

# THE GOOD SENSE ABOUT SURROGACY

Written by  
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Is surrogacy a good thing? It can be. Is surrogacy a bad thing? It can be that also. In this article I demonstrate that surrogacy can be a good thing, in the balance, with appropriate policy and regulatory safeguards. I present an historical view of surrogacy, and give definitions of key terms and concepts. I explore the changing nature of the family in society, and consider surrogacy from the wellbeing aspects of the child, family and gestational mother. I conclude with recommendations for government policy and regulation of this ancient, yet modern practice.

I approach this topic from the perspective of a woman who has experienced surrogate motherhood. In 1988, in Australia's first IVF surrogacy, I gave birth to my niece, Alice, who was conceived using my sister Maggie's egg and sperm from a donor. From birth Alice has been brought up by my sister and her husband. The use of modern assisted reproductive technology (ART) to enable me to gestate my sister's baby has been very successful for our whole family.<sup>1</sup>

Surrogacy is not for everybody, and individual women will have different responses to it. I was willing to gestate a baby but not provide an egg; my sister Cynthia was willing to donate an egg but not undergo a pregnancy. There are many ways to form a family. There is no single method that will suit everybody, which is why having a choice matters.

## DEFINITION OF TERMS

I prefer the term 'gestational mother', not 'surrogate', as I do not see myself as a substitute for anything, but the term 'surrogate mother' is widely used to denote a woman who gestates a child on behalf of someone else. Traditional or partial surrogacy entails the gestational mother supplying the egg, but surrogacy arrangements employing ART might create the embryo using the commissioning mother's egg or

a donor egg, which is known as full surrogacy. Sperm will be supplied by the commissioning father, if relevant and available, or donor sperm will be used.<sup>2,3</sup>

## HISTORICAL ASPECTS OF SURROGACY

Traditional surrogacy is referred to in Genesis, Chapters 16 and 30, which demonstrates that it is not a new idea.<sup>4</sup> Inter-family adoption and surrogacy are also traditional Torres Strait Islander practices.<sup>5,6</sup>

The Kupai Omasker Working Group, a Queensland community group representing Torres Strait Islander people, has been campaigning since the early 1990s for recognition of their practices.<sup>7</sup> Reasons behind a customary adoption for Torres Strait Islanders include maintaining a family bloodline linked to inheritance of traditional land in the islands, keeping the family name going by adopting a male child from a relative, giving an infertile family a child (an arrangement not restricted by the marital status of the giving or receiving parents), strengthening alliances between families, balancing the distribution of boys and girls among families, placing a child in a family where a woman has left home to give the grandparents someone to care for, and providing company and care for an older relative (usually an older child).<sup>8,9</sup> Land rights campaigner Eddie Mabo was traditionally adopted.<sup>10</sup> Laws that permit the continuation of these traditional practices to continue will benefit Torres Strait Islander people, and to outlaw it creates stress in the community.<sup>11</sup> I include this detail to demonstrate that surrogacy is relevant in many ways to different groups within Australia.

## THE CHANGING NATURE OF THE FAMILY IN SOCIETY

Significant social and economic changes in recent decades have led to changes

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in the nature of family in society.<sup>12</sup> In *Diversity and change in Australian families*, David de Vaus stresses that in order to be resilient, families have to change in response to broad social influences.<sup>13</sup> If families were to resist adapting to social change they would become less relevant to people's lives, thus reducing the capacity of the family to be a source of support to the individual. He acknowledges that not all changes will benefit everyone and that the challenge for policy writers is to assist families as they 'seek to find ways of adapting to the complex demands of the contemporary world'.<sup>14</sup> In 2006 more than 25 per cent of Australian children under 15 were not living with both biological parents.<sup>15</sup> Within the diversity of family types

are the lone-parent family (18 per cent), the step or blended family (6 per cent) and 2 per cent in other living arrangements.<sup>16</sup> Short et. al., describe the wider range of family types as more than 'simply the heterosexual-parented nuclear family, including intentionally childless families, families of separated parents, single-parent families, step-families, blended-families, families of same-sex parents, and families in which the children are conceived with donated gametes and/or reproductive technologies'.<sup>17</sup>

A feature of our vibrant, contemporary society is that we are less bound to traditional life scripts, not compelled to follow the behaviour set out by traditional social institutions such as family, gender, class, religion or

ethnicity. This freedom gives the individual much choice, including how they will form a family. As a result family can take a wide diversity of forms.<sup>18</sup> In order to protect individuals within families, especially children, public policy and legislation has to reflect and respect this diversity.

