


Spring 5-10-2009

# Gay Parenthood and the Revolution of the Modern Family: An Examination of the Unique Barriers Confronting Gay Adoptive Parents

Nicholas Arntsen

*University of Connecticut - Storrs*, [nicholas.arntsen@gmail.com](mailto:nicholas.arntsen@gmail.com)

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## Recommended Citation

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**GAY PARENTHOOD AND THE REVOLUTION OF THE  
MODERN FAMILY: AN EXAMINATION OF THE UNIQUE  
BARRIERS CONFRONTING GAY ADOPTIVE PARENTS**

University of Connecticut – Political Science Honors Thesis

Nicholas Arntsen

Thesis Advisor: Dr. Kristin Kelly

May 1, 2009

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## PREFACE

The completion of my senior honors thesis marks a pivotal point in my journey of life that has forever changed me, both scholarly and personally. Still, this thesis could not have been such a success without the support and inspiration from a few. Hence, I would like to take the opportunity to acknowledge those individuals who have contributed to this scholarly research.

First, I would like to recognize the University of Connecticut, the Honors Program, the Political Science Department, and Dr. Jeffrey Dudas for helping to lay the foundational structure to this piece of scholarship.

I would like to express my deepest gratitude for my thesis advisor, Dr. Kristin Kelly, for her yearlong assistance and scholarly supervision. By inspiring academic hunger and intellectual curiosity, Dr. Kelly's involvement is undoubtedly a testament to the exemplary faculty at the University.

Next, I would like to express my sincere appreciation to George and Joan Cole for their endowment of the Political Science Honors Thesis Award as a generous contribution to this project. Additionally, I would like to offer my greatest thanks to Dr. Cole for his scholarly advice and enormous efforts in helping me to complete this project.

I would like to deeply thank David Brennan for his active assistance in obtaining the respondents for this thesis. Last, but quite certainly far from least, I would like to thank each and every individual that participated in an interview, by donating both time and energy in offering personal accounts of gay adoption. Were it not for these interviews, this project would have been impossible. For one day I too hope to use the information I have gathered here to help create a family as a gay adoptive parent.

Finally, it is with a sincere hope that the information contained herein will advance the scholarly literature on gay adoption, by helping further revolutionize conceptualization of what

constitutes a "family." I fully hope my work contributes to the greater work of literature by illustrating how a family is just like the human fingerprint - no one family will ever be the same as any other, and, like a fingerprint, the family will forever remain the home to each person's identity.

## ABSTRACT

*In recent decades, the structure of the American family has been revolutionized to incorporate families of diverse and unconventional compositions. Gay and lesbian couples have undoubtedly played a crucial role in this revolution by establishing families through the tool of adoption. Eleven adoptive parents from the state of Connecticut were interviewed to better conceptualize the unique barriers gay couples encounter in the process adoption. Both the scholarly research and the interview data illustrate that although gay couples face enormous legal barriers, the majority of their hardship comes through social interactions. As a result, the cultural myths and legal restrictions that create social hardships for gay adoptive parents forge a vicious and discriminatory cycle of marginalization that American legal history illustrates is best remedied through judicial intervention at the Supreme Court level. While judicial intervention, alone, cannot change the reality of gay parenthood, I argue that past judicial precedent illustrates that such change can serve as a tool of individual, political, and legal validation for the gay community for obtaining equal rights.*

## INTRODUCTION

In American culture, the institution of family is both the texture and the canvas to the portrait of human life. With a wealth of promise for a lifetime of personal enrichment, interpersonal companionships, and unconditional love, families are uniquely positioned to mold the children of tomorrow through infancy, adolescence, and often some of the most memorable years of life. In the 1983 U.S. Supreme Court case of *Jonathan Lehr v. Lorraine Robertson*, Justice Stevens, writing for the majority, states, “The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility.”<sup>1</sup> As Justice Stevens’ claim reveals, throughout American history the welfare of children has frequently engaged immense political, social, and cultural debate. Regardless of where the concern lies, whether it’s in education, economic stability, or the realm of transportation, laws are perpetually crafted to offer present and future generations of children a sense of structure, establishment, and responsibility. However, some children, by the nature of their predispositions, lack a critical element to the portrait of life: the presence of a long-term parent and/or guardian.

In order to rectify this dilemma, however, the United States introduced the proactive measure of adoption. As Annette Appell notes, “the first general

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<sup>1</sup> *Jonathan Lehr v. Lorraine Robertson*. 1983. 463 U.S. 248.

adoption statutes in the United States, enacted in the 1850s, established the hallmark of adoption: the termination of one family and creation of another, when in the interests of the child.”<sup>2</sup> Fortunately, adoption programs have offered millions of children both families and homes. Still, each year more than 130,000 children in the United States are waiting to be adopted.<sup>3</sup> While various legislative initiatives have been introduced, such as the Adoption and Safe Families Act (ASFA) of 1997, “which put pressure on states to find permanent homes for children in a timely manner and placed stricter timelines on agencies to terminate parental rights,” the American adoption system has evolved into a legal battlefield with intricacies of its own.<sup>4</sup>

In the United States, whether conspicuously or not, adoption procedures continuously convey how the family portrait *should* appear – as a nuclear family, consisting of one man and one woman. Except now, unlike decades passed, the social mask of this ‘acceptable’ family has been revolutionized to encompass a relatively new structure: households run by two men or two women, engaged in committed relationships. In these modernized homes, like their heterosexual counterparts, gay couples have actively sought to incorporate the role of

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<sup>2</sup> Appell, “The Endurance of Biological Connection,” 297.

<sup>3</sup> U.S. Department of Health and Human Services, “Trends in Foster Care and Adoption,” Updated in September 2008. Besides the DHHS, some data sources suggest the present number of children waiting to be adopted is 100,000. Still, besides the children that are waiting to be adopted, current estimates project that about 500,000, or half a million children are in the foster care system.

<sup>4</sup> Gary J. Gates, et al. “Adoption and Foster Care by Gay and Lesbian Parents in the United States,” *Williams Institute on Sexual Orientation Law and Public Policy*. 2007: 1.



parenthood.<sup>5</sup> It should come as no surprise that “Lesbian and gay couples cannot create children together without assistance from third (and even fourth) parties.”<sup>6</sup> Still, many gay couples are revolutionizing the American family by becoming parents and creating families of their own.<sup>7</sup> For many gay couples, parenthood often materializes through the means of adoption.<sup>8</sup>

Still, beneath the delicate exterior of the ‘family’ is another instrument of cultural influence and social construction that affects the process of adoption: heteronormativity – the cultural norm that “views families as heterosexual, marital, and exclusively two-parent.”<sup>9</sup> Since many Americans hold deep-seated reservations toward the larger gay community, gay parenthood has become a politicized issue of enormous debate. In seeking adoption, gay couples have confronted a myriad of unique legal, institutionalized, and intrapersonal barriers that have shaped their internal perceptions as gay persons and socialized positions as parents. Consequently, such barriers have reinforced their statuses as

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<sup>5</sup> Throughout the body of this thesis, “gay couples,” “gay adoptive parents,” and “gay parents” will function as umbrella terms for both gay-male adoptive parents and lesbian adoptive parents. Also, since gay couples will not include other populations within the queer community (sexual identities such as bisexual, transgender, etc.), the research solely applies to adoptive parents that identify as ‘gay’ or ‘lesbian.’ Although other subgroups within the queer community are rightfully assumed to have several connections with gay adoptive parents, the scope of this research has been intentionally narrowed to get as thorough and accurate of an assessment as possible. Furthermore, although the term ‘homosexual’ may seem like an appropriate label for the adoptive parents discussed herein, doing so would be an injustice to the adoptive parents and the gay community at large. The label ‘homosexual’ is an overly impersonal medicalized term, wrought with notions of deviance and an aversion from the alleged ‘normal’ path of sexuality and human attraction.

<sup>6</sup> Annette R. Appell. “The Endurance of Biological Connection: Heteronormativity, Same-Sex Parenting and the Lessons of Adoption.” *BYU Journal of Public Law* 22.2. 2008: 306.

<sup>7</sup> Appell, “The Endurance of Biological Connection,” 306.

<sup>8</sup> Appell, “The Endurance of Biological Connection,” 307.

<sup>9</sup> Appell, “The Endurance of Biological Connection,” 301.

marginalized citizens, which in turn produce the strongest component of adversity for gay adoptive parents: social hardship.

Although the idea of social hardships may seem intuitive, certain assumptions for heterosexual adoptive parents are inapplicable to gay adoptive parents. For example, while all types of adoptive parents deal with the ‘general’ struggles/consequences of parenthood, such as financial, emotional, and physical difficulties, not all adoptive parents have their capabilities as a parent questioned and constantly reevaluated through the lens of sexual identity. As such, “social hardships” are herein operationalized to refer to restrictions, obstacles, and interpersonal tensions that create an atmosphere of inequality, stigma, and non-acceptance, when compared to *similarly situated persons*.<sup>10</sup>

Now, to better understand the unique hardships of gay parenthood, this thesis is significant as a temporally sensitive examination of the following *research questions*<sup>11</sup>: How do the *present* cultural and social myths that surround gay parenthood parallel the lived experiences of gay parenthood? Additionally, how have the social and cultural myths of gay adoption manifested as legal limitations? To evaluate these questions, an interdisciplinary approach to scholarly literature will be utilized.

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<sup>10</sup> Some examples of social hardships are as follows: explicit homophobia toward gay adoptive parents, parenting guides that speak solely to the heterosexual consumer, and many others. Notably, I have chosen to borrow the phrase “similarly situated person” from legal discourse in a hope to sharpen the analysis – to see how gay adoptive parents face *unique* and greater brands/strains of social hardship than heterosexual adoptive parents.

<sup>11</sup> For further information, see “Notes on Research Design” in the Appendix.

This research is intended to provide a political, sociological, legal, and historical context of the hardships facing gay adoptive parents in 2009. As the coming pages will highlight, the scholarly questions are evaluated and assessed in a time-sensitive fashion. After all, it is with a strong conviction that the unique barriers that gay adoptive parents face has and will continue changing with as time progresses. Thus, as the social stigma surrounding the gay community lessens with time, so too, it is argued, will the *unique* hardships confronting gay adoptive parents. For example, during the Presidential election of 2008, the individual state ballots served as ammunition for Arkansas to ban gay adoption, Arizona and Florida to ban gay marriage, and California to *likely* revoke gay marriage (potentially invalidating past gay marriages). Clearly, these examples are only a few of many recent illustrations of the quickly changing ideological framework of the American political machine.

Since the topic of gay parenthood extends far beyond boundaries of political discourse and legal analyses, the fields of sociology, psychology, and religious studies help to provide a more macro-level analysis. However, while literature on the gay, lesbian, bisexual, and transgender (GLBT) community has risen over the years, many academics still neglect research on gay couples as adoptive parents.<sup>12</sup> Accordingly, the use of purely textual references would fail to

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<sup>12</sup> Scott D. Ryan, Laura E. Bedard, and Marc G. Gertz. "The Influence of Gender on the Placement of Children with Gay or Lesbian Adoptive Parents," *Journal of GLBT Family Studies*, Vol. 3(1) 2007: 15.

suffice. In light of this deficit, personal interviews were conducted with gay adoptive parents to examine the legal, institutionalized, intrapersonal, and social hardships they experience as adoptive parents.<sup>13</sup>

During the course of my research study, a total of eleven gay adoptive parents were interviewed, all who reside in the state of Connecticut and adopted during their Connecticut residency.<sup>14</sup> Of the eleven respondents, six persons identified as lesbians, while the other five identified as gay males.<sup>15</sup> All respondents adopted during the course of a long-term relationship, most who had adopted during their mid- to late-thirties. Although the legal means for adoption was not universal among the respondents, most utilized the public adoption agency in Connecticut through the Department of Children and Families.<sup>16</sup>

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<sup>13</sup> Note: Some respondents' names were placed under pseudonyms to ensure confidentiality. Other names, however, have remained unaltered at the request of the respondent(s).

