

Surrogacy: A Question of Motherhood and the “Child’s Best Interests”

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Abstract: The Second Wave of Feminism of the mid-twentieth century created an ideal landscape to discuss and fight for women’s rights, with surrogacy and other reproductive rights issues as focal points of the movement. In 1985, Mary Beth Whitehead signed a surrogacy contract with Elizabeth and Bill Stern; Whitehead agreed to carry and give birth to a child for the Sterns in return for 10,000 dollars. However, the birth of the child rekindled Whitehead’s intense motherly instincts, and she battled a series of contradicting thoughts, for she understood that she had chosen to sign the contract and give the baby to the Sterns. In the days after the birth, Whitehead faced a choice that could alter the life of the child: should she keep or give up the baby to the Sterns? By examining the financial incentives for pursuing a surrogacy agreement, along with the competing arguments of what it means to be a mother, this case explores the validity of surrogacy contracts and the value of reproductive rights in American society.

Introduction

On Thursday, March 27, 1986, 29-year-old Mary Beth Whitehead gave birth to a baby girl (Whitehead and Schwartz-Nobel 1989). Nine pounds and two ounces with striking blue eyes and light blond hair, the child closely resembled Whitehead’s 10-year-old daughter. Even her birth certificate listed her name as “Sara Elizabeth Whitehead” and her parent’s names as “Mary Beth and Rick Whitehead.” Few people in the hospital knew that the child was not actually meant for the Whiteheads: Mary Beth had signed a surrogacy contract with Elizabeth and William Stern, and the Sterns would receive the child shortly after the birth. However, immediately after holding the child in her arms, Mary Beth’s mind filled with doubt regarding the thought of relinquishing her custody of the child. She expressed in her memoir, “What a mistake I’ve made. I did not want to make this mistake real. I wanted to pretend that it hadn’t happened, that this was just my baby and we would share a normal life together” (Whitehead and Schwartz-Nobel 1989, 19). Nonetheless, on Sunday, three days after the birth, the Sterns came and took the child, and Mary Beth crumbled. Juggling her conflicting feelings of her attachment to the child and her understanding of the terms of the contract, Mary Beth faced a daunting decision: should she fight for or give up the baby?

The Whiteheads: Family Comes First

Mary Beth Whitehead, the sixth of eight children, came from humble beginnings with a teacher father and hairdresser mother (Whitehead and Schwartz-Nobel 1989). From early on, Mary Beth took on several household responsibilities such as caring for her younger siblings, cleaning, and cooking. At age 15, she felt “out of place” in high school and eventually decided to drop out (Whitehead and Schwartz-Nobel 1989, 67). She began working at her brother’s luncheonette,

where she would meet her future husband, Rick Whitehead. The two married within half a year after meeting, and Mary Beth gave birth to her first child at 16 years old.

Rick, a Vietnam War veteran, struggled to secure income for the family and resorted to alcohol consumption as a coping mechanism. After being fired from his truck driver job due to a license suspension from a drunk driving charge in 1973, Rick used his remaining savings to start a landscaping business that ultimately failed. During this period, Mary Beth had a second child, and in addition to serving as the primary caretaker, she began working miscellaneous jobs to provide income for the family. Eventually, the family regained some of the financial stress as Rick sought help for his alcohol addiction and obtained a stable job for a garbage disposal company. Mary Beth returned to “what she did best:” raising children (Whitehead and Schwartz-Nobel 1989, 89).

As her children grew and gained independence, Mary Beth felt that a part of her was melting away. She explained, “Being a mother was how I had always defined myself ... I’d spent my whole life caring for, listening to, and nurturing other people” (Whitehead and Schwartz-Nobel 1989, 89). So, Mary Beth was naturally intrigued when she saw the opportunity to be a surrogate in a newspaper advertisement by the Infertility Center of New York (ICNY). In addition to earning much-needed additional income, she felt drawn to the idea of providing the “gift of life” to another family and simply “help[ing] to better the world” (Matter of Baby M. 1988, n.p.; Whitehead and Schwartz-Nobel 1989, 8).

