# One Parent or Five

## *A Global Look at Today's New Intentional Families*

Elizabeth Marquardt, Principal Investigator

Released by the Commission on Parenthood's Future • Institute for American Values

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# ONE PARENT OR FIVE

*A Global Look at Today's New Intentional Families*

## ALSO RELEASED BY THE COMMISSION ON PARENTHOOD'S FUTURE

Elizabeth Marquardt, *The Revolution in Parenthood: The Emerging Global Clash between Adult Rights and Children's Needs* (2006)

Elizabeth Marquardt, Norval D. Glenn, and Karen Clark, *My Daddy's Name Is Donor: A New Study of Young Adults Conceived through Sperm Donation* (2010)

Linda McClain and Daniel Cere, co-editors, *What Is Parenthood?* (An interdisciplinary scholarly volume debating a family diversity or an integrated point of view, with editors and authors contributing chapters from each viewpoint, forthcoming.)

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# EXECUTIVE SUMMARY

What do children need? Do mothers and fathers matter? Is intending to have a child a key factor in child well-being, or do other factors, such as the family structure in which a child is raised, matter as well?

In today's debates about the family a new term is often heard: "intentional parenthood." The term, which appears to have originated in the 1990s to resolve disputed surrogacy or lesbian parenting family law cases, has been embraced broadly within family law and by family diversity leaders around the world. Intentional parenthood, its advocates say, is good for children. Intention makes a wanted child. Anyone can be an intentional parent—straight, gay, married, partnered, or single.

This report takes the reader on a global tour of today's new intentional families, introducing one-, two-, three-, four-, and five-parent families. The report reveals what we do and do not know, from a social scientific point of view, about child well-being in these family structures. Some of these family forms are too new, too rare, or until recently too secret to have been studied closely. Others, such as the married mother-father family, are forms about which we now know a great deal. At the same time, intriguing new research on the practice of intentionally conceiving children—through anonymous sperm donation—who will not know or be known by their biological fathers, suggests that intention alone hardly guarantees that children will do well.

What do family forms that even before conception intentionally deny children a relationship with their biological father or mother have in common? What forms do these families take? How do young people deliberately denied a biological parent feel about what happened to them? This report presents what we believe to be the first systematic critique of the concept of intentional parenthood and offers a surprising and at times disturbing portrayal of practices now being followed around the world.

# 1. WHAT IS INTENTIONAL PARENTHOOD

Where did the idea of "intentional parenthood" originate? While the concept shares intellectual parallels with the idea of "planned parenthood" and a century-long discourse about legal access to contraception and, more recently, abortion, the specific language of intentional parenthood appears to have originated as a legal concept in the United States in the 1990s, as judges sought to grapple with murky surrogacy cases. Diane Ehrensaft, a developmental and clinical psychologist in Berkeley, California, and author of *Mommies, Daddies, Donors, and Surrogates: Answering Tough Questions and Building Strong Families*,[1] refers to the 1997 case of Luanne and John Buzzanca. The Buzzancas conceived a child using donor sperm, donor egg, and a surrogate, and then split up before the baby was born. The legal case pitted them against each other as well as against the surrogate mother, who sought to keep the child.

Ehrensaft writes that ultimately, "The court decision was made on the basis that these two people [Luanne and John Buzzanca] were the ones who intended to have this child together."[2] It was this "tumultuous legal case," she continues, that "helped point us all toward a key concept in family building using reproductive technology—the intent to parent. If we want to know who a child belongs to, ask who made plans to have the child."[3] In the years following, this concept was used in lesbian parenting disputes that came before the courts. These were cases in which a non-biological mother figure sought rights to a child whom she and her ex-partner had conceived together using donor sperm, or in which a biological mother sought to deny custody or visitation rights to her former partner.[4]

In an oft-cited article published by the *Hastings Law Journal* in 2002, City University of New York School of Law professor John F. Storrow sought to underline how intentional parenthood should be used as a guiding framework even for those who do not have access to marriage. He took on "recently enacted and proposed statutory provisions that clearly define intentional parenthood

but reserve the status to married couples alone."[5] Drawing upon the "emerging doctrine of functional parenthood" (which defines parenthood around who actually cares for the child), Storrow sought to illumine recent theories about intentional parenthood, arguing that "planning and preparing for the birth of a child—not marriage—are the essential criteria in determining who is—and is not—an intentional parent."[6]

Other legal scholars then employed the concept of intentional parenthood beyond disputed surrogacy or lesbian parenting cases. For example, University of Florida law professor Nancy Dowd has argued that fatherhood should be legally defined around "intentional, ongoing caretaking" rather than around "genes, marriage and money."[7]

The idea of intentional parenthood has leapt from the legal lexicon to the broader academic and cultural vocabulary, becoming largely synonymous with the already popular idea of "families of choice"—that is, family defined not necessarily by marriage or blood or adoption, but by choices freely made by autonomous beings. British philosophy professor Susanne Gibson describes single mothers by choice as those who "practice…intentional single parenthood."[8] In a particularly free-floating definition, Kathleen M. Galvin, professor of communications at Northwestern University, defines "intentional families" as "families formed without biological and legal ties, [which] are maintained by members' self-definition. These 'fictive' or self-ascribed kin become family of choice, performing family functions for one another."[9]

More recently, intentional parenthood has been elevated as a good by family diversity leaders who have long fought to make their case for the equal value of all family structures, despite the reality of messy divorces, stressed-out remarriages, and unplanned births to struggling single moms. Drawing upon longstanding ideas about the value of planned pregnancy embedded in public discussion on contraceptive and abortion rights, family diversity advocates now discover among lesbians and gays using artificial reproductive technologies a realm of peace and order, intention and planning—where *no* child can fall into that dreaded category of personhood: the accident.

Ellen C. Perrin, professor of pediatrics at Tufts School of Medicine and lead author of the American Academy of Pediatrics 2002 report on same-sex parenting, observed that for same-sex couples "it typically takes a lot more planning and thought to become parents." She added, "If anything there is a very high

level of commitment to parenting among [them]."[10] After the June 2010 release of a widely-publicized study purporting to show that children of lesbian mothers actually do *better* than children of heterosexuals,[11] a number of observers repeated the oft-stated claim of lesbian and gay leaders: "None of *our* children are accidents." One reporter wrote, "There are obviously no gay 'accidents.'"[12] Another quoted a source as saying, "Lesbian and gay parents have to choose to have a family. There are no 'accidental' children."[13] Following the January 2011 decision by the U.S. State Department to extend benefits to partners of gay and lesbian employees, another observer commented on an article on the *Washington Post* website: "when children come along for gay couples, it's because we really want to have them. They are not 'accidents' or treated as such."[14] A social work textbook concurs: "What stands out…is that parenting is a *choice* for gays and lesbians.…Pregnancy and parenting is not an accident as it might be in heterosexual relationships" (emphasis in original).[15] Rather, "the decision is well thought out, and probably even extremely expensive."[16] Sex columnist Dan Savage agrees. "Since gay men and lesbians don't have children by accident, all our kids," he writes, "are wanted kids, planned for and anticipated."[17] The implication is that intention—what the adults meant to do *before* they started the family—is a key ingredient for child well-being.

So, who are today's intentional families? What do they look like? What forms do they take?

In this report you will meet today's new intentional one-, two-, three-, and four-plus- parent families from around the world. These are the variety of families that adults set out to form before a child is conceived. Intentional families do *not* include those who are divorced, remarried, a single mother by accident, widowed, or adoptive. They do not include the grandmother raising her grandchildren or the married couple who take in their niece or nephew. In none of these cases do the adults actively decide: "I'd like to make a divorced family" or "I'd like to get married and then have my spouse die" or "I'd like my daughter to get hooked on drugs and then get pregnant so I can raise my grandchildren" or "I'd like to get pregnant by accident."[18]

The intentional families around the world featured in this report include those today's would-be parents think about in advance, then decide with pride and say, yes, I want to do this. This is my choice.

Let's get started.

# 2. MEET TODAY'S NEW INTENTIONAL FAMILIES

## ONE-PARENT FAMILIES

### *Single Mother by Choice*

The single mother by choice has her own acronym: the SMBC. Since 1981, an organization in her honor has been hosting meetings where SMBC's can gather, trade diaper talk, commiserate about lousy family leave policies, and provide tips to curious would-be SMBC's looking for advice. Their ranks include women who became unexpectedly pregnant and, deciding against adoption, abortion, or marriage, choose to raise the baby alone; women who adopt; women who intentionally stop using birth control in order to become "accidentally" pregnant in a casual relationship; but mostly (and getting the most headlines) women who choose their baby's absent father from a sperm bank. Nationwide chapters of SMBC have grown from twelve to twenty-four in just the last three years.[19] Since most people soon get fed up being known by a cumbersome set of letters, the SMBC movement has lately adopted a new, edgier, and decidedly American moniker: the "choice mom." America loves motherhood and freedom of choice, and it's clear the American media loves a good story about choice moms.

Open the *New York Times*. The October 13, 2005, headline "Women Opt for Sperm Banks and Autonomy" tops one of many stories across the country revealing how women today can browse online catalogs and shop for a sperm donor in the same way they might choose a sectional sofa or a new car. The article states that about three-quarters of the 4,000 SMBC members used sperm donors to get pregnant, and quotes one Long Island choice mom as saying, "You're paying for it, so you kind of want the best of the best." The reporter notes that this mom "saw her ability to select a 6-foot-2 blond, blue-eyed, genetic-disease-free donor as some consolation for not getting to fall in love with someone who would most likely have been more flawed."[20] Or flip to the *Times* magazine's January 29, 2009, installment and read "2 Kids + 0 Husbands

= Family." Until recently (Nadya Suleman, otherwise known as "Octomom," excepted), most choice moms chose to have only one child. Now, according to the article, they are increasingly choosing to have two: "instead of giving their children a father, they give them a sibling."[21]

Open the *Chicago Tribune* to this bold heading: "Women in Their 30s and 40s Choose Not to Wait for a Spouse." Amid the breathless declarations that "single women are helping redefine the typical American family," "single mothers are integrating into the mainstream and getting attention in the media," and "the stereotypes of the 1950s…have long vanished from many American households," we do find some hard reality in one choice mom's story.[22] Ten years ago, pushing forty, she moved to a new state, bought a house, and began decorating a nursery. She got involved with a man, they were not using birth control, and she reports that his attitude about a pregnancy was, "If it happens, it just happens." She became pregnant and soon after that was no longer involved with the father. Of her now nine-year-old daughter, this choice mom reports, "She does cry sometimes about not having her dad around, but we talk about it.…I do feel guilt sometimes, but we try not to let it overwhelm us."[23] Yet rather than dwell on the inconvenient fact that this child, like so many, mourns the loss of her father, the story swings back to breezy portraits of single moms toting their tots on campus, managing their managerial posts with aplomb, and relying on their own mothers, nannies, and au pairs to provide all the care that they as working single parents cannot.

Or open the September 2005 *Atlantic*, in which writer and "choice mom" Lori Gottlieb, midway through her first pregnancy, details the giddy excitement of expecting a baby without having a man in the way. Like many choice moms interviewed in the media, Gottlieb confirms that single women often turn to donor sperm not because their clock is ticking and no man is available, but because none of the men available are good enough for *them*: "Many, including me, have turned down engagement rings from eligible bachelors even as our biological alarm bells started sounding. As a friend put it, we're paradoxically 'desperate but picky.'"[24] While browsing online donor catalogs ("Did I want an M.B.A. or a Ph.D.? A lacrosse player or a violinist?") Gottlieb gushes—in words seemingly designed to offend the male half of the human species—that "it felt liberating to have the pick of the genetic crop."[25] She echoes the common secret pleasure of today's choice mom: "by bypassing the uncontrollable world of romance, I was able to choose a man to father my child who

might be completely out of my league in the real world."[26] After she becomes pregnant, Gottlieb notes that "I've gotten a surprising amount of male attention" lately, "not due to some bizarre pregnant-lady fetish," but because "the men I'm dating realize that I already have everything else I want, so now I'm in this purely for a chance at love."[27] Expecting her child in a couple of months, Gottlieb closes her piece with a sigh: "in a very modern sense my life these days feels incredibly romantic."[28]

I read Gottlieb's piece that autumn while knee-deep in toddlers, struggling with my husband to raise a seventeen-month-old and an almost three-year-old and hold down two jobs between us at the same time. With a cynical snort I threw down the magazine and wondered how romantic Gottlieb's life would be once the actual infant arrived. I didn't expect that I would have the chance to find out.

In March 2008, the *Atlantic* featured an update on Gottlieb's thoughts about love and motherhood. With the urgent title, "Marry Him! The Case for Settling For Mr. Good Enough," Gottlieb, now a seasoned mother, urges would-be choice moms to get over their pickiness and settle for the guy already in their lives, the guy with the "annoying habit of yelling 'Bravo!' in movie theaters," the guy with the "halitosis or abysmal sense of aesthetics."[29]

What happened? Did Gottlieb—as some choice moms eventually do—look at her beloved toddler and ache for the tragic absence of his father in her son's life? Well, no. The thrust of the piece is this: A husband would be great because raising a child is a heck of a lot of work and having someone to help clean the house, bring in some income, and throw a ball with the kid at the park while you get to sit on a blanket and rest would be, well, terrific. And that's it. Gottlieb's sage advice to unmarried women considering going the single-mom route (Don't do it! Get over your pickiness! Marry a nice man and raise your children with him!) is based solely on the testimony of a tired-out woman who has discovered that not only is there no romance in raising a baby on your own,

> *these single-mom books fail to mention that once you have a baby alone, not only do you age about 10 years in the first 10 months, but if you don't have time to shower, eat, urinate in a timely manner, or even leave the house except for work, where you spend every waking moment that your*

> *child is at day care, there's very little chance that a man—much less The One—is going to knock on your door and join that party,*[30]

but also that it's really, really exhausting.