<sup>14</sup> Note: Of the eleven gay adoptive parents, two adoptive parents were in the 'pre-adoptive' phase during the time of interview, in that the adoptions, themselves, had not been finalized in Court. Also, of the eleven respondents, four of the interviews (for a total of eight respondents) were conducted with both adoptive parents simultaneously—two of these were male-male couples while the other two were female-female couples. Of the remaining three respondents, two females and one male had interviews conducted by themselves.

<sup>16</sup> Although a few respondents did utilize private adoption agencies, it is crucial to note the reasoning most gay adoptive parents selected the public forum. Although public adoption agencies cost much less, the testimonies that many respondents offered for utilizing DCF (public adoption) appeared far from being a money strategy. Most gay adoptive parents were extremely open to adopting most, if not all children DCF had presented to them (race, medical history, etc.). Further, some of the adoptive parents made it known during the interviews that they had specifically pursued the public means for adoption because (a) they were aware of how many kids were waiting in the system and (b) because they knew how a variety of children that were waiting to be adopted had very sad and difficult histories (neglect, abuse, etc.) that would require individual attention.

Since respondents for my research had to be actively sought after, participants were recruited primarily through the use of *snowball sampling* and *convenience sampling*. Although online advertisements were initially used to recruit respondents, this approach quickly proved inefficient.<sup>17</sup> Eventually, the sample of gay adoptive parents was gathered with the aid of a highly regarded professional in Connecticut. So, as the data will illustrate, the interviews are not units that can (nor should) function quantitatively. ‘Measuring’ the amount of social hardship and legal barriers faced by an adoptive parent would be too subjective to function reliably. As such, the interview data will shine through as beacons of personal testimony – giving a present account of gay adoptive parents, with the struggles and hardships that are *currently* encountered.

Overall, the data generated by this research will serve to support the following *argument*: The cultural myths and legal restrictions that create social hardships for gay adoptive parents forge a vicious and discriminatory cycle of marginalization that American legal history illustrates is best remedied through judicial intervention at the Supreme Court level. Although a judicial intervention cannot immediately remedy the social and cultural myths and the legal limitations for gay parents, its spark will help to give gay families a sense of validation in the public spotlight. Finally, I will maintain that the suggested change for equality

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<sup>17</sup> For further information see Appendix A: “Recruitment Materials.”

and GLBT rights, although a gradual process, will come as a consequence of a Supreme Court ruling on the constitutional right to same-sex marriage.

In the coming pages, the analysis is structured to evaluate the previous research questions and draw together the various components of my central argument. First, in Part I, the various social and cultural myths surrounding gay parenthood will be reconstructed and evaluated. Then, in Part II, the legal limitations for gay parenthood will be examined with a discussion of hardships other marginalized groups have faced in the American Courts, followed by an analysis of the legal restrictions unique to the gay community. Finally, the argument will be made that intervention at the Supreme Court will serve as a measure of individual, political, and legal validation by breaking the cycle of myths and legal limitations.

## PART I: RECONSTRUCTING SOCIAL & CULTURAL MYTHS

*If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death; their blood is upon them. – Leviticus 20:13<sup>18</sup>*

Translated for the 1989 New Revised Standard Version (NRSV) of the Bible, the preceding passage stems from the third book of the Old Testament known as Leviticus.<sup>19</sup> Altered from its original version, which some scholars believe was written around the year 560BC, it is one of many examples of how language, both religious and secular, is utilized to structure and censure sociocultural exploration.<sup>20</sup> While this excerpt may appear irrelevant to the scholarly research on gay adoption, it epitomizes a central objection to the gay community: Are sexual identities besides heterosexuality *innately* wrong? Notably, the premise of this inquiry, both biblical and theoretical, relies on the assumption that a particular sexual identity intrinsically holds the ‘right’ and ‘natural’ position in society. The discussion that follows examines (1) how definitions of abnormality *change over time* and (2) why the use of rendering

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<sup>18</sup> Timothy J. Dailey. “The Bible, the Church, & Homosexuality: Exposing the ‘Gay’ Theology,” *Family Research Council*. 2004: 4.

<sup>19</sup> Dailey, “The Bible, the Church & Homosexuality,” 4.

<sup>20</sup> William D. Barrick. “The Book of Leviticus,” *Placerita Baptist Church*. 2004: 3. As Barrick illustrates, scholars have reasoned that a portion of Leviticus (Ch. 17-26), including the excerpt 20:13, was not the word of God to Moses. The contribution of Moses to Leviticus is said to have occurred “around 1444-1440 BC.” Consequently, the argument included in Leviticus 20:13, as some scholars argue, may have been offered by a “radical Judean priest.”

something and/or someone ‘abnormal’ can function as a means for social control.<sup>21</sup>

To begin, we must focus on the foundational convictions held by the adversaries to gay rights. Most opponents to gay adoption claim that homosexuality is, in itself, (1) a mental illness and/or (2) a deviant act of human nature with severe social, cultural, political, moral, physical, psychological, spiritual, and global repercussions. Rev. Paul Check, Catholic priest of the Diocese of Bridgeport, CT and Executive Director of Courage International, asserts, “Same sex attraction is both treatable and preventable. It indicates an incomplete character development likely based on the convergence of several factors: temperament, environment, experience, and free will.”<sup>22</sup> Similarly, the Family Research Council (FRC), “does not consider homosexuality, bi-sexuality, and transgenderism as acceptable alternative lifestyles or sexual ‘preferences’; they are unhealthy and destructive to individual persons, families, and society.”<sup>23</sup> Also on behalf of the FRC, Peter Sprigg claims, “homosexual behavior is not inborn, involuntary, immutable, or innocuous.”<sup>24</sup> Some argue that it is an act of deviance, devoid of “natural” and “normal” attributes—“the notion that ‘people

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<sup>21</sup> John J. McNeill, “The Church and the Homosexual,” 1976: 5-6; Susan Nolen-Hoeksema. *Abnormal Psychology: 4<sup>th</sup> Edition*. (2007): 6.

<sup>22</sup> Rev. Paul N. Check. “Courage and the Cross: The Problem of Same Sex Attraction,” *Sex and Culture*. [http://www.staustinreview.com/uploads/issues/Nov\\_Dec\\_2008\\_Check.pdf](http://www.staustinreview.com/uploads/issues/Nov_Dec_2008_Check.pdf), (2008): 16.

<sup>23</sup> Family Research Council, “Human Sexuality,” <http://www.frc.org/human-sexuality#homosexuality>.

<sup>24</sup> Peter Sprigg, “Homosexuality is Not a Civil Right,” from *Outrage: How Gay Activists and Liberal Judges Are Trashing Democracy to Redefine Marriage* (Washington, DC; Regnery Publishing, 2004): 18.



are born gay' is nothing less than the 'Big Lie' of the homosexual movement."<sup>25</sup>  
It is no coincidence that all anti-gay arguments intersect at the road of normality. Now, we must inquire: How does the United States view normality and why does this matter for the debate of gay adoption?

In the most recent edition of Dr. Susan Nolen-Hoeksema's text on abnormal psychology, she acknowledges, "Currently, the consensus among professionals is that behaviors that cause people to suffer distress, that prevent them from functioning in daily life, and that are unusual are abnormal."<sup>26</sup> Undoubtedly, this explanation, while rather encompassing, fails to express the opinion of all professionals in the field of psychology. Nonetheless, when this notion of abnormality is cross-analyzed with earlier conceptions of abnormality, we find noticeable alterations.

Even in the United States, a nation established less than two and half centuries ago, mainstream beliefs on *what* is rendered abnormal have shifted with the changes in time and culture. An excellent example of this comes prior to the Civil War. Dr. Nolen-Hoeksema discusses that, "When the slave trade was active in the United States, slaves who tried to escape their masters could be diagnosed as having *drapetomania*, a sickness that caused them to desire freedom. This provided a justification for capturing them and returning them to their masters."<sup>27</sup>

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<sup>25</sup> Sprigg, "Homosexuality is Not a Civil Right," 5.

<sup>26</sup> Nolen-Hoeksema. *Abnormal Psychology*, 28.

<sup>27</sup> Szasz, 1971 in Nolen-Hoeksema, *Abnormal Psychology*, 6.

At the time, esteemed physician, Dr. Samuel Cartwright, wrote, “With the advantages of proper medical advice, strictly followed, this troublesome practice that many Negroes have of running away, can be almost entirely prevented.”<sup>28</sup> Dr. Cartwright’s mention of “medical advice” appears to be nothing but a crude way of believing that torturous punishment was the ‘proper’ remedy.

As the American clock fast-forwards past the Civil Rights Movement and into the year 2009, this use of abnormality diagnostics will likely seem appalling and unbelievable to most people. One might pause and ask how this notion came to be accepted by psychological professionals. While racial inequalities still plague U.S. culture, slavery has been abolished, equal protection has been heightened, countless civil and human rights have been reclaimed for racial minorities, and the diagnosis of drapetomania is no longer used. Intuitively, if individuals tried to argue in favor of its use today, the vast majority of U.S. citizens would find such a belief as discriminatory, oppressive, unconscionable, and *abnormal*. This indicates how the use of labeling something and/or someone ‘abnormal’ can function as a means for social *control*.<sup>29</sup>

In contemporary America, persons that self identify as gay are subjected to political and social dissonance that opposes both the validity and normality of a gay identity. Even the belief that homosexuality is a mental illness is somewhat

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<sup>28</sup> Nolen-Hoeksema, *Abnormal Psychology*, 6-7.

<sup>29</sup> Peter Duff. 1997. “Diversion From Prosecution Into Psychiatric Care. Who Controls the Gates?,” *British Journal of Criminology*; Nolen-Hoeksema, *Abnormal Psychology*, 6.

understandable when considering the fact that until 1973 the American Psychological Association (APA) had homosexuality diagnosed as a mental disorder in the *Diagnostics and Statistics Manual for Mental Disorders (DSM)*.<sup>30</sup> This highlights why our society has conceptualized and opposed homosexuality. As a means for social control, “the civil commitment through medicalization of deviance,” has ingrained the notion in American history that homosexuality is a mental illness.<sup>31</sup>

Currently, unlike their heterosexual counterparts, gay individuals cannot donate blood to the Red Cross, serve openly in the United States Army, nor marry in forty-eight of the fifty states. As one anti-gay author argues, “The question, therefore, is not whether [gay] ‘discrimination’ will take place—it can, it will and it must.”<sup>32</sup> These examples, however, are only a fraction of the explicit legal and institutionalized restrictions that confront the gay community. The majority of the barriers, as the scholarship illustrates, come as a result of the immense social implications and social stigma that is attached to the class-specific legal limitations.

As discussed in the introduction, adoption is one of the most popular tools that gay couples have used to create families. Yet, similar to the other examples of explicit restriction, gay Americans have been significantly limited in their pursuit

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<sup>30</sup> Nolen-Hoeksema, *Abnormal Psychology*, 9.

<sup>31</sup> Steven Vago. 2006. *Law and Society*.

<sup>32</sup> Sprigg, “Homosexuality is Not a Civil Right,” 4.

of adoption due to the numerous social myths and stereotypes of the gay community. As the earlier discussion illustrates, the social conceptualization of normality serves as a vital baseline for reconstructing many of these myths. Clearly, if gay adoption was socially acceptable, the myths that presently mold cultural perception would run counter to actuality. This is not to say, however, that opposition would be extinguished if equality was reached—after all, even decades since women and racial minorities have reclaimed many of their basic civil rights, some opponents still maintain harsh objections to these groups. What this does purport, nonetheless, is that by thoughtfully analyzing and assessing social myths and stereotypes with the factual data from scholarly research, measurable truths may be exposed to either substantiate or oppose a particular position on gay adoption.

