Children of Lesbian and Gay Parents: Research, Law and Policy

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On December 20, 1999, the Vermont Supreme Court ruled that the state must guarantee exactly the same protections for same-sex couples that it does for heterosexual couples (Goldberg, 1999). The Court left it to the Legislature to decide whether to accomplish this by legalizing same-sex marriages in Vermont, or by adopting a domestic partnership law that would provide all the protections afforded by marriage. To extend equal rights to gay and lesbian couples "who seek nothing more, nor less, than legal protection and security for their avowed commitment to an intimate and lasting relationship is simply, when all is said and done", the opinion stated, "a recognition of our common humanity" (quoted in Goldberg, 1999).

Thus began a new chapter in the history of legal and policy issues affecting children of lesbian and gay parents. As of this writing, the Vermont legislature is holding hearings and considering its next steps in light of the Supreme Court ruling. Will the results of this process allow children of lesbian and gay couples in Vermont to live, for the first time, with legally married parents? And, if so, will the United States Supreme Court ultimately decide that the same protections must be available in other states, as well? Or will Vermont decide instead in favor of a domestic partnership arrangement, in an effort to minimize the impact of the Vermont Supreme Court's ruling on our understanding of marriage and on the practices of other states? Or will the results take some third, as-yet unknown form? Whatever the ultimate decision, the outcome is very likely to have an important impact on children of lesbian and gay parents, both
in Vermont and in the rest of the United States. Thus, it is clear that the legal and policy landscape relevant to children of lesbian and gay parents is currently in flux.

In view of changing legal and policy environments, our aims in this chapter are threefold. We hope to provide a snapshot of the current legal and policy terrain, to supply an overview of social science research on children of lesbian and gay parents, and to offer recommendations for changes in law and policy that would benefit children of lesbian and gay parents. Our goals are thus to summarize the current status of legal and policy issues relevant to children of lesbian and gay parents in the United States today, to provide an overview of the research evidence about development among these children, and --- in light of the current knowledge base --- to outline some changes in law and policy that would benefit children growing up with lesbian and gay parents.

A preliminary question might be raised about the numbers of children involved in such discussions. How many children of lesbian and gay parents are there in the United States today? Many estimates have been offered, but reliable estimates of the numbers of lesbian and gay parents, and their children, are difficult to find (Badgett, 1998; Michaels, 1996; Patterson & Friel, in press). Early attempts to create such estimates were based on non-representative samples, and were subject to a number of biases. More recent efforts (Badgett, 1998; Patterson & Friel, in press) have drawn on population-based, representative (or near-representative) samples. Even so, difficult assessment dilemmas must be resolved regarding the ways in which participants are identified as lesbian or gay, on the one hand, and as parents, on the other. The impact of these decisions upon the size of estimates can be dramatic. If, for example, women are asked “are you a parent?”, many more lesbian women apparently respond in the affirmative than
if they are asked, "have you had a biological child?" (Badgett, 1998; Patterson & Friel, in press). The result is that, although there is common agreement that there are many lesbian and gay parents in the United States today, and although most commentators suggest that parenthood is becoming more common in lesbian and gay communities, there is little agreement as to the precise numbers of lesbian and gay parents and their children. The clearest conclusion is that there are very substantial numbers — almost certainly millions — of children with lesbian and gay parents in the United States today (Patterson & Friel, in press), and hence that legal and policy issues relevant to them affect sizeable numbers of Americans.

When considering lesbian and gay parents and their children, it is helpful to recognize the diversity of family constellations. One important distinction is between families in which children were born or adopted in the context of heterosexual marriages that later dissolved when one or both parents came out as lesbian or gay, on the one hand, and those in which children were born or adopted after parents had affirmed lesbian or gay identities, on the other. Families of the first type have undergone the tensions, separations, and reorganizations characteristic of parental divorce and separation, while families of the second type have not experienced these transitions. Thus, children's experiences are likely to be different in the two kinds of families.

Within each of these two general types of families, there are of course many additional kinds of diversity. Apart from the ethnic, religious, economic, and other forms of diversity that characterize other families, there are also a number of forms of diversity that are more specific to lesbian and gay family formation (Martin, 1993; Patterson, 1995-b). For instance, a lesbian couple and a gay couple may agree to conceive children together and raise them jointly. Variants on this type of arrangement might involve a gay couple and a single lesbian, or a lesbian couple
and a single man. The adults might or might not live in the same house, or in close proximity to one another. Children may be conceived by lesbian mothers using sperm from a known or an unknown donor, by gay men with help of a surrogate mother, or children may be adopted either in domestic arrangements or from abroad. For a number of reasons (e.g., international adoptions), many families also include members of more than one ethnic group.