The Sterns: Knowledge is Power

In contrast to the family-focused, economically challenged Whiteheads, the Sterns prioritized education and financial stability. Elizabeth Stern, an M.D. Ph.D. who worked as a pediatrician at the Albert Einstein College of Medicine, and William (Bill) Stern, who had a Ph.D. in biochemistry, married in 1974 (Harrison 1987). Although they had wished to have a child, they decided to wait to conceive due to Elizabeth’s education and other financial reasons. Bill, whose entire family had been killed during the Holocaust, felt burdened by the prospect of continuing his family line. However, Bill swiftly cast his wish aside after Elizabeth was diagnosed with a mild case of multiple sclerosis (MS). This incurable neurodegenerative disease can produce a myriad of symptoms, ranging from vision changes to the inability to communicate or walk (Multiple Sclerosis (MS) n.d.).

The Sterns initially considered surrogacy for fear of worsening Elizabeth’s condition or of potentially passing on the genetic predisposition to their child. They had dismissed the idea of adoption because of the time that it would take (Elizabeth and Bill were both in their late 30s) and religious differences since Elizabeth was Methodist and Bill was Jewish (Matter of Baby M. 2024). Furthermore, Bill expressed that “he was worried about the fear of AIDS in an adopted child and did not want a foreign child, such as a Korean, because the child would be different,” which eliminated the option of adoption (Koplewicz 1987, 4). The couple also responded to the ICNY newspaper advertisement, and they ultimately decided on the surrogate mother based on an incomplete application, a book with photographs of potential surrogates, and ultimately a meal with the Whiteheads (Harrison 1987). And so began the surrogacy case that would lead to a vicious conflict of opinions—and moral dilemma for Mary Beth.

Surrogacy: A History Dating Back to 4000 B.C.E.

Surrogacy refers to the process of having a woman referred to as the surrogate, carry and give birth to a child for another couple. The first historical reference to this form of assisted

reproduction dates back 6,000 years ago to the Book of Genesis in the Bible, where Hagar, a servant, served as the surrogate for Sarah and Abraham (Gupta 2021). Initially, the surrogate mother and the intended father would engage in sexual intercourse to create the child, but the Bible's teachings, specifically from 1 Corinthians, denounced this interaction due to concerns of infidelity. The year 1884 marked the first successful artificial insemination of a surrogate mother, marking significant progress in surrogacy procedures. The Sterns and the Whiteheads chose this method of surrogacy, with Bill's sperm being directly injected into Mary Beth's uterus, instead of utilizing IVF.

In vitro fertilization (IVF), which involves the fertilization of an egg by a sperm in a petri dish in a laboratory prior to implantation in the uterus, eventually replaced artificial insemination for surrogacies. (In vitro fertilization (IVF) n.d.). The first child conceived via IVF was born in 1978, seven years before the Whiteheads and the Sterns signed the surrogacy contract (Thompson 2016). IVF can be utilized in a process called gestational surrogacy, which grants the surrogate the choice to not donate her egg since a different individual's egg (the desired mother) can be selectively fertilized, meaning that the fetus would not be genetically related to the surrogate. In the US, 1985 marked the first report of an official gestational surrogacy (Brinsden 2016). While statistics of historical surrogacies are difficult to estimate due to their relatively uncommon nature, the Society for Assisted Reproductive Technology asserts that 2,807 babies were born through surrogacy (most likely gestational) in 2015 in the U.S., which indicates a sharp rise compared to the 738 born in 2004 (Chuck 2019). As such, this data highlights just how uncommon surrogacy was when the Whiteheads and the Sterns decided on it.

There are several classifications of surrogacies. For example, surrogacies can be categorized as commercial or altruistic depending on whether the surrogate mother is compensated for her service (Saxena, Mishra, and Malik 2012). The Sterns and the Whiteheads engaged in a commercial surrogacy in which Mary Beth would receive \$10,000 for her service, worth nearly \$30,000 in 2024 when adjusted for inflation (Federal Reserve Bank of Minneapolis n.d.). Surrogacies can also be divided into traditional or gestational, based on if the surrogate mother served as the egg donor or if another woman provided the egg (such as in IVF) (Internet Encyclopedia of Philosophy n.d.). Elizabeth and Bill ultimately decided against IVF and opted for traditional surrogacy due to fears that Elizabeth's egg would carry genes for Multiple Sclerosis and because of the technique's relative inaccessibility due to its novelty.

