

Commentary

Gay dads: Choosing surrogacy

Arlene Istar Lev

THE MORE I LEARN ABOUT LESBIAN, Gay, Bisexual, and Transgender (LGBT) family-building, the more I am increasingly awe-struck by our creativity, passion, and ingenuity. A quarter of a century ago, lesbians took charge of their reproductive capabilities and stepped outside of conventional marriage and heterosexual intercourse and began utilising donor insemination to make babies (Benkov, 1994; Toevs & Brill, 2002; Martin, 1993; Mohler & Frazer, 2002; Pepper, 1999). Within the last decade, LGBT people have turned the adoption world on its head, with nearly 60 per cent of all adoption agencies in the US placing children in LGBT homes (Evan B. Donaldson Adoption Institute, 2003). Now, gay men are also taking charge of their own biological potential and becoming fathers in unprecedented numbers through surrogacy arrangements (Strah, 2003).

Although LGBT people have 'regular, average, and normal' families, we do build our families in unique ways, utilising alternative methods of reproduction and family-building (Lev, 2004). We continue to develop cutting-edge and innovative options to create our families. I have tremendous admiration watching the explosion of parenting within the gay male community. Gay men seem to parent with tenderness and gentle humour; they exhibit a competence that often makes me feel like a crazed housewife with my hair in rollers – how do they do it and still look so fabulous?

Of course, I am saying this somewhat tongue-in-cheek, but I do think that gay dads are challenging us all to see gay men, as well as fathering in general, in a new light. Michael, who lives with his partner, Steven, in

Los Angeles, says, 'Whether gay or straight, society doesn't trust men as nurturing influences, particularly with infants. Countless times walking down the street with my infant son, George, people (mostly women) would say, 'Mommy's day off?' This is so insulting because I know women in the same situation have never heard, 'Daddy's day off?''

I will confess that the first time I ever met a gay male couple with an infant, I had that same initial shock: 'Who is going to take care of the crying infant, i.e. where's the MOM?' I got over myself pretty quickly (that was nearly 20 years ago), but I still see the concern on many people's faces – straight and gay – when they see a dad, or two dads, with a baby. Parenting has often meant 'mothering', and although we all know that fathers can change a diaper, it is still assumed that there is a mother somewhere to check that they are doing it correctly (McGarry, 2003; Strah, 2003).

Michael L, a white single dad, said that before his son was born, a woman asked him, 'Whose your girl?' When he asked her what she meant, she said, 'You're gonna get a girl right? To take care of the baby.' Michael said he was quitting his job to stay home and take care of the baby, she laughed and said, 'Oh honey. You neeeced a girl! You're too intelligent; you want someone to handle the stupid stuff.' Michael accurately assesses that this conversation sums up our society's view on parenthood – raising children is thought of as a 'stupid' process and that woman are the only ones stupid enough to do it! Gay dads may just be smart enough to change the world.

Gay men are currently parenting in unprecedented numbers, through both adoption and surrogacy. In my own small

community, the numbers of gay men seeking my services for adoption homestudies¹ increases every month, and each gay parenting event brings more gay men with strollers and diaper bags. In the last five years or so there has been an upsurge of gay men seeking fatherhood explicitly through surrogacy, so I decided it was time to investigate this phenomenon; so far I really like what I've found.

Understanding surrogacy

Surrogacy commonly involves somewhat complex medical procedures, similar to the assisted reproductive technologies used by women who are struggling with infertility. In its most basic form, surrogacy is simply the creation of a child through the sperm of father and a donated egg. *Traditional surrogacy* is similar to donor insemination, although the 'donor' in this case is not the sperm donor, but the egg donor. Insemination can take place outside of a medical setting, much as it did for Heather's two mummies (Newman, 1989). The surrogate mother is inseminated and will carry a child made with her own egg. Although the child is biologically hers, she is technically the 'carrier' for the biological father and his partner. A surrogate mother cannot, obviously, maintain the same anonymity that a sperm donor can, so, therefore, traditional surrogacy involves enormous trust between the parties, as well as creating complex legal protections. As Karl M, from northern Virginia, admits, 'You are trusting a stranger to take care of your child. There have been times when I have felt scared'.

Traditional surrogacy arrangements are often made independently, which can be more cost effective, but can also create a potential quagmire of legal problems regarding custody of the child. One dad shared that when he began to look into surrogacy over a decade ago, there were no agencies or attorneys that would work with a gay couple, so they simply placed an ad in a

gay paper seeking a surrogate. A lesbian woman responded, and over the next four years they conceived two children who are now in their teens. They were able to complete a second-parent adoption almost a decade later after the surrogate mother relinquished her legal rights. Requesting anonymity, as did many of the dads I interviewed, he said, 'We were lucky that there was never a question for our surrogate of her role in the children's lives, but as I look back, we were taking quite a risk. If she had changed her mind, or fought for custody, I suspect that our stable home life would've been disrupted in a homophobic system that would not have recognised my partner and I as the real parents.'

