



Adoption

by Mikaila Mariel Lemonik Arthur

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Adoption has been practiced as a method for childless parents to raise children, parentless children to obtain parents, and heirless individuals to pass on their legacy, from time immemorial. The procedures for conducting adoptions have been codified in law from the time of the Code of Hammurabi of Babylon, as well as in the legal systems of Judaism, the Roman empire, and the ecclesiastical law of the early Catholic Church.

Many of these early laws allowed adoption by couples, single males, and single females, though infertility was sometimes required. British law, however, did not incorporate an adoption procedure until the nineteenth century. Therefore, though adoptions were certainly performed during the early history of the American colonies and the United States, there were no formal adoption laws until 1851, when Massachusetts drafted a law based on the Roman statutes.

As of 2000, there were about 117,000 children waiting for adoption, as well as over 400,000 additional children in foster care not currently eligible for adoption. All of these children need loving, permanent homes.

Although many glbtq individuals and couples create families through donor insemination, surrogacy, or co-parenting arrangements, legal adoption is often necessary to establish parenthood for non-birth mothers.

Methods of Adoption

There are various methods of adoption now available. These include private agency adoptions, public agency adoptions, attorney adoptions, and international adoptions.

Private agency adoptions are arranged by a private adoption agency, which acts as an intermediary between the birth mother and the adoptive parents. These adoptions often involve some communication between the parties, which allows the birth mother to specify what kind of family she would like to rear her child and the adoptive parents to find out whether the birth mother has any "defects" they would like to avoid.

Additionally, some of these adoptions are *open adoptions*, which means that the adoptive parents stay in touch with the birth mother and keep her apprised of the child's development, and the birth mother may even visit the child occasionally.

Public agency adoptions occur when children have come under the supervision of state departments of child welfare due either to voluntary relinquishment by parents or involuntary termination of parental rights owing to such conditions as abuse, neglect, abandonment, or lengthy incarceration. Many of these children spend months or years in foster care, and some have special needs. Continuing contact with birth parents is rare.

Attorney adoptions are arranged individually between a birth mother and an adoptive couple. Usually, the adoptive parents assume complete responsibility for the financial costs of an adoption through an attorney, which includes not only legal fees but also prenatal medical care and delivery for the birth mother. This arrangement allows adoptive parents to have more control over the conditions of the adoption and the characteristics of the birth mother, particularly her health.

Additionally, individuals and couples who would not be approved for adoption by an agency (because of age, for instance) may be able to adopt this way more easily. This does not mean that attorney adoptions are conducted free of supervision most states have laws regulating who is able to adopt, as well as a requirement for home studies to be conducted in an attempt to ensure that the adoptive parents will be attentive and nurturing. However, if potential adoptive parents can afford the cost, this method may be easier.

International adoptions, which are almost always pursued through an agency, occur when children are adopted from countries other than the one in which the adoptive parents reside. These adoptions are heavily governed by national and international laws, which attempt to ensure responsibility on the part of the adoptive parents and a lack of corruption on the part of the agency and the sending country's government.

Each sending country has its own regulations about what sorts of parents can adopt and some attempt to impose those regulations on the receiving countries. Some do not permit single parents, unmarried parents, or lesbian and gay couples or individuals to adopt. Among the countries currently sending many children for adoption in the United States are the People's Republic of China, Russia, South Korea, Guatemala, Ukraine, Romania, and Vietnam.

Adoption, glbtq Parents, and the Legal System

Some states have restrictions that make it difficult or impossible for prospective glbtq parents to adopt children. Until recently Florida and Arkansas had the most severe restrictions, which made it impossible for any gay man or lesbian to adopt children. Other states also restrict the ability of glbtq people to adopt. For instance, in Utah, unmarried couples (whether same-sex or heterosexual) are forbidden to adopt children in state care, though private adoptions are not covered by this law; and in Mississippi, same-sex couples are prohibited from adopting.

Laws exist in other states that make adoptions by glbtq parents difficult, while not prohibiting them entirely, and new legislation that discriminates against glbtq parents is frequently introduced. Additionally, since approval for adoptions is usually contingent upon the completion of a home study by a social worker or other trained observer, some same-sex couples may be denied approval based on the perceptions and prejudices of this observer.

Another legal hurdle for glbtq adoptive parents is the fact that a number of states make it impossible for same-sex partners to both be considered legal parents of the same child, even if the child is the biological offspring of one of them. Second-parent adoptions have been approved by state Supreme Courts or appellate courts in California, Connecticut, Illinois, Massachusetts, New Jersey, New York, and Washington, D. C., while lower courts have approved them in sixteen other states.