Surrogacy: A Woman's Choice or an Infringement of a "Natural Right"?

Surrogacy has been a topic of much debate amongst feminists, philosophers, and medical professionals. The perspectives on surrogacy have typically been divided into two main categories: the equality and difference arguments. The equality argument emphasized women's abilities to make their own informed decisions regarding their bodies, including the choice to engage in a surrogacy contract (Peterson 2016). This represented the same precedent behind *Roe v. Wade* (1973), which established the right to privacy and abortion. Moreover, surrogacy allowed same-sex and other infertile couples the opportunity to raise a child, which was particularly enticing to those who believed that these couples deserve the right to have biological children and a family. In general, the equality approach provided individuals with more control over their reproductive lives through a family planning option other than adoption, where the child would not be biologically related to the parents. Similarly, the Sterns did not wish for Elizabeth's condition to worsen or their child to have any genetic predisposition to multiple sclerosis, and surrogacy presented an opportunity to satisfy this desire.

Conversely, the difference argument asserted that pregnancy was a special right for women that surrogacy should not take advantage of. This rested on the belief that the person carrying the child in their womb had a “biologically sacred bond” to the baby that could not be broken (Peterson 2016). Moreover, some feminist advocates including Phyllis Chesler and Gena Corea considered surrogacy to be degrading for women by reinforcing the belief that women’s bodies can be used as vehicles to earn money. They asserted that this belief may be viewed as negating women’s autonomy and further reducing them into objects (Peterson 2016). This argument also raised the concern of exploitation of class differences since, typically, less financially independent surrogate mothers enter surrogacy contracts with affluent and established families as a desperate attempt to secure additional income (Scott 2009). Subsequently, it is difficult to ascertain whether the surrogate mothers truly felt that they had a choice to sign the contract or whether external factors had essentially made the decision for them (Shanley 1993). In this case, Mary Beth, a high school dropout in financial strain, had signed the contract with the Sterns, two highly educated individuals with stable incomes, indicating a clear class difference between the two parties.

Legal Measures: The Surrogacy Parenting Agreement

The Sterns and Whiteheads signed the surrogacy contract, organized by lawyer Noel Keane, in February 1985. Keane, who was the third son of Irish immigrants, earned a law degree from the University of Detroit and established a lucrative business organizing surrogacy contracts (Van Gelder 1997). In 1976, he mediated the first official surrogacy contract in the United States between a couple and surrogate mother. Keane earned a flat rate of 7,500 dollars in each of the contracts that he oversaw, accruing an income of approximately 3 million dollars in 1985 alone, equivalent to 8.5 million dollars in 2023 (Whitehead and Schwartz-Nobel 1989, 10; Federal Reserve Bank of Minneapolis n.d.). Keane utilized a Surrogate Mother Application, with questions about family history and experience with pregnancy, and medical and psychiatric exams performed by physicians to determine the mental and physical fitness of the surrogate mothers (Keane 1981). His law firm accepted 85–90% of surrogacy applicants, which was significantly higher than surrounding centers. This comparatively high acceptance rate raises concerns about the company’s interests: whether surrogate mothers who may have been unfit for the position were accepted solely to increase profits for the law firm.

After that, the Surrogate Parenting Agreement outlined the expected series of events during the surrogacy. Mary Beth Whitehead would be artificially inseminated with William Stern’s sperm, making Whitehead the egg donor and resulting in the child inheriting 50% of her DNA. Next, Mary Beth would carry the child to term and after the birth, immediately relinquish her maternal rights so the Sterns could adopt the child. The Sterns would then provide financial compensation of 10,000 dollars once they received the child. The Sterns would be responsible for all medical expenses related to the pregnancy (which would cost nearly 5,000 dollars barring complications), paternity testing, and psychiatric evaluations for Mary Beth to confirm that she would be fit to serve as a surrogate (Gold and Kenney 1985). Mary Beth would not “attempt to form a parent-child relationship with an y child or children she may conceive” to prevent any lingering emotions, and the Whiteheads would recognize that giving the child to the Sterns represented the child’s best interests (In re Baby M 1988, n.p.). Finally, both parties would agree that they signed the contract voluntarily and would acknowledge its legality. It is important to note that the contract never explicitly referenced any information about the surrogate’s ability to interact with the child after birth.