#### THE WELLBEING OF 'SURROGACY FAMILIES'

Forming a family through surrogacy is a diversion from traditional life scripts. Empirical research indicates these families do very well. A longitudinal study of families created through surrogacy assessed the psychological well-being of parents, parent-child relationships and the psychological functioning of the child at age 2,



using standardised interviews and questionnaires. In the second stage of the study, a comparison of 37 surrogacy families with 48 egg donation families and 68 families conceived through sexual intercourse found that the surrogacy mothers showed more positive parent-child relationships and surrogacy fathers reported lower levels of parenting stress.<sup>19</sup>

The surrogacy children's socio-emotional and cognitive development were no different from the other children, and there appeared to be no negative impact from surrogacy on their development.<sup>20</sup> The third phase of this research, when the children were 3 years old, had consistent findings. In this instance the number of research participants included 34 surrogacy families, 41 donor insemination families, 41 egg donation families and 67 families conceived through sexual intercourse.<sup>21</sup> How children turn out is more the result of family functioning than family structure.<sup>22</sup>

The wellbeing of any child born through surrogacy must be the primary concern. Victorian law reflects this. The first guiding principle of the *Assisted Reproductive Treatment Act 2008* is that 'the welfare and interests of persons born or to be born as a result of treatment procedures are paramount'.<sup>23</sup>

The greatest risk to children born through non-traditional methods, or living in non traditional families, is stigma.<sup>24</sup> Stigmatisation is defined as 'the condition of being denied full social acceptance'.<sup>25</sup> If government policies and public statements by politicians, religious leaders, friends and relatives are prejudicial against non-traditional families then children of those families will suffer discrimination. Other community members will take their direction from community leaders. Stigma can be reduced by policy and legislation that condones and supports diverse families. It is also the responsibility of parents, teachers and society's leaders to foster an environment that supports family diversity.

Children use all kinds of perceived differences as a prompt for bullying. Children who are brought up to understand and be proud of who they are in a position to resist bullying.

Alice Kirkman, writing at age 13, demonstrates this in her account of how she managed a bully:

*Until a couple of months ago, I used to be able to say that I'd never been teased about the way I was born. Then last month, a kid at my school - let's call him Richard Cranium - said, 'You're just abnormal, Alice. You're a test-tube kid. That's why you're the teachers' pet, just because you're a test-tube kid'. Then Dick started chanting, 'Test-tube kid, test-tube kid'. (I've known Dick since kindergarten.)*

*I thought it was pretty stupid. He had not even understood what was different about my birth. IVF is common (and not in a test tube). I thought about it later, and came to the conclusion that he was just another bully who bullied everyone. He really had no idea what was different about me. I wanted to tell him that it was less embarrassing to have been conceived in a Petri dish than with your parents having sex, but I would have put it less politely, so I said nothing at all.<sup>26</sup>*

A positive aspect for children born through surrogacy, in which they differ from children coming into families through adoption, is that they are usually with their commissioning parents from the start. This means they are much less at risk for emotional or behavioural problems as they grow up. Adopted children may have been placed later after some transition placements, which can lead to adverse childhood experiences. For this reason research findings about adopted children cannot be extrapolated to children born through surrogacy.<sup>27</sup>

Socio-cultural factors that encourage stigmatisation of non-traditional family types, or discrimination against them, can have severe negative impacts on those families and the individuals in them. The effects of stigma and discrimination include anxiety, having to maintain secrecy, low self esteem, increased incidence of experiencing violence, all of which can lead to poor mental health and reduced wellbeing.<sup>28</sup>

What this demonstrates is that it is not being born into a non-traditional family that is itself the problem, but the stigmatisation of those families. If

we have open minded public policy, and religious and community leaders who openly encourage acceptance of difference, the result will be more respect for diversity in society. This can help in the reduction of stigma and its effects. This won't only benefit individuals, it will lead to a better society for us all.

