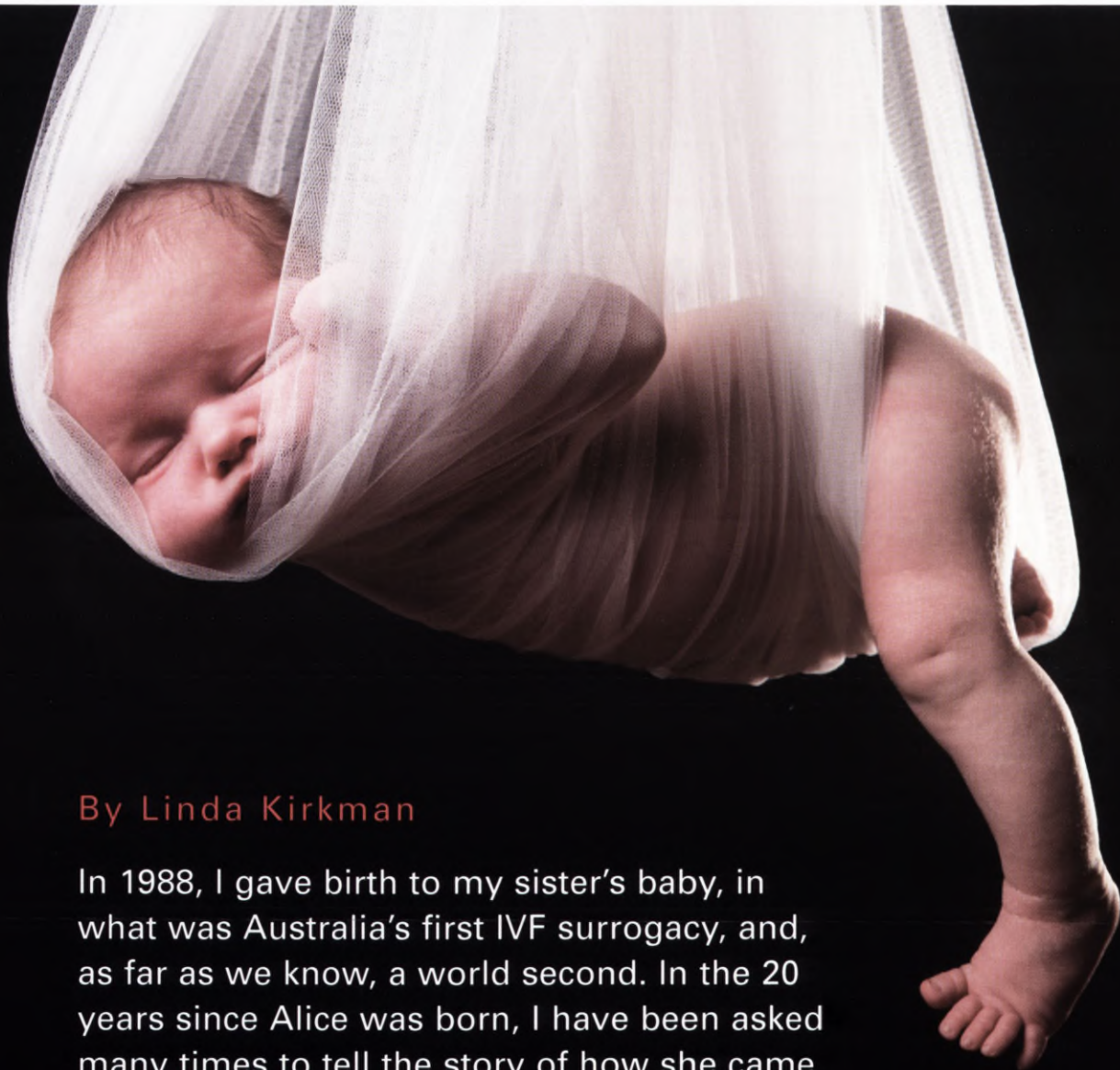


ALTRUISTIC SURROGACY

a new twist to an old practice



By Linda Kirkman

In 1988, I gave birth to my sister's baby, in what was Australia's first IVF surrogacy, and, as far as we know, a world second. In the 20 years since Alice was born, I have been asked many times to tell the story of how she came about. I always start with, 'I saw an article in the paper about how sisters had been having babies for sisters for centuries.' Customary adoption is a contemporary practice based on ancient traditions.

Many societies have practised inter-family/ community adoption for centuries, but find that today's laws do not reflect or respect their traditional, considered and sophisticated, customs. A significant Australian example is the Torres Strait Islander people, who have customary adoption practices that are quite different from Western concepts of adoption.

As a result of intractable medical problems, my sister, Maggie, had had a hysterectomy at the age of 30. I knew she would love a baby. I had two children; our other sister, Cynthia, had three; and my kids were asking for another sibling. Jim, my husband, and I were not prepared to expand our family any more. But helping to provide a cousin seemed reasonable.