In Gottlieb's vision, "Mr. Good Enough" is little more than a glorified house boy, not really an intellectual or social equal, and certainly (because this issue never merits a mention in her piece) of no importance to the child as the child's *father*. Still, reading Lori Gottleib on what happens *after* the sperm and egg become a baby would be sobering for any woman pondering ordering sperm off a website—*if* she read it.

But if the would-be choice mom happened to flick on the television instead, she would encounter a different story. For example, on the January 15, 2007, episode of the *Today* show, host Meredith Viera moderated a debate on the choice-mom issue.[31] The exchange featured family psychologist Brenda Wade, an attractive African-American therapist in a warm pink sweater set who, leaning comfortably on a sofa opposite Viera, exhorted female viewers to make a "power choice" to become single moms. Women are "hardwired for bonding" she told viewers; they feel "that deep, deep urge to have children." Women need children because they want to "grow" and "learn about themselves." When pressed about the emotional needs of children to know and be in a relationship with their fathers, Wade confidently asserted that because choice moms are generally older and might never have been married (and thus divorced) in the first place, their children are in a different category and will not be harmed by their mom's "power choice."[32] (At Dr. Wade's website, one can purchase not only her *Power Choices* book, but also a "self-transformation kit" that includes "power choice" note cards and a candle.)[33]

Or maybe our would-be choice mom decided to drop by the bookstore on her lunch hour. There she can find *Single Mothers by Choice: A Guidebook for Single Women Who Are Considering or Have Chosen Motherhood*, or *Choosing Single Motherhood: The Thinking Woman's Guide*, or any number of other volumes including the popular *Knock Yourself Up: No Man? No Problem: A Tell-All Guide to Becoming a Single Mom*, by Louise Sloan.[34]

Not long after the publication of *Knock Yourself Up* in 2007, a British newspaper featured a long interview with its Park Slope, Brooklyn-based author. Now

44, Sloan lives with her young son, who was conceived "not, as Sloan had fantasized, in her twenties, through a candlelit ceremony in which she and her then long-term girlfriend Joan tenderly inseminated each other in their apartment in San Francisco, but…'lying in stirrups in some doctor's office with the sperm of some complete stranger being introduced to my uterus through a catheter!'"[35]

Sloan went on to write a book (*Knock Yourself Up*) about the whole thing. Part tell-all, part advice, part survey of today's breed of choice mom, the book dishes on the highs and lows of having babies with men you have never met. One of the highs choice moms consistently agree upon: There's no man underfoot. Sloan writes about "Anne," "who has one daughter by an ex-boyfriend, and another by a donor, and who says: 'I have one kid who's all mine, and nobody can ever f--- with that, and another kid who I always have to do this dance [with her father] of how she's raised.'"[36]

Now let's say our would-be choice mom bypassed the bookstore and instead went to church on Sunday. Surely there she would hear a different message? Maybe not. Support for women making the "power choice" of single parenthood can come from surprising corners. In her 2006 *Single by Chance, Mothers by Choice: How Women Are Choosing Parenthood without Marriage and Creating the New American Family*, Rosanna Hertz shares the remarkable story of "Lily," a committed Christian from the Midwest who, as a teacher in Boston, realized that her dream was to have a baby alone through artificial insemination:

> *Bubbly and outgoing, she never lost her Midwestern friendliness and directness, but even she hesitated before she approached the pastor of her church with her "crazy" question: should she become a mom on her own? She fully expected her pastor to reprimand her for defying church tradition. But she was stunned by his reaction:*
>
> > *I walked out of there and my eyes were just wide. I thought, "Oh no, he didn't just shut down this road I'm on." He said, "It's completely natural that you want to be a mother, of course you want to be a mother. And of course, it would be more perfect if you had a husband. But you would be a great mom. And this church community loves you, and I know they will support you in this."*[37]

Lily's pastor then recommended that she bring her question to the church elders. Hertz relates Lily's words:

> *And I went to talk to them about it when I was more sure I was going to do it and I was thinking the same thing—they are not going to approve of this….I was crying as I was talking about it because it was bittersweet. I really was torn. I wanted to be a mom, but I didn't want to do it this way. You know? And I finished telling them what I was thinking about, and there was this silence. And then the woman who hired me ten years earlier, she reached over and grabbed my arm and said, "Well, bless your heart! That is so brave." And then there was silence and she said, "I'm getting goose bumps thinking that we might get to support you in this."*[38]

Lily also checked in with the principal at the middle school where she taught. The principal and head of her department were "sympathetic":

> *The principal asked [Lily] to think about how and what she would tell her students. This gave her pause. She decided that if she went forward with her plan and if she became pregnant, she would tell the students that she had been inseminated in a doctor's office. She especially wanted to convey to the students that there was no sexual "misconduct" on her part: she had not made a mistake but instead had chosen a sexless route to motherhood.*[39]

### *Single Father by Choice*

Starring opposite the choice mom (but not having much interaction with her; in fact, his drama takes place on another stage down the hall) is the single father by choice. He hasn't achieved acronym status yet, so let's go ahead and give him one now: the SFBC.

Browse newspapers around the world and read glowing reports of the proud new SFBC.

First stop, the United Kingdom. Meet Ian Mucklejohn, father of three. In 2001, at the age of 54, Mucklejohn became the father of triplets conceived with an egg donor and a separate "gestational" surrogate mother, both living in the U.S. ("Gestational" surrogate refers to a woman who carries an embryo that was

conceived with another woman's eggs. A "traditional" surrogate carries a baby conceived with her own eggs.) Mucklejohn readily admits he used services in the U.S. because one is not allowed to buy a woman's eggs in Britain; nor can one circumvent the right of the surrogate mother to decide to keep the child if she changes her mind after the birth.[40] By contrast, in California—a destination of choice for gay and single would-be fathers around the world—anything goes. A man can purchase eggs, pick a surrogate, and head home with three babies. His only remaining and sometimes significant legal struggle is to convince local authorities to provide the children citizenship and birth certificates with a blank in the space for "mother." Mucklejohn fought and won this battle in the U.K. and is thus a pioneer of the emerging global SFBC movement—men who, unlike women, must leap additional biological and legal hurdles to conceive and raise a child who has no relationship with the other biological parent.[41]

Next stop India, where in 2005 forty-six-year-old accountant Amit Banerjee became the nation's first SFBC. Ironically, the IVF doctor who performed the procedures sits on the Indian Council of Medical Research, which, with the National Academy of Medical Sciences, comprises the two organizations overseeing ethics regulations for reproductive technologies in India. Dr. Sudarshan Ghosh Dastidar enthused that the new father "was a perfect candidate for ART (artificial reproductive technology). As a physician I could not deny him the available technology that hundreds of childless couples are opting to fulfill their dreams of a family."[42] Hoping to head off a national debate, Dr. Ghosh Dastidar continued, inexplicably: "One cannot deny the right of procreation to a married adult, who unfortunately in this case was divorced. But he is financially stable to support a child and has a family that is more than willing to bring the child up." And what about the loss of ever knowing his mother for the child? The good doctor replies with a question, "What about a child whose mother dies on the delivery bed?" In other words, some children already begin life under the gravely tragic circumstances of their mother dying in childbirth. Is it not the "right" of would-be parents intentionally to create children with, according to the doctor, virtually the same experience—and is it not the obligation of doctors to help them achieve this?

SFBC's, gay or straight, are also popping up all over the U.S. For example, Andy Abowitz, a "successful, single gay man living in Philadelphia," twice paid a twenty-five-year-old married doctoral student to donate her eggs and a gestational

surrogate to carry the pregnancy, which resulted in a girl and, twenty months later, twin boys.[43] The egg donor commented, "When I got (the pictures), I was so surprised by how much [the girl] resembled me when I was that age." She enthused, "I think it's really fantastic when children are born into situations where they're wanted that much." And while it's true that Abowitz seems to want these children very much, how will they make sense of an egg donor and surrogate mother who did *not* want them? How will they make sense of what "mother" even means when they have a genetic mother and a separate birth mother, neither of whom are in their daily lives? Such questions apparently do not concern Abowitz, who proudly tells the reporter, "Technology has allowed me to do this and society has allowed me to do this."

Abowitz is certainly correct that society—or at least, the nearby state of Maryland—has allowed him to do this. The year after Abowitz's story aired on a Baltimore television station, Maryland decided to settle the issue of how to handle surrogate mothers and the birth certificate. Their conclusion? Keep them off of it. In a 4–3 decision handed down on May 16, 2007—the day after Mother's Day—the Maryland Court of Appeals, the state's highest court, ruled that a surrogate mother who has no genetic relationship to the baby she is carrying does not have to be listed as the mother on the birth certificate. The decision stemmed from the case of twins born in 2001 in the Washington, D.C., suburbs to a gay father, where the court decided neither to recognize the egg donor as a mother (even though she *does* have a genetic relationship to the children), nor to appoint counsel for the children.

Although judges in other jurisdictions have allowed a blank to be left in the space for "mother" on birth certificates of children conceived through surrogates, this was the first time a high court had used a state's Equal Rights Amendment to make the ruling, according to the attorney who argued the 2001 case. The court ruled, in essence, that men who can prove they have no genetic relationship to a child can be ruled not to be the father, so the same principle should apply to women.[44] For Maryland's highest court these twins became officially, legally and otherwise, motherless.

In America's reproductive technology Wild West, courts are generally all too happy to stay out of it or, when necessary, to help out (clearing up that birth certificate issue, for instance), but sometimes a judge gets wind of what's up and gets angry. Unfortunately, for a situation to draw judicial wrath someone else has to mess up colossally first.

In 2004, Stephen F. Melinger, an unmarried, fifty-eight-year-old New Jersey schoolteacher, contracted Zaria Nkoya Huffman, of South Carolina, through a Pennsylvania brokerage agency to carry his child while her husband was away on active duty in military service. (A considerable number of U.S. surrogates are married to military men, and thus their prenatal health care and delivery costs are shouldered by—you guessed it—you and me.)[45] Huffman conceived twin girls. When the due date neared, Melinger and Huffman traveled to Indiana, where Melinger checked into a hotel room near the hospital to await the delivery. After their birth the infant twins spent their early days in neonatal intensive care. In the intensive care unit, Melinger aroused the concern of nurses when he arrived for a visit with the twins with a live pet bird on the arm of his suit jacket, and on another occasion appeared to have bird feces on his shirt. Unit nurses also noted that Melinger was planning to drive the girls back to New Jersey by himself, and did not seem to be aware of the kind of care they would need or to have made any provisions to care for them once home. The nurses alerted authorities and a judge was brought in on the case.

In a fiery letter that was reprinted in local media, Marion Superior Court Judge Marilyn Ann Moores expressed outrage over the whole matter. She condemned the brokerage of children and asked U.S. Attorney Susan Brooks to review the case and the director of the surrogacy agency that arranged it. Moores wrote: "There seems to be no concern regarding the emotional impact on children who learn that they, in effect, were bought and paid for and that their mothers gave birth as a means of obtaining money."[46] The twins were removed from Melinger's custody and put in foster care.

### *Posthumous Conception*

For some single mothers there is another, albeit less common, way of obtaining sperm, one that brings another layer of social sympathy for the mother, additional assurance that dad will not get involved in the child's life, and an extra layer of pain for the child. This way of achieving a pregnancy is called "posthumous conception": conceiving a baby with the sperm of a dead man.

Like motherlessness, a father's death before his child's birth was once the stuff of grave misfortune, the excruciating plot twist in novels and films, the subject of classic poetry (especially if the father died at war)—a heartbreaking story of love, sex, death, and new life happening in the span of nine months. Think

of how the killing of *Wall Street Journal* reporter Daniel Pearl shook the nation and became the subject of a major motion picture, in part because of the compounded tragedy that Pearl's wife was pregnant with their son when he was brutally murdered. While the scenario might seem dreadfully romantic in the movies, most people would agree that in real life avoiding such a tragedy would absolutely be the right thing to do for a child. But not everyone feels that way.

After a man dies, his sperm can live up to about thirty-six hours in his body. It is possible for doctors to harvest and freeze living sperm within this time frame. The sperm can then be used in the same way that vials of frozen sperm are used in artificial insemination procedures worldwide. For some time, men with cancer and other illnesses for which the treatment might cause infertility and who might wish to have children later have been encouraged to store sperm in advance of treatment. In the event the man dies, one can certainly sympathize with a grieving and perhaps childless widow who considers using the sperm to have a child to carry on the memory of her husband. After all, her husband consented to having his sperm stored for this purpose, they were married to one another, and the fact that the sperm exists (and will also eventually "die" if it is not used) is a painful reminder for a woman desperate to keep a connection to her lost love. But if she uses the sperm she is conceiving a child already burdened with a grieving mother and a dead father.