Different kinds of lesbian- and gay-parented families have given rise to different types of legal and policy issues. For instance, child custody cases involving lesbian and gay parents may arrive in court when previously married heterosexual parents are divorcing, after one has come out as lesbian or gay, and the parents cannot agree on custody and visitation arrangements. In some jurisdictions, these cases may raise the question as to whether a parent’s sexual orientation should be considered in making custody and visitation arrangements for minor children; in others, they do not. If a lesbian couple has adopted a child together and subsequently separates, questions about custody and visitation may also find their way into court. Here, however, the issues raised are likely to be different ones. Because only one member of the couple is likely to be recognized as a parent by the law, questions may revolve around the standing of a second parent to bring a custody matter at all. Other kinds of lesbian- and gay-parented families may raise a variety of other legal and policy issues, including those involved with the use of reproductive technology, surrogacy, adoption, and foster care arrangements.

In the next section, we provide an overview of the legal and policy terrain for children of lesbian and gay parents in the United States today, with an eye to the diversity of issues and families involved. This is followed by a discussion of the research literature on children of lesbian and gay parents, and by recommendations for changes in law and policy that would
benefit children in lesbian- and gay-parented families.

**Legal Status of Lesbian and Gay Parents and Their Children**

Although the rights to marry and the rights to raise children as one sees fit are regarded by American law as fundamental, these rights have not been extended to lesbian or gay Americans. The rights to marry (*Loving v. Virginia, 1967*), to procreate (*Skinner v. Oklahoma, 1942*), and to raise children (*Meyer V. Nebraska, 1923*) have long been held by the United States Supreme Court to be fundamental, and as such, have been seen as guaranteed by the Constitution. However taken for granted these rights may be by the majority of Americans, however, they have often been denied to lesbian and gay Americans. At the time of this writing, legal recognition of same-sex marriage has not yet occurred in any jurisdiction within the United States (Chambers, 1996; Eskridge, 1993; Rubinstein, 1996). Lesbian and gay parents have endured many challenges to their custody and visitation with children from previous heterosexual marriages, as well as limitations on their opportunities to become foster or adoptive parents after acknowledging lesbian or gay identities (Rubinstein, 1991, 1996).

**Sodomy Laws.** Important underpinnings of discrimination against lesbian women and gay men in many states are provided by the so-called sodomy laws (Rivera, 1991, Rubinstein, 1996). In 1950, every state in the Union had such laws on the books, making private oral or anal sexual conduct between consenting adults a criminal act — often, a felony. Over the years, sodomy laws have gradually undergone repeal in many states (ACLU, 2000). Most sodomy statutes have been voided by legislatures or by courts, but sodomy restrictions are still on the books in sixteen states. In Arkansas, Kansas, Oklahoma, and Texas, the laws apply to same-sex but not to opposite-sex couples; in two of these states (Arkansas and Texas), the laws are
currently under challenge (ACLU, 2000). Twelve states still have sodomy laws that apply to both same-sex and different-sex couples, and at least one of these (Louisiana) is currently under challenge in the courts (ACLU, 2000).

Despite the undisputed fact that behavior prohibited by these laws is widespread among heterosexual as well as nonheterosexual adults in the United States today (Laumann, Gagnon, Michael & Michaels, 1994), courts have often used the illegality of lesbian and gay parents’ presumed sexual conduct to justify the denial of child custody or the curtailment of visitation (e.g., Bottoms v. Bottoms, 1995; Roe v. Roe, 1985; Thigpen v. Carpenter, 1987). In Powell v. State (1998), the Georgia Supreme Court recently joined the long list of courts that have struck down laws that forbade oral and anal sex between consenting adults, saying that “we cannot think of any other activity that reasonable persons would rank as more private and more deserving of protection from governmental interference than consensual, private, adult sexual activity” (ACLU, 2000). State sodomy laws have, however, been upheld as constitutional by the United States Supreme Court in Bowers v. Hardwick (1986), and so efforts to overturn these laws are taking place on a state-by-state basis.