Currently, most Americans would concur that a gay identity is not a contagious ailment; an individual cannot simply ‘catch’ or acquire a gay identity in passing on the street. When the element of a gay identity is added to the institution of family, however, this supposed ‘understanding’ of non-transference changes. As Scott Ryan, a professor and author for the *Journal of GLBT Family Studies* notes, “Regardless of the why someone is/becomes homosexual, many persons believe gay men and lesbians should not enjoy the same privileges as

heterosexual individuals and couples.”<sup>33</sup> Now, before asking the, “but why?” question, we must understand how the public perceives homosexuality and how it has changed over time.

### *Public Perceptions*

More than forty years ago, “A 1965 Harris poll revealed that 82% of the men surveyed felt that homosexuals were harmful to the nation. In the survey, ‘only Communists and atheists were considered more harmful than homosexuals.’”<sup>34</sup> Yet, when we look at national surveys from more recent years, we find a drastic shift in how people feel toward gay individuals. As the data illustrates, the acceptance of gay individuals has increased over time.

In the 2000 National Election Study (NES), for example, American voters were asked, “How would you rate gay men and lesbians, that is, homosexuals?”<sup>35</sup> On a thermometer scale of 0 to 100, the survey respondents were able to offer their feelings on gay and lesbian individuals, with 0 relating to the most unfavorable feeling (“cold”) and 100 corresponding to the most favorable feeling (“warm”). Of the sample, only 32.7% offered a score below 50. Although this

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<sup>33</sup> Ryan, Scott, “The Influence of Gender on the Placement of Children with Gay or Lesbian Adoptive Parents,” 16.

<sup>34</sup> Ryan, Scott, “The Influence of Gender on the Placement of Children with Gay or Lesbian Adoptive Parents,” 17.

<sup>35</sup> NES2000.sav; 2000 National Election Study, Center for Political Studies and ICPSR, University of Michigan. In *An SPSS Companion to Political Analysis*, ed. Philip H. Pollock III. CQ Press: 2005.

survey question is admittedly subjective, in that the inherent meaning behind each thermometer rating will vary person to person, a general perspective can be uncovered. Unlike the 1965 Harris poll, with a significant proportion feeling that gay people are ‘harmful,’ this survey found much less opposition.

Now, it is beneficial for us to build upon this understanding that the American opinion toward gay individuals has shifted over time, since opinions on gay adoption has altered as well. Comparing information from the 2000 NES with the 2002 National Survey of Family Growth (NSFG) helps to produce the subsequent comparison table:

**Figure 1.1: 2000 NES and 2002 NSFS on Gay Adoption<sup>36</sup>**

Opinion on Gay Adoption	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
NSFG Percentage 2002	8.4%	38.5%	3.7%	28.0%	21.5%
NSFG Grouped Percentages 2002	46.9%		N/A	49.5%	
NES Percentage 2000	45.1%		N/A	54.9%	

<sup>36</sup> NSFS: Martinez GM, Chandra A, Abma JC, Jones J, Mosher WD. 2006. Fertility, contraception, and fatherhood: Data on men and women from Cycle 6 (2002) of the National Survey of Family Growth. National Center for Health Statistics. Vital Health Stat: 111-112; NES2000.sav; 2000 National Election Study, Center for Political Studies and ICPSR, University of Michigan. In *An SPSS Companion to Political Analysis*, ed. Philip H. Pollock III. CQ Press: 2005.

This comparison table illustrates a statistically significant change over a period of two years. Unlike the year of 2000, where survey data would estimate 54.9% of people to disagree with gay adoption, in 2002, at 5.4 fewer percentage points, 49.5% of people were estimated to disagree with gay adoption. In a parallel fashion, approval of gay adoption increased from 45.1% in 2000 to 46.9% in 2002—a 1.8 percentage point gain. Like the American feeling toward gay individuals, it appears that statistically the approval of gay adoption is shifting upward with time.<sup>37</sup>

### *Myths of Gay Parenthood*

Most adversaries of gay adoption argue that due to the sexual identity of the adoptive parent as gay or lesbian, children are (1) at a *greater* risk of becoming gay and (2) will become less geared toward a heterosexual identity.

Shane, an adoptive mother of two, is one of many that disagree with this ideology. As respondent Shane remarked, standing alongside her partner Angelina, “It’s rhetoric. It’s not true. That’s rhetoric, to me, driven out of fear...or just not knowing—or ignorance—or somebody telling them something when they were younger. And they’ve never looked into it, to dispute it, to educate themselves about it.” The claim of passing a sexual identity caters to a homophobic agenda, in which heterosexuality is socially rendered the normative.

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<sup>37</sup> See Appendix B: “Supplementary Statistics” for further quantitative analyses.

Notably, “heterosexuality, as it is constructed in our culture, relies on homophobia as a central organizing tenet.”<sup>38</sup> What this means is that although many persons who identify as heterosexual may not be overtly opposed to homosexuality, they are passive agents of homoprejudice. After all, heterosexuality, as some scholars argue, is defined by separating oneself from those who are homosexual. Still, many opponents hold a strong belief that “the child might become gay or lesbian as a result of having a gay parental role model.”<sup>39</sup> Yet, in addressing this assumption it is vital to inquire, “If a parent’s sexual orientation affects a child, why aren’t gay men [and women] raised by heterosexual parents not heterosexual?”<sup>40</sup>

During a 2002 CNN interview, Robert Knight of the Culture and Family Institute asserted,

I’m not questioning the good intentions of some of these homosexuals who want to raise kids. But I would say that they have serious sexual problems of their own, serious identity problems, and it’s not where you’d want to put a child unless you were taking into consideration more of what the homosexuals wanted than what is best for the kids.<sup>41</sup>

Although his reasoning goes unsubstantiated, Knight points to the widespread conviction that children are best suited in households that maintain healthy and loving interactions that cater to the *best interest of the child(ren)*. This is a belief

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<sup>38</sup> Heasley & Crane. 2003. *Sexual Lives: A Reader on the Theories and Realities of Human Sexualities*: 362

<sup>39</sup> Gerald P. Mallon. *Gay Men Choosing Parenthood*. Columbia University: New York. (2004):11

<sup>40</sup> Mallon, *Gay Men Choosing Parenthood*, 12.

<sup>41</sup> Zain Verjee and Brian Cabell, “Q&A,” *CNN International*, July 15, 2002.



few would refute, as repeatedly expressed by the interviewees. For example, Jillian, a gay adoptive mother of two states it well when she says, “We both want what’s in the best interests of our two kids. End of story.” For opponents of gay adoption, however, this belief is far from the end. Unlike supporters of gay adoption, adversaries vary on their position toward so-called sexual identity problems. To begin, the discussion must return to the former piece of this belief: Are children in gay households at a greater risk for becoming gay? “Yes,” “No,” and “Why does it matter?” are a few of the ‘answers’ we will find.

Tim Dailey, on behalf of the Family Research Council, argues that “The claim that homosexual households do not ‘recruit’ children into the homosexual lifestyle is refuted by the growing evidence that children raised in such households are more likely to engage in sexual experimentation and in homosexual behavior.”<sup>42</sup> Dailey includes the following statistics as proof of the ‘growing evidence’:

Studies indicate that 0.3 percent of adult females report having practiced homosexual behavior in the past year, 0.4 percent have practiced homosexual behavior in the last five years, and 3 percent have ever practiced homosexual behavior in their lifetime. A study in *Developmental Psychology* found that 12 percent of the children of lesbians became active lesbians themselves, a rate which is at least four times the base rate of lesbianism in the adult female population.<sup>43</sup>

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<sup>42</sup> Timothy Dailey, “Gay Parenting Places Children at Risk.” Family Research Council: (2001) in Kate Burns’ *Gay and Lesbian Families*: 36.

<sup>43</sup> Dailey, “Gay Parenting Places Children at Risk,” 36.

In addition to being quite different from my research findings, Dailey's conclusions contradict the consensus view of scholarly literature.<sup>44</sup> Whether or not Dailey's *intention* was to be deceptive through an erroneous association is uncertain. Clearly, what this excerpt demonstrates, among other things, is a number of mistakes in logic.

Dailey's argument utilizes a particular set of studies to claim "three percent [of adult females] have ever practiced homosexual behavior in their lifetime."<sup>45</sup> He takes this statistic to make drastic conclusions based on a separate, unrelated sample. Dailey's supposition indeed fails the most basic test of external validity—its generalizability does not stand. To make his inference, Dailey used the three percent marker of "homosexual conduct" to be an accurate representation of the lesbian population in America. Currently, the consensus view among scholars is that "about 10 percent – or 25 million – of the nation's population is homosexual."<sup>46</sup> But, returning to Dailey's claim, can a gay identity be simply measured by "homosexual conduct?" Opponents frequently create the picture of gay adoptive parents by encouraging the belief that gay relationships lack the emotional and romantic components.<sup>47</sup> Like heterosexuals, some people

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<sup>44</sup> Mallon, *Gay Men Choosing Parenthood*, 12; ACLU 1999: 44; Carole Cullum. 1993. "Gays and Lesbians Should Have the Right to Adopt Children," from "Co-Parent Adoptions: Lesbian and Gay Parenting," *Trial*: 118.

<sup>45</sup> Dailey, "Gay Parenting Places Children at Risk," 36.

<sup>46</sup> Carole Cullum. 1993. "Gays and Lesbians Should Have the Right to Adopt Children," from "Co-Parent Adoptions: Lesbian and Gay Parenting," *Trial*: 118.

<sup>47</sup> Dailey, "Gay Parenting Places Children at Risk," 32.

that identify as gay will never have sexual relations. As such, the figure that is used cannot be verified in a *reliable* capacity.

Furthermore, Dailey makes an erroneous transition from “homosexual behavior” to “lesbianism.” This illustrates the dehumanizing vernacular of many opponents to gay parenthood: Gay individuals are referenced disproportionately by non-romanticized sexual behaviors, such as “homosexual behavior,” “sodomy,” and “sexual deviance.” Such is a clear perversion of the true essence of a gay identity.

Dave, a pre-adoptive father of three children, expands on the myth of sexual identity confusion. Sitting with his partner he had met in college fourteen years ago, Dave stated,

“So, is it more likely that children in a gay household might grow up to be gay? Yes, because they’re more likely to be open-minded and go down the path they want to go down in life versus living life closeted and trying to get married and do what they think their parents want them to do. That’s the only thing that would increase the likelihood. I don’t think that seeing us increases the likelihood that they’re going to turn gay. I do believe that it’s very genetic.”

Dave’s comment on the potential of children to self identify as gay in gay homes, one he believes may be higher than in variant homes, creates a new portrait of sexual identity that both anti-gay and most gay-friendly scholars fail to capture. As Dave explains, he believes that gay families, by embracing open-mindedness and acceptance, may be more conducive to a child’s acceptance of self. Dave went on to note:

“I don’t think [children] grow up with a propensity to be gay. I think they grow up with a propensity to be open-minded...They’re probably going to grow up more open-minded than most kids would. So, if they have any inclination they won’t deny that inclination. They’ll pursue it and say, “I’m comfortable with that.” They aren’t going to grow up uncomfortable to be straight because they grew up with two fathers.”

Dr. Gerald Mallon argues against higher rates of gay children from gay adoptive parents by stating, “All the available evidence demonstrates that the sexual orientation of parents has no effect on the sexual orientation of their children and that children of lesbian and gay parents are no more likely than any other child to grow up to be gay.”<sup>48</sup>

But, how can people better understand that gay families are not all that different from heterosexual families? Adoptive mothers Shane and Angelina suggest a more practical approach to debunking this myth of gay parenthood:

Angelina: “You can get to know some gay families—and that’s one of the things we’re learning through our church. We’re well accepted in our church, but there are some fringe elements that have some concerns. And even from them, though, we’ve heard, “you know, since we’ve gotten to know you, it has really changed our minds about gay people and our comfort level. We really like you guys.”

Shane: “You’re kind of normal.”