Surrogacy arrangements require the hiring of a knowledgeable attorney. In a world where legal precedent still rests on the connections between biological mothers and biological fathers, traditional surrogacy can invite custody battles similar to those that have taken place between lesbians and their known sperm donors. However, like known donor insemination for lesbians, traditional surrogacy arrangements will continue to be made by gay men, often with close friends or relatives. Hopefully as the legal system progresses to understanding the complexities of our families, the courts will 'catch-up' and protect families formed by surrogacy from the moment of conception.

In order to minimise the potential legal problems, many gay men choose to work through an agency, despite the increased cost. There are many benefits to working with an agency, which include assisting the fathers in meeting a surrogate mother, educating the couple about the legal and medical processes, screening the surrogate mother medically and psychologically, co-ordinating the surrogacy arrangements, providing counselling for all parties, and mediating areas of conflict. Working with an agency will increase the costs, but offer vital protections for everyone involved.

¹ A homestudy is a psychosocial evaluation conducted by a social worker. In the US prospective adoptive parents must have a homestudy in order to adopt.

Randy H, from Sayre, Pennsylvania, a white father of a 17-month-old child through surrogacy said, 'Many people assume surrogacy is really risky, and that surrogate mothers will just take the child. But the high profile stuff you hear, like the Baby M case, was with an unscreened mother who answered a want-ad from a couple. When done through an agency, with physical and psychological screening and legal preparation, surrogacy is no riskier than adoption.' For example, an agency can help sensitise hospital personnel so that both fathers as well as the biological mother are given bands and are all recognised as parents from the moment of birth.

The LGBT community in the US now has an agency that specialises in surrogacy internationally for gay men. *Growing Generations* (<http://www.growinggenerations.com>), located in Los Angeles, California, was founded in 1996 by Gail Taylor, and has worked with over 500 families, bringing 230 babies into the world.

Reproductive technology has made enormous progress in the past 15 years, and gay men seeking surrogacy have stepped in to take advantage of it. Unlike traditional surrogacy where the baby is the genetic child of the surrogate mother, *gestational surrogacy* involves the sperm of one of the dads, and an egg donor (who can be anonymous), as well as the surrogate who will carry the child. The surrogate has no genetic link to the child, but has the embryo placed in her womb, after the donor egg has been fertilised with the biological dad's sperm, using an *in vitro* (IVF) medical procedure. The surrogate is the gestational carrier, but is not the biological mother. These advances in biomedical technology – the first gestational surrogacy procedure was in 1985 – can also increase fertility potentiality. For example, *Growing Generations* has an excellent pregnancy success rate with more than 65 per cent of those using *in vitro* fertilisation achieving pregnancy on the first attempt and 90 per cent by the second attempt. Significant numbers of births using IVF also result in twin and triplet births.

Will Halm, Chair of *Growing Generations*, who is a family law attorney specialising in surrogacy and egg donations and a board member of the Family Pride Coalition, says, 'Our family is about as cutting-edge and high-tech as you can get – two gay dads and three 'test tube' babies. My partner of 18 years, Marcellin Simard, and I created our three children, Malina, seven, Luc, five, and Harley, almost two, with the help of wonderful surrogates and egg donors and the medical process of *in vitro* fertilisation. Through the process of surrogacy, we were able to be full participants during the three pregnancies – we were present in the delivery rooms and the first to hold our children.' In 1998, Will Halm challenged the law in California, and the California Superior Court granted Will and his partner the first pre-birth paternity judgment, naming the gay couple the legal parents of their son, Luc, prior to his birth, eliminating the need for a second-parent adoption.

Why surrogacy?

Given the high cost of surrogacy – ranging from \$30,000 to \$100,000 per pregnancy, I was curious what motivated men, not all of whom are wealthy, to chose a family-building path that was so expensive. The number one reason gay dads chose surrogacy was to have a biological connection to their child. Randy H, who became a father through surrogacy said, 'We had one child biologically linked to my partner from a previous marriage and I wanted to father a child biologically as well. Plus, we had more control over the process and the medical history of the mother than with adoption.' Scott, who is partnered with Eduardo and the father of 18-month-old twins, lives in Dallas, Texas, says, 'We wanted the biological connection with a child. I am amazed to see little things they do, and how they look, that reflect so much of me.'

A number of dads told me that they were also interested in adoption, but with surrogacy they were assured of raising the child from birth. Michael, father of a two-year-old, said, '[Surrogacy] was a way to insure that

our parenting of George started from the second he was out of the womb. We felt every second of a child's development was important. We wanted to be there from the very beginning.'

Depending on the laws of the state where a couple lives, adoption may be prohibitive for a gay couple, and surrogacy may be legally less complicated. Karl M, who is awaiting the birth of his first child through surrogacy, said, 'We decided on surrogacy versus adoption because the laws are so vague that they could deny us a child strictly based on our orientation. The laws are much broader under surrogacy.' The laws may be broader, but they also vary from state to state, and country to country. Technological advances are always ahead of the law and, although some US states (California) have laws permitting surrogacy, and other states (New York) have outlawed it, the majority of localities still have murky rules governing surrogacy arrangements. It is essential that prospective parents carefully research the changing laws of not only the state they live in but also the state the surrogate resides in.