**Child Custody and Visitation by Lesbians and Gay Men.** The extent to which a parent’s sexual identity is considered relevant in deciding a child’s best interest, for purposes of child custody and visitation, varies from state to state (Brantner, 1992; Lambda Legal Defense and Education Fund, 1996). In many states, parental sexual orientation is considered relevant to custody and visitation disputes only if it can be shown to have an adverse impact on the child. Before parental sexual orientation can be considered as a factor relevant to the child’s best interests, in these states a connection, or *nexus*, must be demonstrated between a person’s sexual
orientation, on the one hand, and a negative outcome for the child, on the other. For instance, in
_S.N.E. v. R.L.B._ (1985), an Alaska court awarded custody to a lesbian mother, noting that there
was “no suggestion that (her sexual orientation) has or is likely to affect the child adversely”.
Similar rulings have emerged recently in a number of states. For instance, in a recent Maryland
visitation case (_Boswell v. Boswell_, 1998), the court refused to limit children’s visitation with
their gay father in the presence of his same-sex partner because there was no evidence of harm to
the children from such visitation.

At the other end of the spectrum, some states have in place presumptions against lesbian
or gay parents. Even though these may not any longer rise to the level a of _per se_ rule against
parental fitness among lesbian and gay adults, they may nevertheless remain influential. In a
Virginia case known as _Bottoms v. Bottoms_ (1995), for example, the Virginia Supreme Court
reiterated its earlier holding that a lesbian mother is not _per se_ unfit, but included the mother’s
sexual orientation among factors considered to make her an undesirable parent. It viewed the
fact that “conduct inherent in lesbianism is punishable as a ... felony” (i.e., the mother’s violation
of the state’s sodomy laws) as an “important consideration in determining custody” (_Bottoms v.

The legal standards for custody in a number of states fall somewhere between these two
extremes. In one recent case (_Burgess v. Burgess_, 1999), the Indiana Supreme Court denied a
gay father’s request for review of a lower court’s decision to deny him custody of his son.
Indiana law does not allow parental sexual orientation to be considered as a determinative factor
in placement of a child, but the court noted in its decision that the father’s sexual orientation
“raises the specter of an aberrant lifestyle” (_Burgess v. Burgess_, 1999, page ). In another recent
North Carolina case, a gay father was denied custody of his two sons because of the court’s concern about his long-term relationship with a male partner, who was helping to care for the boys (Pulliam v. Smith, 1998). Despite tremendous legal progress in many states, child custody and visitation for lesbian and gay parents after the break-up of heterosexual marriages continue, in many jurisdictions, to be adjudicated in an atmosphere of antigay prejudice.

**Adoption and Foster Care.** Legal adoptions of minor children by lesbian and gay adults can be seen as falling into one of two types (Patterson, 1995c). When biological parents are unable or unwilling to care for a child, and an adoptive parent who is not related to the biological parents offers to provide that child with a home, the result is called a *stranger adoption*. In such cases, the courts dissolve existing legal bonds, and create a new legal relationship between the child and the adoptive parent. *Second-parent adoptions* are pursued by lesbian and gay couples who raise a child together, although only one member of the couple — the biological or legal adoptive parent — is a legal parent. These couples seek legal recognition of the relationship between the other parent and the child. In recent years, both types of adoptions have been completed by openly lesbian and gay individuals in the United States (Polikoff, 1990).

Like laws on custody and visitation, those governing adoption vary considerably across the states (Patterson, 1995c). At the time of this writing, adoption of minor children by lesbian or gay adults is specifically barred by statute in only one state, Florida, where the statute is currently the subject of a court challenge. New Hampshire had a statute barring lesbian and gay individuals from becoming adoptive parents until recently, but the Legislature repealed the law in 1999, leaving Florida as the only state with an anti-gay adoption statute still in place (Love, 1999). In other states, such as New York and Massachusetts, the law is more favorable to
prospective adoptive parents who identify themselves as lesbian or gay. For example, in a
landmark New York second-parent adoption case, *In re Adoption of Evan* (1992), the court noted
that "(t)he fact that the petitioners here maintain an open lesbian relationship is not a reason to
deny adoption... A parent's sexual orientation or sexual practices are presumptively irrelevant..."