The Psychological Evaluation: Clear Foreshadowing

Joan Einwohner, the Infertility Center of New York's psychologist, interviewed Mary Beth before she signed the contract to ensure that she would be a fit surrogate. As early as preliminary testing, Einwohner expressed concern for Whitehead's capability to be a surrogate, "She expects to have strong feelings about the baby. It would be important to explore with her in somewhat more depth whether she will be able to relinquish the child at the end" (Whitehead and Schwartz-Nobel 1989, 13). Nonetheless, the clinic ultimately decided that Mary Beth would be a suitable candidate and went ahead with the contract. It is unknown why they never inquired further about her conflicted mental state, but it is highly possible that "profit motive got the better of the Infertility Center" (Matter of Baby M. 1988, n.p.). The center workers simply informed Mary Beth that she had passed and did not provide additional details regarding any reservations that the psychologist may have had. Moreover, after the Sterns decided to have Mary Beth as their surrogate, they either did not examine or did not seem concerned by Mary Beth's psychological evaluation. They simply trusted the Infertility Center's decision (Matter of Baby M. 1988).

The Birth: A Hurricane of Emotions

A little over one year after the Whiteheads and the Sterns signed the contract, on Thursday, March 27, 1986, Mary Beth gave birth to a healthy baby girl in a hospital, with Rick at her side. She had spent the previous night managing waves of back pain and decided to go to the hospital, taking her backache as the first sign that she was going into labor. She went to a labor room to prepare for this delivery, and soon enough, the piercing labor pains arrived. While she had given birth to two children before this, she reflected that the synergy in the room felt different. For one, Mary Beth had chosen to have a natural delivery with this child; she experienced all the excruciating pain that childbirth had to offer, which she had chosen to stifle in the past with epidurals. She also noticed an air of maturity and acceptance that she had not felt when she had given birth as a teenager. Eventually, when Mary Beth heard the nine-pound child cry for the first time and held her in arms, she marveled at the beauty of this human being that she had created. Rick exclaimed, "I love her, Mary Beth ... I love her because she's a part of you" (Whitehead and Schwartz-Nobel 1989, 4).

Mary Beth and Rick's excitement dissipated with the Sterns' visit the same evening of the birth. Fear, anger, and guilt fueled the hurricane of emotions that Mary Beth felt as she remembered that she would soon have to abandon the child. After all, Mary Beth had been the one nursing, holding, and taking care of the child during the three-day hospital stay. In fact, Mary Beth and Rick Whitehead were identified as the parents on the birth certificate, and their chosen name of "Sarah Elizabeth Whitehead" was written in the middle of the page in big, cursive letters; New Jersey law automatically assumed that the husband was also the father of the child unless an Affidavit of Denial of Paternity (ADP) and Certificate of Parentage (COP) were completed (New Jersey Paternity-Parents n.d.).

By Saturday, two days after the birth, Mary Beth became increasingly distressed, and the tears started flowing without an end in sight. She confessed to her husband, "What can I do? I can't give her away. I can't give her up" (Whitehead and Schwartz-Nobel 1989, 21). The Sterns visited once again this evening, reassuring Mary Beth that she could visit and even offering more money for the child by allowing her to keep the cost of the delivery which she had originally intended to return to the Sterns. Mary Beth, overwhelmed and confused, could not muster a response.

The next morning, Easter Sunday, Mary Beth and the child were discharged from the hospital. Though Mary Beth had a couple hours of bliss to introduce the child to her friends and

family, the Sterns came in the early afternoon to retrieve her. As soon as they drove off with the baby, Mary Beth felt that a piece of herself had been stolen. She lamented, “I didn’t want to talk. I didn’t want to live ... You don’t comfort somebody who is giving away her child” (Whitehead and Schwartz-Nobel 1989, 25). She felt paralyzed by the emptiness that consumed her and knew that she had to make a final decision on the fate of the child: should she remain silent and allow the Sterns to raise the child, or should she demand that they return her?