Joint adoptions, whereby both members of a couple simultaneously become parents of a child, are allowed in New Jersey, New York, Washington D. C., and some parts of California. The existence of joint or second-parent adoptions is vitally important for same-sex couples and their children. Only by having their parental rights explicitly recognized by the courts can these parents be sure that in the case of a separation or the death of one of the partners will one of the couple be able to care for their child. For gay male couples, who are unable to give birth to children, these adoption arrangements are the only way they can build a family in the many states where surrogacy is illegal.

The status of these laws is in flux. For instance, a recent lower-court case in California would have invalidated all second-parent adoptions, but this ruling was reversed by the California Supreme Court. And in 1999, a legislative measure ended New Hampshire's prohibition on adoption and foster parenting by homosexuals that had been in effect for over a decade. Connecticut courts had explicitly held that second-parent adoptions by gay and lesbian couples are not permitted, but legislation reversed that decision in 2000.

Florida's ban on adoption by homosexuals was upheld by a federal appeals court, but was finally overturned by a state appeals court in 2010.

Arkansas' draconian regulation forbidding the state from placing children in homes in which an adult homosexual resided was struck down by the Arkansas Supreme Court in 2006. In response, conservative "family" groups sponsored a ballot initiative that prohibited unmarried cohabiting couples, both opposite-sex and same-sex, from adopting or fostering children. The initiative, known as Act 1, "An Act Providing That an Individual Who is Cohabiting Outside of a Valid Marriage May Not Adopt or Be a Foster Parent of a Child Less Than Eighteen Years Old," was adopted by 57% of the voters in the November 2008 general election.

Although Act 1 prohibited all unmarried couples from adopting or fostering, its real intent was to prevent gay couples from adopting or fostering children.

In April 2011, however, the Arkansas Supreme Court unanimously declared Act 1 unconstitutional. Justice Robert Brown wrote for the Court, "We hold that a fundamental right to privacy is at issue in this case and that, under the Arkansas Constitution, sexual cohabitators have the right to engage in private, consensual, noncommercial intimacy in the privacy of their homes. We further hold that this right is jeopardized by Act 1 which precludes all sexual cohabitators, without exception, from eligibility for parenthood, whether by means of adoption or foster care."

The landmark Supreme Court of the United States decision in *Lawrence v. Texas* overturning same-sex sodomy laws may have a significant effect on other cases challenging state laws prohibiting adoption by same-sex couples.

States that prohibit adoptions by gay and lesbian individuals, same-sex couples, or unmarried couples, as well as those that make these processes difficult, often claim that they are applying "the best interests of the child" standard. They claim that growing up without a parent of one sex or in an unmarried home will lead to immoral, unhealthy, or criminal adults, despite the 1995 American Psychological Association report showing that same-sex parents raise children that are just as happy and healthy as those of heterosexual parents. However, prohibiting gay and lesbian individuals and couples from adopting means that many children will grow up without loving families and caring homes.

In 2006, the Evan B. Donaldson Adoption Institute issued a report that strongly supported the rights of gay men and lesbians to adopt and urged that remaining obstacles be removed. "Laws and policies that preclude adoption by gay or lesbian parents disadvantage the tens of thousands of children mired in the foster care system who need permanent, loving homes," the Institute concluded.

At the same time, however, the Roman Catholic Church has begun pressuring Catholic Charities to end its century-old adoption programs in Massachusetts and California rather than comply with laws banning discrimination against gay men and lesbians.

Adult Adoptions

Although adoption typically involves the addition of a minor child to a family, adoption has also historically

served as a means of facilitating the disposition of property by individuals who would otherwise die without an heir. In many cases, the adoptees were adults, who sometimes agreed to carry on the family name of the adopter.

Gay male and lesbian couples have sometimes used adult adoption to create legally recognized relationships. Adoption of one partner by another not only assures property distribution in the case of death of one of the partners, but also confers a next of kin relationship that facilitates making decisions concerning health care and other matters.

While some courts have permitted adult adoptions by individuals involved in a gay or lesbian relationship, others have ruled that such adoptions are inappropriate and violate adoption statutes.

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About the Author

Mikaila Mariel Lemonik Arthur is an Assistant Professor of Sociology at Rhode Island College. Her research focuses on the emergence of academic programs in queer studies, Asian American studies, and women's studies in colleges and universities in the United States.