Michael, George's dad, shared an interesting perspective on choosing surrogacy. He said, 'It was the only way that our child would be born without sadness as part of his life story, i.e. there was someone who had to give you up, didn't want you, couldn't care for you, etc.' In other words, there is no adoption 'wound', but the child will always know they were wanted. I was intrigued by the continuing relationships between many gay dads and their surrogates and egg donors, maintaining 'open' relationships, similar to the current trends in adoption.

The surrogate Mom

Most of the dads I spoke with had on-going relationships with their surrogate, and in some cases their egg donors. Sometimes the relationship was maintained primarily through letters and pictures, and in other cases the families remained distant friends. However, in some families, they were so close that the surrogate was named the god-

mother to the child. In families that had lost contact with the surrogate or egg donor, they sometimes expressed sadness. Scott, father of twins, says, 'Our surrogate is a constant part of our life in many ways. Since she is not biologically related to the children she is able to maintain a distant yet caring relationship towards the children.'

Bernie and his partner Ernie reside in Southern California, and are the proud fathers of three daughters, Caelan, age four, and Emily and Ellie, two-year-old twins. Bernie says that both their surrogate and their egg donor are involved in their kid's lives, are referred to with their first name preceded by 'Mama', and are close enough that they are travelling to spend Mother's Day together. Another dad shared that they are close to the surrogate and her family. He said, 'We come from very different backgrounds. Lucy runs a daycare centre, and Bill is a fire fighter, and my partner and I work for the entertainment industry. By participating in each other's lives and the cultural exchange that occurs, we have all become better parents.'

Most dads said that one of the criteria for a good surrogate was her ability to not bond with the children, but yet take good care of herself and the baby she was carrying. Clearly, this requires an exceptional woman, who can nurture a child, but yet still maintain some distance. One surrogate mother said, 'I don't feel as close to [the child] as I do my own children. But I feel closer to him than I do to any of my nieces and nephews.'

Surrogates are motivated by many factors. Rebecca, a surrogate mother, said, 'I wanted to help a gay couple complete their family because I believe there is no difference between gay and straight parents. I had a dear friend growing up that was gay. I will never forget the day he said he would never be able to have children and be his true self because no one would accept or allow it.'

There are many misconceptions about surrogate mothers, but research has shown that the 'average' surrogate is a white woman, who is educated, and has children of

her own. Surrogates are reimbursed approximately \$20,000, which pays for their prenatal care, vitamins, transportation, maternity clothes, medical, legal and psychological counselling. Surrogates are not motivated solely by the money but by altruistic reasons and wanting to offer parenthood to a family unable to have children. As one surrogate said, 'I know of no one that would work on a job 24 hours a day, seven days a week for 40 weeks straight while being sick with heartburn and back aches, have sleepless nights, stretch marks, extra weight, risk the possibility of losing her reproductive organs, and then go through 24+ hours of pain from labour for what comes out to about a dollar an hour.'

Surrogates describe the experience as amazing. 'Getting to know my guys was incredible. They are both very generous, talented, fun and loving. They both have a wonderful support system full of friends and family members. The day their child was born was one of the best experiences of my life. Seeing the pure love and devotion they had for their child was so wonderful!! The first time they held their child was breathtaking!'

It is obvious the relationship and respect between gay dads and the surrogate mother is a kind of love-fest, and that maintaining contact with one another has been a

defining factor for many of these families. One daddy tells his son a bedtime story called, *The First Time We Went Nigh' Nigh': Nine months before we went nigh' nigh' for the first time, a woman from Sweden gave us an egg that Papa and Dada put in Irma's belly. That egg grew to be you. Then Irma called us and said you ready to come out now. So Dada and Papa got in our car and drove over the mountain. When you were born, we all went nigh' nigh' that first night.* As this father says, 'Our son will never remember a time that he doesn't know that he came from Irma's belly.'

All of the dads assured me that surrogacy arrangements rarely go awry, and that despite the fact that it is an option less often chosen than adoption, it remains a viable option, and one that more daddy-wannabee's should consider.

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www.choicesconsulting.com or

www.proudparenting.com

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<https://www.growinggenerations.com/>. Gay dads: Choosing surrogacy. *Lesbian & Gay Psychology Review*, 7, 73-77.Google Scholar. Lewin, E. (2009). The process for gay surrogacy is very similar to any other surrogacy process. However, there are some differences for a surrogacy for gay couples. Intended fathers may choose to use one partner's sperm with eggs from a close relative of the other partner, giving both fathers a biological link to the child. Once intended parents have made these important decisions, they should be able to continue the surrogacy process as any other intended parents would. *Same-Sex Surrogacy Laws*. Each state has laws regulating surrogacy, and some states do not allow or recognize surrogacy contracts at all. This can make the legal surrogacy process complicated for intended parents and especially for same-sex intended parents.