Lispector’s stories are life lessons without moral underpinnings: the women in them are circumscribed by routine or societal limitations, until some form of liberating association enables them to break out. This is true of Ana, the protagonist of “Love,” whose chance meeting with a blind man chewing gum in Rio’s lush Botanical Garden engulfs her in overwhelming abundance, as if she has suddenly found herself in a foreign land or on a new planet, where she must face the unknown in and beyond the self. In Lispector’s fictional world, joy and pleasure may produce peril, yet peril is preferable to complacency. Order and sanity are akin to acquiescence and conformity. The mundane exists alongside the mystifying. Moments of luminescence and breakthrough occur during ordinary interactions.

As Lispector grew older, her fiction became more daring and unrestrained, as well as more esoteric and abstract. The characters in her mature collection, The Via Crucis of the Body (1974), for example, explore uncharted physical, sexual territory. Thus, “The Body” focuses on a sexual threesome that evolves into an act of murder and complicity. “Via Crucis” features a birth like that of Jesus, but within the scope of the miraculous pregnant Maria das Dores’s reality: her “kind of impotent” husband and her own “strange cravings” and obesity.

Lispector’s later stories, such as those in Where Were You at Night (1974), can make the reader feel as though she is combating the dizzying and mind-scrambling effects of high altitude. Seemingly concise texts in uncomplicated language harbor controlling actions of a mean kid (described as “fat, short, freckled” with “reddish, excessively frizzy hair”) whose book she must wait to borrow, having none of her own.

Lispector had a great esteem for animals. Her stories highlight curious, symbiotic interactions between humans and animals, an elemental clash between instinct and intellect that emboldens humans to become invigoratingly alive, like the bus passenger who sits next to a marmoset in “A Full Afternoon”; or the character who experiences a vertiginous face-to-face encounter with a black buffalo at the zoo in “The Buffalo.” A later piece, “Dry Sketch of Horses,” is a more abstract homage. Chickens, especially, hold a place of existential prominence: in “A Chicken,” the bird’s escape represents freedom, albeit fleeting:

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The Complete Stories

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**Plan A and Plan B**

**Love’s Promises:**

How Formal and Informal Contracts

Shape All Kinds of Families

By Martha Ertman

Boston: Beacon Press, 2015,

253 pp., $26.95, hardcover

Reviewed by Dana Rudolph

The word “family” usually implies love and emotional commitment. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality. The word “contract” usually implies a clinical legality.

Ertman, the Carole and Hanan Sibel Research Professor at the University of Maryland’s Carey Law School, has a personal as well as professional interest in this topic. She is mother to a boy whom she had...
when single, with the help of her gay best friend Victor, and whom she is now raising with Victor and her new female partner. Ertman shares this “very human story of carefully thought-out exchanges that brought love into my life” in order to show us “the emotional side of contracts and deals.”

This is not a memoir, however. Ertman uses her tale as the jumping-off point for a broad look at how contracts and deals help people “create and sustain families” and how family law is increasingly honoring contracts across a wide range of family types—same- and different-sex, single and multiracial, married and cohabitating. The key role of contracts may come as no surprise to same-sex couples and others who have found themselves elbow deep in legal paperwork to create and protect their families, but Ertman puts it into a wider framework, which members of those families as well as lawyers, social workers, social scientists, and policymakers will find helpful, readable, and insightful.

The main message of the book, Ertman says, could be summed up as “UNUSUAL ≠ ILLEGAL.” Both “unusual” and “usual” families are supported by a variety of contracts. This means, she writes, that “[i]nstead of talking about ‘the’ family as one kind of relationship honored above all others by Nature or God—marriage, heterosexuality, genetic kinship—law and society can update that black-and-white two-dimensionality to acknowledge the colorful, 3-D variety of life as it’s actually lived.” That may be too rose-colored a view of how such a change will happen: those who truly believe that God prefers one family type over another will likely need more convincing. For the rest of us, however, she makes an excellent case for the value of contracts in enabling an equitable view of families today.
“Plan B” still connotes a back-up plan. Still, it’s an improvement over other terms.