Even though state adoption laws vary, both stranger adoptions and second-parent
adoptions by openly lesbian and gay adults have occurred in numerous jurisdictions. Openly
lesbian or gay adults have completed stranger adoptions in many states, including California,
Ohio, and the District of Columbia. Many more stranger adoptions have no doubt been
accomplished by lesbian or gay adults in other states without their sexual orientation becoming a
topic of public discussion. Second parent adoptions have been granted in 15 states and in the
District of Columbia. State supreme courts in Massachusetts, Vermont and Wisconsin have
ruled on the legality of second-parent adoptions, and two of the three — Massachusetts
(*Adoption of Tammy*, 1993) and Vermont (*Adoptions of B.L.V.B. & E.L.V. B.*, 1993) have
affirmed them.

**Summary.** Across the United States today, the legal and policy landscape for lesbian and
gay parents and their children is remarkably varied. At one end of the spectrum, a state such as
Massachusetts — in which sodomy laws have been repealed, in which parental sexual orientation
is considered irrelevant to child custody and visitation proceedings, and in which the State
Supreme Court has affirmed the legality of second-parent adoptions — the legal climate for
lesbian and gay parents and their children is generally positive. At the other end of the spectrum,
as state such as Virginia — in which sodomy laws make private oral and anal sexual conduct
between consenting adults illegal, in which lesbian and gay parents are disadvantaged in custody and visitation proceedings by negative presumptions about their parental fitness, and in which second-parent adoptions have not yet been reported — the legal atmosphere for lesbian and gay parents and their children is less desirable. Although the pace of change may vary from state to state, the direction of movement over time during the last 50 years is clearly toward provision of greater legal recognition of the many different family types formed by lesbian and gay adults.

Social Science Research on Lesbian and Gay Parents and Their Children

How do the results of social science research address legal and policy issues raised by child custody, visitation, and adoption by lesbian and gay parents? In this section, we provide an overview of studies focused on children of lesbian and gay parents. When they have denied or curtailed custody or visitation, courts have voiced three main kinds of concerns about development among children of lesbian and gay parents. Research in each of three main areas of judicial concern — namely, children’s sexual identity, other aspects of children’s personal development, and children’s social relationships — is summarized below. For other recent reviews of this material, see Green and Bozett (1991), Falk (1989), Parks (1998), Patterson (1992, 1995-b, 1995-d, 1997, 1998), Perrin (1998), and Tasker and Golombek (1991, 1997).

Children of Divorced Lesbian and Gay Parents. Reflecting the issues relevant to the largest number of custody disputes, most of the research compares development among children with divorced custodial lesbian mothers to that of children with divorced custodial heterosexual mothers. For children living in families headed by lesbian mothers who are divorced from the children’s fathers, it has been widely believed that children living in families headed by divorced but heterosexual mothers provide the best comparison group. Thus, most studies have compared
children in divorced lesbian mother-headed families with children in divorced heterosexual mother-headed families, and we review these here.

One major concern is that development of sexual identity might be compromised among children with lesbian or gay parents. For example, it has been suggested that children reared by lesbian or gay parents may show disturbances in gender identity (i.e., a person's self-identification as male or female), gender role behavior (i.e., the degree to which a person's activities are regarded by the culture as conforming to masculine or feminine norms), and/or sexual orientation (i.e., a person's choice of sexual partners, whether heterosexual, homosexual, or bisexual). To examine the possibility that children in the custody of lesbian or gay parents experience disruptions of development in this area, research has addressed each of these three major facets of sexual identity.

In general, research has failed to reveal any differences in the development of children's gender identity or gender role behavior as a function of parents' sexual orientation (Kirkpatrick, Roy & Smith, 1981; Golombok, Spencer & Rutter, 1983; Green, 1978; Green et al., 1986). For example, in interviews with children of lesbian and heterosexual mothers, Green and his colleagues (1986) found no differences among children as a function of their mothers' sexual orientation with respect to favorite television programs, television characters, games, or toys. These investigators did report that daughters of lesbian mothers were more likely to be described as engaging in rough and tumble play, or play with toys such as trucks or guns that are usually thought of as masculine, but they found no comparable tendency for sons' play to be feminized, nor have other investigators replicated the difference for daughters. Taking all the available information together, the similarities in development of gender identity and gender role behavior
between children of lesbian and children of heterosexual mothers are very striking.