Beyond this scenario there are other even more complicated situations involving posthumous conception. For example, when an unmarried man dies, do his parents have the right to retrieve his sperm to create the grandchild they desperately want? Some say yes, especially if he was their only child. In Dallas, Texas, when twenty-one-year-old Nikolas Evans died from a head injury after a fist fight, his mother harvested and stored his sperm, hoping to find a surrogate and someday raise her own grandchild.[47] In Russia, a mother used her deceased son's harvested sperm and a surrogate mother to create a grandchild she also planned to raise alone.[48] The Russian state challenged her right of parentage, refused to name her as the legal mother, and placed the child in state care.

What about a girlfriend? Does she have the right to harvest her boyfriend's sperm, even if he did not consent to such an arrangement before his death? A court in Iowa thinks so. In September 2007, the *Des Moines Register* reported

a case in which a twenty-three-year-old man was critically injured in a motorcycle accident.[49] Hooked up to machines and with little brain activity, he was expected to die soon. The man's girlfriend and his parents asked the hospital to harvest his sperm so that his girlfriend could have his child after his death. The hospital refused. The man's parents appealed to the court and obtained an emergency hearing—and won.

What about the state? Does it have interest in harvesting sperm? Perhaps. In Israel, with the approval of the army, a group called New Family has helped hundreds of Israeli soldiers who agree to store and sign over rights to their sperm to their wives or "serious girlfriends" before going off to battle. In striking support of what might be called "dead father's rights," New Family chairwoman Irit Rosenblum said she believes that "a person should still be able to father a child even when he is no longer alive."[50]

And what about strangers? Can they get access to a dead man's sperm? If there is a purported shortage of men willing to donate sperm, maybe yes. The state of Western Australia has a policy limiting the number of offspring that can be conceived with one man's sperm; they also do not allow importation of sperm from other nations, since sperm banks in other countries do not comply with their policies. Consequently, there is not an abundance of donor sperm in Western Australia. In response to these circumstances, two doctors proposed that sperm be harvested from dead men in order to address the sperm donor shortage "crisis." Many in Australia were alarmed, including Tangled Webs, a group that advocates for the rights of donor-conceived persons. One of the group's leaders, Myfanwy Walker, wrote in a letter to the *West Australian* newspaper:

> *The proposals by Anne Jequier and Bruce Bellinge to harvest sperm from deceased men is not only seriously macabre but in direct conflict with the best interests of the child to be created from such posthumous "donations."*
>
> *It seems it is easy to forget that a human being will be conceived with needs and rights of their own, their life extending long beyond the "serious problem of clinics not having enough gamete donors (and presumably a somewhat smaller bank balance)....I was created via donor conception, a practice based on the same reckless postulating exhibited by Jequier and Bellinge. Apparently no one considered that I might want to know my bio-*

*logical father and half siblings, that I might feel a need to connect with that unknown and unrecognised part of myself, that I might feel a deep loss and confusion from the inability to reconcile this feeling of being somewhat alien in the family that raised me and, most tortuously, that the decision to create me in such a way was intentional….Unlike those of us conceived with living donors, however, people conceived via posthumous donations will have to grapple with knowing they were conceived via cadaver.*[51]

## *Cloning?*

There is yet another potential way to create an intentional one-parent family, a method no one has admitted to achieving yet, but one that could succeed any day: reproductive cloning. Not too long ago that process induced universal gasps of horror. No longer.[52]

While the revelation that Hwang Woo-suk, the once-prominent South Korean stem cell researcher, had fabricated large portions of his data threw the stem cell research field temporarily in disarray, intense discussion of "therapeutic cloning" in the media in recent years has nevertheless made the public much more comfortable with and even enthusiastic about the idea of cloning for some purposes. In May 2005, the South Korean cloning accomplishment made front-page headlines around the world, but news later that month that a team of scientists at the University of Newcastle in Britain had also created cloned human embryos barely elicited a yawn. Cloning had already become old news.

Many nations have banned reproductive cloning but allow varying degrees of therapeutic cloning.[53] Yet few people realize that the only difference between therapeutic and reproductive cloning is whether the cloned embryo is implanted in a woman's womb. The technology to implant the embryo—in-vitro fertilization—has been in wide and ever-increasing use since 1978.

Has anyone implanted a cloned embryo in a woman's womb? A fringe group called the Raelians claimed to have accomplished this in 2002, but the reports were unconfirmed. So far, no reputable scientist has reported doing so. But how much time remains before that happens?

Britain's *Guardian* newspaper ran an astonishing article on May 20, 2005: "Process Holds Out Hope for Childless Couples." The process is reproductive cloning. Among the experts quoted were Robert Edwards, who pioneered in-vitro

fertilization and created the world's first "test tube" baby, Louise Brown, in 1978. Edwards told a conference audience that "reproductive cloning should be considered for patients who have exhausted all other forms of treatment." For example, it "would be helpful for people who cannot produce their own sperm or eggs."[54]

At that same conference, James Watson (who with Francis Crick discovered the structure of DNA in 1953) argued that "there is nothing inherently wrong with cloning," saying, "I'm in favour of anything that will improve the quality of an individual family's way of life."[55]

Critics point out that cloning in animals led to numerous stillbirths, deformities, and deaths shortly after birth before succeeding in a live, apparently healthy animal (and even those animals can develop serious health problems later). Prof. Edwards responds that pre-implantation genetic screening of embryos will take care of all that. With enormous confidence in the ability of medical science to detect every defect in an embryo—and with casual concurrence with the routine discard of all embryos that are not acceptable—he remarked that "very soon…only healthy embryos will be implanted during assisted reproduction." The "birth of a child with defects after fertility treatment" will be "a thing of the past."

Edwards concluded with conviction: "If we stand back and say it can't be done, this is letting our patients down."[56]

Edwards and Watson are joined by a growing number of the world's leading bioethicists who have already gone on record calling for the legalization of human cloning. These include Udo Schuklenk, co-editor of *Bioethics*, one of the world's leading bioethics journals, on his *Ethx Blog*; D. Elsner of the University of Melbourne in the *Journal of Medical Ethics*; and Hugh McLachlan of Glasgow Caledonian University, who published a "vigorous defense" of human cloning in the prestigious *New Scientist* magazine.[57]

For now, it is a biological fact that all children have a mother and a father. This might well change. Forget about having to buy sperm or eggs from "donors" or deal with surrogate mothers who want to receive baby pictures. Cloning is the ultimate one-parent family—a family in which the child has, literally, *only one parent*. For adults intent on safeguarding their parental rights, cloning would be a dream come true.

## TWO-PARENT FAMILIES

### *Married Mother and Father*

The main player on the "intentional two-parent family" scene has been around for a long time and is otherwise known as the "married mother and father." This remains a popular option for today's would-be parents. Despite widespread divorce and high rates of single-parent childbearing, quite a few prospective parents still choose someone of the opposite sex to fall in love with and marry before they have children together (or sometimes the woman becomes pregnant unexpectedly and the couple will even marry before their child is born).

When at all possible, the married mother and father usually opt to conceive children the old-fashioned way, through sexual intercourse (or what our parents' generation quaintly called "making love"). The married mother and father can be found pretty much everywhere, from the parks of San Francisco and Seattle to the streets of the edgiest neighborhoods of New York. Diverse and resilient, the married mother and father family has for millennia put down roots everywhere in the world. Generally thriving wherever planted, the fruit this family produces—children—is among the hardiest and healthiest in the world.

For it turns out that changes in family structure patterns over the past several decades have given social scientists an opportunity to discover what having a married mother and father *actually does* for children. By now, the evidence is substantial. Having a married mother and father is correlated with increased physical and mental health, as well as general life happiness, academic and intellectual performance, behavioral success at school, and graduation from college.[58] These children are also more likely to build successful family relationships when they reach adulthood.[59] Children growing up with married mothers and fathers are less likely to live in poverty and suffer its related problems.[60] They are also less likely to suffer from physical or sexual abuse, abuse drugs or alcohol, become involved in criminal or violent behavior, or engage in early sexual activity and premarital childbearing.[61]

Even when controlling for selection effects that could help explain such outcomes, marriage is nevertheless linked to higher levels of health and happiness and lower levels of alcohol and drug abuse for children and adults. Marriage is also a wealth-creating institution—married couples on average earn more,

save more, and build more wealth compared to people who are single or live together.

Researchers are also finding that having parents who just live together is not as good for children, on average, as having parents who are married. Adults who live together are more similar to singles than to married couples in terms of physical health[62] and emotional well-being and mental health,[63] as well as in assets and earnings.[64] Children living with parents in cohabiting unions have outcomes more similar to children living with single parents than to children from intact marriages.[65] Even biological fathers in cohabiting unions who live with their children are not as involved and affectionate with their children as are biological fathers who are married and share a home with their children.[66]

One major problem is that cohabiting unions are much less stable than married unions. A recent study found that 50 percent of children born to cohabiting couples have parents who split up by the time they are five years old, as compared to 15 percent of children born to married couples.[67] Couples who live together on average report relationships of lower quality than do married couples, with those living together reporting more conflict, more violence, and lower levels of satisfaction and commitment.[68] Even biological parents who live together have poorer quality relationships and are more likely to split up than parents who marry.[69] These differences might occur in part because people who choose to live together are less committed to each other.[70]

### *Same-Sex Marriage and Parenting*

Since same-sex marriage was made the law of Massachusetts by a 2003 state supreme court decision, the debate about gay marriage has exploded on the U.S. national scene. In 2008, Connecticut's high court legalized same-sex marriage and New York State began recognizing same-sex marriages legally contracted outside the state. That same year, the California Supreme Court passed same-sex marriage with a law that was later overturned by voters in Proposition 8. That ballot initiative, in turn, was later declared unconstitutional by the court, with more challenges from both sides likely. In 2009, same-sex marriage became legal for all Iowans, while Vermont became the first state to legalize same-sex marriage by legislative rather than judicial action. The legislatures of Maine and New Hampshire followed suit the same year. In Washington, D.C., same-sex marriage became legal in 2010. In New York State, in 2011.

Looking abroad, between 2001 and 2010, the Netherlands, Belgium, Canada, Spain, Norway, South Africa, and Argentina were among the nations to legalize gay marriage, sometimes in the midst of heated debate. Additional U.S. jurisdictions and states, and countries such as France and Britain, legally recognize same-sex relationships through domestic partnerships or civil unions.

What do we really know about children's experiences when they do not grow up with both their mother and father? In many areas we know a great deal. In others, we need to learn more.

Increasing numbers of people realize that marriage has important benefits for children. What many do not realize, however, is that existing research suggests that there is something about the marriage of a child's *biological mother and father* that carries these benefits. Marriage alone does not make the difference. For example, children raised in families where a biological parent is married to a stepparent appear more like children of single parents than children of married parents on many important social indicators.[71]

Some advocates for legalized same-sex marriage claim that it will be good for children because the children will have two married parents. But the stepfamily data suggests it may not be that simple. We do not know how much the poorer outcomes in stepfamilies are due to the history of family dissolution or other problems unique to stepfamilies and how much is due to the child being raised in a home with a (non-biological) stepparent.

Most stepparents are without question good people who do their very best to raise the children in their care. Nonetheless, it is vital for those shaping family policy to be acquainted with the large body of research that shows that children raised by non-biologically-related adults are at significantly greater risk of abuse. Many are not aware of the considerable research that reveals that their mothers' boyfriends and their stepfathers abuse children more often on average than their fathers do—and that children are especially at risk when left in the care of their mothers' boyfriends. More than seventy reputable studies document that an astonishing number—anywhere from one-third to one-half—of girls with divorced parents report having been molested or sexually abused as children, most often by their mothers' boyfriends or their stepfathers.[72] A separate review of forty-two studies found that "the majority of children who were sexually abused…appeared to come from single-parent or reconstituted families."[73] Researchers Martin Daly and Margot Wilson conclude: "Living with

a stepparent has turned out to be the most powerful predictor of severe child abuse yet."[74]

The fields of evolutionary biology and psychology yield some insights into why children are, on average, far safer with their biological parents. David Popenoe, family scholar and sociology professor emeritus at Rutgers University, sums up the research this way:

> *From the perspective of evolutionary psychology, the organization of the human nuclear family is based [in part on]…a predisposition to advance the interests of genetic relatives before those of unrelated individuals, so-called inclusive fitness, kin selection, or nepotism.*[75] *With respect to children, this means that men and women have likely evolved to invest more in children who are related to them than in those who are not.*[76] *The world over, such biological favoritism seems to be the rule.*[77]

Of course, to recognize that adults tend to favor their biological children is not to say that this predisposition is necessarily or always a *good* thing. Rather, it is to recognize that this tendency is highly common and probably even hard-wired, or biologically primed, into humans. Ideally, all of us would be as deeply committed to and concerned for other people's children as we are for our own, but practically speaking the human race is not there yet.

The example of adoption, however, remains an inspiration. When the state carefully screens prospective adoptive parents and these parents receive social support for their role as parents, and particularly when adopted children can be raised from birth by parents who are committed to one another over the long haul, most of the outcomes for such children don't look a lot different from those raised by their biological married parents, and are certainly better than if they were raised in an abusive, neglectful, or otherwise inadequate home. So again, while biology is not everything—biological parents can fail their children, and adoptive parents are generally highly committed and loving parents—research reveals that biology does matter.

What relevance does this research have to same-sex marriage and parenting? The two persons in a same-sex couple cannot both be the biological parents of the child. In many same-sex unions, children are brought into the union from previous relationships. Even children born to same-sex couples are conceived using "third-party donors"—sperm or egg donors, and/or surrogate mothers.

