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FETAL FICTIONS:
AN EXPLORATION OF PROPERTY ARCHETYPES
IN RACIAL AND GENDERED CONTEXTS*

*Patricia Williams***

I am new to Madison; I began teaching at the University of Wisconsin only last September. Last July I travelled from my then-home in New York to find myself an apartment. I found an advertisement for a two-bedroom apartment in University Heights, not far from the law school, and at one-thirty on a Saturday afternoon, I called and made an appointment to see it. The woman on the other end of the line sounded very friendly; I told her about myself and she said I sounded perfect (i.e., quiet, single, middle-aged professor with cats). She described the second-floor apartment as having a fireplace, 1200 square feet, and a sunroom. We agreed to meet at the apartment at three o'clock. At three I showed up; at five minutes after three she showed up. I saw her first, at a distance, walking down the street briskly. I saw her catch sight of me, as I sat on the doorstep. I saw her slow down; I saw her walk slower and slower, squinting at me as I sat in the sunshine. At ten minutes after three, I was back in my car, driving away without having seen the apartment. The woman had explained to me that a "terrible mistake" had occurred, that the apartment had been rented without her knowledge to "a man who can lift heavy boxes and shovel snow in the winter."

When I got back to the law school, I mentioned what had happened to my colleague, Professor Linda Greene, also a black woman and also new to Madison. I told her of my suspicions and my hurt feelings. As I recounted the scenario, Linda started finishing my sentences for me: "Twelve hundred square feet?" she interjected. "Little white window-sills? Fireplace and hardwood floors?" As it turned out, Linda had visited the same apartment two weeks earlier. She, too, had been turned away when she showed up. She, too, had been told that there had been a "terrible mistake," that the place had already been rented.

Now, one can look at what happened to Linda and me two ways. One analysis is to call any suit we bring against the landlord an attempt

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to enforce our constitutional rights as equal citizens, a pursuit of our civil liberties and the fruits of full citizenship. The other analysis is to label such a suit an attack on the contract freedoms of the landlord, an assault on her rights to privacy and association and freedom of choice, and a conspiracy to employ the courts as the redistributive agents of socialism or maybe even communism. This tension between civil liberties and private property is the subject of this paper: the tension between what I shall call the forces of market and antimarket in the legal ideology of intimate relations.

The asserted polarity between autonomy and paternalism, between freedom of contract and of association and the ideal of equality, is an old, familiar one. This polarity underlays the battle in *Brown v. Board of Education*.¹ In that sense, the June 1989 litany of Supreme Court civil rights cases² indeed has launched us back to the beginning, back to time-before-*Brown*, back to recharacterization of such suits as threatening to the propertied order of things, back to a wilderness in which demonologies breed, a hierarchy in which the property of some is ranked above the humanity of others. But, if recent events take us back to the beginning, they also give us an opportunity to redefine the task in a way that is rooted in the attempt at coalition and that reframes the historic struggle of blacks to involve the explicit interests of all people of color, of women, of gays and lesbians, and of physically and economically disadvantaged people.

I want to consider the issue of isms in United States institutions from this very broad view, not from the standpoint of specific institutions such as schools, the courts, or a particular employment site. Given the current disposition of the courts and of the country, we have to look at the conceptual institutions that encompass and regulate all our thoughts about those specific institutions. In that vein, I want to examine first the conceptual institution of contract law, or the body of thought that describes as market relation most of our daily human encounters; and second, that most holy of conceptual institutions, the United States Constitution and its provision of a system of rights that links our citizenship, our communitarian selves, to a notion of market-based property interests.

1. 349 U.S. 294 (1954).

2. See, e.g., *Independent Fed'n of Flight Attendants v. Zipes*, 109 S. Ct. 2732 (1989); *Jett v. Dallas Indep. School Dist.*, 109 S. Ct. 2702 (1989); *Missouri v. Jenkins by Agyei*, 109 S. Ct. 2463 (1989); *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989); *Will v. Michigan Dep't of State Police*, 109 S. Ct. 2304 (1989); *Lorance v. AT & T Technologies*, 109 S. Ct. 2261 (1989); *Martin v. Wilks*, 109 S. Ct. 2180 (1989); *Wards Cove Packing Co. v. Antonio*, 109 S. Ct. 2115 (1989).