A number of investigators have also studied sexual orientation, the third component of sexual identity. For example, Huggins (1989) interviewed a group of teenagers, half of whom were the offspring of heterosexual and half of lesbian mothers. No child of a lesbian mother identified as lesbian or gay, but one child of a heterosexual mother did. Similar results have been reported by others (e.g., Golombok & Tasker, 1996; Gottman, 1990). Studies of the offspring of gay fathers have yielded similar results (Bozett, 1987).

Two recent studies, conducted from a behavior genetic perspective, have added to this literature. Pattatucci and Hamer (1995) studied a large sample of women, some of whom identified as lesbian or bisexual. Of the 19 such women in their sample with daughters old enough to report sexual orientation, six daughters were identified as lesbian or bisexual using relatively loose criteria for this assessment. However, when more restrictive criteria were used, only one of seven adult daughters were identified as lesbian or bisexual. No significant results emerged for sons of nonheterosexual mothers in this sample. In the other such study, Bailey and his colleagues (1995) interviewed gay fathers, and inquired as to the sexual orientation of their adult sons. They reported that 7 of 75 (9%) of the sons in their sample were identified as gay or bisexual. No information about the daughters of gay fathers was collected in this study.

Appropriate interpretation of these numbers depends upon the population base rates for nonheterosexual identities, and for many reasons, these remain a matter of dispute. Thus, the clearest conclusion from these and the earlier studies would seem to be that, although the extent of possible genetic contributions to sexual orientation remains unknown, the great majority of children with lesbian or gay parents grow up to identify themselves as heterosexual (Bailey &
A broad array of other aspects of personal development has been assessed by researchers (Patterson, 1995-b; Tasker & Golombok, 1991). Among these have been psychiatric evaluations and assessments of behavior problems, personality, self-esteem, self-concept, locus of control, moral judgment, and intelligence. Concerns about possible difficulties in personal development among children of lesbian and gay parents have not been sustained by the results of this research (Patterson, 1992, 1995-b, 1997). As was the case for sexual identity, studies of other aspects of personal development have revealed no important differences between children of lesbian/gay and heterosexual parents. Fears that the children of lesbian or gay parents suffer deficits in personal development appear to be without empirical foundation.

Studies assessing potential differences between children of gay and lesbian versus heterosexual parents have sometimes included assessments of children’s social relationships. Because of concerns voiced by the courts that children of lesbian and gay parents might encounter difficulties among their peers, the most common focus of attention has been on peer relations (Patterson & Redding, 1996). Studies in this area have consistently found that children of lesbian mothers report normal peer relations, and that adult observers agree with this judgment (Patterson, 1992). Anecdotal and first-person accounts describe children’s worries about being stigmatized as a result of their parents’ sexual orientation (e.g., Pollack & Vaughn, 1987). The research literature in this area remains sparse, but findings to date provide no evidence for the proposition that children of lesbian mothers have difficulty in peer relations (Tasker & Golombok, 1997).

Research has also been directed toward description of children’s relationships with adults,
especially fathers. For instance, Golombok and her colleagues in the United Kingdom (1983) found that children of divorced lesbian mothers were more likely than children of divorced heterosexual mothers to have contact with their fathers. Most children of lesbian mothers who participated in this study had some contact with their fathers during the year preceding the study, but most children of heterosexual mothers had not. Kirkpatrick and her colleagues (1981) also reported that lesbian mothers in their sample were more concerned than heterosexual mothers that their children have opportunities for good relationships with adult men, including fathers. Overall, results of research to date suggest that children of lesbian mothers have satisfactory relationships with adults of both genders.

Concerns that children of lesbian or gay parents are more likely than children of heterosexual parents to be sexually abused have also been voiced by judges in the context of child custody disputes (Patterson & Redding, 1996). Results of research in this area show that the great majority of adults who perpetrate sexual abuse are male; sexual abuse of children by adult women is extremely rare. Existing research findings suggest that gay men are no more likely than heterosexual men to perpetrate child sexual abuse (Jenny, Roesler, & Poyer, 1994). Fears that children in custody of gay or lesbian parents might be at heightened risk for sexual abuse are thus without empirical foundation (Patterson, 1995-b, 1997, 1998).

Research on Children Born to or Adopted by Lesbian Mothers

Many writers have recently noted an increase in childbearing among lesbians, but research with these families is as yet relatively new (Kirkpatrick, 1996; Martin, 1993; Patterson, 1992, 1994-b; Perrin, 1998). In this section, we summarize the research to date on children born to or adopted by lesbian mothers. Although some gay men are also undertaking parenthood after
coming out, no research has yet been reported on their children.