One could argue that the family structure most of these families most closely resemble is that of a stepfamily, a family structure in which one parent is the biological parent of the child and the other is not.[78] Only when a same-sex couple adopts a child do they have a symmetrical relationship to the child, that is, both are non-biological but legal parents of the child.

There are some studies that try to address how children of gay and lesbian parents fare. But there are challenges. Same-sex parenting has only recently become more common and visible, and the numbers will always be small within the overall population. In addition, much of the existing research looks at isolated questions, such as whether children raised by same-sex couples are more likely to be gay and lesbian themselves, or whether they identify with non-traditional gender roles. On broader measures of child well-being, most studies find little difference between children of same-sex parents and other children. But the field of research has important limitations.

In a review essay, developmental psychologist Charlotte Patterson of the University of Virginia traces the trajectory of research on children raised by lesbian or gay parents.[79] Patterson is well-placed to write such a review, as she has been a lead author or co-author of much of such research in the U.S. She notes that early research typically focused on children born to heterosexual parents and raised by their lesbian or gay parent (usually the former) after divorce. These studies tended to compare these children with children raised by divorced heterosexual parents whose orientation remained heterosexual, and typically found little difference between the two groups. Patterson observes correctly that these findings were useful for courts in making custody decisions. However, they reveal little that is helpful about the broader experience of children raised by lesbian mothers, since they compared children in one kind of fatherless home (a divorced-from-a-man, lesbian mother-headed household) with children in another kind of fatherless home (a divorced heterosexual mother-headed household). If both groups of children overall were suffering the well-documented effects of divorce, such problems would not appear when comparing these two samples.

Next came studies of children who had been raised from birth by lesbian mothers. One example, the Bay Area Families Study, included a small convenience sample of children between the ages of four and nine. The children appeared to be progressing normally on several measures. Patterson notes that while the findings were reassuring, it was possible that these children were not

representative, since the sample was assembled by word-of-mouth. Perhaps only high-functioning families had responded.

With that in mind, Patterson and several colleagues embarked on a research partnership with the Sperm Bank of California, which had long served lesbian as well as heterosexual women. This study, again, revealed little difference between the children raised by lesbian mothers and those raised by heterosexual mothers. But, again, the researchers were comparing what I consider to be two subgroups of an overall perhaps more troubled population—the sperm donor offspring. In a 2010 study colleagues and I conducted of young people conceived this way, we found that compared to young people who are adopted and to those raised by their biological parents, the sperm donor offspring, as a group, feel more loss and confusion about identity and family, and fare worse on outcomes related to substance abuse and delinquency.[80]

Patterson's next step was to use data from the highly-regarded National Longitudinal Study of Adolescent Health. She and her colleagues examined the data on 12,000 teens and were able to isolate those whose parents said they were in a "marriage-like" relationship with someone of the same sex. Unfortunately, there were only forty-four such teens whose parents were in such a relationship and who were willing to reveal it to the investigators. Nonetheless, based on that sample, Patterson and her colleagues concluded that "the qualities of family relationships rather than the gender of parents' partners were consistently related to adolescent outcomes."[81] Patterson noted Susan Golombok's work in Britain and the U.S., which has relied upon similar samples that attempt to be representative, but because of the challenges of studying this population nonetheless include only small numbers of typically young children.

With a somewhat different perspective, an important review of studies on same-sex parenting was prepared in 2003 by sociologist Steven Nock, who, like Patterson, was based at the University of Virginia (he passed away in 2008). After reviewing several hundred studies available at that time, Nock concluded that they all "contained at least one fatal flaw of design or execution" and "not a single one of those studies was conducted according to general accepted scientific standards of research."[82]

Problems and limitations that Nock and other reviewers noted at the time include:

- the absence of nationally-representative samples used in studies on same-sex parenting (Patterson and her colleagues have since taken advantage of the National Longitudinal Study of Adolescent Health data)

- outcome measures were limited

- studies often relied on a mother's report of her parenting rather than objective measures of the child's well-being

- the virtual absence of long-term studies that follow children of same-sex parents to adulthood

But the biggest problem by far, Nock noted, was that the vast majority of the studies compared single lesbian mothers to single heterosexual mothers.[83] They tell us nothing about how these children compare to children raised by their biological mother and father.

In summer 2010, much attention was given to a study published in *Pediatrics* that claimed that children of lesbian mothers actually do better than children of heterosexuals. However, like nearly all earlier studies, this one relied on a convenience sample—in this case "154 prospective lesbian mothers" who between 1986 and 1992 "volunteered for a study that was designed to follow planned lesbian families from the index children's conception until they reached adulthood."[84] It may well be higher-functioning couples who volunteer to have their parenting skills and their children's behavior studied.

Earlier that same summer my colleagues and I released our study of sperm donor offspring. Our sample was drawn from a web-based panel of one million American households who had signed up to receive surveys on a wide variety of topics. Among our 485 sperm donor offspring were thirty-nine who were conceived to lesbian couples (the rest were conceived to single mothers by choice or heterosexual married couples). Our study also had comparison groups of 562 young adults who were adopted as infants and 563 who were raised by their biological parents.[85]

We found that the adult donor offspring of lesbian couples were not that different in many ways from other donor offspring in their concerns, for example, about accidental incest, kinship confusion, longings to know more about their

ethnic background, and issues of trust in their families. And although in some ways the donor offspring of lesbian mothers are faring better than other donor offspring, substantial minorities still report distress and sadness over their origins and the absence of their biological father in their lives, and more than half report curiosity about their biological father and his family. The donor offspring of lesbian mothers were also twice as likely as those raised by their biological parents to have struggled with substance abuse issues.[86] These findings are provocative and troubling. Without question, they speak to the need for more attention to and research about the possible difficulties these young people might face.

For now, it is too simple to assume that, for children, having two moms or two dads is just the same as having a mom and a dad. The reality for children of same-sex couples is much more likely to be highly nuanced. One thirty-year-old man raised by lesbian mothers writes:

> *When I was younger, I was very aware of the assumption: two women plus a son equals a fucked up guy. You get these very concerned liberal reporters asking, "Didn't you miss your dad? Wasn't that hard?" This is an issue that can't be boiled down to a sound bite. There is a real story to the whole question of my father, but then there was this public persona that I felt I had to present. [My lesbian mothers] weren't coming to me and saying, "Don't talk about [your feelings about not knowing your dad.] You have to present yourself to be just fine." It was internal pressure. I felt protective of my family. You are aware of the political issue. You are aware of what you are saying and how they will judge you.*[87]

As any other child does, children raised by same-sex couples love their parents. Many of them appear to want the right of marriage for their parents. But these children may also worry about their parents, who face social stigmas, and may not want to add to their burden by expressing a sense of loss about their own absent biological parent. It is possible that these children, like some who are raised in divorced or single-parent or stepfamilies, also struggle with the absence of both mother and their father in their daily lives.

Despite the slim evidence available about same-sex parenting and children up to this point, a number of professional organizations in the United States—including the American Psychological Association, the American Psychiatric

Association, and the American Academy of Pediatricians—have already embraced same sex-marriage and parenting.

There are two problems with this. First, to make their case these organizations have relied on the same limited studies I described earlier. Second, these organizations are acting in direct contradiction to other mainstream professional organizations and institutions that until recently have stressed the research revealing the overall benefits to children of the married, two-parent biological family. Consider this simple chart:

| BEFORE November 2003 Massachusetts court decision mandating legalization of same-sex marriage and making it the first U.S. state to have this option: |
|---|
| AUGUST 2001: *New York Times* runs front-page review article summarizing research on the importance of two biological parents for child well-being. |
| JUNE 2002: Child Trends research brief concludes that the family structure that most helps children is two biological parents in a low-conflict marriage, emphasizing that it's not just *two parents* but *two biological parents* that seems to make the difference. |
| APRIL 2003: National Council on Family Relations releases fact sheet stating the importance of both biological parents for child well-being. |
| JUNE 2003: U.S. Census Bureau releases report saying that its data reveals importance of two-parent families for child well-being. |
| **AFTER November 2003 Massachusetts court decision mandating legalization of same-sex marriage:** |
| JULY 2004: American Psychological Association releases statement supporting legal recognition of same-sex marriage, in part because it will be better for the children. |
| MAY 2005: American Psychiatric Association votes to support legal recognition of same-sex marriage; supporting documents say it will be better for the children. |
| JULY 2006: American Academy of Pediatricians, in their journal *Pediatrics*, calls for same sex- marriage rights, stating that denial of such rights harms children. |

Since late 2003, none of the organizations or institutions that previously affirmed the importance for children of the married, two-parent biological family have made such bold, clear statements on the matter again. In essence, they and other leaders in this country have either gone silent on the issue or have embraced a small body of limited data to say that same-sex marriage and parenting is just fine for children.

I would rather that we wait and let a generation of young people raised by gay dads and lesbian moms grow up and tell social science researchers—and all of us—how they feel about mothers and fathers, what they lost, what they gained, what they needed and if they got it. I would prefer to let them tell us if anti-gay stigma was their only problem or if they faced other problems as well.

In the meantime, these new policies are already having effects. There are affirmative early reports that use of third-party donors to conceive children does appear to be increasing in jurisdictions that have recognized same-sex marriage or similar arrangements, as couples with new legal protections now seek assistance from fertility clinics to achieve pregnancies.

A 2007 report from Britain claimed that "Lesbians and single women in Britain are increasing their share of donor insemination, accounting for 38% of such treatment last year compared with 28% in 2003 and 18% in 1999."[88] Especially noteworthy is that this trend, if the numbers are verifiable, was occurring before 2008. For decades, and even after civil partnerships were legalized in Britain in 2004, British fertility law has said that the child's "need for a father" must be taken into account when offering fertility treatments. Despite that clause, rates of lesbian and single women inseminated by clinics have been rising. In May 2008, after a long and heated national debate, the fertility treatment authority dropped the "need for a father" clause—removing the last policy barrier for lesbians and single women to access donor insemination services in the nation's clinics.[89]

In Massachusetts, a December 2007 news report read:

> *Since the legalization of same-sex marriage there has been a marked increase in the number of gay couples seeking assisted reproduction, a medical center specializing in in vitro fertilization said.…"Each year we're seeing an annual increase of about 50 percent in the number of same-sex*

*couples coming to us for IVF to have their children and build their families," said Dr. Samuel Pang, Medical Director of Reproductive Science Center of New England. RSC has eight locations throughout New England… and is the seventh largest medical practice of its kind nationwide. "I don't know how much equal marriage rights for gay and lesbian couples has affected the upward shift, but it seems to be the trend over the last three or four years."*[90]

Turn next to Denmark, which passed a law in 1989 allowing gays and lesbians to enter registered partnerships. In 2006 the parliament then passed a law allowing lesbian couples and single women the right to obtain free artificial insemination at publicly-funded hospitals. Mikael Boe Larsen, chairman of the Danish National Association for Gays and Lesbians, said, "People are almost euphoric, people are crying, and especially the lesbians are extremely happy since it is a governmental approval of their family form."[91]

In other nations, too, there is evidence that marriage rights and rights to artificial reproductive technologies are seen to go hand in hand. In 2005 in Victoria, Australia, the Victorian Gay and Lesbian Rights Lobby released a survey of 652 gay and lesbians persons that revealed, among other things, that 98 percent of those surveyed wanted same-sex marriage to be made legal in Australia, and that more than 90 percent felt that gay and lesbian couples "should have access to assisted reproductive technologies such as clinical insemination of donor sperm and IVF." Moreover, the survey revealed that "77 percent supported altruistic surrogacy as a right."[92]

In Norway, the law affirming the right to same-sex marriage that was passed in 2008 also affirms the right for lesbian women to have access to artificial insemination.[93] In nation after nation, the right to marriage is also interpreted as a right to access reproductive technologies that deliberately deny children a relationship with one or both of their biological parents.

### *Co-Parenting Pre-Conception Arrangements*

Next, let's consider one of the newer and more surprising of the intentional two-parent arrangements. In this model, two would-be parents look around, see many divorced parents trying to "co-parent" their kids in separate homes, and decide, hey, why not skip the falling in love, getting married and divorced

part and just set up a split life for our child before the child is even conceived? Anyone—gay or straight—can enter into this arrangement, and potential parents typically use insemination technology to conceive. The hoped-for outcome is a child—without any of the complications or obligations of a relationship between the parents.

In summer 2005 www.parentsincluded.com was launched. This British website was intended for lesbian and single women who wish to bear a child using donor sperm and want "both parents" to play a role in the child's life. Potential sperm donors seeking to have some kind of relationship with the resulting child were invited to enroll.[94]A more recent version of this type of website is www.co-parentmatch.com, where you can "Find Your Co-Parent or Sperm Donor" using a pull-down menu of options. A similar site in Canada, the "LGBT Parent Matchmaker," helps those who wish to locate and pair with one or more opposite-sex partners with whom to conceive and "co-parent" a child.[95] In New York City, the Gay, Lesbian, Bisexual and Transgender Community Center offers a "sperm and egg mixer" where interested parties can "discover just how creative, innovative and brave LGBT people can be when it comes to exploring the possibilities of new kinds of family structures."[96] In a particularly enterprising example, one woman ran a classified ad on a West Hollywood news website that read: "I am a single mom who wants to have another baby, but does not wish to use anonymous donor sperm. If you would like to be a father with visitation rights, send a picture and introductory letter to Kelly W."[97]

In *Single by Chance, Mothers by Choice: How Women Are Choosing Parenthood without Marriage and Creating the New American Family*, author Rosanna Hertz relates the story of "Annette" who, at thirty-eight and single, was diagnosed with severe endometriosis. Encouraged by her doctor to get pregnant soon if she wished to have children, Annette then "became pregnant with a former lover, a relationship that had ended years before."[98] Annette told the interviewer that her former lover "didn't anticipate that he would fall in love [with the child], kind of, that he would be so emotionally bonded. And that's what ended up happening" (81).