The original vehicle for this interest in the intersection of commerce and the Constitution was my family history. I write frequently about the extraordinary emotional significance of my sister finding vestigial documentation of my great-great-grandmother's existence in Bolivar, Tennessee, as the property of a wealthy white lawyer who fathered and owned her children.³ This latter story, of course, has inspired most powerfully my interest in the interplay and function of notions of public and private, of family and market, of male and female, of molestation and the law. I meticulously track the dimension of meaning in my great-great-grandmother's being a chattel: the meaning of money, the power of consumerist worldview, the deaths of those whom we label the unassertive and the inefficient. I try to imagine where and who she would be today. I also am engaged in a long-term project of tracking my great-great-grandfather's lawyerly word — through his letters and his opinions — and of finding the shape described by her absence in all of this.

I see her shape and his hand in the vast networking of our society and in the evils and oversights that plague our lives and our laws. The control he had over her body. The force he was in her life, in the shape of my life today. The power he exercised in the choice to breed her or not. The choice to breed slaves in his image. To choose her mate and to be that mate. In his attempt to own what no man can own, the habit of his power and the absence of her choice.

I look for her shape and his hand.

Let me update this story of ownership, this paradigm of disowned-ness. Just before I moved to Wisconsin, I was sitting in the library where I was preparing a seminar on homelessness and the law. A student of mine, B., interrupted my writing. She was angry at me because, she said, my class was "out of control." The readings and the discussion made her feel guilty that her uncle was, as she described him, "a slumlord." She said that the rich "can't help" who they are. I resented this interruption, and I snapped at her: "They can help who they are as much" — and here I gave B. back her own words of only a day or so before — "as poor people who are supposed to 'help' themselves out of poverty." I was very angry; I knew it showed. I could feel how unprofessorial I must have seemed.

After the Civil War, when slaves were unowned — I hesitate to use the word emancipated — they also were disowned. They were

3. See Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 418-19 (1987); Williams, *On Being the Object of Property*, 14 SIGNS: J. WOMEN IN CULTURE AND SOC'Y 5 (Autumn 1988).

thrust out of the market and into a nowhere land, which was not quite the mainstream labor market and was very much outside the marketplace of rights. They were placed beyond the bounds of valuation, in much the same way that the homeless, or nomads and gypsies, or tribal people are. They became like all those who refuse to ascribe to the notion of private space, or who cannot express themselves in the language of power and assertion and staked claims — all those who deserve the dignity of social valuation yet so often are denied survival itself.

I have been thinking about the unowning of blacks and their consignment to some collective public state of mind, known alternatively as “menace” or “burden.” I have been thinking about the degree to which it might be that public and private are economic notions, that the right to privacy might be a function of wealth. I wonder, still smarting from the power of my encounter with B., if the concept of intimacy (assuming privacy is related to the drive for intimacy) is premised on socioeconomic status. B. was upset, I think, not because I actually insulted an uncle whom she loved and of whose existence I had no knowledge, but because the class discussion had threatened profoundly the deeply vested ordering of her world. As best I could understand, B. was saying: “haves” are entitled to privacy in guarded, moated castles, while “have-nots” must be out in the open — scrutinized, looked at, seen with their hands open and empty to make sure they’re not pilfering. B.’s rationale maintained that the poor are envious of the rich. The rich worked hard to get where they are, or possess more innately valuable social characteristics, and deserve their wealth, for they have suffered for it. B. kept saying just that: “My family has suffered for what they have.”

Perhaps, I finally decided, the best way to overcome all these divisions is to acknowledge the suffering of the middle and upper classes. I think, in an odd moment of connection, of my Great-Aunt Mary who, back in the 1920s, decided that her lot in life would be made better if she pretended to be a white woman. She left Tennessee for Cambridge, Massachusetts and ultimately married into one of Newport society’s wealthiest families. While the marriage lasted, she sent her decidedly black daughter by a previous marriage to live with her sister, another of my great aunts.⁴ Thirty years later, I grew up under the rather schizophrenic tutelage of these two aunts, one of whom had been a charwoman at Harvard University, while the other lived in splendor with one of its largest contributors. The gulf, the rift, and

4. Great-Aunt Sophie was my great-great-grandmother’s granddaughter.

yet the connection between the sisters is even today almost indescribable. The explicit sacrifice of family for money. The bonds, the tendrils, the need seeping up in odd, nonfamilial and quasi-familial expectations which were denied, in guilt, in half-conscious deference to the corruption of real family bonds. Their only contact with love, attention, and intimacy was always at the expense of each's children or family — each was in peonage to the other. There was in this an exchange of mutual suffering indeed.