#### IDENTITY: WON'T THEY BE CONFUSED?

To answer the question of identity confusion I will first quote Alice Kirkman, presenting at age 10 to a plenary session an international conference, the 11<sup>th</sup> World Congress on In Vitro Fertilization and Human Reproductive Genetics.

*They said I would be confused about my origins: two mothers and two fathers. Well, I say that I have three mothers and three fathers! I have my mother, Maggie, my father, Sev; the sperm donor; the sperm donor's wife (if he is married); my aunt, Linda and my uncle, Jim. But I know that I have only one Mum and one Dad. Maggie and Sev have looked after me from the age of 10 seconds. It is far too corny to say we make a real family, but I know exactly where I come from.<sup>29</sup>*

In the same presentation Alice speaks of her shock at hearing that there were people who thought she should never have been born. She is very happy to have been born.

Later, at 14, she tells the story of finding out the sperm donor's identity. This stopped her curiosity, but she writes that she can't understand what it must be like for people after adolescence who don't know their genetic makeup.<sup>30</sup> This highlights the difficulty people have in imagining a circumstance that is different from their own, which can lead to rejection of a life which is different from their own or not some idealised traditional family structure. It is important 'to locate individual experiences within wider social structures' and not judge people's lives solely on the basis of being different from our own.<sup>31</sup>

My own children, who were aged 5 and 3 when Alice was born, never thought of Alice as their sister, but always accepted her as their cousin.

“ IT IS NOT ACCURATE OR VALID TO COMPARE SURROGATE MOTHERS WITH MOTHERS RELINQUISHING CHILDREN FOR ADOPTION, WITH THE ASSUMPTION THAT THEY WILL EXPERIENCE THE SAME SENSE OF LOSS, AND DESIRE CONTACT WITH THE LOST CHILD.

They were slightly disdainful of others who could not understand this family relationship which was to them perfectly clear. People underestimate children's ability to understand a clear explanation. The presence of a secret in a family can itself become a 'malign force'.<sup>32</sup> Recommendations to be honest and open to children about their identity are borne out by research into offspring of donor-assisted conception.<sup>33</sup>

Telling children or other family members about the need for donor conception is complex, and for some shameful or stressful.<sup>34,35</sup> It is much easier for the children if they grow up without any big moment of revelation, but instead have the narrative of a donor helping them to come into the world. Golombok *et al.* find that children born through surrogacy are most likely to be told of their birth origins, with positive results.<sup>36</sup> Adults finding out that they were donor conceived may have to adjust their whole sense of identity. The evidence is not conclusive that children will suffer by not being told about their origins, but, given what we know about adolescent development and identity, it is preferable that children know about donor conception before adolescence.<sup>37</sup>

#### WELLBEING OF THE SURROGATE MOTHER

I love the distinction between 'common sense' and 'good sense'. Common sense is a widely accepted belief, a 'general feeling of mankind or community'.<sup>38</sup> Common sense and good sense are not always the same. Good sense is 'soundness of judgement'<sup>39</sup> based on empirical evidence. What might be presumed to be common sense about surrogate motherhood from stereotypic portrayals is not demonstrated to be good sense by the evidence.

The stereotype of the surrogate mother is a grieving woman who regrets her decision and tries to either stay strong without her baby, or who is trying to reclaim the child. This stereotype is not supported by reality. Rothschild post-

doctoral research fellow at UC Berkeley, Elly Teman, reports that of the estimated 25,000 women who have given birth through surrogacy arrangements,<sup>40</sup> over 99 per cent have willingly relinquished the child and less than 0.1 per cent of surrogacy cases end up in court battles.<sup>41</sup> Likewise Gena Dodd, representing UK organisation COTS (Childlessness Overcome Through Surrogacy), points to the 437 surrogate births among its members to 2003 and the 98 per cent of problem-free surrenders to intended parents, but expresses frustration the media focus is on the unrepresentative 2 per cent.<sup>42</sup>

The stories that make the news or are depicted in film, television or popular journalism are not the happy, no-fuss ones, but where something sensational and newsworthy has occurred. Sometimes surrogacy arrangements do go wrong, or lead to distressing or controversial outcomes, such as in the Baby M case, and this excites a massive media response.<sup>43</sup>