Motherhood: Providing the “Gift of Life”

Being a mother had always defined a significant part of Mary Beth’s identity. She prided herself on taking care of her younger siblings and raising her two children, Ryan and Tuesday. Since she had given birth to her first child as a teenager and never pursued higher education, motherhood consumed a substantial part of Mary Beth’s life and gave her purpose. As such, her initial interest in surrogacy was rooted in her hope to provide the “gift of life” to another family (Matter of Baby M. 1988, n.p.). She thought that this would be the perfect chance to continue doing what she “was born to do,” and she also enjoyed the prospect of earning money while being able to stay at home with her children (Whitehead and Schwartz-Nobel 1989, 89; Peterson 2016).

However, her emotions towards the child overshadowed any intention that she had to help the Sterns start their family. While Mary Beth had spent the entire pregnancy attempting to distance herself from the child, she quickly identified herself as the true mother of the child when she was finally able to hold her. She firmly asserted, “My body, my soul, my heart, my breathing, my everything had gone into making this baby. What had Bill Stern done? Put some sperm in a cup. What had Betsy done? Brought some clothes, a box of diapers, and a case of formula” (Whitehead and Schwartz-Nobel 1989, 26). In her mind, the physical act of carrying the child for nine months made her the rightful mother. Moreover, Mary Beth felt that the two had bonded during her pregnancy and even during the three days in the hospital after the birth. As she nursed the child in the hospital, she found that the child reached out to her, and interpreted this act as the child recognizing her as her mother. Mary Beth criticized Elizabeth’s choice to prioritize her education over having a child and believed that her previous experience caring for children clearly showed that she would be the more *capable* mother. In addition, Mary Beth had donated her egg and subsequently contributed to 50% of the child’s DNA. She felt obligated to care for the child because the baby was made from her. As her motherly instincts took over, she understood the Sterns’ actions as an attempt to steal *her* child. Mary Beth feared that by agreeing to give up her child, she had failed as a mother and was no longer worthy of the role.

Financial Considerations: The Allure of Ten Thousand Dollars and the Value of the Child

There was no doubt that Mary Beth had been entranced by the financial compensation that the surrogacy would provide. Burdened with teenage motherhood and an alcoholic husband who found it difficult to keep minimum-wage jobs, Mary Beth had felt helpless in the face of financial instability. When she stumbled across an opportunity to get paid for doing one of the few things that she considered as her strength, she could not resist. Still, after having the child and reawakening with her emotional obligation as a mother, Mary Beth had to consider financial implications.

If Mary Beth kept the child, she would forfeit the agreed sum of 10,000 dollars that she had planned to save for her other children. Additionally, in the 1980s, raising one child until adulthood cost over 80,000 dollars, which would add a significant financial burden on the already-struggling Whiteheads (AP 1983). Although Rick had maintained his job at the garbage disposal

company, the Whiteheads already strained to support two children with their limited income. Conversely, the Sterns, with advanced degrees and dual income, were financially comfortable and more prepared to assume the costs of raising a child.

On the other hand, Mary Beth grappled with the idea that she would essentially be selling the baby in exchange for money. She feared that the child would feel like a “slave” after realizing that her life had been assigned an arbitrary, finite monetary value (Whitehead and Schwartz-Nobel 1989, 19).

The Contract: A Legal Document with Limited Enforcement

Mary Beth also understood that if she decided to fight for the child, she would be retracting a legal promise that she had made to the Sterns. Attorney Noel Keane and his law firm had created the surrogacy contract as a legal document. Both the Whiteheads and the Sterns had read and voluntarily signed the contract, certifying that they understood the expectations from the beginning of the process. The contract explicitly stated, “This agreement is binding on each party’s respective executors, heirs, assigns and successors. This agreement ... shall be governed by, continued and enforced in accordance with the laws of the State of New York” (In re Baby M 1988). Mary Beth admitted after the birth, “No one at the hospital realized that this was a baby I was having for another couple. Who could imagine that anyone would have gone through this for someone else? But this is what I had agreed to do” (Whitehead and Schwartz-Nobel 1989, 5). Thus, if Mary Beth were to attempt to obtain the child, that would indicate a breach in the legal agreement, which would also contradict her virtues of living an honest life.