Ertman applies her contractual lens to reproductive technology, adoption, cohabitation, and marriage. For each area, she traces the history of the arrangement, showing, for example, that surrogacy and adoption go back even to the biblical era, and that the idea of marriage has evolved over time, notably to give women a legal identity within it. Through numerous examples of real-life court cases (as well as her own, less contentious situation), she brings to light the roles of exchanges and agreements in structuring family arrangements.

She begins with reproductive technologies, where contracts are at the heart of family-making. In families created through surrogacy, in vitro fertilization, or alternative insemination, donors or surrogates typically contract out of legal parenthood, while the buyers contract into it. In cases like Ertman’s own, a donor may contract back into the relationship if that is what the parties wish. Reproductive technology contracts usually work out well for those involved, she contends—which may seem surprising to those who have seen headlines about controversial cases such as the Baby M surrogacy dispute in New Jersey, or various lawsuits involving the rights of sperm or egg donors. Ertman asserts, however, “Amazingly, given that repro tech brings tens of thousands of babies into American families every year, a search for cases after 1990 pulls up just over a hundred cases,” indicating that, “for the most part, reproductive technology contracts and deals work out pretty well for the people involved.”

Ertman explores cases when things do go wrong, however, in order to show us that when disputes occur, “family law rules that are shaped by contractual thinking provide much of the legal doctrine.” Courts typically honor “parenthood-by-contract,” she says, breaking the conventions only in extreme situations, such as when a child’s health is in danger. For example, in the case of Diane and Ronald, a couple whose child received a serious disease when their anonymous sperm donor failed to disclose it to the fertility clinic, the court upheld Ronald’s legal fatherhood while bending the anonymity part of the contract to allow them to receive medical information about the donor.

Private arrangements must be able to protect donor-conceived kids, their parents, and the donors, Ertman says. She advocates legislation that clarifies statutes related to such parenthood-by-contract, as some jurisdictions, notably California and Washington, DC, have done.

Adoption, too, “relies more heavily on contracts and deals than most people realize,” she asserts. While to some, the idea of contracts in adoption may raise the specter of baby selling, the fact is that birth parents “make a legally binding agreement—a contract—to surrender their parental rights and duties”; in turn, “adoptive parents contract into the care and feeding of those children.” Increasingly, too, birth and adoptive parents may agree to various degrees of later contact with each other through postadoption contract agreements (PACAs). Until the 1980s, PACAs were treated as mere deals, private arrangements unenforceable in court, but more states are now viewing them as binding contracts.

The big question, Ertman says, is how openly to acknowledge the role of contracts in adoption. Some, notably the legal economist Elisabeth Landes and the jurist Richard Posner (now a judge on the US Seventh Circuit Court of Appeals), have said we should more fully stress adoption’s contractual nature. In a 1978 paper on “The Economics of the Baby Shortage” (The Journal of Legal Studies, Vol. 7, No. 2), Posner and Landes even suggested that adoptive parents should pay higher fees to encourage birth mothers to choose adoption over abortion. Others, like University of Michigan Law Professor Peggy Radin, have rejected talking about adoption in con-
ractable terms, to emphasize that children are not goods. Ertman suggests a “middle path,” with family law more openly acknowledging the role of contracts in adoption, but staying away from the language Landes and Posner used, which implied foster children are “inventory.”

Moving to adult relationships, Ertman reminds us that contracts are involved in marriage as well. Marriage conveys certain property rights. Prenuptial agreements are contracts. No-fault divorces are a “businesslike” and “matter-of-fact distribution of assets, debts, and parental rights and duties.” Certain aspects of Jewish and Muslim marriage contracts have even been enforced by US courts that recognize they dealt with civil issues, such as the relationship or financial arrangements between spouses, rather than their relationship with God.

Ertman feels that marriage, more deliberate and harder to exit than cohabitation, should be the “legal threshold to being treated as an ‘us’ when it comes to institutions outside the relationship, like the IRS and the Social Security Administration.” At the same time, contracts and deals can help cohabiting couples “be recognized as an ‘us’ in relation to one another through property-sharing rules,” with property arrangements made “a la carte appropriate for their situation, rather than committing to the full range of rights and duties that come with marriage.