In one of the earliest studies of children born to lesbians, Steckel (1987) compared the progress of separation-individuation among preschool children conceived via donor insemination to lesbian couples with that among same-aged children conceived in the conventional way by heterosexual couples. Using parent interviews, parent and teacher Q sorts, and structured doll play techniques, Steckel compared independence, ego functions, and object relations among children in the two types of families. Her main results documented impressive similarity in development among children in the two groups. Similar findings, based on extensive interviews with five lesbian mother families, were also reported by McCandlish (1987).

The first study to examine psychosocial development among preschool and school aged children born to or adopted by lesbian mothers was conducted by Patterson (1994-a; 1995-a; Patterson, Hurt & Mason, 1998). Thirty-seven four to nine year old children were studied, using a variety of standardized measures. The Achenbach and Edelbrock Child Behavior Checklist was used to assess children's social competence and behavior problems; five scales from the Eder Children's Self-View Questionnaire were used to assess children's self-concepts, and open-ended interview techniques were used to assess preferences associated with sex-role behavior. In this way, the study sought to provide an overview of the children's development.

Results showed that children scored in the normal range for all measures (Patterson, 1994-a). On the Child Behavior Checklist, for example, children of lesbian mothers' scores for social competence, internalizing behavior problems, and externalizing behavior problems differed significantly from the scores for a clinical sample, but did not differ from the scores for a large normative sample of American children. Likewise, children of lesbian mothers reported
sex-role preferences within the expected normal range for children of this age. On most subscales of the self-concept measure, answers given by children of lesbian mothers did not differ from those given by same-aged children of heterosexual mothers studied in a standardization sample (Patterson, 1994-a).

On two subscales of the self-concept measure, however, Patterson (1994-a) found that children of lesbian mothers reported feeling more reactions to stress (e.g., feeling angry, scared, or upset), but a greater sense of well-being (e.g., feeling joyful, content, and comfortable with themselves) than did same-aged children of heterosexual mothers in a standardization sample.

One possible interpretation of this result is that children of lesbian mothers reported greater reactivity to stress because, in fact, they experienced greater stress in their daily lives than did other children. Another possibility is that, regardless of actual stress levels, children of lesbian mothers were better able to acknowledge both positive and negative aspects of their emotional experience. Although this latter interpretation is perhaps more consistent with the differences in both stress reactions and well-being, clarification of these and other potential interpretations must await the results of further research.

Some additional findings from this study can be mentioned briefly. Contrary to stereotypes of these families as isolated from families of origin, most reported that children had regular (i.e., at least monthly) contact with one or more grandparents, as well as with other adult friends and relatives of both sexes (Patterson, Hurt & Mason, 1998). In families headed by lesbian couples, the parents were likely to maintain egalitarian divisions of labor. When differences occurred, however, biological lesbian mothers were likely to do somewhat more childcare and nonbiological lesbian mothers were likely to spend somewhat more time engaged
in paid employment (Patterson, 1995-d). Even within the relatively small range represented in this sample, families in which childcare was divided more evenly were also those in which children exhibited the most favorable adjustment (Patterson, 1995-d). These results suggest the importance of family process variables as predictors of child adjustment in lesbian as well as in heterosexual families.

Chan and his colleagues (Chan, Brooks, Raboy & Patterson, 1998; Chan, Raboy & Patterson, 1998) studied a group of 80 families formed by lesbian and heterosexual parents via donor insemination, and reported similar findings. Children's overall adjustment was unrelated to parents' sexual orientation. Regardless of parents' sexual orientation or relationship status, parents who were experiencing higher levels of parenting stress, higher levels of interparental conflict, and lower levels of love for each other had children who exhibited more behavior problems. Among lesbian couples, non-biological mothers' satisfaction with the division of labor, especially in family decision making, was related to better couple adjustment, which was in turn related to children's positive psychological adjustment (Chan, et al., 1998-a), a result that is consistent with research on heterosexual families (Cowan & Cowan, 1992). Flaks and his colleagues (1995) also compared children from lesbian mother families with heterosexual families and found no differences in the children's level of psychological adjustment as a function of mother's sexual orientation.