Teman suggests that the public unease with the idea of surrogacy is a result of cultural anxiety; surrogacy is a subversive activity that challenges the social construction of family and motherhood. If a woman is willing to gestate a child in order to give it away shouldn't that make her somehow unnatural, or not normal? That someone might be prepared to do this threatens the construction of motherhood as universally nurturing where babies are wanted, loved and cherished.<sup>44</sup> I wonder if the assumption that a disabled baby born through surrogacy would not be wanted is an extension of this stereotype; that the parents lack 'normal' parenting qualities. Of course, the parents of a disabled baby born through surrogacy have the same options, and range of responses, as any parents.

Teman criticises psychosocial research into surrogate mothers for being framed in a way that presupposes these women are psychologically aberrant. However Teman says that

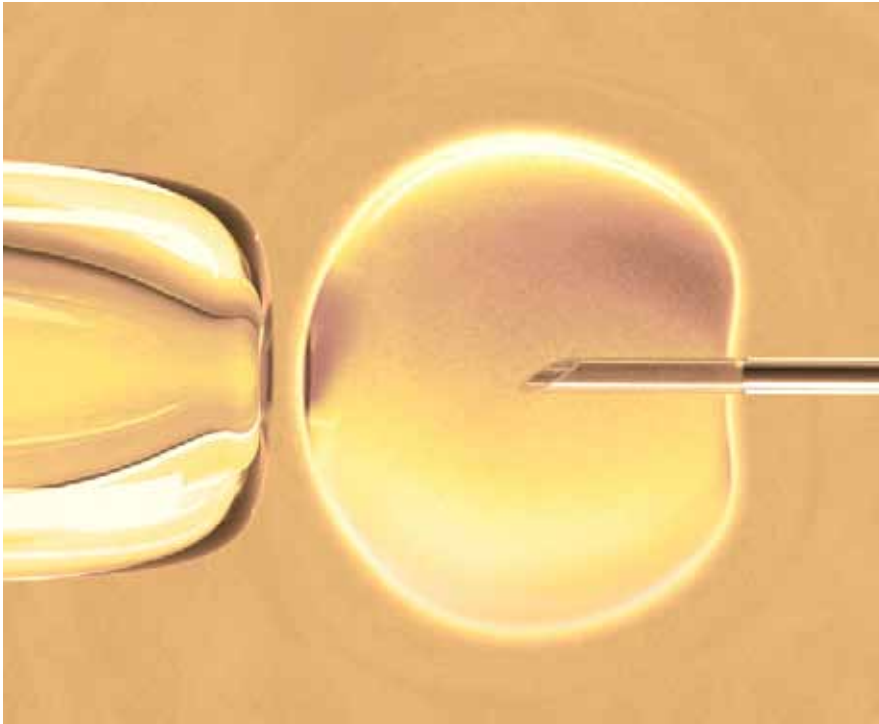
'none of the studies have successfully located any 'abnormal' personality traits among surrogates',<sup>45</sup> and in fact they are described using terms like 'intelligent, self-aware, stable adults',<sup>46</sup> 'assertive' and 'in control'.<sup>47</sup> Research on the psychological wellbeing of 34 surrogate mothers using a standardised semi-structured interview found that they 'did not appear to experience psychological problems as a result of the surrogacy arrangement'.<sup>48</sup>

Another popular assumption is that surrogate mothers are 'normal' but have a good reason to undertake surrogacy, such as financial desperation. Those who are not financially desperate are assumed to be acting from altruistic motivations because of a connection to the commissioning parents. These assumptions are also not generally supported by the evidence, such as found by anthropologist Dr Helena Ragoné.