Recognition of the contractual nature of both cohabitation and marriage, Ertman says, can help us address a glaring problem in family law: the devaluation of homemakers’ contributions. In both cohabitation and marriage, one partner often supports the family financially while the other keeps up the house—an arrangement she calls the “pair-bond exchange.” In a marriage, the primary homemaker owns a share of the property earned by the breadwinner “because it’s the fruit of an exchange of financial support for caregiving.

Cohabitants, however, do not fall under the property-sharing rules that govern marriage and often make oral agreements about how to share finances and caregiving. Too frequently, as Ertman shows through several examples, courts refuse to value home labor when calculating what the homemaking member of an unmarried couple is owed after a breakup or the death of the other person. They view it as a “gift,” not an exchange.

Legal scholars have offered various solutions. Cornell University Law Professor Cynthia Bowman has suggested treating cohabitating couples as married after a defined period of time or when they have a child, but allowing them to contract out of property sharing if they wish. American University Law Professor Nancy Polkoff, however, has argued that marriage should be irrelevant to civil benefits. Instead, individual laws should address specific family issues, such as property sharing, inheritance, parental rights, and medical directives, and extend these family rights not only to cohabiting couples, but even to non-couples, such as adult siblings or close friends.

Ertman feels each alternative has its limitations. Bowman’s solution, essentially common law marriage, does not encompass non-couple arrangements, such as the extended family living arrangements common in some communities of color. Polkoff’s solution, while broad enough to encompass all arrangements, would be complex, with different laws applying to each family situation.

Ertman once again takes the middle road. She feels marriage provides a simple, universal signal that people are family. She would therefore keep it as “conveying the most rights and obligations.” At the same time, she would provide for recognizing “cohabitants’ reasonable expectations about what’s shared and what’s not,” including both financial and homemaking contributions—in alignment with a proposal by the American Law Institute.

Marriage, while avoiding some of the pitfalls of cohabitation, has its own problems in valuing both sides of the pair-bond exchange. Notably, prenuptial agreements have too often let the earning spouse leave the homemaking spouse with nothing after a divorce, despite the homemaker’s years of caring for the home (and often for children). Ertman’s solution is to consider such a prenup as a statement that the marriage is “no longer a joint enterprise.” Instead of then treating homemaking as an uncompensated gift in the event of a divorce, the court would ensure that, even if the prenup prevents the ex-couple from dividing all their assets, the homemaking ex-spouse is at least compensated based on the market value of cooking, cleaning, and other home duties.

Ertman’s scope is wide, but that is its strength. Rather than focusing narrowly on one type of family, she demonstrates that contracts support a range of our most personal and emotional human relationships. While a family like hers might have literally been inconceivable several decades ago because of the repressive technologies involved and the social constraints on single mothers, she shows us that families based on contracts are not new, nor are they exclusively Plan B.

She is somewhat less successful in her goal of offering Plan B families “practical information.” There are useful insights, but this is not a how-to guide. She does offer an appendix with sample contracts for co-parenting, open adoption, and cohabitation, but does so “without any warranties or promises that they’re legally enforceable, complete, well-written, balanced, or anything else.” Professional ethics and variations in state law limit her, as does her broad scope, which precludes in-depth advice. Members of Plan B families may, however, gain a gratifying sense that their families are part of a continuum of contractually based family types, rather than outliers from a “norm.”

When the law acknowledges and supports the contractual foundation of relationships, Ertman says, individuals get the freedom to choose and tailor their families to match their situation, while communities and society benefit from more people coming to work, school, and the supermarket with the vital social, financial, and emotional support that comes with being an “us.”

Family law will need to evolve further to be fully equitable for all, but in the meantime, Ertman’s book will help lawyers, policymakers, and families better navigate the current landscape—and offers a vital reminder that we’re all on the same map.

Dana Rudolph is the founder and publisher of Mombian (mombian.com), a GLAAD Media Award-winning blog and associated newspaper column for lesbian moms and other LGBTQ parents. She is also the online content manager for the National SEED Project at the Wellesley Centers for Women.

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**New Books**

**Lancelot: Her Story**

Carol Christ is the author of *Rebirth of the Goddess*, two week tour for women. www.goddessariadne.org, institute@goddessariadne.org

**Goddess Pilgrimage to Crete**

WITH CAROL CHRIST

Carol Christ is the author of *Rebirth of the Goddess*, two week tour for women. www.goddessariadne.org, institute@goddessariadne.org

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