Annette goes on: "He got very involved when Ben was born and just through the months and years of parenting, he's not faded into the background.... He just kept getting more and more interested. And at this point, there's not any wavering about it. My son has a dad" (81–82). Hertz says that Annette

"described a weekly routine that resembles those worked out by cooperative divorced parents" (82):

> *We don't have set times. We didn't negotiate it or go to court or sign a document. But it's evolved into a pretty patternized [sic] kind of thing which involves one night a week that Ben stays at his house without me, and one night a week after school like on a Wednesday or something….And then [some nights] his dad will come over to our house around seven-thirty or so…to do the visiting and bath and bed routine.*
>
> *We also spend time usually on Sundays all together, the three of us...try to have some time in the weekend when we're all three together, because that has become very important for John. He really—that's what keeps him in this, is the family time. He really likes that a lot, much more than he anticipated. (82)*

But, Hertz explains, "whereas the donor particularly liked the time spent as a family, Annette was much more uncertain about its meaning, seeking therapy to sort out her feelings toward John and his unexpected reemergence in her life" (82):

> *I have kind of mixed feelings. In one sense I do like it that it's a lot easier to take care of a kid when there are two adults around, I won't deny that. The part of it that I don't like is I feel a little bit false in that it's like playacting, or pretending to be a family when we're not a family. And I feel a little bit like living a falsehood there. (82)*

After reading her story, I put down the book, stared into space, and imagined myself in conversation with Annette. These were the only words I could find: "I don't claim to know much about you or your child. But I do know this: you are Ben's mother; John is Ben's father. And a child, a mother, and a father is a pretty core definition of a *family*. To pretend anything otherwise is to play an incredible head game with your son—a head game that, given all the anxiety you're expressing, isn't even working for you. My advice is this: Give it up. You have a beautiful son. Your son has a father, a kind man who loves him dearly. Maybe you would like to marry the father. Maybe not. But at least stop pretending that you haven't created a family—a family, sadly, divided even before your son was conceived."

### *Same-Sex Procreation?*

By far the most egregious experimentation with two-person parenting is happening in the hard sciences, specifically in laboratories at some of the world's leading universities. Scientists are now seeking to fuse sperm and eggs in unexpected ways to create human embryos for implantation in the womb.

In June 2005, researchers at Sheffield University in Britain announced that they are now able to develop human embryonic stem cells into early forms of cells that can become eggs and sperm. If they succeed, such work holds the potential to free same-sex couples from relying on sperm or egg donors. Instead, they could have children genetically related to both of them.

Headlining stories worldwide were frank about the implications. "The consequences of such work might even mean gay couples or single men could produce children," a reporter remarked in the June 20, 2005, *Guardian*.[99] "The technique raises the possibility that gay couples will be able to have biological children," another reporter observed in the *New Zealand Herald* the next day.[100] Another June 21, 2005, article about the Sheffield research and similar work underway at Monash University in Australia headlined in Australia's *Herald Sun*: "Doing Away with Donors."[101] In a story filed from Copenhagen that ran at ProudParenting.com, an American advice and support website for gay and lesbian parents, the headline read, "Stem Cell Research May Provide Hope to Gay Couples." The article said the research is "huge news for the gay and lesbian community."[102]

Other scientists are pursuing similar research goals. In 2004, scientists in Japan succeeded in creating a mouse with the genetic material of two females and no male.[103] They created over 450 embryos, of which 370 were implanted and ten were born alive. Of those ten, only one survived to adulthood.

So, do children need two parents? Well, yes. But in today's family debates *which* two parents can be construed as widely open to interpretation. Further, some ask, if two parents are good for children, could three parents be even better?

## THREE-PARENT FAMILIES

Sometimes when the earth moves it doesn't make a sound. That's what happened several years ago in Harrisburg, Pennsylvania.

On April 30, 2007, a state superior court panel ruled that a child can have three legal parents. The case, *Jacob v. Shultz-Jacob*, involved two lesbians who were the legal co-parents of two children conceived with sperm donated by a friend. The panel held that the sperm donor and both women were all liable for child support. Arthur S. Leonard, a professor at New York Law School, observed, "I'm unaware of any other state appellate court that has found that a child has, simultaneously, three adults who are financially obligated to the child's support and are also entitled to visitation."[104]

The case follows a similar decision handed down by a provincial court in Ontario, Canada, in January 2007. That court also ruled that a child can legally have three parents. In that case, the biological mother and father had parental rights and wished for the biological mother's lesbian partner, who functions as the boy's second mother, to have such rights as well.[105]

The concept of assigning children three legal parents is not unique to North America. In 2005, expert commissions in Australia and New Zealand proposed that sperm or egg donors be allowed to "opt in" as a child's third parent.

Many observers believe that children have already had three or more parents for quite some time—after all, many children grow up in stepfamilies or adoptive families. What these observers fail to acknowledge is that even in stepfamilies or open adoption scenarios children still have at most two legal parents. In open adoptions, a birth mother who remains in contact with a child she has relinquished to another couple has no legal rights to act as a parent to that child. Meanwhile, a stepparent cannot become a child's legal parent unless the child's *other* legal (usually biological) parent has parental rights revoked or dies, and either way the stepparent then must go through a formal adoption process to become the child's parent by law.

When it comes to legal parenthood, this "rule of two" has not been breached in the past. It has remained intact out of respect for the rights of the existing legal parents and in recognition that plenty of conflict can arise even between two parents. Why would the state throw a third person with equal legal standing into the mix?

But today, supporters of the recent three-legal-parent proposals and rulings have a different point of view. They say, if two parents are good for children,

wouldn't three parents be better? It is true that some three-parent petitions are brought by adults who appear deeply committed to the child in question. In the Ontario case, both women and the father all seem devoted to the boy. But in Pennsylvania, the sperm donor, whom the children called "Papa," was ordered to pay child support over his objections, and the lesbian co-mothers have already split up.[106] In another recent case in Ontario, a lesbian couple used a "known donor"—a gay friend—to conceive their child. All parties intended before the child's birth to seek legal parental status for the three of them. But they never managed to initiate the legal case and eventually became embroiled in a court battle over whether the gay father's parenting rights can be terminated so that the second lesbian mother can adopt the child.[107]

### *Polyamory*

Same-sex marriage is currently legal in some states and jurisdictions of the U.S. and several nations of the world. Other arrangements for same-sex couples, such as civil unions and domestic partnerships, are also legal in some places. The struggle for the recognition of same-sex marriage and partnerships will likely continue. But for some legal scholars today, same-sex marriage is not all that interesting anymore. They have made their case. They are seeing victories beginning to stack up in courts. The latest hot topic is polyamory.

Polyamory—defined as "ethical non-monogamy" by its proponents—literally means "many loves." It describes relationships involving three or more people. One or more couples within the relationship may or may not be married to one another (which distinguishes it from polygamy, where more than one woman is married to the same man). Polyamorists say their relationships also do not resemble "swinging" (from the 1970s), because they emphasize open communication, respect, and "ethical" treatment of one another.

The debate about legal recognition of polyamorous relationships—or some form of group marriage—is already well underway. A major report issued in 2001 by the Law Commission of Canada, *Beyond Conjugality: Recognizing and Supporting Close Personal Relationships*, viewed marriage as a "close personal relationship" and asked whether such relationships should be "limited to two people."[108] Its conclusion: probably not.

In *An Introduction to Family Law* (Oxford University Press, 2001), Gillian Douglas of Cardiff Law School speculated, "The abhorrence of bigamy appears to

stem…from the traditional view of marriage as the exclusive locus for a sexual relationship and from a reluctance to contemplate such a relationship involving multiple partners."[109] For Prof. Douglas, the idea that marriage means two people is a "traditional" and perhaps outdated way of looking at this type of relationship.

In 2004, Elizabeth Emens of the University of Chicago Law School published a substantial legal defense of polyamory—"Monogamy's Law: Compulsory Monogamy and Polyamorous Existence"—in the *New York University Review of Law and Social Change*.[110] Prof. Emens suggests that "we view this historical moment, when same-sex couples begin to enter the institution of marriage, as a unique opportunity to question the mandate of compulsory monogamy."[111]

Mainstream cultural leaders have also hinted at or actively campaigned for polyamory. Roger Rubin, former vice-president of the National Council on Family Relations—one of the main organizations for family therapists and scholars in the United States—believes the debate about same-sex marriage has "set the stage for broader discussion over which relationships should be legally recognized."[112] The Alternatives to Marriage Project, whose leaders not long ago were often featured by national news organizations such as MSNBC and *USA Today* in stories on cohabitation and same-sex marriage, includes polyamory among its important "hot topics" for advocacy.[113] Meanwhile, the Unitarian Universalists for Polyamorous Awareness hope to make their faith tradition the first to recognize and bless polyamorous relationships.[114]

A July 2009 *Newsweek* story estimates that there are more than half a million "open polyamorous families" living in America.[115] Reporter Jessica Bennett argued that polyamorists could soon start using that bumper sticker often found on the cars of lesbian and gay activists: "We Are Everywhere." Nearly every major city in the U.S. has a polyamory social group of some kind. The polyamory magazine, *Loving More*, has 15,000 subscribers. Books and sex columns with titles like *Open* and *Opening Up* are proliferating, while *The Ethical Slut* (1997)—"widely considered the modern 'poly' Bible"[116]—was recently released in a new edition.[117] In 2006, "polyamory" was added to the Merriam-Webster and the Oxford English dictionaries. Ken Haslam, curator of a polyamory library at the Kinsey Institute and a self-professed polyamorist, remarks that there "have always been" some people talking about the "labors of monogamy," but "finally, with the Internet, the thing has really come about."[118]

It is not unusual for children to be present in polyamorous unions. Websites for practitioners of polyamory devote considerable space to the challenges of being a poly parent.

At one online chat room, one mom said "Polyamory is what my kids know. They know some people have two parents, some one, some three and some more. They happen to have four. Honestly? Kids and polyamory? Very little of it effects [*sic*] them unless you're so caught up in your new loves you're letting it interfere with your parenting."[119]

On this same site, another older mom advised a young poly mother-to-be who is not sure how to manage a new baby and her poly lifestyle:

> *Having a child…and being poly isn't exactly a cakewalk, but…it is possible. Sometimes it means that you take the baby with you to go see your OSO [Other Significant Other], or your OSO spends more time at the house with you, your husband, and the baby, and sometimes things will come up where plans have to be cancelled* at the very last minute *because baby is sick or something….There is a lot of patience that is needed from all parties involved, but it can be done. The first six months are extremely hard.*[120] *(Emphasis in original)*

Another woman was offended by her best friend's lack of support for her polyamorous relationship that involves a couple who have a six-year-old daughter. "No matter how happy and content that kid is, according to my friend we and her parents are undoubtedly wreaking some serious damage on her by not completely concealing our relationship from her," the woman complains. "Sometimes intelligent, goodhearted, rational people who know you fairly well can still hold rather irrational and bigoted opinions."[121]Another polyamorous mother wrote that she has a "simple rule" for her twelve-year-old son: "What happens at Mommy's house stays at Mommy's house if you want to keep visiting Mommy."[122]

The *Newsweek* article features a polyamorous "cluster" involving Terisa, Matt, Vera, Larry, and Scott, which also includes Matt and Vera's six-year-old son. All five adults and the boy spend weekends together, an arrangement, one scholar is quoted as saying, that would be fine for the boy "so long as it's stable." Bennett notes that most polyamorists are "too busy" for political activism, but they

*are* quite concerned about custody issues, especially after one poly mom lost custody of her son after "outing" herself in an MTV documentary in 1999. (One website warns readers: "If your PolyFamily has children, please do not put your children and family at risk by coming out to the public or by being interviewed [by] the press!"[123])

Another hurdle for poly families: there just don't seem to be a lot of families like them around. One pro-poly website despairs: "One challenge that faces poly families is the lack of examples of poly relationships in literature and media."[124] A sister site offers the *PolyKids Zine*. This publication for kids "supports the principles and mission of the Polyamory Society," and contains "fun, games, uplifting PolyFamily stories and lessons about PolyFamily ethical living." Its book series includes titles such as *The Magical Power of Mark's Many Parents* and *Heather Has Two Moms and Three Dads*.[125]

If polyamorists are too busy to push for marriage rights, their supporters might fight the battle for them. In an influential document, "Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families and Relationships," released in 2006, over three hundred gay and lesbian activists and their supporters—including attorneys, academics, grassroots leaders, and luminaries such as Gloria Steinem, Barbara Ehrenreich, and well-known professors from the Ivy Leagues—called for "legal recognition for a wide range of relationships, households and families" including "households in which there is more than one conjugal partner."[126]

## *Polygamy*

No one can predict the legal future of polyamory. But in a startling development coming from a very different direction, another challenge to the concept of marriage and parenthood as involving two people is resurging—polygamy, a marriage form with deep roots in human history and still in evidence in many parts of the world.