I sink deep into my wondering about my student B. I think about her uncle, the slumlord, and the tax I seem to have extorted in her life's bargain not to think about him guiltily. I ponder the price her uncle must have charged in the agreement not to think of him in unheroic terms. And, if the consideration in such an exchange transcends money and material gain — if the real transaction is not for "salary" but for survival itself — for love and family and connection — then this becomes a contract of primal dimension.

If both rich and poor are giving up life itself and yet both are deeply dissatisfied, indeed suffering, neither ever will feel "paid" enough for their lot in life, for what has gone on is not a trade or exchange, but a sacrifice. They have been victimized by a social construction that attempts to equalize with money, that locks money into an impossible equation with "pricelessness," uniqueness. They have been locked into a socially constructed life-disappointment by the carrot of hope that somewhere, just ahead, lies "satisfaction" or "sufficiency" of payment.

In the insistence on equation, more money eventually equals the right to have more intimacy, to have family. Yet, because no amount of money is ever "enough," family becomes out-of-reach, increasingly "undeserved." Family becomes the sign, not of figurative wealth (as in "My children are my jewels"), but of literal wealth — those who have family have money, or they are suspect, as undeserving as thieves.

Such a bargain is a mere trade of self-esteem for money and racial belonging. Money buys self-esteem. The property of race buys belonging. If you are disfranchised either racially or monetarily, you cannot be happy because you are the object of revulsion and ridicule. If you are disfranchised, you cannot accept it as fate because poverty is your fault. If you are disenfranchised, you can't *not* resent the privileged classes because competition, or some notion of property revenge, is the name of the game, the only way out.

This is not just a description of a class system; it is a formula for war. Ideology aside, it is a formula bought with hopes of a lifestyle that will release us all from serfdom, empty us into the promised land, and open the secrets of wealth and belonging. It is a formula premised

on a hypothetical world in which the streets were paved with gold and resources were relatively infinite. It is not a formula that accounts for a world in which the reality of proximity comes crashing in on the illusion of privacy, in which the desperation of isolation explodes into the mindless pleasantries of suburban good-times. It is not a formula that works in a finite world.

I miss the street I lived on in New York. I could always see, just by stepping outside my apartment, the dimension of meaning in my great great grandmother being a chattel: the life-or-death contrast of lifestyles. On my street, lots and lots of mercenary mothers, black women mostly, push little white children in strollers, taking them to and from school. On hot summer days, they go to the park. They sit on the benches and chat in the shade, gaggles of white children playing all around them. I have never, ever seen a black child playing there. On cold winter days, three homeless black men take up residence on the corners of my street, in cardboard boxes placed over the subway vents. Year round, the *New York Post* runs stories about how black single mothers, the universal signifiers for poverty, irresponsibility, drug addiction, and rabbit-like fertility, are causing the downfall of Western civilization.

This all-or-nothing scramble for finite resources in which the infinity of our most precious selves is put up for sale and on the line.

I continue to ponder the equations of privacy with intimacy and publicity with dispossession. I think about the degree to which our civic selves as well as our humanity are complicated by our specific history. In this country notions of commercial property are located in humanity itself: through the system of outright ownership that was slavery; through the ingrained patterns of disinterest and disownership that have resulted in widespread homelessness and hunger in the midst of great wealth; and through subtler forms of self-alienation that prostitution and certain types of labor represent, exemplified best in our high-tech society by the selling of body parts as assets and liabilities in Solomonic, soul-splitting tradeoffs with each other and with the state.

