

ADOPTIVE HOMES AND THE MEANING OF FAMILY: IMPLICATIONS FOR GAY AND LESBIAN PROSPECTIVE PARENTS

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Restrictions on the adoption rights of gay men and lesbians limit their possibilities to become parents, even as thousands of children wait to be placed in adoptive families in the United States. This article will review past and current policy on gay and lesbian couple adoption in the United States. Policy changes are then suggested to expand the definition of adoptive families and to create non-discriminatory adoption guidelines to protect gay men and lesbians as legitimate families. Finally, the role of social workers and their responsibility under both the laws and systems of adoption protocol will be explored.

While thousands of U.S. children eligible for adoption languish in foster care, discriminatory policy and practice continue to restrict the rights of many prospective parents seeking to adopt. The passage of the 1997 Adoption and Safe Families Act (ASFA) accelerated the termination of parental rights, predictably increasing the number of children waiting for safe and permanent placements (Kenyon, Chong, Enkoff-Sage, & Hill, 2003). In addition, ASFA no longer defines interventions by risk of harm to the child, but by “the best interest of the child” criterion. According to the Adoption and Foster Care Analysis and Reporting System (U.S. Department of Health and Human Services Administration for Children and Families, 2004), there were approximately 118,000 children waiting to be adopted as of August 4, 2004. Ricketts (as cited in Brooks & Goldberg, 2001) noted that there is a widespread recognition that the pool of prospective adoptive parents is dwindling. A viable group of prospective parents, though, has yet to receive adequate, fair, and just governmental consideration under adoption policies. The research is unequivocal that gay men and lesbians are equally qualified to provide adoptive homes for children. However, without a clear definition for the best interest of the child, courts, states, and governments continue to allow homophobia to dictate the future of children’s lives.

According to Adams, Jaques, and May (2004), there are as many as two to ten million gay men and lesbians in the United States who are parents to

an estimated 14 million children. Despite these numbers, studies have shown that gay men and lesbians encounter many obstacles throughout the process of becoming prospective adoptive parents. Adoption policies affecting gay men and lesbians vary from state to state, county to county, and often judge to judge. Due to the absence of federal policy regarding adoption, gay men and lesbians are subject not only to state law but are at the mercy of local judges who base adoption decisions on the broad best interest of the child criterion. These decisions may be influenced by personal bias, discrimination, and political agendas, and continue to perpetuate homophobia in social policies (Benkov, 1994). Some officials fear that placing children in gay and lesbian homes may not be in the best interest of the child; however, scientific research demonstrates that children who grow up in households with gay and lesbian parents fare just as well in emotional, cognitive, social, and sexual functioning as children whose parents are heterosexual (Drucker, 1998; Patterson, 1992; Perrin, 2002; Raymond, 1992; Steckell, 1987). It is clear that based on the existing empirical research, gay men and lesbians deserve legal protections to qualify to become adoptive parents to the growing number of children in need of permanent families.

Gay and Lesbian Adoption Policy

Adoption laws pertaining to gay men and lesbians are made on a state rather than federal level and are dictated by statutes, agency regulations, and court opinions, which may be fueled by political ideologies (Kenyon et al., 2003). While some states completely ban adoption by gay men and lesbians, other states implicitly prohibit gay couples from adopting by requiring that adoptive couples be married, a practice currently prohibited for gay men and lesbians in most of the country. The remaining states that do not have specific state laws addressing this issue make decisions based on the undefined best interest of the child criterion of the Adoption and Safe Families Act of 1997.

Currently, Florida is the only state that categorically prohibits gay and lesbian individuals from becoming adoptive parents through Florida Statute Ch. 63.041(3), which states that: "No person eligible to adopt under this statute may adopt if that person is a homosexual" (Appell, 2001, p. 76). According to the American Civil Liberties Union (2005), this statute, first enacted in 1977, has undergone several unsuccessful appeals, the last appeal denied by the Supreme Court in January 2005. According to the 2002 Human Rights Campaign Foundation Report (Bennett, 2002), New Hampshire enacted a law in 1988 to prohibit gay men and lesbians from

adopting children or serving as foster parents and barred heterosexual foster parents from having gay or lesbian people spend the night in the same house as the child. This law, though challenged in federal court and repealed in 1999, illustrates how homophobia can influence policies and legislation and continue the cycle of oppression on not only prospective gay and lesbian parents, but also those who are friends or family of gay men and lesbians.