Remarkably similar to Shane and Angelina’s suggestion on becoming acquainted with gay families, Jillian, an adoptive mother of two, offers the following advice:

“Get to know a gay couple that has kids. Become friends with them. Learn about our community. We’re the same as heterosexual couples. We pay taxes – we go to work every day, we cook dinner, we do all the same things. And talk to our children. My kids will be the first to say to you,

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<sup>48</sup> Mallon, *Gay Men Choosing Parenthood*, 14.

“Mom, I am not gay. I like boys.” Fabulous. My son: “I like girls.”  
Excellent. That’s wonderful. I don’t really care who you love. Love who  
you want to love.”

This illustration that gay adoptive parents are just as welcoming of  
heterosexuality, however, is not to negate the presence of gay children in gay  
households; “Of course, some children of lesbians and gay men will grow up to  
be gay, as will some children of heterosexual parents.”<sup>49</sup>

In an initial conversation with her older son of fourteen years, Diana  
states, “When we asked and talked to him about [if he had] a problem with having  
two moms, he was like, ‘No, because I’m gay.’ And that kind of threw us,  
because we had no... We were like, ‘What do we do?’ It’s funny, because you’re  
not discriminatory, but you never want your kids to go through what you went  
through.” Similar to Diana and Lynn’s predicament with their son’s sexual  
identity, one other gay couple, Joe and Gus, have encountered a parallel situation.

As Joe explains,

“Because Michael is the only straight person in the house, [we have to  
ensure] that he doesn’t feel like he’s an outsider. There was one day that  
Gus and Peter were having a conversation and Peter was bringing up that  
Michael was feeling kind of straight bashed by the conversation... Peter  
was going on, “gay people are so great.” [Consequently], we have to say  
that straight people are just as great; that there is no difference.”

Both sets of interviewed parents, whose children are gay, illustrate a concern to  
ensure the inclusion (and acceptance) of heterosexuality. As Joe illustrates,

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<sup>49</sup> Mallon, *Gay Men Choosing Parenthood*, 14.

because his son Peter was always talking about the gay community, Joe and his partner Gus endeavored to clarify to both of their children that straight people are just as great. What this illustrates contrasts the environment many self-identified gay adoptive parents have expressed in their own upbringings. While gay issues are commonly neglected and forgotten in heterosexually led homes, gay adoptive parents are quite aware of the inclusion factor and try to remove the prospect of heterosexual stigmatization.

The question thus remains: Are gay homes simply catering to the demands of a heteronormative culture? Annette Appell, a champion in the field of gay adoption, offers a potential answer to this question when she explains

Same-sex adoption appears to reinforce social and legal norms regarding adult and family relationships, protecting individual relationships while leaving legal, social, and economic structures intact. Moreover, even the frameworks for assessing lesbian and gay parented families utilize “heterosexual-parent households as the gold standard and implies that differences equal deficits.” This measure thus masks differences between heterosexual and homosexual parenting and avoids assessments that same-sex parent families may provide different and positive social and psychological lessons.<sup>50</sup>

Appell raises an excellent point about comparison where even my own research falls victim. Is it not heteronormative, in scholarly research, to assess the myths of gay adoptive parents as defined by heteronormative opposition? Am I inadvertently catering to a heteronormative agenda by arguing that adopted children are just as likely to identify as gay in gay homes as any other home?

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<sup>50</sup> Appell, “The Endurance of Biological Connection,” 308.

Regardless of this possibility, Appell highlights the socially ingrained standard of heteronormativity that parents, both gay and straight have utilized in parenting.

As scholar George Mallon notes, “A parallel inference that surfaces in exploring these gay dads’ experiences is that heterocentrism, the privilege of heterosexual relations over gay identities, continues to complicate gay dads’ efforts to be creative, resilient, and committed parents.”<sup>51</sup> I will not argue that heterocentrism ‘complicates’ a father’s efforts as a parent in a negative nor debilitating regard, but instead serves as a frequent reminder of one’s own sexual identity and the gendered interactions that occur in the home.

As Appell further holds, “despite concerns of social conservatives that recognizing lesbian and gay couples will undermine heterosexual norms, the *assimilation* reflected in same-sex parent adoption appears to reinforce notions that families are nuclear, monogamous, and economically autonomous.”<sup>52</sup> As sociologists Mary Bernstein and Renate Reimann note, “many LGBTs strive desperately for acceptance and understanding from mainstream society.”<sup>53</sup> This strong desire for societal acceptance may trigger this reinforcement and active framework for a heteronormative parenting style. Similarly, Annette Appell, a professor of law, argues, “despite concerns of social conservatives that recognizing lesbian and gay couples will undermine heterosexual norms, the

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<sup>51</sup> Mallon, *Gay Men Choosing Parenthood*, 104-105.

<sup>52</sup> Appell, “The Endurance of Biological Connection,” 308.

<sup>53</sup> Mary Bernstein and Renate Reimann. “Queer Families and the Politics of Visibility.” In *Queer Families, Queer Politics: Challenging Culture and the State*. Columbia (2000): 1.

assimilation reflected in same-sex parent adoption appears to reinforce notions that families are nuclear, monogamous, and economically autonomous.”<sup>54</sup>

While some earlier literature on gay parenthood argue that heteronormative ideals are overt signs of internalized homophobia, the most current research, including my interviews, disproves this notion.<sup>55</sup> Although many of the gay adoptive parents think about how others may perceive their parenting skills as a factor of their sexual identities, all of the parents appear very comfortable and open about their personal identities. So, although gay adoptive parents may unknowingly raise their children in a heteronormative lifestyle, the reasons for doing so have no connection with the concept of internalized homophobia. All gay adoptive parents interviewed openly acknowledged how their child’s sexual orientation wouldn’t make a difference in how they treated them or how much they love them. All of the interviewed parents were more concerned with their children’s best interests – the many things that make their children feel happy and feel loved.

As the previous examples illustrate, in American culture, the ideal ‘family’ is comprised of a married man and woman with biological children. Compared to this skewed vision of a family’s composition, gay parenthood is assumed to impose on the institution of family and its ‘traditional’ values, *as defined by*

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<sup>54</sup> Appell, “The Endurance of Biological Connection,” 308.

<sup>55</sup> “Internalized homophobia” herein refers to feelings of inner turmoil and even hatred due to a conscious conflict/battle with one’s own sexual identity.



*gender*. In Tim Dailey's article opposing gay parenthood, he argues, "The best way for children to be raised is by a mother and father who are married to each other."<sup>56</sup> Robert Knight's rhetoric follows the same logic: "What works is a child having a mother and a father in a committed, lifelong relationship. That's what we ought to be seeking. That's where children out to be placed, in terms of adoption. There's simply no excuse to create a motherless or fatherless family by design."<sup>57</sup> But, what about the alarming truth that "on any given day in the United States, about a half million children are living in foster care?"<sup>58</sup>

Robert Knight's assertion that families are being designed as motherless or fatherless is based on another ingrained myth about the family. The second myth I shall highlight is the belief "that it's in every child's best interest to have both a mother and a father."<sup>59</sup> Notably, this argument relies on the premise that mothers and fathers have innate characteristics as parents that function 'properly' together. However, as John, a gay adoptive father of two, remarks, "It makes sense, except, since life began, there have been households where the mother or father died, the mother or father were killed, they divorced, the grandparents raised the kids, or all [other] manners have happened." As a matter of fact, the so-called picturesque,

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<sup>56</sup> Dailey, "Gay Parenting Places Children at Risk," 39.

<sup>57</sup> Verjee & Cabell, "Q&A," July 15, 2002.

<sup>58</sup> Gates, "Adoption and Foster Care by Gay and Lesbian Parents in the United States," 1.

<sup>59</sup> Amanda Ruggeri, "A Quiet Fight Over Gay Adoption," *U.S. News & World Report*. 2008: 2.

‘traditional’ or ‘nuclear’ family “now accounts for less than twenty-five percent of the nation’s households.”<sup>60</sup>

Maggie Gallagher, president of the Institute for Marriage and Public Policy, asserts “the experience of same-sex couples will become the new norm for family life, because the ‘unisex’ idea that gender has no public significance is the only model that can be construed as ‘inclusive’ of both opposite-sex and same-sex unions.”<sup>61</sup> Gallagher reaches far beyond logical boundaries in making such a claim –She falls victim to sex-role stereotyping, and by doing so makes the erroneous assumption that men and women’s gender interactions are the sole product of biology. These arguments are interconnect with “the essentialist conviction that gay men cannot serve as appropriate sex-role models of masculinity for children, especially boys,” which is mirrors the belief that lesbians cannot serve as appropriate sex-role models of femininity for girls<sup>62</sup> As gay adoptive parents Dave and David discuss:

*Dave:* “All kids do things, cross-gender, that people associate with being gay. My four year old son loves to play with the dress up clothes...I’ve never worn women’s clothing in my life—nor has David to my knowledge. So, he doesn’t get that from us. He’s a kid.”

*David:* “If his sister has got a really cool princess outfit and he wants to squish into it, he does. That’s just the way it goes. We have friends that are straight couples with kids that do that and ask us, ‘What should I do?’ I’m

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<sup>60</sup> David Crary. “Gay Families Are Gaining Greater Recognition”: August 3, 2003. In Kate Burns, eds. *Gay and Lesbian Families*. Greenhaven Press. 2005: 97

<sup>61</sup> Maggie Gallagher. 2004. “In Defense of the Family,” *Institute for Marriage and Public Policy*.

<sup>62</sup> Mark Gianino. “Adaptation and Transformation: The Transition to Adoptive Parenthood for Gay Male Couples,” *Journal of GLBT Family Studies*. 2008: 206.

like, ‘Who cares?’ It’s what kids do. If they want to wear your heels, let them wear your heels and clonk around the house.”

*Dave:* “I’ve seen my two nephews do that and nobody thinks anything of it because my sister is heterosexual...But, if our kid does that people connect that to our being gay.”

What Dave and David highlight in their discussion is vital: When a child defies the gender norms in a gay home the so-called deviance will be blamed on the parenting skills of the *gay* parents.

Still, there are those that argue that boys and girls are biologically crafted to interact optimally in gender-specific ways. The ways children interact according to gender is said to be a causal factor of a gay identity. As Rev. Paul Check claims, “a mother who is overly involved in the life of her son, especially if she demeans the father in the eyes of the boy or tries to make her son into a surrogate husband, will likely do harm to the development of the boy’s masculinity.”<sup>63</sup> This inference, however, is on the assumptions that (1) masculinity is the optimum and ideal way for a boy’s maturation and (2) masculinity cannot be portrayed by anyone that is not a biological male. As adoptive mother Angelina states,

“I think you need to have a bunch of different good role models around any child to have them grow up well...And that’s another important reason for the church that we chose. There are a lot of men in our church that are great role models for our son about how to be a man and how to be a Christian man. That’s important to us – in terms of what’s important for how you learn to relate to other people or how you learn to relate to your significant other is by what’s modeled before you. So, if both Shane and I

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<sup>63</sup> Check, “Courage and the Cross: The Problem of Same Sex Attraction,” 16.

have a respectful relationship with each other, that's what he's going to learn: how to treat his partner respectfully. If we don't, then that's what he's going to model too."

Angelina's argument essentially encompasses the idea that a child's maturation comes through the exposure to positive and exemplary role models, regardless of sexual identity. Compatible with Angelina's argument that adult role models exist beyond the home, is adoptive father John's statement that

"Roles exist all over. In our house, we don't teach either one of them that something is specifically for boys or something is specifically for girls... Such as 'boys can't have dolls,' 'boys can't wear pink.' Those things have come up with the children. Each time I hear those things I stop and ask, 'What makes you think that?' And we explore them in length and I give my daughter examples of someone she knows that has a doll or someone she knows that's a boy that wears pink."

John takes an unconventional approach to gender reinforcement by actively discussing gender roles with his young children. Although this style wasn't as pronounced with the other adoptive parents I spoke with, most appear to be much more tolerant *in the event that* their children went against the gender norms.