From Europe, Breuweys and her colleagues (1997) studied children's adjustment among a group of 4 to 8 year old children who were conceived via donor insemination by lesbian and heterosexual parents and compared them to a group of children who were conceived by heterosexual parents in the conventional way. When children were asked about their perceptions
of parent-child relationships, all children reported positive feelings about their parents; there were no differences in children's reports as a function of family types. Children's behavior and emotional adjustment were also assessed, and results indicated that overall, children who were conceived via donor insemination in heterosexual families exhibited more behavior problems than other children. In particular, girls who were conceived via donor insemination in heterosexual families exhibited more behavioral problems than girls from other family types. Breuaees concluded that these difference observed in the heterosexual donor insemination families may be attributable to issues of confidentiality and secrecy among heterosexual donor insemination families regarding the origin of the child. This type of concern is not relevant to lesbian parented families, who generally disclose information about the method of conception. Overall, children of lesbian mothers were developing well.

In another European study, Golombok and her colleagues (1998) reported on the psychological well-being of children raised since birth by lesbian mothers, and by heterosexual single mothers. These children were compared with children raised in 2-parent heterosexual families. Results indicated that children of lesbian mothers did not show unusual emotional or behavior problems (as reported by parents or by teachers); there were no differences as a function of family type. In terms of children's attachment relationships to their parents, children from mother-only families (lesbian mothers and heterosexual single mothers) scored higher on an attachment-related assessment than did children reared by heterosexual couples, suggesting the possibility that children from mother-only families had more secure attachment relationships with their mothers — an outcome which would seem to favor development among children of lesbian mothers. With respect to children’s perceived competence, children from mother-only
families reported lower perceived cognitive and physical competence than those children from father-present families. Overall, however, children born to lesbian mothers appeared to be developing well (Golombck et al., 1998).

Summary. Despite the sometimes adverse legal climates in which they must live, results of research on children of lesbian and gay parents suggest that they develop in a normal fashion. Certainly the research findings to date provide no justification for limitations on child custody or visitation by lesbian or gay parents. Similarly, results of research do not support the idea that lesbian and gay adults are less likely than others to provide good adoptive or foster homes. Thus, research on development of children with lesbian and gay parents provides no warrant for legal discrimination against them.

Legal and Policy Recommendations

Although research to date suggests that children of lesbian and gay parents are developing in a normal fashion, legal discrimination nevertheless persists. Although some headway has been made in breaking down legal barriers to maintenance of parent-child relationships in families headed by lesbian and gay parents, there is still much to be done. In this section, we put forward five recommendations for legal and policy changes that would, we believe, benefit children of lesbian and gay parents, and explain why each would have a salutary effect.

Our first recommendation is for the repeal of sodomy laws in the 16 states that still have these laws on the books. Once prohibitions against private sexual behavior between consenting adults have been removed, lesbian and gay parents will no longer be viewed as probable criminals for this reason, and the results for family relationships should be positive. Children can
be more secure if their lesbian and gay parents cannot be fined or imprisoned for private sexual behavior. More importantly, children of lesbian and gay parents will no longer be subject to collateral harms such as challenges to child custody and visitation that arise from sodomy laws. Repeal of sodomy laws would leave intact all legal protections against child sexual abuse, and would continue the trend of the last 50 years toward eliminating governmental interference in private sexual conduct between two consenting adults.

A second policy innovation that would benefit children of lesbian and gay parents is the legalization of same-sex marriage throughout the United States. The possibility of legal marriage among same-sex couples would benefit society in numerous ways, but here we focus exclusively on the benefits for children of lesbian and gay parents. Some benefits would involve intangible but nevertheless important gains. With their parents’ romantic relationships normalized through legal marriage, children of lesbian and gay parents would benefit due to lessened stigmatization of their families. Other benefits, such as access to health insurance through two parents’ employment, would be more concrete. Children of heterosexual parents are generally seen as better off if their parents are married, and there are no good reasons to believe that any different result should hold for children of lesbian and gay parents. In the event that legalization of same-sex marriage cannot be accomplished, then some of the benefits of marriage might also be achieved through legal recognition of domestic partnership agreements between same-sex couples.

A third recommendation for policy change that would benefit children of lesbian and gay parents is the legalization of adoption and foster care by lesbian and gay adults (including second-parent adoption) in all the states. In Florida, this would involve the repeal of the
country’s only remaining anti-gay adoption statute. In other states, implementation of this change would be less dramatic, but should include equal foster care as well as equal adoption opportunities, so that lesbian and gay prospective foster or adoptive parents would be allowed to provide homes for waiting children.