Let me try to enlarge upon how I think these concepts affect all of us and go beyond simply perpetuating the oppressions of the past to replicate and breed new forms of devastation. The recent Supreme Court cases revoking so much of the schema of civil rights enforcement of the last twenty-five years have begun to spawn a host of lower court cases affecting not just people of color, but white men and white women. One example, *UAW v. Johnson Controls*,⁵ a so-called "fetal

5. 886 F.2d 871 (7th Cir. 1989), cert. granted, 110 S. Ct. 1522 (1990).

protection" case handed down by the Seventh Circuit on September 26, 1989,⁶ explicitly relied on the Supreme Court's reasoning in *Wards Cove Packing Co. v. Atonio*,⁷ which imposed very high burdens of proof on plaintiffs in suits contesting employers' assertions of business necessity for discrimination policies.⁸ In *Johnson*, all women of childbearing age were barred from working in a plant that manufactured batteries, for fear of exposing not them, but their fetuses, to lead poisoning.⁹ That much may sound like a perfectly laudable public interest goal, but the record revealed working conditions at the Johnson plant in which some lead was likely to be absorbed into the blood of all workers, male and female.¹⁰ Yet, only fertile females were barred from working there.¹¹ All actual, living employees risked exposure to elevated blood levels of lead;¹² yet, only fetuses and potential fetuses were protected rather than all actual, living employees. Barring women was deemed purely incidental to that goal.¹³

Johnson was very much like the cases in which canaries are brought down into mining shafts: when the canary stops singing, you know gas is leaking. Although fetuses, like canaries, are keenly susceptible to the ravages of lead poisoning, the *Johnson* opinion seemed not at all concerned about the longer gestational period of debilitation from prolonged lead exposure in adult workers. Rather, *Johnson* amounted to a righteous ban of canaries in the interest of canaries and all future generations of canaries — perhaps not a bad cause, but operating as a diversion from the fact that mineworkers are exploding in great numbers below.

Furthermore, in the guise of protection of the fetus, *Johnson* disfranchised all women of childbearing age,¹⁴ regardless of their intent to have children, with the same irresolute logic of applying the rule against perpetuities to devises of fertile octogenarians. (One of the plaintiffs in the *Johnson* case was in her fifties.¹⁵) Additionally, the court employed "neutral," but extremely loaded, vocabulary: it de-

6. *Id.*

7. 109 S. Ct. 2115 (1989).

8. *Id.* at 2122 (statistical evidence showing high percentage of nonwhite workers in lower positions does not establish prima facie Title VII case of disparate impact).

9. *Johnson Controls*, 886 F.2d at 876.

10. *Id.* at 875.

11. *Id.*

12. *Id.* at 876.

13. *See id.* at 901.

14. *Id.* at 876 n.8. Johnson Control's policy was to exclude all women except those with medical documentation of their sterility. *Id.*

15. *Id.* at 919 (Easterbrook, J., dissenting).

scribed the impact of its ruling as not affecting women in particular, but merely the “offspring of all employees” without regard to gender.¹⁶ Concomitantly, it asserted that only women are capable of transmitting the harm to the fetus.¹⁷ Throughout the opinion the court referred to “the unborn child,”¹⁸ thus making present and palpable something which was at best hypothetical. Finally, the court eliminated all alternative ways of protecting fetuses, even while saying that it would leave room for consideration of other, less restrictive alternatives; it disposed of them by saying that any alternatives must be “equally as effective[]” in preventing harm to the unborn child as would barring all women from the workplace.¹⁹ But what alternative possibly could be “equally” as effective as a total bar? Why not simply confine all women to the home, keep the liquor under lock and key, and feed them a constant diet of whole grains and antibiotics, like brood hens?

The *Johnson* case established not a social interest in healthy future generations, as it purported to do, but a property interest in the fate of fetuses, belonging to the defendant corporation, Johnson Controls. Johnson literally owns an interest in the fetus, as a result of this case, because its ability to control all women who might be the bearers of fetuses is premised upon its ability to shield its stockholders from being sued. This property interest is expressed as the court’s allowance that Johnson may exercise its best business judgment in fashioning an exclusionary rule.²⁰ It is the business interest, rather than any notion of public interest, that will ultimately govern as the rule in this case if it takes hold throughout the corporations of America.