As mentioned previously, laws may implicitly deny gay and lesbian couples from adopting through the use of carefully designed but blatantly homophobic language. For example, Utah passed a law in 2000 prohibiting adoptions by a person who is cohabitating in a relationship that is not a legally valid and binding marriage under the laws of the state (Utah Code Ann. 78-30-1(3) (b)). According to the Families Like Ours Organization (2004), Oklahoma adopted a new law in 2004 stating that no office, court, or municipality in Oklahoma will legally recognize a joint adoption by two peoples of the same sex from another state or country (10 O.S.2001, §7502-1.4). Despite the many states restricting gay and lesbian adoption, there are some states that explicitly permit joint adoption: California, Massachusetts, New Jersey, Vermont, New York, Maryland and the District of Columbia (Ryan, Pearlmutter, & Groza, 2004). State by state, the future of children's lives and the rights of gay men and lesbians are dictated by insidious homophobia.

The best interest of the child standard is the primary criterion for approving adoption in those states without specific statutes, although there is a considerable amount of flexibility in the factors that may be taken into account in evaluating an adoptive parent's suitability (Benkov, 1994; National Center for Lesbian Rights, 2004). Decisions are often made by court judges and child welfare workers that make recommendations on the resources, strengths, and personalities of the family, as well as the family's overall motivation for adoption. However, because of the void of formal policy in this area, it can be a subjective process, allowing for the influence of personal bias and prejudice. In *Pima County Juvenile Action B-10489*, the court denied a bisexual man an adoption petition on the grounds that, "he testified that it was possible that he at some future time would have some type of homosexual relationship with another man" (Ariz. Ct. App. 1986). The role of personal bias, as shown in this case, heavily impacts the rights of gay men and lesbians to adopt. Yet, while there continues to be discriminatory laws against gay and lesbian families, other judges attempt to separate judgments on sexual orientation from parenting capabilities. For example, in *Adoption of Evan*, a New York judge ruled, "an open lesbian relationship is not a reason to deny adoption because a child's best

interest is not predicated on or controlled by parental sexual orientation” (Sur. Ct. 1992). The cycle of oppression will continue to perpetuate without appropriate policies to prevent decisions based on personal bias, homophobia, or both.

Those opposing the idea of gay men and lesbians as adoptive parents may use the following arguments to conclude that licensing a home for adoption or foster care is not in the best interest of the child: the child will be harassed or ostracized, the child might become gay or lesbian, the child’s moral well-being may be harmed, and that the child may be molested (Adams et al., 2004). Empirical research supports that these arguments are unsubstantiated. Children of gay and lesbian parents are equally successful in their developmental process compared to the children of heterosexual parents (Mallon, 2000; Perrin, 2002; Sullivan, 1995). For example, Mallon found that a child is 100 times more likely to be sexually molested by a heterosexual partner of a relative than by someone who identifies as being gay, bisexual, or lesbian. Patterson (1992) noted that studies assessing children born to gay or lesbian parents in twelve different samples showed no disruption in the normal course of their sexual identity development. Despite this research, the best interest of the child standard unjustifiably denies adoption to gay men and lesbians. This is evident as judges, child welfare workers, and social workers continue to equate homosexuality or bisexuality with deviant behavior and uphold the current adoption guidelines that perpetuate such notions as acceptable ways of thinking (Raymond, 1992).

The failure of courts to recognize that gay and lesbian adoptive homes are in the best interest of the child has an adverse effect on those children waiting to be adopted. Children remaining in foster care are denied secure attachments (Patterson, 1992) and have been found to have low self-esteem, confidence, and overall satisfaction of life (McDonald, Alle, Westerfelt, & Piliavin, 1996). In a study conducted by Taigelman and Silverman (as cited in Bartholet, 1994), it was found that permanent placements in adoptive homes for those children waiting in foster care are more conducive to the overall well-being of the child. Additionally, the failure of the law to recognize gay men and lesbians as viable parents creates a culture of fear and hate, ultimately allowing for homophobia to permeate the lives of children and families in society. For example, children of gay and lesbian families are often subject to teasing and harassment within their peer group (Drucker, 1998; Patterson; Raymond, 1992). Patterson states that protection of gay and lesbian families, “demands that courts and legislative bodies acknowledge nontraditional families,” and that the failure to acknowledge

these families will pose “great difficulty in serving the ‘best interest of the child’” (p. 1037). It is imperative that policy be created to not only protect the rights of prospective gay and lesbian parents, but also to support children of nontraditional families who are affected by the current policies that allow for homophobic discrimination to continue.