Without reservation adoptive mother Jillian states, "The things that you should be teaching your kids shouldn't matter if you're a male or a female. In teaching them the values of life, [gender] doesn't matter."

Still, there will be those few that spew out heteronormative and homophobic language, such as Brian S. Brown, an opponent of gay adoption, who states, "Love alone does not make a family – a mother and father, committed to a life-long relationship either alone or raising their adoptive or biological children,

does. Put simply, family does matter.”<sup>64</sup> Brown alludes to the slogan of gay activists who proclaim, “Love makes a family.” Although, he makes an honest statement that love alone cannot create a family, it is quite clear that love is an intricate piece to building healthy and long-lasting families. Brown indirectly attempts to devalue the legitimacy and normalcy of gay parenthood by enhancing the cultural ideals of heterosexuality.

Similar to the cultural control over the labels of “normal” and “natural,” a socially constructed association has also been created between the labels “homosexual” and “immoral.” The myth still remains that (1) “children raised by gay parents will be brought up in an ‘immoral’ environment and (2) children will not be raised in religious and/or spiritual households.

Mallon addresses the first part of this myth by stating,

Americans have all kinds of disagreements about what is moral and what is immoral. Some people may think that raising children without religion is immoral, yet atheists are allowed to adopt and be foster parents. Some people think that drinking and gambling are immoral, but these pastimes do not disqualify someone from being evaluated as an adoptive or foster parent. If we eliminated all the people who might be considered ‘immoral,’ we would have almost no parents left to adopt and provide foster care.

Although this moral assessment rarely materializes through firsthand experience, many people will interconnect these issues of morality, from religious passages,

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<sup>64</sup> Brian S. Brown, “Same Sex Parenting Fails Children,” *Family Institute of Connecticut*. <http://www.ctfamily.org/editorial10.html>.

with more contemporary notions of human sexuality, political discourse, and social patterns.

Father McNeill, a Jesuit Priest, argues against the religious rhetoric against homosexuality. McNeill makes a universal declaration on morality by removing the myth that homosexuality is intrinsically immoral:

The same moral rules apply to homosexual as to heterosexual attitudes and behavior. Those that are responsible, respectful, loving, and truly promotive of the good of both parties are moral; those that are exploitive, irresponsible, disrespectful, or destructive of the true good of either party must be judged immoral.<sup>65</sup>

Still, religious zealots and many churches support the spiritual ‘solution’ to overcome a gay identity. This so-called ‘solution,’ as some claim, is the conscious action to rid oneself of any actions, thoughts, or behaviors that are same-sex oriented, by turning oneself to God or the path that one is ‘supposed to follow.’ As Parents, Families and Friends of Lesbians and Gays (PFLAG) warn in their faith and spirituality resource guide, “‘reparative therapists’ and ‘ex-gay ministries’ have been rejected by every major medical and professional association and have been proven to cause serious damage and even lead to suicide.”<sup>66</sup> It is even highlighted in PFLAG’s spiritual resource that, “In 2001, The US Surgeon General’s Call to Action to Promote Sexual health and

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<sup>65</sup> McNeill, “The Church and the Homosexual,” 21.

<sup>66</sup> Parents, Families and Friends of Lesbians and Gays (PFLAG). “Faith in Our Families: Parents, Families and Friends Talk About Religion and Homosexuality,” 1997: 15.

Responsible Behavior asserted that homosexuality is not ‘a reversible lifestyle choice.’<sup>67</sup>

To effectively reinforce their positions, anti-gay activists choose to switch the methodological phenomena of prevalence to cause/effect relationships. Individuals in the gay community become judged, in turn, as representations of their sexual identities than of their individual self. Opposition is perpetuated through its myth that “gay men are more likely to molest children.”<sup>68</sup> Although statistics proves that this belief is false, it is still an issue that gay adoptive parents recognize as a social stigma. As Dave, a pre-adoptive father of three notes,

“My mother hated when I was teaching, because she was afraid that a kid would say that I molested them or that I touched them and the whole gay thing would be associated with that. I think with my son, when he goes to school, is he going to say, “Oh when I was running around?” Or, is my daughter going to say, “When my brother was running around?” I get so paranoid about it. I need to kind of let off because I know it’s natural and it’s normal.”

Dave illustrates a phenomenon that is quite similar among the male gay adoptive parents. Notably, “for some, the concept of [a] gay father is an oxymoron where the identities of gay and father are seen to be mutually exclusive and at opposite extremes.”<sup>69</sup> Here, Dave illustrates a sense of social reinforcement that transcends to his internal stage. After being told about how sexual identity is evaluated with molestation, Dave is aware of what *could* be said. Consequently, the myths that

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<sup>67</sup> PFLAG, “Faith in Our Families,” 16.

<sup>68</sup> Mallon, *Gay Men Choosing Parenthood*, 14.

<sup>69</sup> Gianino, “Adaptation and Transformation,” 206.

surround molestation and pedophilia paint gay and lesbian parents as sexualized criminals. Since molestation and pedophilia are well known to be *innately wrong*<sup>70</sup>, when associations are unjustly characterized with a gay identity, gay parents are directly affected.

Following this scare tactic, many adversaries worry how the normalization of gay adoption will translate into legislation on gay marriage, which will transcend into the legalization of all forms of marriage. One opponent argues “that the gradual transition from gay marriage to state-sanctioned polyamory, and the eventual abolition of marriage itself, is now the most influential paradigm within academic family law.”<sup>71</sup> Like many adversaries of gay adoption, this opponent embraces the ‘slippery slope’ ideology. Stanley Kurtz an opponent of gay marriage and a research fellow at the Hoover Institution argues,

It is more likely that opening marriage to homosexuals will allow them to legitimize nonmonogamy, civil partnerships unrelated to sexual or romantic relationships, and polyamory (sexual relationships among more than two people. Without monogamy as a founding principle, marriage will no longer provide a stable and healthy setting for families—and especially children—to thrive.<sup>72</sup>

Likewise, Amanda Ruggeri’s notes, “allowing gay couples to adopt is seen by many conservatives as an unacceptable step closer to allowing same-sex

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<sup>70</sup> The concepts of molestation and pedophilia are regarded as innately wrong acts, following the legal conception of *mala in se*.

<sup>71</sup> Dailey, 2

<sup>72</sup> Stanley Kurtz. 2003. “Gay Marriage Threatens Families,” from “Beyond Gay Marriage,” *The Weekly Standard*.



marriage.”<sup>73</sup> Gay adoption is disfavored, amongst other things, for the domino effect it is assumed to contain.

The looming assumption persists that gay parenthood has a hidden vendetta to solely ‘redefine’ the institution of marriage.<sup>74</sup> Similar to gay adoption, opposition to gay marriage is based on unverified assumptions of gay persons. Some opponents go so far as to even claim, “Many radical gays and lesbians who yearn to see marriage abolished (and multiple sexual unions legitimized) intend to marry, not only as a way of securing benefits but as part of a self-conscious attempt to subvert the institution of marriage.”<sup>75</sup> Not only is this claim contrary to the mainstream gay community (and many of the radicals), but it also creates the notion that marriage will be inevitably ‘stained’ by polygamy.<sup>76</sup> As a result of the social and cultural myths that devalue gay relationships, legal action has been taken in the recent years to “protect” the traditional family.

Clearly, the “slippery slope” ideology that opponents embrace is false. The gay adoptive parents that were interviewed were less consumed by marriage inequality that I had come to observe in the general gay population. All adoptive parents, although understanding the safety, tax benefits, security, etc. of marriage, noted that obtaining a marriage license was never the motivation for creating a

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<sup>73</sup> Ruggeri, “A Quiet Fight Over Gay Adoption,” 2.

<sup>74</sup> Dailey, “Gay Parenting Places Children at Risk,” 37.

<sup>75</sup> Kurtz, “Gay Marriage Threatens Families,” 21.

<sup>76</sup> Kurtz, “Gay Marriage Threatens Families,” 21.

family. Still, many of the parents noted how marriage, nonetheless, holds serious benefits for the family.

Now, like the excerpt from Leviticus that introduced this chapter, numerous opponents take the literary interpretations of biblical passages to be unquestionable truths, known as “faith in faith,” albeit practiced in a selective manner.<sup>77</sup> As such, religious passages have been rendered unquestionable truths—to question one piece of one’s belief system is to question the entire system itself. As one heterosexual couple that opposes same-sex relationships claimed, “The symbolic meaning of the sexual union of husband and wife is explicitly related to the meaning of Christ’s union with his Church, and surely this has something to tell us of the meaning of our sexuality and of the male-female relationship.”<sup>78</sup> Fortunately, this opinion is not universal, even within the Catholic Church.

As Peter Fink, S.J. argued in a 1973 edition of *Commonweal*, a Catholic periodical, “the Church should explore the possibility that homosexual love is a valid form of human love, and, consequently, can also mediate God’s loving presence.”<sup>79</sup> Clearly, the specific religious opposition doesn’t silence gay families from exploring the depths of spirituality. Like the vast majority of gay adoptive parents that were interviewed, Joe reflects on his experience with religion:

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<sup>77</sup> McNeill, “The Church and the Homosexual,” 14. McNeill notes how “in using Scripture to deal with homosexuality many still use a text-picking approach.”

<sup>78</sup> Dailey, “The Bible, the Church, and Homosexuality,” 25.

<sup>79</sup> John J. McNeill, “The Church and the Homosexual,” 1976: 4-5.

“Our church – we always try to have a booth at Hartford Pride. One year we were the only church there and then the next year there were a ton. They were a whole row of churches. And some people who come go, “why are you guys all here?” I said, I think it’s kind of a backlash politically, with the religious-right. All this conservativeness is being forced down our throats. I think the churches that are liberal realize they have to have voice to and they’re letting people know that if you want spirituality and religion there are places for you—that all churches aren’t the same.”

Parallel to the narratives of the other gay adoptive parents that were interviewed, Joe and Gus’ religious engagement at the family level is common among gay adoptive parents. Many were active in their religious communities and in their own sense of spiritual exploration. “It helps give us some structure and it helps keep us connected to other people,” says gay adoptive couple Joe and Gus.

In Father John J. McNeill’s book entitled, “The Church and the Homosexual,” a religious argument of the truth between homosexuality and Catholicism is discussed. As Father McNeill summarizes,

The Church’s attitude toward homosexuals is another example of structured social injustice, equally based in questionable interpretations of Scripture, prejudice, and blind adherence to merely human traditions, traditions, which have been falsely interpreted as the law of nature and of God. In fact, as we have seen, it is the same age-old tradition of male control, domination, and oppression of women, which underlies the oppression of the homosexual.<sup>80</sup>

Father McNeill brings us back to the argument that the social hardships faced by gay adoptive parents, come through myths that are perpetuated to maintain a

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<sup>80</sup> McNeill, “The Church and the Homosexual,” 189.

position of control and domination.<sup>81</sup> Father McNeill touches at the heart of the argument contained in this thesis when he notes that,

The primary argument for the continued oppression of the homosexual is the belief, in reality unfounded, that the stability of the family and the moral health of society demand such oppression. There is good reason to believe, as we have seen, that just the opposite is the case. It is the present oppressive situation, which helps undermine the family structure by limiting the heterosexual to narrow and dehumanizing stereotypes and also by frequently forcing the homosexual into marriage.<sup>82</sup>

Now, as I approach the end of Part I, I will close with a question – one that I fully believe both proponents and opponents of gay adoption try to answer in advocacy efforts. What is in the best interest of children?

Although countless parenting guidebooks and literature on human development offer instructions on parenting, no guide can answer this question definitively. Since families will forever come in all shapes, in different races, with different capabilities, and from different times in history, there is and will never be a universal guide to the creation of family. As adoptive mother Jillian states,

“Kids need love. They need love, they need structure, and they need somebody there to care for them...They need that guidance and they need to know that you’re going to be there for them unconditionally. Even through the heartaches, my son and my daughter both know I’m not going anywhere. We’re forever. We’re forever family.”