In this creation of a property interest in a corporation, the court simultaneously disowned workers, in particular the female workers, the so-called “risk-factors,” to the ideal, nonexistent, unborn, uncarried, unconceived, and unthought-of child. (I am reminded of a cartoon my colleague Professor Alta Charo mentioned seeing in a German magazine. In it, a man and a woman were depicted each with a ray of white light streaming from their eyes. The caption read: “the gleam in the eye of the mother + the gleam in the eye of the father = the new definition of conception.” Unfortunately, that gleam can also now be said to conceive not a public interest in the fate of that child-to-be,

16. *Id.* at 885 (majority opinion) (quoting *Hayes v. Shelby Memorial Hosp.*, 726 F.2d 1543, 1548 (11th Cir. 1984)).

17. *Id.* at 890.

18. *See, e.g., id.*

19. *Id.* at 891.

20. *Id.* at 901.

but a tangible *property* right in the employers of the biological parents.). The *Johnson* case also disowned the male employee because it narrowed the range of actionable health risks of the workplace to those affecting fetuses rather than real men and women. The hidden premise in this opinion was that workers who do stay in this environment consent to anything that happens, that the fetus really represents the only part of either the man or the woman that is unable to consent. It thus excluded a range of economic realities about a market that is not as free and option filled as theory would have it. It established a *prima facie* case of consent for real workers in highly toxic and potentially dangerous situations. It disowned the arguments that they might try to make on behalf of themselves.

At the same time, the analysis in *Johnson* invites the sort of prostitutive self-partialization that has occurred in Brazil where similar demands by employers have contributed to Brazil's having one of the highest sterilization rates in the world. Brazilian employers, fearing that they will have to pay benefits under Brazil's new maternity laws, ask their female employees to provide proof of sterilization.²¹ This phenomenon has created the disturbing specter of women sterilizing themselves in order to survive. The problem presents itself most strongly among those most disfranchised, those closest to the bottom of the socioeconomic ladder; the poor, the young, those with no other alternatives. It must be understood in the context of the continuing genocide of indigenous peoples around the globe; racism here and abroad; the homelessness crisis; lack of basic economic rights to things like health, housing, and childcare; and racist and gendered property interests in not making provision for the disfranchised. The Brazilian situation builds economic incentives for poor women, mostly women of color, to just say no to ever having children — incentives to give up a part of themselves in order to reap a pecuniary benefit. Given that context, the "Catch-22" of corporate-controlled reproductivity is a real specter, a certain possibility, a hypothetical born into the realm of the real. The system is nothing less than a passively bargained, privatized form of eugenics.

This commercialization of the fetus, this reduction of poor people of color to an owned relation to their body parts, this dispossession of the self through alienation therefrom can be tracked in other fetal rights and fetal abuse cases as well.

Before I tell you about some of the other cases, let me set the scene a bit, to frame better what I think is the essential craziness of

21. Simons, *Women in Brazil Are Now Finding Out Sterilization May Save Their Jobs*, N.Y. Times, Dec. 7, 1988, at A6, col. 1-6.

these cases, even at the risk of revealing what may also be my own insanity Not long ago, early on a weekday afternoon, I sat at home watching a children's program called "3-2-1- Contact."²² A woman with a smarmy talking-down-for-children voice was conducting an interview of Frank Perdue at his chicken farm. The camera panned the "plant room" where 250,000 chicks had hatched, all only a few hours old. They were placed on a long assembly line, packed, so that the black conveyer belt was yellow with densely piled chicks. Human hands reached out at high speed and inoculated each fuzzy yellow chick by slamming it against an inoculator and throwing it back on the line. At the end of the line was a chute, and chicks scrambled for footing as they were dumped from a height onto yet another assembly line. Cute, catchy, upbeat music accompanied their tumbling, a children's song for the hurtling chicks.