Also important here would be the opening up of second parent adoptions to lesbian and gay couples who seek them. For children of lesbian and gay parents, the opportunity to be adopted by their second parent opens up a range of financial benefits such as social security, disability, and inheritance. Adoption would also ensure that, should the parents separate or divorce, the continuity of children’s relationships with both parents would be protected by the courts. If one parent dies, the continuity of children’s relationships with the surviving parent would be protected if the relationship had been legalized via adoption. Second parent adoptions, in which the child already lives in the household of both parents, should be completed without intrusive home studies by social workers, as step-parent adoptions in heterosexual families are generally completed today.

A final recommendation for change derives from a recent legal innovation, termed a “pre-birth decree of parenthood”. In a recent San Francisco case (Ness, 1999), a lesbian couple had conceived a child using assisted reproductive technology. One woman’s egg was fertilized with sperm from a donor, and implanted in the womb of the other woman, who carried the baby until its birth. Since both women could be seen as having a claim to the title of “biological mother”, and since both intended to become parents for the child, they petitioned the court for a decree conferring the rights and responsibilities of legal parenthood upon them both. The decree was issued on March 1, 1999, in San Francisco Superior Court, declaring both women to be legal
parents of the as-yet unborn child. Thus, at his birth on March 20, 1999, this child had two legal parents of the same gender (Ness, 1999).

This case suggests the possibility that, in many non-traditional family situations, it would be useful if parents-to-be could announce their intentions to parent, and have their intended parental rights and responsibilities affirmed by a court of law in advance of the birth of a child. In this way, children would be assured of claims to support and supervision from two (or more) rather than only one parent. Such an approach would create legal bonds from the announced intentions of prospective parents and obviate the need for cumbersome custody or adoption procedures after the child's birth.

This type of approach might be conducted under the rubric of a "doctrine of intentional parenthood". Under a doctrine of intentional parenthood, the adult or adults who intend to take parental responsibility for a child, who are not already named as doing so under current law, and who are nominated for this role by any existing legal parent or parent-to-be, could be allowed to declare their intention to parent and have this status affirmed by the court. A declaration of intention to parent, if affirmed by the court, could have the effect of legalizing the parental status of one or more adults, so that from the moment of birth, children could be assured of the care and support due to them by more than one parent. This, of course, is the typical situation of children born to married heterosexual parents, both of whom are presumed in law to become legal parents at the moment of birth. A doctrine of intentional parenthood would extend to children of lesbian and gay parents the possibility of legal bonds from birth with more than one parent. In this way, the possibility would open up for lesbian and gay prospective parents the possibility of protection in law for their family relationships, for the state a wider circle of responsibility for the care of
minor children, and for children of lesbian and gay parents a more secure future.

A doctrine of intentional parenthood, together with the pre-birth decrees of parental status that might embody it, would be valuable for lesbian and gay parents and their children, but might also offer benefits for many other kinds of non-traditional families (Ness, 1999). For instance, such pre-birth decrees could be useful in sorting out various claims to parental status that arise in other cases of assisted reproductive technology, including egg donation, sperm donation, and surrogacy. Parties to the conception of a child could sort out their intended rights and responsibilities in advance of the child’s birth, and have these affirmed by the court, and in this way obviate the need for later legal actions to establish legal parenthood. Such procedures would also benefit the increasing numbers of children who are born to unmarried parents, by establishing from the outset which adults intend to take on the rights and responsibilities of parenthood. Children conceived in these circumstances, as well as society more generally, would be served by ensuring that those who intend to parent are legally bound to do so.

In summary, there are many ways in which legal and policy adjustments could benefit lesbian and gay parents and their children, at the same time as they benefit society at large. Among these are repeal of the remaining sodomy laws, legalization of same-sex marriage, legalization of adoption and foster care by lesbian and gay adults, legalization of second-parent adoptions, and use of pre-birth declarations of intention to parent and of pre-birth decrees of parental status. Together these reforms would extend to lesbian and gay parents and their children the legal protections that are now generally taken for granted by other families. To do so would be, as the Vermont Supreme Court stated, “a recognition of our common humanity” (Goldberg, 1999).
References


In Re Adoption of Evan, 583 N.Y.S.2d 997 (Sur. 1992).