Proposal for New Legislation

As cited previously, empirical research is persuasive in demonstrating that there is no significant difference between gay and non-gay parents in emotional health, parenting skills, and attitudes toward parenting and should therefore be considered as suitable families for the growing number of children in foster care. Notably, neither the Adoption Assistance and Child Welfare Act of 1980, nor the newer Adoption and Safe Families Act (ASFA) of 1997, delineate a useful standard for defining a family. Crawford (as cited in Kenyon et al., 2003) proposed that by not clearly defining the family, “the interpretation of the appropriateness of nontraditional families is left vulnerable to the values and biases of professionals and communities” (p. 572). According to the U.S. Census Bureau, by 2010, only 20% of the total number of households nationwide will be comprised of the traditional two-parent heterosexual families (U.S. Bureau of the Census, 1996). Nontraditional families, such as those headed by gay men and lesbians, are increasing within the United States and federal policymakers need to protect the rights of these families.

There are many prominent professional organizations that support gay and lesbian families and adoption, such as the Child Welfare League of America, the American Psychiatric Association, the American Psychological Association, the American Academy of Pediatrics and the National Association of Social Workers (NASW). It is in the spirit of these organizations that new legislation be proposed to redefine “family” as the first step towards assuring full adoptive rights to gay and lesbian families, supporting the welfare of children in foster care, and allowing for equal opportunity within the adoption process. An amendment to the Adoption and Safe Families Act should be proposed to clearly define the family so as to accommodate the growing need of adoptive parents and nontraditional families within the United States and to reduce biased interpretations of placing children in gay and lesbian families. Family should be defined as any responsible caretaker(s) supporting the well-being of their children both financially and emotionally (Adams et al., 2004; Benkov, 1994; Drucker, 1998; Patterson, 1998). In addition, there should also be a clear

definition of the eligibility of adoptive parents. Lastly, adoption policies should be bound by the same anti-discrimination laws that set the standards in other facets of society. Equal opportunity to apply for adoption and the condition that no one will be subjected to race, gender, sexual orientation, or religious discrimination as criteria for adoption can shape new policies and state decisions on how the best interest of the child clause is interpreted.

Implications for Service Delivery to Children and Families

Social workers are trained to identify where the needs of society and the individual intersect and to promote change when these needs are compromised (Ben-Ari, 1998). In the case of gay and lesbian adoption, social workers are called upon to advocate for the rights of gay men and lesbians on an institutional, community, and individual level. Agencies and social workers continue to weigh their commitment to multiculturalism when working with gay men and lesbians seeking to adopt (Ryan et al., 2004). According to the NASW *Code of Ethics*, social workers should not practice any form of discrimination; however, social workers as well as child welfare providers may be bound by laws that allow prejudices or judgments about gay and lesbian families. For instance, in Richmond, VA, a state senate committee rejected a bill that would have required social workers involved in adoption cases to determine if the applicants are gay. It is critical for social workers to fight against these laws that promote discrimination. However, it is important to recognize that eradication of these laws does not necessarily impact personal views that may influence professional decisions. Prejudiced views on gay men and lesbians may continue to stem from several sources including family background, family values, religious beliefs, or other learned negative beliefs and attitudes about homosexuals (Sullivan, 1995). In addition to these biases, social workers and child welfare providers who do speak out against discrimination and advocate for gay and lesbian prospective parents also face their own risks. Social workers can be subjected to ridicule, ostracism and other career-limiting reactions if homophobia reduction is not respected among colleagues, peers, or supervisors (Ryan et al.).

In order to increase awareness of personal bias and discrimination, trainings in graduate schools as well as in state welfare and private agencies should be implemented to sensitize workers to the needs of the gay and lesbian community. In a study conducted by Ben-Ari (1998), social work students exposed to courses on individual, familial, and social aspects of homosexuality changed their attitudes towards gay men and lesbians

significantly. Ryan (2000) found that training focused specifically on adoptions by gay men and lesbians was the most significant predictor of social worker placement recommendation. Through these trainings, social workers and child welfare providers will be able to broaden their perceptions of family and advocate for the rights of gay and lesbian parents and the many children waiting in foster care.

Conclusion

An estimated 25 million individuals, 10% of the population, have identified themselves as having a sexual orientation other than heterosexual (Mallon, 2000). Excluding 25 million individuals from becoming adoptive parents, solely on the basis of sexual orientation, limits the opportunities for children who are in need of permanent families. Despite the many state laws prohibiting gay and lesbian adoption, multiple research studies have confirmed that it is in the best interest of the child to allow gay men and lesbians to be adoptive parents (Benkov, 1994). Unfortunately, personal bias, discrimination, and homophobia continue to be used systematically to shape policies affecting gay men and lesbians and inadvertently hurt children who wait for loving homes. Many of these children waiting to be adopted could find permanent families if laws and policies are inclusive of gays and lesbians and use scientific evidence and reason to set adoption standards. By undoing the unjust boundaries that currently restrict the adoption process, children can have a greater opportunity to find the support and love of a permanent family.

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