Undoubtedly, love alone cannot make a family. But, like other close relationships, a family cannot survive without the key ingredient of love.

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<sup>81</sup> McNeill, “The Church and the Homosexual,” 189.

<sup>82</sup> McNeill, “The Church and the Homosexual,” 190.

## PART II: THE LEGAL FRAMEWORK OF GAY PARENTHOOD

As Part I of this thesis examines, the ability of gay individuals to function as healthy, lifelong parents has been crudely colored by social and cultural myths. However, since the myths were invalidated in Part I, the first research question asking, “How do the present cultural and social myths that surround gay parenthood parallel actuality?” can be answered. In short, the myths on gay parenthood are nothing more than fallacies that must be abandoned. They do not and have not paralleled the reality in gay adoptive homes, as illustrated by both the scholarly literature and my research. Still, since these myths are vocalized without evidentiary support, they consequently function as the foundation for countless legal hardships placed on the GLBT community. Now, to better conceptualize this relationship, the following model of analysis demonstrates the unique relationship between law and society:

Social & Cultural Myths → Legal Environment

Notably, this model should not be understood as a cause and effect relationship, in that the social and cultural myths do not necessarily create legal restrictions. It should, however, be conceptualized as an outline of the relationship between social perception and legal restriction – how the perception of phenomena transcends into the realm of legality. To help us understand this unique interplay, let’s recall an example that was briefly mentioned in Part I: slavery.

The segment of American history where slavery existed is an important one to mention when evaluating the relationship between society and law. Before prohibiting the act of slavery, social beliefs were maintained that skin color was an outward indicator of one's destined status in culture. Although many white persons believed this argument during the period of slavery, this myth clearly served to justify white supremacy and the free labor that resulted from slavery. Due to the social perception that the African American race was inferior, the slave trade remained a legalized and regulated part of American society. This interplay demonstrates the following:

Inferior Race → Legalized Slavery  
*Myth*                      *Legality*

Fortunately, the America that had once embraced this myth through slavery has been vacated. Although myths about racial superiority still exist in extremist organizations, such as the Ku Klux Klan, the mainstream perception has greatly changed to embrace the natural beauty of diversity. Thus, as the legal environment surrounding race relations has altered over time, so too have the social and cultural myths and the laws surrounding racial relations.<sup>83</sup>

So, to understand how the legal environment of a phenomenon affects the social and cultural myths, a second model can be introduced:

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<sup>83</sup> As the social perception on slavery changed, so too did the laws. Today, quite obviously, most would view slavery as unconscionable, in addition to the fact that it is illegal. Also, not only is slavery illegal, but the social environment of racial minorities are protected through the law, such as anti-discrimination legislation, hate crime laws, etc.

### Legal Environment → Social & Cultural Myths

Although this interplay is notably less visible than the former model, it is crucial to highlight the cyclical nature of myths (and society) with that of the legal culture. As Patricia Ewick and Susan Silbey mention in their book *The Common Place of Law*,

We conceive of legality as an emergent structure of social life that manifests itself in diverse places, including but not limited to formal institutional settings. Legality operates, then, as both an interpretative framework and a set of resources with which and through which the social world (including that part known as the law) is constituted.<sup>84</sup>

What Ewick & Silbey demonstrate is how ingrained and integrated law is—effecting all social interactions, whether or not the law itself is perceived as a central actor. The mere concept of the *present* social world, as Ewick & Silbey convey, includes the presence of the law.<sup>85</sup> Thus, combined with the first model, a sociolegal argument is created:

### **Social & Cultural Myths ↔ Legal Environment**

Crucially, with a sociolegal argument, in both label and substance, I indirectly illustrate how the two actors of a sociolegal argument, society and law, are so closely intertwined in American culture, whereby the use of dualistic thinking would fail to suffice.

Before I examine the specific legal issues faced by gay adoptive parents, I will review *legal* limitations other underrepresented groups have encountered in

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<sup>84</sup> Patricia Ewick and Susan Silbey. *The Common Place of Law*: 23.

<sup>85</sup> Ewick & Silbey, *The Common Place of Law*, 23.

the formation of family. The subsequent discussion aims to demonstrate the relativity of the gay community with other marginalized populations. As the artist Andy Warhol claims, “Life is a series of images, that change, as they repeat themselves.” So, we must ask ourselves: Will the American conception of gay parenthood, like a series of images, change as it merely repeats itself?

### *Marginalization & the Supreme Court*

To begin, in 1965, the Supreme Court of the United States heard the case of *Griswold v. Connecticut*. Through *Griswold*, the Court overturned a Connecticut law, which had criminalized contraceptive use.<sup>86</sup> In its majority opinion, the Court claimed, “the statute, [in question], was invalid as an unconstitutional invasion of the right of privacy of married persons.”<sup>87</sup> Significantly, by arguing that the Connecticut statute infringed on one’s constitutional right to privacy, the Court incorporated the concept of ‘privacy’ into constitutional interpretation. Notably, the term ‘privacy’ does not appear in the entirety of the Constitution.

Two years after *Griswold*, in the 1967 landmark case of *Loving v. Virginia*, the Supreme Court was confronted with a case that questioned the constitutionality of state laws prohibiting interracial marriage. As a white male, Richard Loving was prohibited from marrying Mildred Jeter, a black female, in

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<sup>86</sup> *Griswold v. Connecticut*. 1965. 381 U.S. 479, at 480.

<sup>87</sup> *Griswold v. Connecticut*. 1965. 381 U.S. 479, at 480.



their home state of Virginia. The couple was restricted from marriage due to a Virginia law from 1691, which “stipulated that any white person who married a black person would face banishment from the colony [of Virginia] for life.”<sup>88</sup> Additionally, as a result of the 1924 Racial Integrity Act, a white individual could not marry outside the ‘white race,’ although racial minorities were permitted to marry cross-racially.<sup>89</sup> These restrictions were known as anti-miscegenation laws. As historian Robert Pratt claims in his discussion of the anti-miscegenation laws, “Although it was called the Racial Integrity Act, it should more aptly have been titled the “White Supremacy Act,” since it sought only to protect the integrity of the white race. Whites were prohibited from marrying across racial lines but other races were free to intermarry among themselves.”<sup>90</sup>

In the *Loving* case, the Court ruled that the anti-miscegenation laws at question were unconstitutional, in accordance with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>91</sup> Through *Loving*, all interracial couples could no longer be prohibited from the right to marriage due to “racial classifications embodied in [anti-miscegenation] statutes.”<sup>92</sup> Furthermore, the Court’s opinion proclaims, “Marriage is one of the ‘basic civil rights of man,’

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<sup>88</sup> Robert A. Pratt. “The Case of Mr. and Mrs. Loving: Reflections on the Fortieth Anniversary of *Loving v. Virginia*.” In *Family Law Stories*, ed. Carol Sanger. 2008. New York: Foundation Press.

<sup>89</sup> Pratt, “The Case of Mr. and Mrs. Loving,” 12.

<sup>90</sup> Pratt, “The Case of Mr. and Mrs. Loving,” 12.

<sup>91</sup> *Loving v. Virginia*. 1967. 388 U.S. 1, 11-12

<sup>92</sup> *Loving v. Virginia*. 1967. 388 U.S. 1, at 12

fundamental to our very existence and survival.”<sup>93</sup> Notably, the Court’s assertion that marriage is a basic civil right was offered without explicit mention of heterosexual partnership. Clearly, the debate on same-sex marriage was immaterial to the case and relatively foreign to the justices in 1967. Nonetheless, such judicial ambiguity has led same-sex marriage cases and other hearings of the gay community to recall the ruling of *Loving*.<sup>94</sup>

After *Loving*, a monumental case for family politics materialized in the 1973 case of *Roe v. Wade*, coincidentally the same year that the APA removed homosexuality as a mental disorder from the DSM. As a result of *Roe v. Wade*, statutes prohibiting abortion before the end of the first trimester were declared unconstitutional under the Due Process Clause of the Fourteenth Amendment.<sup>95</sup> Like the efforts put forth in *Griswold*, *Roe v. Wade* enhanced a woman’s right to privacy and gave women a legal voice to decide when and if they would have children.<sup>96</sup> *Roe*, similar to the impacts of *Griswold* and *Loving*, offered the case-specified persons to have greater legal protection in the formation of family. As I believe, the legal precedents of *Griswold*, *Loving*, and *Roe* are none other than G.L.R. – Good Legal Rights – *Griswold*, *Loving*, *Roe* – three cases that have enormously helped a separate GLR: Gay Legal Rights.

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<sup>93</sup> *Loving v. Virginia*. 388 U.S. 1, at 7-12.

<sup>94</sup> *Lawrence v. Texas*. 2003. 539 U.S. 558, at 561

<sup>95</sup> *Roe v. Wade*. 1973. 410 U.S. 113, at 11

<sup>96</sup> *Roe v. Wade*. 1973. 410 U.S. 113

### *Legal Limitations: Past & Present*

When we turn our attention to gay legal rights, it is quite clear that most court cases on gay rights have been heard in the recent decades. Although court decisions have gone in many directions for gay rights, one thing is clear: gay rights are finally being discussed among politicians. Although the road has been long for gay rights activists, the debate is alive.

One of the most salient and historic legal battles for gay individuals surrounds the issue of sodomy. For a great part of our nation's history, sodomy was a crime in the penal code utilized to punish 'deviant' acts of sexual behavior that were not intended for procreation.<sup>97</sup> However, sodomy statutes applied to *all individuals* engaged in 'non-procreative' sexual activity. Essentially, this meant that all sexual activity beyond vaginal penetration between a man and a woman, even when conducted within the privacy of one's home, was considered a legal violation. Yet, regardless of this 'universal' standard that sodomy laws conveyed on face value, intimacy between persons of the same sex was considered utterly wrong and immoral. It should come as no surprise that for a gay person to be intimate, he or she would simultaneously violate the law. Consequently, when sodomy laws were enforced, gay individuals were indirectly given a heteronormative command: Either (1) refrain from any form of gay intimacy or (2) pursue intimacy with a member of the opposite sex.

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<sup>97</sup> *Lawrence v. Texas*. 2003. 539 U.S. 558, at 561

With the beginning of a ‘new age’ the Supreme Court heard one of the most controversial cases in 1986. In the case of *Bowers v. Hardwick*, the Court questioned how a Georgia sodomy statute, criminalizing two men for engaging in sexual activity, would apply through *Griswold*’s incorporation of privacy. Since the defendants were consenting adults who had engaged in sexual relations in the privacy of one’s home, one defendant in *Bowers* “challenged the constitutionality of the [Georgia sodomy] law, arguing that it violated his right to privacy.”<sup>98</sup> The underlying question in this case was whether or not two adults, regardless of their sexual identities, should be constitutionally protected to engage in sexual activities in the privacy of their own homes.

For the gay community and the defendants in this case, the ruling was a disappointment. As noted,

The Supreme Court, in a five to four decision, upheld Georgia’s sodomy law, holding that there is no fundamental right to engage in homosexual sodomy, limiting the scope of privacy jurisprudence to “family, marriage, [and] procreation,” and finding no connection between these concepts and homosexual activity.<sup>99</sup>

In *Bowers*, the privacy argument that *Griswold* incorporated would not be acceptable – at least not for another seventeen years.

In 2003, the Supreme Court finally overturned *Bowers v. Hardwick* in the case of *Lawrence v. Texas*. Although extremely similar to *Bowers* in its legal

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<sup>98</sup> Edward Stein. “The Story of *Goodridge v. Department of Public Health*: The Bumpy Road to Marriage for Same-Sex Couples.” In *Family Law Stories*, ed. Carol Sanger.