Ragoné explores surrogate motherhood from the perspective of the gift of life theme and constructions of altruism. She has found that surrogate mothers, irrespective of payment, describe themselves as giving a 'gift of life'.<sup>49</sup> It is noted 'that transfers of items and rendering of service can have both material and emotional or symbolic meanings'.<sup>50</sup> Typical responses from women in Ragoné's research include, 'It sounded so interesting and fun. The money wasn't enough to be pregnant for nine months' and 'I'm not doing it for the money. Take the money. That wouldn't stop me. It wouldn't stop the majority'.<sup>51</sup>

A key point that Ragoné makes is that the depiction of surrogate mothers in the media as 'motivated principally by monetary gain or as unwitting, altruistic victims of the patriarchy...may reveal a great deal more about EuroAmerican culture than it does about surrogacy itself'.<sup>52</sup> It is difficult to capture in a media grab the complexity behind motivations and the opportunities for empowerment in a surrogacy situation,





which include positive relationships and creative use of medical technology.<sup>53</sup>

It is not accurate or valid to compare surrogate mothers with mothers relinquishing children for adoption, with the assumption that they will experience the same sense of loss, and desire contact with the lost child.<sup>54 55</sup> Key differences between these two groups are that surrogate mothers have deliberately become pregnant, and entered into an arrangement where they intend to relinquish the baby, and usually have much more control over the situation, than a woman who becomes pregnant by mistake and finds herself in a position where she is unable to keep the baby. These birthmothers are more likely to be experiencing distress, social pressure and lack of control.

There are times when being a surrogate mother is not good for the woman. If she has been coerced into surrogacy, or is not given a choice about keeping or relinquishing the baby then she might feel distressed or disempowered. I have serious concerns about surrogacy as a business venture, especially where relationships between gestational mother and commissioning parents are minimised and money is encouraged as a motivating factor. I do acknowledge that some women love being pregnant and would like to be paid for the privilege.<sup>56</sup>

An Indian commercial surrogacy

business claims to represent the best interests of all parties, but cites Indian law that the gestational mother cannot have the option of keeping the child.<sup>57</sup> Even though, as demonstrated above, most women do not wish to keep the baby, this lack of choice is not in her best interests. This is counter to the second guiding principle of the *Victorian Assisted Reproductive Treatment Act 2008* is that the reproductive capacity of any woman or man should not be exploited.<sup>58</sup> There is a tempting potential for exploitation in big business commercial surrogacy, where profit or even solvency motives might reduce caution in decision making if there were uncertainties about an individual in an arrangement.

#### RECOMMENDATIONS

'Evidence-based social policy and legislation must parallel evidence-based medicine.'<sup>59</sup> The Victorian Law Reform Commission's (VLRC) *Assisted reproductive technology and adoption: Final report*<sup>60</sup> was written based on its five-year enquiry reviewing three decades of research and over 1000 submissions.<sup>61</sup> My recommendations derive from this report, with one exception. That exception is the requirement of a police check for someone applying to use ART.<sup>62</sup> This is discriminatory and not a usual requirement of parenting.

The VLRC recommends permitting altruistic surrogacy, if the commissioning person or couple is unlikely or unable to achieve pregnancy or carry it safely to term, and if they are deemed suitable by a doctor or counsellor. Commercial surrogacy is not recommended. Marital status, relationship or sexual orientation of the commissioning person or couple are not considerations. The person or couple, and the woman intending to act as surrogate mother, should receive counselling about the social and psychological implications, as well as 'advice and information about the legal implications of entering a surrogacy arrangement'.<sup>63</sup> Ethics approval is to be sought from the ethics committee of the proposed treatment clinic for each application for a surrogacy arrangement.

The VLRC recommends that an intending surrogate mother, apart from her fertility, has to comply with the same conditions as other women using ART services. She should also be over 25 years old, and while her pregnancy and childbirth history should be considered, it not be a prerequisite that she already has children. She may supply the egg, although gametes from commissioning parent(s) are preferable.<sup>64</sup>

Payment to the surrogate mother is not recommended, although prescribed payments to cover expenses should be permitted. She will have 28 days in which to change her mind about relinquishing the baby, and has to agree to a substitute parentage order before the commissioning parents be granted one, which allows them to apply for an amended birth certificate. The completed surrogacy arrangements should favour the best interests of the child. Information about the surrogate mother and commissioning parent(s) is to be kept in a central register and released to the child at age 18, or earlier if deemed appropriate.<sup>65</sup>

Surrogacy is one way to form a family. It can be successful for all parties if conducted in a policy and regulatory environment that is evidence-based, within a society that values and respects family diversity. ●