At first I imagined that the process would involve using my brother-in-law's sperm and my egg. I couldn't imagine giving up a child that was genetically mine, and I surprised everyone when I announced at a dinner party, without preamble, 'I'm sorry Maggie, but I couldn't have a baby for you.' Maggie's jaw nearly hit the table. 'I was just going to ask you', was her astonished reply.

Maggie's husband, Sev, had thought of using Maggie's eggs and the new reproductive technology of IVF, plus donor sperm and a surrogate mother, to enable them to have a baby. As soon as Maggie explained her idea, I agreed. It solved the barrier that a direct genetic connection had presented to me.

The four of us – Maggie, Sev, Jim and I, explored the idea over the course of the evening, focusing especially on how this might affect our children, who were two and four at the time.

Over the next couple of weeks I thought about nothing else, as I worked through all the possible issues. Some were serious, such as what I would do if I decided I could not relinquish the baby (there would be no pressure to do so), and what if the baby were born disabled (Maggie and Sev would accept the child no matter what).

Other issues concerned social relationships. What would we say to people who commented on my obvious pregnancy? Jim had a good answer for that one. 'It's not mine', he would say. When people had recovered from the shock, he would add, 'It's not hers either.'

Twenty years later, our confidence in our decision has proved well-founded. We prepared thoroughly and, by the time my pregnancy was confirmed in October 1987, the family had undertaken intense personal and interpersonal psychological work, many attempts to negotiate with resistant ethics committees, legal consultations at the highest level in Victoria, and the rigorous medical procedures that constitute IVF. My sister and I also wrote a book together, *My Sister's Child*, which outlines the story in detail.¹

Why did I do it? There were those who suggested I was seeking approval, or was the downtrodden, bullied and coerced little sister. The latter description is so wrong that it is risible; I am a confident, outgoing woman, and the final decision was mine. Gestating a baby was something I could do that Maggie could not. My children wanted siblings whom they were not going to get. I loved giving birth and wanted to do it again, without the hassle of then caring for another baby. It was the right thing for me to do.

TORRES STRAIT ISLANDER CUSTOMARY ADOPTION PRACTICES

Infertility, such as in our family, and having a child born out of wedlock, are common Western reasons for wanting an adoption or surrogacy arrangement. The reasons are far more complex in traditional Torres Strait Islander culture, where it is customary to give a child to another family where there is a need, or deliberately conceive a child to be brought up by people who are not the birth parents.²

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 (this arrangement is not restricted by the marital status of the giving or receiving >>

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Surrogacy and
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parents); strengthening alliances between families; to balance 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).³

In Torres Strait Islander culture, giving birth to a child is not necessarily a reason for raising a child. People are considered greedy if they have too many children and do not share with others. The responsibility for rearing a child is a matter of individual consideration by all families involved and is an intrinsic, sacred aspect of the culture. All Islander families are involved in customary adoption in some way.⁴

Queensland laws specifically prohibit surrogacy, however, which has caused much stress for the Torres Strait Islander community. They want legal recognition for their tradition of altruistic surrogacy and inter-family adoption, an objective for which the Kupai Omaker Working Group has been campaigning for over 20 years.

A WORLDWIDE PRACTICE

Many other cultural groups practise customary adoption. They include other Pacific Islander groups and First Nations people from what is now British Columbia and Vancouver Island in Canada, where customary adoption helps to bind wider communities and maintain positive connections in small groups of 200-300 people living on separate islands. Each population group has its own customs and rationale, which is not understood within the Western framework of the nuclear family, or even the concept of 'it takes a village to raise a child'.⁵

The universal elements of the practice of customary adoption, and where I see my story fitting in, include the desire to help others, to achieve a family balance, and to promote a harmonious community. Children are not seen as a commodity but as vital and loved members of the wider family and community, with their own place in the bigger scheme of things.

I cannot speak of how other cultures deal with a potential refusal to comply with the request to relinquish a child. In

the American case of Baby M (where the birth mother, Mary Beth Whitehead, changed her mind about relinquishing the baby), the commissioning father, who had provided the sperm, gained custody of Baby M. The initial reason cited was that he had paid the birth mother to carry the child. This triggered much discussion about what constituted a fit mother, the role of payment in a legal surrogacy agreement, and gender and class roles.⁶ Recent Australian legal thought takes a much more considered and balanced approach, and also acknowledges that surrogacy is an ancient practice.⁷

Social acceptance or rejection is a common means of promoting conformity to cultural norms. Our westernised culture is becoming more accepting of difference, although major aspects of social change, such as gender equality and accepting same-sex couples as 'normal', still have a long way to go. In this context, if carrying someone else's baby were not socially acceptable, then I might have expected a negative reaction from the media or general public.

SURROGACY AND PUBLIC OPINION

When I gave birth to a baby for my sister, it was seen as a remarkable and unusual thing to do, even without the twist of IVF and Maggie's egg being used. Despite this, I received overwhelming support and acceptance. Strangers in the street expressed admiration, and told me of their sister or friend for whom they would like to do a similar thing. Even now, when I tell the story anew, the response is positive.