<sup>99</sup> Stein, Edward, “The Story of *Goodridge v. Department of Public Health*,” 36. From *Bowers*, 478 U.S. at 191.

background and privacy argument, the *Lawrence* ruling was the exact opposite of *Bowers*. In *Lawrence*, the Court stated that legislation criminalizing sodomy was unconstitutional and in violation of one's right to privacy.<sup>100</sup> Although the Court claims that the sodomy laws were not passed to direct opposition to 'acts of homosexuality,' scholars note that homophobic agendas permitted executive officers to use these laws to prevent intimacy of gay persons.<sup>101</sup> Clearly, the sodomy laws, although 'universal' in essence, were unequally enforced through the discretion of executive officers.

It is curious that the opinion of the Court in *Lawrence* made claim to the following statement: "there is no longstanding history in this country of laws directed at homosexual conduct as a distinct matter."<sup>102</sup> Supposedly, "American laws targeting same-sex couples did not develop until the last third of the 20th century."<sup>103</sup> In this spotlight, the Court makes the legal history sound overly welcoming and tolerant of gay persons. Although the Court is likely accurate in stating that the laws *targeting* same-sex couples are a recent phenomenon, reality demonstrates that legal barriers for the gay community have been long entrenched in the history of the United States.

Now, although the topic of sodomy is seemingly irrelevant to gay parenthood, the influence of sodomy laws on the family and gay adoption is very

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<sup>100</sup> 478 U.S. 186; *Lawrence v. Texas*. 2003. 539 U.S. 558

<sup>101</sup> *Lawrence v. Texas*. 2003. 539 U.S. 538, at 561

<sup>102</sup> *Lawrence v. Texas*. 2003. 539 U.S. 558, at 560

<sup>103</sup> *Lawrence v. Texas*. 2003. 539 U.S. 558, at 561

important. Like other interactions within the home, sexual relations have components that are legally rendered “right” and “wrong.” Since ‘acts of sodomy’ were legally rendered ‘wrong’ before 2003, a gay couple was at the time was either forced to abstain or take part in a criminalized sexual relationship—inevitably affecting the moral fabric of a family and the prospect of gay adoption. In addition by prescribing the label of ‘sodomy’ to gay intimacy, the gay family is causally envisioned as deviant, since the term sodomy holds notions of ‘abnormality.’ Consequently, our model applies in the realm of gay parenthood:

#### Myths on Sexual Identity & Behavior ← → Sodomy Laws

As the model suggests, not only do myths about a gay individual effect the creation of law, but simultaneously through the act of creating such laws the myths are further perpetuated and given a backbone of cultural validity.

On September 21, 1996, following the signature of then democratic President Bill Clinton, the United States Congress passed the Defense of Marriage Act (DOMA).<sup>104</sup> While same-sex marriage in America would not appear until the 2003 Massachusetts’s case of *Goodridge v. Department of Public Health*, DOMA was passed as a *preventative* measure from right-winged conservatives.<sup>105</sup> In its language, DOMA permits states and other territories of the United States to deny recognition of same-sex marriage licenses obtained in

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<sup>104</sup> The Defense of Marriage Act of 1996, Pub. L. No. 104-199, 110 Stat. 2419 (1996)

<sup>105</sup> Stein, “The Story of *Goodridge v. Department of Public Health*,” 27.

another State. For example, if a gay couple from Texas receives a marriage license in Connecticut then returns to their home state demanding legal recognition as a married couple, Texas officials are under no federal obligation to honor the request. In addition to its interstate regulation, “DOMA contains a definition of ‘marriage’ and ‘spouse,’ for purposes of federal law, affirming that both apply exclusively to relationships between persons of the opposite sex.”<sup>106</sup> Essentially it “declares that all federal statutes and regulations that refer to married persons or to other spouses shall be read as applying to opposite-sex couples only.”<sup>107</sup>

Over the past thirteen years, DOMA has been the center of profound controversy. Legal scholars have sharply questioned its constitutionality and evident contradictions with past judicial and legislative precedent. Others are more outraged by the social implications of DOMA, arguing that it implicitly establishes the federal government as an institution that opposes gay rights.<sup>108</sup> In this perspective, DOMA is viewed as a tool that further marginalizes and stigmatizes the gay community. On the contrary, proponents would argue that DOMA serves a key function in maintaining ‘sanctity of marriage.’ While both

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<sup>106</sup> Pamela A. Clarkson-Freeman. “The defense of marriage act (DOMA): Its impact on those seeking same-sex marriages. 2004. *Journal of Homosexuality*, 48(2): 2.

<sup>107</sup> Chambers, David L. “‘What If?’ The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples,” in Queer Families, Queer Politics: Challenging Culture and the State by Mary Bernstein and Renate Reimann. 2001: 307.

<sup>108</sup> Chambers, “‘What If?’ The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples,” 307.

sides to this debate have argued with strong personal motivations, the constitutionality of DOMA is an issue neither can ignore.

When the framers of the U.S. Constitution established a link between the federal and state governments, an important directive was included to ensure a level of consistency between the States: The Full Faith and Credit Clause.<sup>109</sup> In the Full Faith and Credit Clause, it is mandated that “respect should ‘be paid to acts, records, &c., of one state in other states.’”<sup>110</sup> Essentially, records and other forms of legal recognition are *constitutionally* protected as legal entities that require recognition in another state. In effect, by passing the Defense of Marriage Act, Congress knowingly contradicted the Full Faith and Credit Clause and some of the most fundamental constitutional precedents of U.S. history. Although this law still remains, great change has evolved in the road to gay marriage—including state laws that explicitly counteract DOMA. The following map illustrates a state-by-state illustration of the legality of same-sex marriage:

Figure 2.1: State-by-state Analysis of Same-sex Marriage (pre-Iowa)<sup>111</sup>

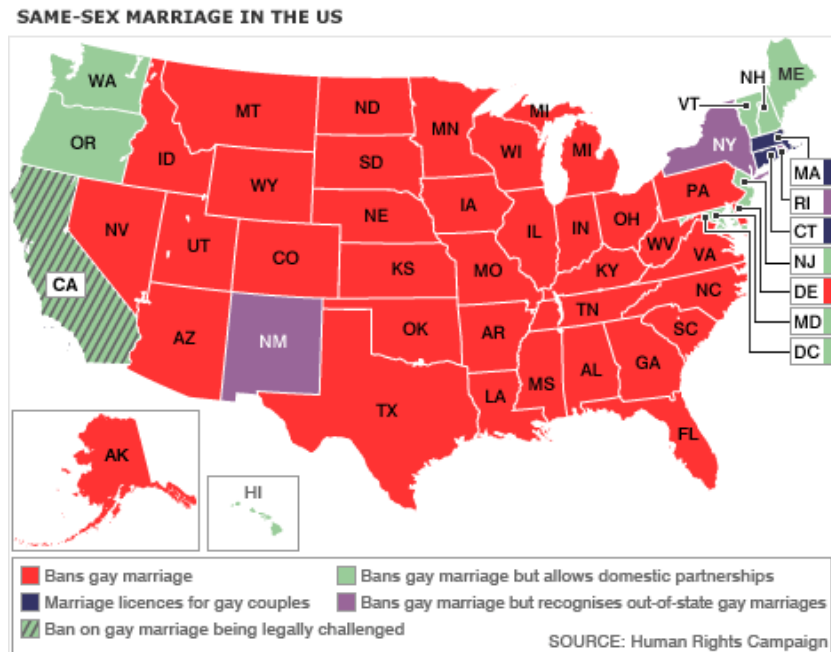
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<sup>109</sup>“Constitutional Law – Full Faith and Credit Clause – Tenth Circuit Invalidates Oklahoma Statute Barring Recognition of Out-of-State Adoptions by Same-Sex Couples. -- Finstuen v. Crutcher, 496 F.3d 1139 (10th Cir. 2007).” 2007. *Harvard law review* 121 (2): 660

<sup>110</sup> “Constitutional Law – Full Faith and Credit Clause.” 2007. *Harvard law review*: 660

<sup>111</sup> Credit: BBC News & Human Rights Campaign. Notably, the most significant changes to this illustration is the legalization of same-sex marriage in the states of Iowa and Vermont.





As the map illustrates, following the result of the November 4, 2008 state ballots, only two States in the U.S. could same-sex couples receive a marriage license: Massachusetts and Connecticut. However, more recently, the states of Iowa and Vermont have legalized same-sex marriage.<sup>112</sup>

While California was the second State to initially recognize gay marriage, via the California Supreme Court’s 2008 ruling *In Re Marriage Cases*, the ballot initiative Proposition 8, served to rewind the state’s political clock by restricting marriage to heterosexual couples. As the map illustrates, the legality of Proposition 8 is still being questioned in California’s judicial system. Issues of its

<sup>112</sup> Note: Although a few states have legalized same-sex marriage, all gay couples still lack the equal protection and benefits at the federal level. Due to DOMA, gay couples, even those that are married, cannot receive a number of federal benefits that their heterosexual counterparts can claim (i.e. Social Security, tax benefits, etc.) – not to mention the type of legitimacy that is afforded to heterosexual couples, through federal recognition as a married couple.

constitutionality are up for debate as well as the pre-Proposition 8 same-sex marriage licenses that were granted in California.<sup>113</sup>

The question now stands: Are the married same-sex couples, who legally wed before Proposition 8 still married under California law or will there be a retroactive effect that revokes said status? Remarkably, “California’s Attorney General, Jerry Brown, has insisted that all same-sex marriages carried out between the May court ruling and the passage of the ban will probably remain valid.”<sup>114</sup> While the voice of the Attorney General cannot be overlooked, opponents seek to remove all strains of same-sex marriage from the state of California.

In the October 2008 case of *Kerrigan v. Commissioner of Public Health*, the Connecticut ruling that essentially legalized same-sex marriage, the majority opinion of the Connecticut Supreme Court stated, “even though the right to marry is not enumerated in our constitution, it long has been deemed a basic civil right. E.g., *Loving v. Virginia* [(1967)].”<sup>115</sup> Notably, in *Kerrigan* the Connecticut Supreme Court applied the standard of heightened scrutiny.<sup>116</sup> By utilizing this standard to analyze the state’s interest in restricting marriage to heterosexual couples,

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<sup>113</sup> “Same-sex Marriage in the U.S.” November 12, 2008. BBC News.

<sup>114</sup> “Same-sex Marriage in the U.S.” November 12, 2008. BBC News.

<sup>115</sup> *Kerrigan v. Commissioner of Public Health*. 2008. 49 Conn. Sup. 664, at 730.

<sup>116</sup> *Kerrigan v. Commissioner of Public Health*. 2008. 49 Conn. Sup. 664, at 728.

The [c]ourt recognizes, and compels lower courts to recognize, that a group may well be the target of the sort of prejudiced, thoughtless, or stereotyped action that offends principles of equality found in [the equal protection clause]. [When] classifications based on a particular characteristic have done so in the past, and the threat that they may do so remains, heightened scrutiny is appropriate.

Notably, the justices in *Kerrigan* were keen to discuss how the legality of gay marriage can be viewed through the social lens of the Women’s Suffrage Movement and the Civil Rights Movement, in which both women and racial minorities fought discriminatory laws to obtain equal protection under law.<sup>117</sup>

Although great efforts have been taken to rectify the myths of gay parenthood, “a few states—relying on myths and stereotypes—have used a parent’s sexual orientation to deny custody, adoption, visitation and foster care.”<sup>118</sup> Further, based on these social and cultural myths, “gay and lesbian Americans wishing to adopt a child as an openly homosexual person are limited to domestic adoptions, as no country outside of the United States knowingly will place a child with gay or lesbian persons as adoptive parents.”<sup>119</sup> Consequently, gay couples are faced with an ultimatum when considering international adoptions: they must either hide their sexual identity or know that their only route for adoption will be within the United States.<sup>120</sup> Further, even when a gay

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<sup>117</sup> *Kerrigan v. Commissioner of Public Health*. 2008. 49 Conn. Sup. 664, at 697.