"We . . . deliver the little baby chicks in schoolbuses to the farms," said the voice of Frank Perdue.²³

The interviewer laughed, "They're off to kindergarten."²⁴ She held a chick in her hand and stroked it like a pet. "You take really good care of them, don't you?" she said softly, as though to the chick.²⁵

"Oh, we must," said Frank Perdue. "I mean, it's our business" Fade to the farm.²⁶

The Perdue farm feeds a million chicks a week.²⁷ The farm is actually a great, big factory building. The chickens never go outside. They stay indoors all their lives in a climate-controlled environment, it is explained, because allowing the chicks to go outside would make them grow too slowly.²⁸

I switched channels. A soap opera actress was the guest on some talk show. Her character had died recently and the host showed a still photograph of her soap opera demise to the audience. The photo showed her body, crumpled in a twisted heap, bruised, abandoned in an alley, a trickle of blood seeping from her mouth. The talk show host said in a hearty voice to the live studio audience, as well as to those of us viewers at home in the afterworld, "Remember that scene, guys?! So, how about a nice hand for the lovely . . ." and the audience applauded warmly.

22. *3-2-1 Contact* (PBS television broadcast, Sept. 13, 1985, produced by Children's Television Workshop) © CTW 1990 (transcript on file at *Florida Law Review*).

23. *Id.* at 10.

24. *Id.*

25. *Id.* at 11.

26. *Id.*

27. *Id.* at 12.

28. *Id.* at 11.

I was at home watching television in the middle of the afternoon because I was not feeling well. I had a headache and was sure I was going crazy. The world was filled with rumor and suspicion: Elvis had just been reborn. I saw the news in the *Midnight Sun*, or the *Noonday Star*, or some paper with a heavenly body in the name. Elsewhere was a sighting of whole tribe of Elvises, reborn in the Amazonian rain forest. They had been singing "Hound Dog" and beating on drums for an estimated five thousand years. The most amazing reincarnation of all, however, occurred on the *Oprah Winfrey Show*, manifested in the body of a young black rap singer named L.D. Shore, but rising to fame as "the Black Elvis."²⁹ It was divinely parodic: Elvis, the white black man of a generation ago, reborn in a black man imitating Elvis.

I remember wondering, in my disintegration into senselessness, in whom I shall be reborn. What would the "White Pat Williams" look like? Have I yet given birth to myself as the "Black Pat Williams"? I wondered about children, how I, as an insane, black female commercial law professor, shall have to be split in order to give life; I wonder still how to go about inventing a child.

On TV, in between the chickens and the Amazon, there was a news snippet about a pregnant inmate in a Missouri prison who was suing the state on behalf of her unborn fetus.³⁰ She claimed that the thirteenth amendment prevents imprisonment of the fetus without it having been tried, charged, and sentenced.³¹ She premised her suit on a Missouri antiabortion statute that declares that life begins at conception;³² the inmate was arguing that such a statute affords a fetus all of the rights of personhood.³³ "The fetus should not serve a sentence for the mother," said Michael Box, the Kansas City attorney representing the inmate.³⁴ Hearing about this case made my head throb harder than before, and my craziness advanced several notches. Somewhere at the back of my head, I remembered having gone crazy before, only a few months ago, over a story about another pregnant young woman, this one in Washington D.C., who was put into prison by a judge to keep her off the street and out of drug-temptation's

29. *The Oprah Winfrey Show: Hot Young Recording Stars* (Harpo Productions Syndication broadcast, May 29, 1989) (transcript on file at the *Florida Law Review*).

30. See *Missouri Fetus Unlawfully Jailed, Suit Says*, N.Y. Times, Aug. 11, 1989, at B5, col. 3 [hereinafter *Missouri Fetus*].

31. *Id.*

32. See MO. ANN. STAT. § 1.205.1(1)-(2) (Vernon 1989); see also *Webster v. Reproductive Health Servs.*, 109 S. Ct. 3040, 3042 (1989).

33. *Missouri Fetus*, *supra* note 30, at col. 4.

34. *Id.*

way, ostensibly in order to *protect* her fetus.³⁵ In this litigation, the underlying issue turned out to be very similar to the one in the Missouri case: the living conditions for all prisoners epitomized by the lack of exercise, health care, and nutrition so necessary for prenatal nurture.³⁶

My head was throbbing because these cases did not make sense to me. I do not believe that a fetus is a separate person from the moment of conception. How could it be? It is so interconnected, so flesh-and-blood-bonded, so completely part of a woman's body. Why try to carve one from the other? Why does the state have no interest not just providing for, but improving the circumstances of, the woman, whether pregnant or not? I am not sure I believe that a child who has left the womb is really a separate person until sometime after the age of two. Years, that is. The entire life force is a social one, a process of grafting onto our surroundings, growing apart, and grafting again, all in our own time and in all kinds of ways that defy biological timetables alone. (But I have been called extreme in this, and by my own mother from whom I have not even yet moved fully apart.)