We did encounter opposition from conservative clergy and radical feminists. The radical feminists were concerned about the exploitation of women, denial of the birth mother's rights, and a reduction in the birth mother's autonomy.⁸ As a proud feminist myself, I was dismayed that others did not support what I saw as my right to do as I wished with my body, and that they assumed I was cowed and manipulated, conforming to the stereotype of a submissive woman. This might be the case with some people, but Helena Ragoné, who studied the motivation and experiences of American surrogate mothers, found that they viewed it as a 'gift exchange', and saw themselves as contributing to the wider community by being able to help infertile couples.⁹

My interpretation of the overwhelmingly positive response is that people innately accept altruistic surrogacy, especially where the child remains in the extended family or community. This does not mean that it will suit everyone, nor that it does not require very careful consideration and safeguards. I was happy to gestate my sister's baby, but was not willing to donate genetic material. Our other sister, Cynthia, offered to donate an egg if one were needed, but was not willing to gestate the baby. Everyone is different. Some women are horrified by the idea of relinquishing a baby. Not all people want to become parents, yet for others parenthood is a consuming passion.

The Victorian Law Reform Commission considered assisted reproductive technology and adoption, including surrogacy, and in 2007 produced recommendations that supported altruistic surrogacy within careful guidelines.¹⁰ In Queensland, a parliamentary inquiry into altruistic surrogacy is in progress.¹¹ As mentioned above, surrogacy and inter-

family adoption is currently illegal in Queensland. This is at odds with the traditional cultural practices of Torres Strait Islander people, who have been campaigning for decades to have legal recognition and support for something that is intrinsic to their culture and community.

Modern reproductive technology meant that my family and I could do what worked for us in the way that suited us best. For Alice, the circumstances of her birth seem normal. For my immediate family and I, it has been a very successful arrangement. Learning about adoption and surrogacy in other cultures, and finding out that sisters are still having babies for sisters, makes me feel that I am one small part of a much bigger tradition, and I like that a lot. ■

Notes: **1** M Kirkman and L Kirkman, *My Sister's Child*, Penguin, 1988, Ringwood, Australia. **2** I am indebted to Paul Ban, a white Australian who has studied, advocated for, and written about Torres Strait Islander customary adoption, for his written information and oral explanations about a culture which, being based on an oral tradition, is not documented in ways that are easily accessible. See P Ban, S Mam, McR Elu, I Trevallion and A Reid, 'Torres Strait Islander Family Life', *Family Matters*, 35, August 1993, pp16-21; P Ban, 'The Quest for Legal Recognition of Torres Strait Islander Customary Adoption Practice' (1993) 2(60) *Aboriginal Law Bulletin* 4; P Ban, 'Customary "Adoption" in the Torres Strait Islands: Towards Legal Recognition' (1994) 3(66) *Aboriginal Law Bulletin* 8; P Ban, 'Developments in the Legal Recognition of Torres Strait Islander Customary Adoption' (1996) 3(78) *Aboriginal Law Bulletin* 14; P Ban, 'Would a Formal

Treaty Help Torres Strait Islanders Achieve Legal Recognition of their Customary Adoption Practice?' *Indigenous Law Bulletin* 2006 at <http://www.austlii.edu.au/au/journals/ILB/2006/33.html>, accessed 26 July 2008. **3** P Ban, 'Torres Strait Islander Customary Adoption', *Family Matters*, 35, August 1993, p17. **4** *Ibid.* **5** Steve Mam, McRose Elu, Ivy Trevallion and Allan G. Reid 'The coconut palm tree: a metaphor for Islander family life' *Family Matters* no.35 August 1993. **6** Rothenberg, Karen H., 'Baby M, the Surrogacy Contract, and the Health Care Professional: Unanswered Questions' (1988), *All Faculty Publications*, Paper 150. at http://digitalcommons.law.umaryland.edu/fac_pubs/150 accessed 30 July 2008. **7** Wilmott, Lindy, 'Surrogacy: ART's Forgotten Child', *University of New South Wales Law Journal*, Volume 29, Issue 2; 2006; 227-32. **8** Roach-Anleu, S, (1992). 'Surrogacy: For Love but Not for Money?', *Gender & Society*, 6, pp30-48. **9** Ragoné, H, (1999). 'Surrogate Motherhood, Gamete Donation, and Constructions of Altruism', in LL. Layne (ed), *Transformative Motherhood: On Giving and Getting in A Consumer Culture*, New York and London: New York University Press, pp65-88. **10** Victorian Law Reform Commission 'Assisted Reproductive Technology and Adoption' at <http://www.lawreform.vic.gov.au/wps/wcm/connect/Law+Reform/Home/Completed+Projects/ART+and+Adoption/LAWREFORM++ART+and+Adoption++Recommendations> accessed 27 July 2008. **11** Investigation Into Altruistic Surrogacy Committee at <http://www.parliament.qld.gov.au/view/committees/SURROGACY.asp> accessed 28 July 2008.

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