However, the contract included a protective statement for the surrogate mother which challenged its enforceability. It mentioned, “Nor does ICNY guarantee or warrant the ‘surrogate mother’ (and her husband, if applicable) will comply with the terms and provisions of the separate agreement entered into between herself and Natural Father including but not limited to, the ‘surrogate mother’s’ refusal to surrender custody of the child upon birth” (In re Baby M 1988). The contract failed to specify any procedures or consequences that would occur in the event that Mary Beth refused to give up the child. This statement complicated whether Mary Beth felt that she could go against the contract because it supported her desired actions and did not provide potential consequences of a breach. In fact, Keane also wrote, “Any and all contracts between adoptive couples and others wanting children and their surrogate mothers are unenforceable. There is ... no guarantee that the surrogate mother will give up her child” (Whitehead and Schwartz-Nobel 1989, 14). At this point, there was no precedent for legal action so there were no cases to reference to determine whether these types of contracts were valid nor what the consequences for a breach would be.

At the same time, while both parties had examined the contract, there was a clear disparity in education levels between the Whiteheads and the Sterns. Because Mary Beth’s education was limited to some high school experience, she may not have been well-equipped to interpret the formal writing of legal documentation without professional counsel. Further, it is possible Mary Beth did not understand all the stipulations of the surrogacy contract and that her agreement to the surrogacy contract was inadequately informed. . She did have access to Sol Radow, an attorney that the Infertility Center had referred to her, but even he assured her that “no court could ever take the baby away” if she decided to keep her (Whitehead and Schwartz-Nobel 1989, 14). In contrast,

with three graduate-level degrees between the two of them, Elizabeth and Bill were much more equipped to read, analyze, and question the contract. Although Mary Beth felt that the contract and both Attorneys Keane and Radow had validated her feelings toward the child by stating that they could not force her to give the baby up, her storm of conflicted decisions raged on since she had willingly signed the document after all.

The Highest Priority: The Baby's Best Interests

Ultimately, Mary Beth had to consider the baby's best interests when making her decision. Although she felt that she had played the most involved role in creating the child and felt an intense motherly attachment to the baby, she had to examine economic and legal factors to make an informed decision that would prioritize the child's well-being. The potential financial burden of raising another child and the murky consequences of breaking a legal contract, even if those repercussions were not clearly defined, loomed over her. Distressed by the weight of uncertainty and confusion, Mary Beth spent the night without the child reflecting on her value of prioritizing the baby's wellbeing and ultimately landing on a choice that would alter the trajectory of both of their lives

The Court Case: The State's Response

Mary Beth called the Sterns the day after she had given up the child and expressed that she could not "live without her [baby]" (Whitehead and Schwartz-Nobel 1989, 31). She asked to have the child for a week to reconsider before making her final decision. While these conversations were happening, the Sterns had been plotting legal tactics to secure the child. Even before the child's birth and without the Whiteheads' knowledge, the couple had submitted a paternity order to a Florida court (which they chose for its relatively loose regulations) asserting Bill Stern as the father. To ensure the petition's admissibility, they claimed that the artificial insemination occurred without Rick Whitehead's consent, a lie intended to curb legal definitions of Rick as the father. The Sterns used this paternity order to call for an ex parte order (an order that is signed without notifying the other party—the Whiteheads) which would allow them to receive police assistance to retrieve the child (Ex Parte n.d.).

On May 5, 1986, 39 days after the birth, the Sterns, along with multiple policemen, arrived at the Whiteheads' house and demanded the return of their child. Instead of complying, Mary Beth handed Rick the child through a window while the police were closing in on them, and the Whiteheads fled to Florida, lodging at numerous houses, motels, and other accommodations to avoid further confrontations. Mary Beth's decision to keep the child was blatantly clear. While on the run, Mary Beth conversed with Bill via phone call multiple times. On one phone call that Bill recorded on his attorney's advice, Mary Beth, overcome with emotion, stated, "'I'd rather see me and her dead before you get her ... I gave her life, I can take her away'" which would later be used against her in trial (Peterson 2016, 106).