The debut in spring 2006 of HBO's television series, *Big Love*, which featured a fictional and in some ways likeable polygamous family in Utah, propelled polygamy to the front pages of American newspapers and put the idea of legalized polygamy "in play" in some surprising quarters. That March, a *Newsweek* article with the title "Polygamists Unite!" quoted an activist saying, "Polygamy

is the next civil rights battle." "If Heather can have two mommies," he argued, "she should also be able to have two mommies and a daddy."[127] That weekend on the *Today* show, hosts Lester Holt and Campbell Brown gave a sympathetic interview to a polygamous family.

During the same month, the *New York Times* devoted much attention to the subject of polygamy. One article featured several polygamous women watching *Big Love*'s pilot episode and sharing such perspectives as "[Polygamy] can be a viable alternative lifestyle among consenting adults."[128] In another piece, an economist snickered that polygamy is illegal mainly because it threatens male lawmakers who fear they would not get wives in such a system.[129] In an opinion piece, then-columnist John Tierney argued that "polygamy isn't necessarily worse than the current American alternative: serial monogamy." He concluded, "If the specter of legalized polygamy is the best argument against gay marriage, let the wedding bells ring."[130]

Not to be outdone, the cover of the June 19, 2006, *New Yorker* featured three lovely brides and a beaming groom driving away in a convertible with "Just Married" scrawled across the trunk. More recently, polygamy has gone to the heart of middle America with a TLC reality television show, *Sister Wives*, which features one man, four "wives" (he is legally married only to one of them), and sixteen combined kids.

It is not just *Big Love* and *Sister Wives* that are putting polygamy in play in the West. In a development that shocked many Canadians, two government studies released by Canada's justice department in 2006 recommended the decriminalization of polygamy, with one arguing that the move was justified by the need to attract more skilled Muslim immigrants. As a government case against a band of polygamists in British Columbia continues to wind its way through the court system, a Canadian civil liberties group recently published an op-ed in the *Montreal Gazette* arguing that Canada's ban on polygamy should be "relegated to the scrap heap of history."[131]

Across the pond, in Britain in February 2008 the government "cleared the way for husbands with multiple wives to claim welfare benefits for all of their partners."[132] A government panel recommended that as long as Muslim men married multiple women in countries where such unions are legal, then all the spouses should be eligible for state aid. That same year it was revealed that in

the Netherlands polygamous marriages contracted elsewhere are commonly registered and recognized by Dutch authorities.[133]

In the U.S. and Canada a significant number of today's legal scholars are arguing, as Stanley Kurtz—who has written extensively on polyamory and polygamy—summarized, that "the abuses of polygamy flourish amidst the isolation, stigma, and secrecy spawned by criminalization."[134] Polygamy per se is not the problem, they claim, only "bad" polygamy.

The silence from these same pro-polygamy policymakers and commentators was deafening in spring 2008, when the state of Texas seized 437 children from a Fundamentalist Church of Jesus Christ of Latter-day Saints compound after receiving reports of child sexual abuse. Watching video of hundreds of pale women wearing identical ankle-length dresses and braided hair, reading reports of widespread abuse and pregnancy among girls under sixteen (including at least one sixteen-year-old who had allegedly already given birth at least four times), and hearing emerging details of routine "spiritual marriages" of young girls to very old men should be sobering, to say the least, for those who envision polygamy as just another mutually-satisfying arrangement among consenting adults. In truth, the practice of polygamy among Texas cult members has much more in common with how polygamy has been practiced historically and currently around the world than it does with any slickly produced episode of *Big Love*.

Here are the facts: Polygamy benefits powerful men. It denies less powerful men wives and consigns them, as young men, to the margins of society. It denies women access to and help from one husband. It denies children any real relationship with their fathers. It appears almost always to go hand-in-hand with the oppression of women and abuse of girls.

Over the last couple of years I have had the opportunity to meet several young people, men and women, raised in polygamous families in Africa. They tell stories of growing up fearful of the other mothers in the family, of each mother out to secure resources and attention for herself and her own children, of unavailable fathers, and of, not surprisingly, lots of family conflict. If we value freedom, women's rights, children's safety, and social stability, we should not legalize polygamy.

Given all this, why would any society that has long disavowed such unions now make the formal move toward full legal recognition of polyamory or polygamy? It is already happening incrementally in some nations. Historically, the limitation of marriage to two people has been far more flexible than its definition as a union of opposite sexes. Polygamy has flourished in many societies and exists in many places today. Some Western nations wishing to be sensitive to their Muslim immigrant populations are already moving towards some forms of recognition of polygamy. In the United States in 2011, a pending court case is offering a defense of polygamy, with lead counsel and noted legal scholar Jonathan Turley of George Washington University arguing that the Lawrence vs. Texas Supreme Court decision in 2003 should protect the private choices of polygamists.[135]

Another route to legalized group marriage could evolve via new court decisions and expert proposals that recognize group-parenting arrangements—something already occurring in the U.S., Canada, New Zealand, and Australia. Group-marriage proponents will likely ask: How can children with three legal parents be denied the same rights and protections that children with only two parents have? How can we deny legal group- parenting arrangements the right of marriage?

### *Three-Person Reproduction*

As we have seen in earlier discussions about the possibilities for reproductive cloning or same-sex procreation, exploding new intentional family forms are not just dependent on what adults are doing in the bedroom or even in the courtrooms. The hard sciences are also on the front lines and old-fashioned methods such as artificial insemination are just the beginning.

In September 2005, British scientists were granted state permission to create three-parent embryos. Researchers from Newcastle University soon announced that they had created human embryos from the combined DNA of one man and two women, and that they hope to be able to offer the option to couples within three to five years. The medical reason for their research lies with the fact that some genetic diseases are passed through mitochondrial DNA—that is, through the DNA that floats around the nucleus of a fertilized egg cell. By placing the nucleus of one woman's egg inside the egg of another woman who is not a genetic carrier of the disease, the scientists hope such research will allow women

in danger of passing a genetic disease on to their child to have the chance to bear healthy children of their own. The resulting child would carry the DNA of three persons—the nuclear DNA of one woman, the mitochondrial DNA of another woman, and the DNA found in the man's sperm cell.[136]

Here we enter one of those not-uncommon gray areas in the biotechnological revolution. Clearly, no one wants children to be born bearing painful and often deadly mitochondrial genetic disorders. Figuring out a way to help couples avoid passing such disorders on to their children seems like a laudable goal (especially given that such a treatment is surely preferable to routine testing and aborting of embryos that appear to be disabled). But what happens when these technologies move from being used to prevent genetic disorders and are employed instead to satisfy adult desires to have babies in unusual ways? There are already pressures for social and legal recognition of multiple-parenting unions. It seems plausible that people in at least some of these unions might wish to bear a child in which all three people are the genetic parents. If we already let adults make myriad procreative decisions under the banner of reproductive rights, why deny them this option?

Test cases could arise sooner than we think. Through a different route there are already numerous children—some of them approaching adulthood—who arguably have three biological parents. Since about 1985, it has been possible for a woman to conceive and carry a pregnancy conceived with another woman's egg. When the woman carrying the embryo not conceived with her own egg intends to be the mother, we call her the "mother" and the other woman the "egg donor." But when the woman who gives the egg intends to be the mother, we call *her* the "mother" and the woman carrying the embryo conceived with that egg the "gestational surrogate." (It *is* confusing. Women who do the *exact same things* are legally determined to be the "real" mother or "just" the egg donor or surrogate, depending on how the adults in question wish it to be.) Either way, the result is an embryo and—ultimately—a child conceived from one woman's egg, fertilized by the sperm of a man (who we call either the "father" or the "sperm donor"), and carried in another woman's womb.

In part as a result of these innovations, scientists are learning a great deal about how the process of gestation affects the genetic development of a fetus. Apparently, during gestation the embryo's genetic markers are switched on and off in reaction to the environment experienced in the womb. In other

words, the woman carrying the embryo physiologically shapes the resulting baby's DNA, even if her egg was not used to conceive the child, and thus she can be said to be a biological mother of the child as well. (And in fact, in the U.S. most state statutes say that the woman who gives birth to a child *is* the mother—these are among the statutes that must be circumvented to allow for the legalization of surrogacy).

Why are the reproductive functions of motherhood split in this way? In the beginning, would-be parents chose this method when the woman who wished to conceive could not—because of some health concern—carry a pregnancy, but still had healthy eggs that were capable of being fertilized. A heterosexual couple confronting infertility on the woman's part, depending on the nature of the infertility, could contract with a gestational surrogate mother to carry the baby on their behalf. But increasingly, the reproductive functions of motherhood are also split by choice, and not just because of the intended mother's health concerns.

Today, many in the surrogacy business claim that it is emotionally easier for the surrogate mother to relinquish the child (and spare the commissioning parents messy legal battles) if she is not the genetic mother of the child. If a couple cannot provide their own egg (some heterosexual couples cannot, and all gay male couples cannot), surrogacy brokers recommend that the commissioning couples get their egg from one source and have the resulting embryo implanted in a different woman. It's easier for everybody, they claim. The surrogate is said not to attach to the child if she knows the baby was conceived with another woman's egg. The egg donor is usually out of the picture entirely. And the commissioning parents are supposed to be able to relax and stop worrying that the surrogate will change her mind and keep the baby in the end.

Yet percolating beneath this seemingly straightforward rationale (which nevertheless has not been subjected to any real scientific investigation) is a thick brew of classism. Look at who gay and straight couples seek out when they look for their egg donor and their surrogate. The egg donor? Good looking, athletic, high SAT scores, Ivy League degree a major bonus. An accomplished cellist? Even better. What about the typical surrogate mother? Not a graduate of an elite college, and maybe even not a college grad. She's probably a single mother or married to a working-class or military man, and is just looking for some income to help her and her kids.

So forget those tear-jerkers about surrogates with hearts of gold and parents who will do anything for them out of gratitude. In truth, once commissioning parents could figure out how to get a working-class surrogate to carry a baby that was conceived with the egg of a young, gorgeous, ambitious woman who would never *dream* of carrying another woman's child, they embraced the option with gusto.

Meanwhile, how do children feel when the reproductive functions of motherhood are split—when they have two women who could be said to be their biological mother and perhaps another legal mother as well? How do they make sense of the concept of motherhood? How does the story of their conception affect their attitudes and values as they themselves approach childbearing age? We have no idea, because nobody has ever asked them.

## FOUR- AND FIVE-PARENT FAMILIES

### *Conceiving Children with Four or Five Legal, Social, Biological, and/or Gestational Parents*

Canadian ethicist Margaret Somerville once began a talk with a description of a *New Yorker*-type cartoon she had seen. It depicted a kindly woman and a young child standing in front of six people. The woman is telling the child, "This is your intended mother, this is your intended father, this is your egg donor, this is your sperm donor, this is your surrogate—and this is your psychiatrist to help you sort it all out."

Everybody laughed uncomfortably. It is painfully true that, today, children can have as many as four or five people who might all qualify as their legal or biological parents. Judges in some countries are beginning to assign children three legal parents. And if as many as five people can be the intended or biological parents of a single child, there is no reason to think the law will stop at assigning that child only three legal parents. Why make the sperm donor a legal parent but not the egg donor? Why make the egg donor a legal parent but not the surrogate who carried the child, who shaped the child's genetic development in the womb, and whose body will forever bear the marks of the child's delivery? Listen, for example, to Dr. Kamal Ahuja, a physician from the London Women's Clinic, who recently observed, "The definition of a traditional family is progressively fading. Though we had concerns some years ago, the evidence

now is that we need not worry in terms of same-sex parenting." He went on: "Families of the future may combine up to five parents. Regardless of culture, the evidence is that children adapt well and it's the quality of the nurturing environment which is important."[137]

### *Co-Parenting "Bothies"*

Welcome to San Francisco, headquarters for the "bothies" movement. Google the term "bothy," and you're more likely to find hits for Scottish hiking associations (apparently, it's also the name for the special huts built for hikers in Scotland) than you will for a new form of intentional parenting. But follow the newspapers of San Francisco long enough and you'll catch on.

Meet new parents Bevan Dufty and Rebecca Goldfader. As San Francisco city supervisor and an openly gay man, Dufty was something of a local celebrity when he embarked on creating his intentional family. Goldfader, a nurse practitioner, Pilates instructor, and a lesbian, joined him in the limelight when they made the rather unusual decision to conceive a child and try, somehow, to raise it together. A local media storm quickly brewed. Was Dufty, a leading gay rights activist, selling out? Was Goldfader joining the ranks of women who identify as lesbian until they decide to marry and settle down with a man? By stating publicly that they felt it was important for their child to know both biological parents, were they implicitly criticizing the decisions made by many other gay and lesbian parents?

Not at all, Dufty and Goldfader responded. They were merely joining the ranks of lesbian and gay parents who want to keep both biological parents involved in the child's life and make room, at the same time, for their own loves or life partners. It is not unusual for gay and lesbian parents to be raising children conceived in previous heterosexual or homosexual relationships and *then* bring new lovers into the picture as parental figures. What makes the decisions of would-be parents like Dufty and Goldfader groundbreaking is that before a child is even conceived, they are planning how to have it all—same-sex partners for each of the parents and a child who knows and spends at least some part of childhood with both mom and dad.

