scholarly work on this question has been in labor law and has largely not touched upon the shifts that these global trends produce in the very definition of the family. Do children raised primarily by a non-citizen migrant nanny have a right to a protected relationship with her? Does this right trump immigration policies or parental employment decisions? As families evolve and change in oftentimes unpredictable directions, sooner or later family law scholars will have to address these questions.⁶³

Indeed, families can take many shapes. Family law scholarship has explored some dimensions, such as various forms of parenthood and life partnership, but it has yet to look into the time dimension: can a family be formed based on a commercial transaction of paid care that evolves into a bond of love? And does it matter that such a family has an expiration date (the infant growing up and becoming independent, the elder person passing away)?

Ertman’s introduction of contracts into the traditionally sacred sphere of love can help us to think about these and many other dilemmas that will undoubtedly arise as families evolve, and, hopefully, as families’ laws follow suit.

V. A NOTE ON METHODOLOGY: THE ROLE OF MEMOIR IN A BOOK ABOUT THE LAW

As I have already mentioned, the book weaves memoir into academic scholarship. This methodology, using the author’s personal story, is not new. But I believe that it is

60. SARAH BLAFFER HRDY, *MOTHERS AND OTHERS: THE EVOLUTIONARY ORIGINS OF MUTUAL UNDERSTANDING* 109 (2009).

61. *Id.* at 147.

62. *Id.* at 109; *see also* ERTMAN, *supra* note 1, at 127 (discussing Blaffer Hrdy’s findings).

63. Triger, *supra* note 59, at 379-80.

new to contract scholarship, and it is not common in family law scholarship either (even though family law is a great contender for such writing). It not only makes the book highly accessible to diverse audiences but also profoundly strengthens its arguments.

Feminist methodology has always grounded scholarship in the personal life experiences of women.⁶⁴ Storytelling has been a key element in critical race theory as well.⁶⁵ Not surprisingly, this methodology has been attacked for being non-academic, biased, and non-objective. But today it seems that the sharp division between valid (remote, impersonal) and invalid (personal, exposed) ways of creating and acquiring knowledge is outdated. The personal, which is the political, as we were taught, has a lot to teach us, and *Love's Promises* joins the formidable lineage of feminist scholarship that melds memoir with research in order to create rich, rigorous, and persuasive scholarship.

Indeed, "the medium is the message:"⁶⁶ families are made of people. They come in many shapes, just as "love comes in different packages."⁶⁷ There is no point in an impersonal, detached, and abstract discussion of "the family" and family law, unless we want to keep it on a purely theoretical level. The memoir parts of *Love's Promises* use "this crazy collage of friends, family, and commerce"⁶⁸ to avoid this abstraction, which may be considered by some more "academic," but has nothing to do with reality.

The overall effect of this methodology, combined with Ertman's warm, accessible, and oftentimes entertaining prose, is to make a highly persuasive argument in favor of contracts, Plan A and B families, and a more inclusive vision of families and their members.

VI. CONCLUSION

Love's Promises is an important contribution to the feminist critique of traditional liberal notion of an acrimonious relationship between law and the family and, more specifically, between contract and family. It joins a recent wave of books critical of current family law.⁶⁹ But *Love's Promises* is about contract as much as it is about the family. Ertman is a great believer in the role of law, and in particular the role of contract law, in promoting meaningful, stable, and egalitarian relationships, as well as in promoting children's best interests. The book explores the role of contracts within the family. It shows that contracts shape today's families, and argues that family law should acknowledge that

64. See, e.g., CAROL GILLIGAN, *THE BIRTH OF PLEASURE: A NEW MAP OF LOVE* (2003); GILLIGAN, *supra* note 50 (feminist scholarship that is part-memoir part-academic).

65. See, e.g., Williams, *Alchemical Notes*, *supra* note 53.

66. See MARSHALL McLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN 7* (1964) (borrowing the phrase from McLuhan's book).

67. ERTMAN, *supra* note 1, at 109.

68. *Id.* at 26.

69. See, e.g., JUNE CARBONE AND NAOMI CAHN, *MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY* (2014); JILL ELAINE HASDAY, *FAMILY LAW REIMAGINED* (2014); CLAIRE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014); Maxine Eichner, *The Family, in Context*, 128 HARV. L. REV. 1980, 1981-983 (2015) (providing a concise mapping of family law scholarship according to decades); MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS* (2010) (arguing that the state should support families so that they can enhance human development and thus benefit adults, children, and society in general).

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and recognize such contracts. Contracts are what enable people to form new families, such as Ertman's own family—comprised of two moms and a dad raising a child.

The main contribution of this book is the notion that contracts and love should not be regarded by law and society as mutually exclusive. Moreover, as Ertman shows, in many cases contracts are what enable love and sustain it. The novelty in her book is two-fold: both in its arguments and in its methodology. Ertman convincingly weaves her personal story into the legal argument in order to show how the law should react to and serve the interests of actual people.

Books can sometimes spark social change. In offering solutions, and not just pointing out problems, *Love's Promises* can certainly be part of such a much needed change in both family and contract law.