Four months later, police again enforced the ex parte order to obtain the child and bring her back to New Jersey. The two parties were involved in a trial, to assess the validity of the surrogacy contract and determine custody of the child, that lasted 32 days, and the court referred to the child as "Baby M" after the name "Melissa" that the Sterns had renamed her (Matter of Baby M. 1988). Ultimately, the New Jersey state court upheld the surrogacy contract, removed Mary Beth's parenting rights, and gave sole custody of the child to the Sterns based on the "child's best

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interests” (Matter of Baby M. 1988, n.p.). The trial court cited Mary Beth’s unstable mental condition and financial considerations as the basis for the ruling. Whitehead appealed, and the New Jersey Supreme Court ultimately invalidated surrogacy contracts and reinstated Mary Beth’s parenting rights but did not change any decisions regarding Baby M’s custody. This court treated this circumstance as an adoption, which contrasts with the trial court’s treatment of the case, and asserted that the contract conflicts with:

(1) laws prohibiting the use of money in connection with adoptions; (2) laws requiring proof of parental unfitness or abandonment before termination of parental rights is ordered or an adoption is granted; and (3) laws that make surrender of custody and consent to adoption revocable in private placement adoptions (In re Baby M 1988, n.p.).

On February 2, 1988, the day before the Supreme Court’s decision would be released, Mary Beth reflected, “By this time I had also accepted the fact that the Sterns loved her and would do everything they could for her” (Whitehead and Schwartz-Nobel 1989, 197). She had come to terms with either potential outcome of the trial. Nonetheless, the decision granted parenting and visitation rights to Mary Beth once again, and she expressed her jubilation at a press conference for anti-surrogacy and adoption groups as she explained, “I am gratified to see surrogacy discredited and delighted to know that my relationship with my daughter will be allowed to continue for the rest of our lives” (Whitehead and Schwartz-Nobel 1989, 198). While she had not achieved her goal of gaining custody of the child, Mary Beth ultimately experienced a taste of victory with the restoration of her visitation rights after this long legal fight against the Sterns.

Baby M’s Legacy: From Legal Precedence to Media Coverage

In the years after the Baby M trial, several states established new legislation to regulate surrogacy practices. This case represented one of the first related to surrogacy and set a legal precedent on this issue for the next few decades. For example, in 1988, Michigan became the first state to ban commercial surrogacy, creating a 50,000-dollar fine and five-year prison sentence as punishment (Whitehead and Schwartz-Nobel 1989, 200). Florida, Louisiana, Indiana, Kentucky, and Nebraska followed with similar statutes. Nevertheless, legislation surrounding surrogacy and surrogacy contracts remains state-level, and there currently exist no nationwide laws (Map of U.S. Surrogacy Laws n.d.).

The case of Baby M riveted American society, and news outlets and the media extensively dissected it in the years to follow. This court case occurred at a time marked by several strides in women’s rights, including the establishment of Title IX, making sex-based discrimination illegal, and the ruling of *Roe v. Wade* in 1973 to legalize abortion (Feminism 2020). These advancements, collectively known as the Second Wave of Feminism, had brought women’s issues to the forefront of American society, and Baby M reflected another instance of this phenomenon. However, more recently, the 2022 *Dobbs v. Jackson* decision, which overturned the *Roe v. Wade* ruling, indicated a move backwards towards allowing individual states decide their policies towards abortion and assisted reproduction among other issues (National Constitution Center n.d.). Though the Baby M trial occurred decades earlier, both these cases correspond to the same issues of privacy and reproductive rights, even if they present differing conclusions. Furthermore, a Gallup poll in 1987,

one year after the child's birth, revealed that 92% of those asked had heard of the Baby M case (Peterson 2016, 103). In 1988, ABC released a two-episode mini-series called *Baby M* that received seven Emmy nominations. In the same year, American artist Martha Rosler created a 35-minute video titled, "Born to be sold: Martha Rosler reads the strange case of Baby \$M" (Rosler 1988). Furthermore, numerous popular television series, including *Seinfeld* and *General Hospital*, referenced this case in their subplots. Baby M also made an appearance as the cover photo for both *Time* and *Newsweek* magazines (Peterson 2016). The widespread coverage of this case, penetrating several forms of media, only emphasized the fascination that the public had with the first contested surrogacy case in the country.

In 2004, 18-year-old Melissa (Baby M) officially terminated Mary Beth's parenting rights and was officially adopted by the Sterns. She expressed, "I love my family very much and am very happy to be with them. I'm very happy I ended up with them. I love them, they're my best friends in the whole world, and that's all I have to say about it." (Haberman 2014, n.p.). Despite the emotional, legal conflicts that shook both the Whiteheads and the Sterns, Melissa ultimately made the decision on her best interests.

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