In both of these cases, it seems to me, the idea of the child (i.e., the fetus) becomes more important than the actual child (who will be reclassified as an adult in the flick of an eye in order to send him back to prison on his own terms), or the actual condition of the woman of whose body the real fetus is a part. In both of these cases, the idea of the child is pitted against the woman and her body; her need for decent health care is suppressed in favor of a conceptual entity that is "innocent," ideal, and all potential.

It seems only logical, I thought while applying a cold compress to my brow, that in the face of a statute like Missouri's, pregnant women would try to assert themselves through their fetuses and would attempt to rejoin what has been pulled asunder conceptually. They would, of course, attempt to assert their own interests through that part of themselves that overlaps with some architecture of the state's interest, in order to recreate a bit of the habitable world within the womb of their protective destructive prisons.

In bargaining this way, however, pregnant women trade in interests larger than the world of prisoners' rights. In having the fetus declared an other person, in allowing the separation in order to benefit the real mutuality, they enslave themselves to the state. They become

35. Churchville, *D.C. Judge Jails Woman as Protection for Fetus*, Wash. Post, July 23, 1988, at A1, col. 5.

36. *Id.*

partialized in the commodification of that bargain, as a prostitute becomes seen only as a "cunt," and as pigs dressed for slaughter become only "hoof," "head," or "hide." Pregnant women become only their fetuses; they disguise and sacrifice the rest of themselves and their interests in deference to the state's willingness to see only a small part of their need.

The fetus thus becomes an incorporation of the woman, a business fiction, an uncomfortable tapestry woven from conflicting-rights-assertion-given-personhood. It is an odd, semiprivate, semipublic undertaking in which an adversarial relationship is assumed between the public and the private.

What a cycle of absurdity, I thought as the melting ice dribbled down my nose: protecting the fetus from the woman by putting her in jail, then protecting the fetus from jail by asserting the lack of due process accorded the fetus in placing it there. The state's paternalism in these cases is very like the nightmare of another woman named I read about named Melody Baldwin, who injected her baby with her own toxic antidepressant medication in order to protect the infant from the toxin of life's despair. It was a madperson's metaphor of maternalism.³⁷

It's all enough to drive a person legally insane. (But then, of course, the person would get thorazine.)

Let me summarize the concerns in all these far-wandering thoughts of mine. I mentioned before that I think the civic imagination we bring to the exercise of our civil liberties is intricately compromised by embodied notions of outright ownership, disaffecting and disfranchising particularly the descendants of black slaves and Native Americans, but also women, all people of color, and revolving categories of immigrants. I think, however, that there is a different notion of property possible in the self, which I will call "self-possession" — a term I use to represent the desirable goal of social interaction and legal intervention. In attempting to incorporate that notion in my own life, I start with trying to understand what the courts are doing in cases like *Wards Cove* or *Johnson Controls*, thematically, theoretically, and paradigmatically. I try to challenge them on an institutional level, as I try to resist them on the personal. Self-possession involves the wresting of the self from others, even from the imaginary world of others, in pursuit of the full self, the overflowing self. I do not know where this search of mine, of ours, will end. These are insane times.

37. *Proposal for Woman's Sterilization Draws Protest*, N.Y. Times, Sept. 26, 1988, at 30, col. 3.

These are desperate times. These are times of all potential. I am driven by a conviction that we do not have a lot of time, but collectively we have power unlimited. We certainly have enough purpose.

There is a quote I love:

God gave Noah the Rainbow sign, No more water, the fire next time!³⁸

Self-possession is each of us come together, at this moment, in the common interest of this Symposium; it is each of us, together, made social; the power of the self made political, the possession of ourselves made real. Perhaps, just the freedom to be mad in an insane world. Maybe the fire that will mean much, much more.

38. J. BALDWIN, *THE FIRE NEXT TIME* 120 (1963) (interpretation of Bible in slave song).