About Dufty and Goldfader, the *Bay Area Reporter* explained, "While not romantically involved, the pair does identify as a couple and plans to live

together, and like many traditional partnerships, theirs revolves around having children and creating family":

> *When this [pregnancy] happened, I called Bevan and said, "You can never leave me," laughed Goldfader, who only half-jokingly characterizes herself as the "wife" in her relationship with Dufty. "This [pregnancy] is not changing our relationship," nodded Dufty. "This is our relationship."*[138]

During the years that it took for them to hatch the idea and finally to get pregnant, both Dufty and Goldfader had already had several relationships each. But once the child was born, in addition to each of them being a legal "co-parent" of the child, they "both envision[ed] that their long-term partners would have parental roles and rights as well." They planned to buy a duplex together with each having a floor as their own home for themselves, their future partner, and for the child to live with each of them one week at a time. The reporter quoted Beth Teper, executive director of Children of Lesbians and Gays Everywhere (COLAGE), to underscore that such a plan is not at all unusual:

> *"Queer families have been creating and forming their families in all the ways they can throughout the last millennium. There are many gay families that co-parent," said Teper, adding that COLAGE has several member kids known as "bothies," meaning they have two gay dads and two gay moms. Some of those families began as four-way agreements. In other situations, romantic relationships began after the children were born to co-parents, and the biological parents were able to add legal protections for their lovers through contracts and court rulings later.*[139]

Not long after the birth of Dufty and Goldfader's child, another parent of a soon-to-be-born "bothy" wrote a piece in the *San Francisco Chronicle* describing his own arrangement with three other people. With the child due within weeks he remarked that he, his partner, and the lesbian couple with whom they have conceived the child have been "on the receiving end" of plenty of intrusive comments and questions as they planned their baby's conception and arrival. Dad-to-be Bill Delaney addressed some of the most frequent questions asked in his column:

> *Where will our child live? Initially, he/she will live with mom while breastfeeding. Once weened [sic], our baby will spend one week each between*

*parents. By the time our child is ready to start kindergarten, we will have either bought a home together, or separate homes within walking distance of each other….*

*What about holidays/special occasions/etc.? We all come together. We will never make our kid shuttle between parents beyond the basic living arrangements.*

*What if one of the couples splits up? Again, it's all about our child. We will not freeze out a parent out of spite, which would be damaging to our kid. We will also decide which residence is the best for our kid's needs….He/she will not be shuttled among four homes.*[140]

Delaney's sunny description of the foursome's legal agreements about the child's life is filled with bizarre assumptions such as the idea that "shuttling" back and forth between two homes every week will be fine for the child, but they would "never make our kid" do more than that: "He/she" will not be shuttled among four homes." (Eerily, the possibility of shuttling between three homes is not mentioned.)

What is especially notable about Delaney and company, as well as Dufty and Goldfader, is that these would-be parents spell out in great detail how well everything will work out after the child is born. But I would like to read the media stories about the foursomes who set up this kind of pre-conception arrangement fifteen to eighteen years ago and remain a stable foursome, carrying out their contract as planned.

While journalists and scholars are tracking down examples of such committed foursomes, you can check your local family court docket for stories about the ones who do not work out. One example is the foursome in Florida written about in "Mamas vs. Papas: Two Gay Couples Fight over Custody of Child" in the July 16, 2009, *Miami New Times*.

Here are the facts in the case: Five years earlier, a lesbian couple began trying to have a baby. Inseminations with anonymous donor sperm kept failing—"Katherine" was not getting pregnant. Then the couple started talking with their friend "Ray," a gay Air Force veteran with a partner of his own. With Ray's sperm, Katherine conceived, and the two couples planned to raise the baby boy together.

Then Katherine and her partner decided to move to California and take the boy with them. Ray and his partner sued in 2008. After considering the case, a Miami-Dade Circuit Court judge ruled that even though Ray was the child's biological father, and even though the child's mother had put his name on the birth certificate when the child was born, Ray was merely a sperm donor and had "no rights." Ray's lawyer called this case "the most tragic case of my career." Katherine's lawyer says she and her partner "feel like their family unit is being attacked." Ray immediately began planning his appeal.[141]

Not surprisingly, once the daydream of four people orbiting agreeably around one beloved child hits reality, it is unlikely to last for long. With parenthood, conflict abounds. Cloth diapers or plastic? Organic baby food or the cheap stuff? Raised in your religion, mine, some combo, or none? Who will take time off work for the doctor's appointment? Who will put in the long, hands-on hours with the child? What if the child actually has needs beyond the typical highly needy child? What if he or she is autistic or has a heart defect? What if the child has a defiant disorder and none of the adults particularly enjoys spending time with him? Or, what happens when one member of the foursome gets a great job offer elsewhere or a new lover with a cuter toddler, and the old fantasy just isn't quite as exciting anymore…

Undoubtedly, some of these "bothy" scenarios do not even make it past the planning stage for exactly these reasons. Not long ago, while lunching with a friend I heard about a similar situation. My friend told me about his grown niece, a woman raised as a pastor's kid who with her new husband (whom she married later in life) attended a mainline Protestant church. Her husband wanted a child, she was ambivalent and probably too old to conceive, but wanted to be sensitive to his wishes. At their church they met a lesbian couple with whom they became friends. When they learned that the lesbian couple also wanted a child, the two couples hatched a plan in which the husband would inseminate one of the lesbian women and all four would raise the baby together. The plan was derailed when her husband instead had an affair with a woman who lived down the street and left my friend's niece for that woman.

After three or four decades of widespread divorce, this is where we have arrived. Our society has so normalized the divorce experience for children that nice people (for I am certain that Dufty and Goldfader and Delaney and all the rest are for the most part perfectly nice people) do not bat an eye about setting up a split life for their child before the child is even conceived. And even

if they manage to keep their four-parent units together, the children in these scenarios will never actually *live* with their biological mothers and fathers at the same time. So while all these would-be parents invest their time and energy in rallying their foursome, scheduling their inseminations, and completing their reams of legal paperwork, I invite them to spend at least a little time learning about the experience of those who *have* grown up shuttling between two worlds.

Not long ago, with Norval Glenn of the University of Texas at Austin, I completed the first national survey in the U.S. of grown children of divorce.[142] We found that even young people who grew up in a so-called "good divorce," one in which their divorced parents got along reasonably well and stayed involved in their lives, still suffered negative effects. For example:

- Even in a "good" divorce, half (52 percent) of young adults from divorced families say that family life after the divorce was stressful, as compared to 6 percent from happy marriages and 35 percent from unhappy but low-conflict marriages.

- Almost a third who grew up in a "good" divorce (30 percent) say they were alone a lot as children, as compared to 5 percent from happy marriages and 21 percent from unhappy but low-conflict marriages.

- Half (51 percent) report they always felt like adults, even as little kids, as compared to 36 percent from happy marriages and 39 percent from unhappy but low-conflict marriages.

- Almost a third (29 percent) say their divorced parents' versions of truth were different, as compared to 12 percent from happy marriages and 24 percent from unhappy but low-conflict marriages.

- Over half (53 percent) say they experienced many losses in their lives, as compared to 37 percent from happy marriages and 42 percent from unhappy but low-conflict marriages.

The idea that a "good" divorce is good for children is popular. But we found that while an amicable or "good" divorce is better than a bad divorce, it is inaccurate and misleading to describe the children's experience as "good."

The vast majority of young adults in our study—80 percent—said their parents did *not* have a lot of conflict after the divorce. So foursomes who want to create a "bothy" would be ill-advised to write off the pain of children of the "good" divorce as merely due to the divorce itself or to post-divorce conflict. Instead, the young adults told us that the structure of growing up in two worlds *itself* created much of the stress. They felt like space cadets, never knowing where their homework or book bag was. As they grew older it was a burden to have to "visit" their parents when other kids their age never had to think about such things—their parents were just there, in the background, and taken for granted. That just as adults would find it nearly impossible to feel at home in two places (think about it—how many adults do it?) children do too. That when you are always on the move it is almost impossible to form and sustain rich relationships with family, friends, neighbors, and community. That when you have two homes rather than one, neither place fully feels like home.

A "good" divorce is the best thing anyone can hope for once two parents have already split—but it is nonetheless a rough life for a child. So I ask San Francisco, and the nation, why would anyone intentionally choose this life for a child who does not yet exist?

# 3. THE WANTED CHILD

While the language of "intentional parenthood" appears to have originated in the legal sphere in the 1990s, its roots go deeper. "Every child a wanted child" has long been a slogan of the pro-choice or abortion rights movement, and the idea of "planning" pregnancies is at least as old as Margaret Sanger's efforts to make contraceptives legal at the turn of the twentieth century. In our cultural dialog about pregnancy and childbearing, the idea that being planned and wanted is critically important to child well-being is broadly accepted. Overall, it seems to make sense that children who are wanted at the outset will have a better shot at becoming happy, healthy young people. I came of age in the post-*Roe v. Wade* era and feel like I can understand the points of view of reasonable people on both sides of the abortion debate pretty well. And yet I've been doing a lot of thinking lately about the consequences of assuming that intention or "wantedness" is a key ingredient for child well-being.

Last year, colleagues and I released a report titled *My Daddy's Name Is Donor: A New Study of Young Adults Conceived through Sperm Donation*. For that study we recruited from a panel of more than one million American households 485 young adults who had been conceived through sperm donation, 562 who were adopted, and 563 who were raised by their biological parents. (For more information about the study, see the text box on the following page.) Our aim was to study the identity, kinship, well-being, and social justice experience of donor-conceived persons.

As I got to thinking about our results, I was struck by the fact that our study could be seen as an attempt to examine whether and how much being "wanted" truly helps children. The first group in our study—the donor offspring—is a sample of entirely planned, intended, and presumably fiercely *wanted* children. There are no "accidents" among the donor offspring. They are here because their mothers—and perhaps others, but in most cases most specifically their mothers—wanted them.

The other two groups are more mixed. We know that in the U.S. today about half of pregnancies are unintended. I think we can assume that among the

# My Daddy's Name Is Donor:

***A New Study of Young Adults Conceived through Sperm Donation***, co-investigated by Elizabeth Marquardt, Norval D. Glenn, and Karen Clark and released by the Commission on Parenthood's Future, reports a study on the identity, kinship, well-being, and social justice experiences of young adults who were conceived through sperm donation. It was published by the Institute for American Values in May 2010. The survey research firm Abt SRBI of New York City fielded the survey through a web-based panel that includes more than a million households across the United States. Through this method the co-investigators assembled a representative sample of 485 adults between the ages of eighteen and forty-five who said their mother used a sperm donor to conceive them, as well as comparison groups of 562 young adults who were adopted as infants and 563 young adults who were raised by their biological parents.

The study found that, on average, young adults conceived through sperm donation are hurting more, are more confused, and feel more isolated from their families. They fare worse than their peers raised by biological parents on important outcomes such as depression, delinquency, and substance abuse. Nearly two-thirds agree, "My sperm donor is half of who I am." Nearly half are disturbed that money was involved in their conception. More than half say that when they see someone who resembles them they wonder if they are related. Almost as many say they have feared being attracted to or having sexual relations with someone to whom they are unknowingly related. Approximately two-thirds affirm the right of donor offspring to know the truth about their origins. And about half of donor offspring have concerns about or serious objections to donor conception itself, even when parents tell their children the truth.

To learn more and to see tables and figures reporting the data, download a free PDF of the 135-page report, My Daddy's Name Is Donor, at FamilyScholars.org. A summary of fifteen major findings of the study can be found on pages 7 to 14 of the report.

adopted adults many were the results of unplanned pregnancies. Similarly, a good many of those raised by their biological parents were also probably unplanned. Among these two groups we find all the babies who come about as a result of messy, mostly uncontracepted sex.

So what does the study show? Does being explicitly planned—being most definitely *wanted*—spell terrific child outcomes, or at least better outcomes than for babies conceived in other ways? Actually, no. Quite the opposite. The donor offspring, those who are without a doubt the most uniformly wanted group at the outset, are, as a group, faring the *worst*. Compared to those who were adopted, they are hurting more and are more confused. They feel more isolated from their families. And compared to those raised by their biological parents, they suffer more often from addiction, delinquency, and depression.

Now, let's grant that being wanted by your mother remains a very good thing. I believe it is vitally important, not just for the child, but for the mother too. But, perhaps, being wanted at conception is not the only factor, or even the main factor, that matters when it comes to child well-being. Maybe what comes next—what family structure the child is born into or raised in—matters as much, if not more.

In today's debates about parenthood, the ideal of the wanted child is resounding again, this time among gays and lesbians advocating for access to reproductive technologies and legal recognition of their families. The buzz phrase in today's debates is "intentional parenthood." Some leaders in the gay and lesbian community like to say proudly: "None of our children are accidents." What is there possibly to be concerned about? They're all intended. They're all wanted.

But dig deeper and you'll learn that that "intention" is actually a hotly contested idea in today's family debates. For at least one group, the deliberateness or intention with which offspring are conceived in order to be separated from their biological parent is quite troubling. Some of the stories posted by donor-conceived persons at The Anonymous Us Project at AnonymousUs.org evoke these concerns about deliberate separation from fathers.[143] Or read what Damian Adams, a donor-conceived adult living in Australia, has to say concerning the difference between adoption and donor conception: "the key and most important difference is intent." Adoption, he says,

*is used as a last resort to ameliorate, but not solve, the tragedy of an existing child whose biological parents are unable for whatever reason to care for it. In this situation the people who have created the child never intentionally set out to create one that would have to be relinquished for adoption. It occurs either through accidental conception or circumstance. Donor conception on the other hand is a completely different kettle of fish. Even prior to the child's conception which is deliberately preplanned, the intent is to separate and deprive the child of one or both biological connections. It is not the result of happenstance or circumstance.*[144]

On the one side, advocates of family diversity argue that intention is basically synonymous with "good for children." The fact that the child is conceived on purpose makes it good. Plans on how to raise the child—whether, for example, the child will know and be raised by his or her own mother and father—don't really matter. On the other side, donor-offspring activists have a completely different point of view. They argue that deliberately inflicting a loss—the loss of the biological father, or mother, or both—*is precisely the problem*.

Let me hasten to note that few donor-offspring activists single out gay and lesbian parents as a particular concern. The largest issue that seems to unite most donor offspring is the strong belief that anonymity should be ended, that they have the right to know who their biological parents are. On the question of whether donor conception itself should be available as a means to have children, they are more divided, with some believing that better regulation is enough and others feeling that the practice itself should not occur.[145] When it comes to whether gay and lesbian persons should use these technologies, my impression is that donor-offspring activists generally either feel that donor conception should be available to pretty much anyone so long as far better protections for the child's right to know are put in place, or they believe that donor conception is *not* okay and they are against anyone—gay, straight, married, or not—using it. But because some of today's most vocal proponents of intentional parenthood are found among gay and lesbian leaders and their family law supporters, the debate about whether intentional parenthood really is the most important issue for child well-being necessarily gets tangled up in the debate about gay- and lesbian-headed families.

The main point is this: the value of intentional parenthood is not a settled question, but rather a hotly contested one. Do children do fine with one parent, or

three, or five? Do young people mourn the absence of their biological mothers and fathers in their lives? Can three-person units be as stable as admittedly already-fragile two-person units? Is there something special about trying to keep the man and woman who make the baby together, for the sake of the baby and each other, in what we call marriage? Are children commodities we commission to appease adult desires, or are they vulnerable creatures with individual human dignity, whose needs must come first? In today's global family debate, these are the questions on the table. Nothing less than the well-being of this and future generations of children is at stake.

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70. Stanley, Markman, and Whitton, "Maybe I Do."

71. For instance, girls in stepfamilies are slightly *more* likely to have a teenage pregnancy compared to girls in single-parent families, and much more likely to have a teenage pregnancy than girls in intact, married families. Children who grow up in stepfamilies are also more likely to marry as teenagers, compared to children who grow up in single-parent or intact, married families. See Institute for American Values, *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*, 2nd ed. (New York: Institute for American Values, 2005), 14.

72. Robin Fretwell Wilson writes, "These studies of fractured families differ in their estimates of the percentage of girls molested during childhood. However, regardless of

whether the precise number is 50% or even half that, the rate is staggering and suggests that girls are at much greater risk after divorce than we might have imagined." She continues: "Despite these studies, the idea that so many girls in fractured families report childhood sexual abuse strains credulity. Nevertheless, with more than seventy social science studies confirming the link between divorce and molestation, there is little doubt that the risk is indeed real. As difficult as it is to accept, a girl's sexual vulnerability skyrockets after divorce, with no indication that this risk will subside." "Children at Risk: The Sexual Exploitation of Female Children after Divorce," *Cornell Law Review* 86, no. 2 (January 2001): 256.

73. Joseph H. Beitchman et al., "A Review of the Short-Term Effects of Child Sexual Abuse," *Child Abuse & Neglect* 15, no. 4 (1991): 537–56; cited in Wilson, "Children at Risk," note 9.

74. Martin Daly and Margot Wilson, "Evolutionary Psychology and Marital Conflict: The Relevance of Stepchildren," in *Sex, Power, Conflict: Evolutionary and Feminist Perspectives*, ed. David M. Buss and Neil M. Malamuth (Oxford and New York: Oxford University Press, 1996), 9-28; cited in Family Scholars, *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences* (New York: Center of the American Experiment, Coalition for Marriage, Family and Couples Education, and Institute for American Values, 2002).

75. Citing W.D. Hamilton, "Significance of Paternal Investment by Primates to the Evolution of Adult Male-Female Associations," in D.M. Taub, ed., *Primate Paternalism* (New York: Van Nostrand, 1964), 309–35.

76. Citing M.S. Smith, "Research in Developmental Sociobiology: Parenting and Family Behavior," in Kevin B. MacDonald, ed., *Sociobiological Perspectives on Human Development* (New York: Springer-Verlag, 1988), 271–92.

77. David Popenoe, "The Evolution of Marriage and the Problem of Stepfamilies: A Biosocial Perspective," in Alan Booth and Judy Dunn, ed., *Stepfamilies: Who Benefits? Who Does Not?* (Hillsdale, NJ: Lawrence Erlbaum Associates, 1994), 9.

78. Even in stepfamilies, the second parent figure must adopt the child in order to be a legal parent to that child. And in order to adopt the child, the child's other biological parent must give up his or her parental rights or have them terminated—a grueling process and one not undertaken lightly by courts—with the result that most stepparents remain in a quasi-legal relationship with the children in their care.

79. Charlotte J. Patterson, "Children of Lesbian and Gay Parents," *Current Directions in Psychological Science* 15, no. 5 (October 2006): 241–44.

80. See "Executive Summary and Fifteen Major Findings," in Elizabeth Marquardt, Norval D. Glenn, and Karen Clark, *My Daddy's Name Is Donor: A New Study of Young Adults Conceived through Sperm Donation* (New York: Commission on Parenthood's Future, 2010), http://www.familyscholars.org/assets/Donor_summ_findings.pdf.

81. Patterson writes in "Children of Lesbian and Gay Parents":

*There were no significant differences between teenagers living with same-sex parents and those living with other-sex parents on self-reported assessments of psychological well-being, such as self-esteem and anxiety; measures of school outcomes, such as grade point averages and trouble in school; or measures of family relationships, such as parental warmth and care from adults and peers. Adolescents in the two groups were equally likely to say that they had been involved in a romantic relationship in the last 18months, and they were equally likely to report having engaged in sexual intercourse. The only statistically reliable difference between the two groups—that those with same-sex parents felt a greater sense of connection to people at school— favored the youngsters living with same-sex couples. There were no significant differences in self-reported substance use, delinquency, or peer victimization between those reared by same- or other-sex couples (Wainright & Patterson, 2006). (242)*

82. Affidavit of Steven Lowell Nock, *Halpern v. Attorney General*, Ontario Superior Court of Justice, Court File No. 684/00, 2, http://marriagelaw.cua.edu/Law/cases/Canada/ontario/halpern/aff_nock.pdf.

83. See Maggie Gallagher and Joshua K. Baker, "Do Mothers and Fathers Matter? The Social Science Evidence on Marriage and Child Well-Being," iMAPP policy brief (Washington, DC: Institute for Marriage and Public Policy, February 27, 2004).

84. Nanette Gartrell and Henry Bos, "US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents," *Pediatrics* 126, no. 1 (July 2010), 28–36, http://pediatrics.aappublications.org/content/126/1/28.full.

85. Elizabeth Marquardt, Norval D. Glenn, and Karen Clark, *My Daddy's Name Is Donor: A New Study of Young Adults Conceived through Sperm Donation* (New York: Commission on Parenthood's Future, 2010), http://www.familyscholars.org/assets/Donor_FINAL.pdf.

86. Ibid.; see summary of "Fifteen Major Findings," 7–14.

87. Jesse Gilbert, quoted in Abigail Garner, *Families Like Mine: Children of Gay Parents Tell It Like It Is* (New York: Harper Paperbacks, 2005), 9.

88. *Family Edge*, weekly newsletter, no. 115 (August 1, 2007).

89. In summer 2008 the newly enacted law was tabled until the fall, so that further debate could be had, after a public outcry ensued over the law's passage.

90. 365Gay.com Newscenter Staff, "Mass. Gay Marriages Lead to Increase in IVF," www.365gay.com, December 7, 2007.

91. "Insemination Rights for Lesbians," Reuters, June 2, 2006, posted at www.news.com.au.

92. "Attacks on gays and lesbians 'high'" *Victoria News*, August 3, 2005, http://news.ninemsn.com.au.

93. The Associated Press notice that ran in the *New York Times* on June 18, 2008, read:

> *Gay men and lesbians in Norway will be granted the same rights as heterosexuals to marry and to adopt children under a law approved by the upper house of Parliament. It replaces a 1993 law that gave gay men and lesbians the right to enter civil unions, but did not permit church weddings or adoption. The law also allows lesbians to have artificial insemination. Individual churches and clergy members may perform weddings for gay men and lesbians, but will not be legally obligated to do so.*

94. The link was www.parentsincluded.com. The site is no longer active.

95. See http://groups.yahoo.com/group/to-parent/. Note that the term "co-parent" evolved during the divorce revolution, as mothers and fathers were urged to be effective "co-parents" in the wake of their split. The term is now also commonly used to describe situations in which two or more men and women (who may be gay or straight) plan to conceive and raise a child together without being involved in a romantic relationship and usually without living together.

96. "Center Kids, Center Families Sperm and Egg Mixer!" The Gay, Lesbian, Bisexual and Transgender Community Center, http://www.gaycenter.org/node/2452.

97. The ad listed a P.O. Box and advised: "Must be white, in good health, no family history of ADD or ADHD please." Website viewed July 12, 2005; link is no longer available.

98. Rosanna Hertz, *Single by Chance, Mothers by Choice: How Women Are Choosing Parenthood without Marriage and Creating the New American Family* (Oxford and New York: Oxford University Press, 2006), 81. Further references to this work will be cited parenthetically within the text.

99. James Meikle, "Sperm and Eggs Could Be Created from Stem Cells, Says New Study," *Guardian*, June 20, 2005, http://www.guardian.co.uk/science/2005/jun/20/genetics.health.

100. Maxine Firth, "Stem Cell Babies Could Have Single Parent," *New Zealand Herald*, June 21, 2005, accessed online.

101. Milanda Rout, "Doing Away with Donors," *Herald Sun* (Australia), June 21, 2005, accessed June 22, 2005.

102. "Stem Cell Research May Provide Hope to Gay Couples," Proud Parenting.com, June 30, 2005, accessed July 2, 2005.

103. See Bijal P. Trivedi, "The End of Males? Mouse Made to Reproduce without Sperm," *National Geographic News,* April 21, 2004, http://news.nationalgeographic.com/news/2004/04/0421_040421_whoneedsmales.html.

104. Associated Press, "Sperm Donor Ordered to Pay Child Support," *Pittsburgh Post-Gazette*, May 10, 2007, http://www.post-gazette.com/pg/07130/784968-100.stm.

105. In January 2009 in a Toronto family court, a lesbian couple who had used a "known donor"—a gay friend—lost a challenge. The lesbian biological mother and the gay biological father are the child's two legal parents. The three parties (the lesbian couple and the father) had agreed in a contract before the birth that they would seek a three-parent adoption, which would require a court challenge, but they never did. The lesbian mothers had a falling-out with the gay father, who has maintained a relationship with the child all along. The couple sought to have the second lesbian mother named as the child's adoptive second parent, a move that would require termination of the father's parental rights. The father refused and a family court judge sided with him. Advocates commented that this ruling could have a chilling effect in Canada on lesbian couples choosing to use a known rather than an anonymous sperm donor. See Shannon Kari, "Gamete Donor Rights: Court Back Parental Right of Known Sperm Donor; Ruling May Affect Lesbian Couples," *National Post* (Canada), January 20, 2009.

106. Parts of this argument were first published in Elizabeth Marquardt, "When 3 Really Is a Crowd," op-ed, *New York Times*, July 16, 2007, http://www.nytimes.com/2007/07/16/opinion/16marquardt.html.

107. Shannon Kari, "Ruling may affect lesbian couples," *National Post*, January 30, 2009, accessed online January 30, 2009.

108. See Law Commission of Canada, *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships* (Ottawa: Law Commission of Canada, 2001), cited in Dan Cere, Council on Family Law, *The Future of Family Law: Law and the Marriage Crisis in North America* (New York: Institute for American Values), 32, http://www.marriagedebate.com/pdf/future_of_family_law.pdf.

109. Gillian Douglas, *An Introduction to Family Law*, Clarendon Law Series (Oxford: Oxford University Press, 2001), 30–31, cited in Cere, *Future of Family Law*, 32.

110. Elizabeth Emens, "Monogamy's Law: Compulsory Monogamy and Polyamorous Existence," *New York University Review of Law and Social Change* 29, no. 2 (February 2004): 277–376.

111. Ibid., 7.

112. See Roger Rubin, "Alternative Lifestyles Today" in *Handbook of Contemporary Families*, ed. Marilyn Coleman and Lawrence H. Ganong (Thousand Oaks, CA: Sage Publications, 2004), 32–33, cited in Cere, *Future of Family Law*, 32.

113. "Ways to Be Unmarried," Alternatives to Marriage Project, www.unmarried.org.

114. Unitarian Universalists for Polyamorous Awareness, www.uupa.org.

115. Jessica Bennett, "Only You. And You. And You. Polyamory—Relationships with Multiple, Mutually Consenting Partners—Has a Coming-out Party," *Newsweek*, July 29, 2009, http://www.newsweek.com/2009/07/28/only-you-and-you-and-you.html.

116. Ibid.

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118. Bennett, "Only You."

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120. Ibid.

121. Ibid.

122. Ibid.

123. Bennett, "Only You."

124. See "Polyamory-Related Books," http://www.polychromatic.com/kids.html.

125. The Polyamory Society Children Educational Branch, http://www.polyamorysociety.org/children.html.

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