<sup>118</sup> American Civil Liberties Union (ACLU), 42

<sup>119</sup> John D. Matthews and Elizabeth P. Cramer. 2006. "Envisaging the Adoption Process to Strengthen Gay- and Lesbian-Headed Families: Recommendations for Adoption Professionals." *Child welfare*: 320

<sup>120</sup> Matthews & Cramer, “Adoption and Foster Care by Gay and Lesbian Parents,” 320.

couple takes the latter path and is confined to domestic adoption, only a little over half of adoption agencies ‘accept applications’ from persons who identify as gay.<sup>121</sup>

For gay couples who find an agency that will accept their application for adoption, further institutionalized scrutiny is permissible. Many agents of adoption centers will hold personal biases that cater to a heteronormative lifestyle in selecting the appropriate adoptive parents for a child. As one adoption counselor asserts, “An unspoken ranking operates within the adoption network.”<sup>122</sup> Adoption agencies are encouraged to place the so-called ‘best’ children in traditional households, while leaving the ‘other children’ (those with mental disabilities, histories of abuse, behavior disorders, etc.) to “unmarried couples of all kinds, single individuals, and gay people.”<sup>123</sup> As a result, families with gay adoptive parents are designated as substandard.

Presently, similar to the right of same-sex marriage, the legal debate over gay adoption is a state-by-state issue. The following map illustrates the various ways states respond to gay adoption:

Figure 2.2: Map #1 on Gay Adoption Laws by State<sup>124</sup>

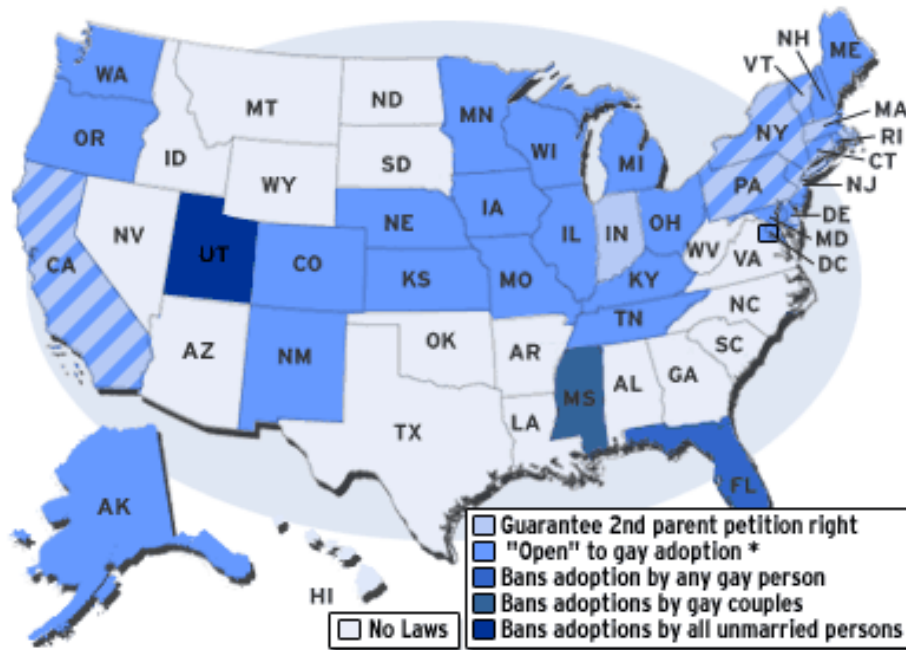
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<sup>121</sup> Matthews & Cramer, “Adoption and Foster Care by Gay and Lesbian Parents,” 320.

<sup>122</sup> Matthews & Cramer, “Adoption and Foster Care by Gay and Lesbian Parents,” 320.

<sup>123</sup> Matthews & Cramer, “Adoption and Foster Care by Gay and Lesbian Parents,” 320.

<sup>124</sup> Source: <http://www.post-tribulation-news.org>. July 14, 2008.



Although this map is an excellent illustration of the overall state laws on adoption, it is not an up-to-date, accurate depiction of the state laws.<sup>125</sup> For example, during the November 2008 Presidential Election, the state of Arkansas placed a ban on adoption for ‘unmarried couples,’ which specifically served to restrict gay couples from adopting. As Figure 2.2 doesn’t show, there is an explicit ban against unmarried persons, which transitively is a ban against gay couples.<sup>126</sup> Although Figure 2.2 has many states labeled as “no laws,” the sad truth remains that the lack thereof of gay adoption laws does not equate

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<sup>126</sup> Since gay couples cannot marry in Arkansas and only married couples can adopt in Arkansas, I utilized the transitive property to highlight the overall restriction of the gay community to adopt in Arkansas.

acceptance of joint gay adoption.<sup>127</sup> On a side note, it is only somewhat refreshing to highlight how only the state of Florida explicitly restricts “homosexual” persons from adoption.<sup>128</sup> The remaining states where it is ‘illegal’ have homophobic laws that either (a) prevent gay couples from adoption or (b) unmarried couples from adopting.

Unlike gay marriage, which receives a great deal of public attention, issues over adoption tend to illustrate a lack in uniformity.<sup>129</sup> As the Human Rights Campaign notes, “In many states the status of parenting law for GLBT people is unclear. The determination of parenting rights is always made on a case-by-case basis and is ultimately the decision of the judge whether to grant the adoption petition.”<sup>130</sup> Still, “State adoption laws closely reflect remarkably similar norms regarding families and parenting in that they model exclusive parenting, two-parent marital families, or single parents.”<sup>131</sup>

Although the legal inability to marry is an enormous setback, it is but one of many concerns that shape the daily interactions of gay adoptive parents. As it stands, “since gay men who choose to become parents together cannot be legally

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<sup>127</sup> Joint adoption, as opposed to second parent adoption, is the more favorable method for gay couples to adopt since it ensures a timely and equal transition into the legal rights of parenthood.

<sup>128</sup> On September 10, 2008, precisely a month before the Connecticut Supreme Court essentially legalized gay marriage, a Florida Circuit Court Judge rendered Florida’s ban on gay adoption unconstitutional (*Case not yet released*). The greater implications of this Florida decision are unknown since this case is currently in the appeals process.

<sup>129</sup> As authors note, the various state procedures for gay adoption are not fully understood since adoption occurs on a case-by-case basis.

<sup>130</sup> Human Rights Campaign. “Parenting Laws: Second Parent Adoption.” November 6, 2008.

<sup>131</sup> Appell, “The Endurance of Biological Connection,” 315.

recognized as parents in most states, one parent in the couple is likely to receive less validation and support from the outside world.”<sup>132</sup> The restriction that most states have, where only one of the partners in a gay couple can adopt, leads us to an important distinction: joint adoption v. second parent adoption.

As the Human Rights Campaign explains, a second parent adoption is the legal procedure whereby, “a person can petition to adopt the child of his or her partner.”<sup>133</sup> Unfortunately, as current data illustrates, there are only nine states and the District of Columbia, where “second-parent adoption is an option for same-sex couples statewide.”<sup>134</sup> Although the literature claims that some same-sex couples have petitioned to adopt in particular jurisdictions within states, such instances do not serve as binding precedents for statewide rulings. Although second parent adoption can be viewed as ‘better’ than the absence of gay adoption, it is certainly not the ideal. After all, it is nothing more than an institutionalized and legal barrier, unjustly burdening and stigmatizing gay couples. In the states where second parent adoption is the only option for gay couples, adoption procedures must be done for each parent *individually*. Not only does this institutional barrier subtract from the validity of a gay relationship, it also creates a risk for the child. Since only one parent will hold all legal rights to his or her child, the other parent has no legal voice until the second parent

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<sup>132</sup> Mallon, *Gay Men Choosing Parenthood*, 77.

<sup>133</sup> Human Rights Campaign. “Parenting Laws: Second Parent Adoption.” November 6, 2008.

<sup>134</sup> Human Rights Campaign. “Parenting Laws: Second Parent Adoption.” November 6, 2008.

adoption is finalized. Hypothetically, what if the parent that had maintained all legal rights dies before the second parent adoption? Who now holds the legal voice of the children until the children can be adopted, whether or not the living parent is permitted to adopt? Although the details would vary based on the timing and the particular state in question, the State would reclaim all legal rights until a permanent home is found and a new adoption process is finalized.<sup>135</sup>

Clearly, the more favorable option of adoption for gay couples is through joint adoption. Although this argument is certainly made on the premise that a gay individual adopts with his or her partner, the procedure for single-parent adoption as a gay individual is actually an easier procedure than as a couple.<sup>136</sup> A joint adoption, on the contrary, “involves a couple adopting a child who has been put up for adoption by the child’s biological parent(s) or is in the custody of the state. [Still], in many states it is unclear whether a same-sex couple would be permitted to file a joint petition to adopt.”<sup>137</sup> In only ten states plus the District of Columbia “same-sex couples can jointly petition to adopt statewide.”<sup>138</sup> It should come as no surprise that seven of the ten states, in addition to the District of Columbia, that permit joint adoption for gay couples are the same states where second parent

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<sup>135</sup> While the State may allow the children to remain with the living ‘parent,’ said parent would not maintain any sense of legal independence that other gay adoptive parents are afforded until the paperwork is completed to give all legal rights to said parent.

<sup>136</sup> Although not all states permit single persons to adopt children, single gay adoptive parents do not have to go through the process of obtaining legal rights that partners do in second parent adoptions. Furthermore, the issue of a single parent’s sexual identity is less likely to affect the prospect of adoption.

<sup>137</sup> Human Rights Campaign. “Parenting Laws: Joint Adoption.” November 6, 2008.

<sup>138</sup> Human Rights Campaign. “Parenting Laws: Joint Adoption.” November 6, 2008.



adoptions are also available to gay couples. Overall, since adoption procedures for gay couples remains uncertain for many states, it is evident that most states are not openly accepting of gay adoptive parents. This is reality is quite counterintuitive when we recall the unavoidable fact that at least 130,000 children are waiting to be adopted.

As the distinction between second parent adoption and joint adoption conveys, the legal rights of a parent are everything. While this truth may seem trivial to heterosexual couples, try to imagine the dilemma that many gay adoptive parents expressed in their interviews: “What if we were traveling through another state and the cops pulled us over? What if our son/daughter needed to go to the hospital when we were on vacation? The paperwork is the only way to show that we’re both his/her mother/father.” Certainly, the heightened level of legal awareness that gay adoptive parents have, although bad in the sense that it causes hardship, is positive in that gay adoptive parents seem to be much more knowledgeable and realistic in their family interactions. As a result of such limitations, these families are forced to deal with many more stressors that effect the social interactions of gay adoptive parents. After all, how many heterosexual parents make sure to have multiple forms of identification for their children in their cars and at home as did the vast majority of the respondents?

When asked about the advantages of having both parents adopt, B. talked about the legal component. As she said,

“I can take her to the doctor. If we’re in an emergency I can take care of her. I can pick her up from school. If you’re not the parent you can’t do any of that unless the parent writes your name down....nothing. You’re a legal stranger unless you’re the parent. So you’d be crazy not to.”

Unfortunately, all gay couples don’t receive the same rights as B. As Annette Appell notes, “What has remained in most states is adoption’s heteronormative frame that views families as heterosexual, marital, and exclusively two-parent.”<sup>139</sup> As discussed, legal rights through adoption are a state-by-state issue.

Unlike other gay adoptive parents I interviewed, B. was situationally forced to adopt her partner’s child who was born as a result of in vitro insemination. B. was thus forced to petition for a second parent adoption. As B. recalls,

“[My partner] was inseminated. So, I was part of that. I legally adopted my child, because that’s what happens. I think Connecticut calls it second-parent adoption, so I’m technically an original parent and an adoptive parent. I’m a peculiar case. And this makes me very different from heterosexuals because if we were married heterosexuals I wouldn’t have had to adopt. It would have been just automatic because of the marriage.... If I was a man and we went through the same process nobody would have ever questioned the parenthood.”

B. introduces a clear inequality between heterosexual and gay adoptive couples – how a marriage license can make the adoption process unnecessary and/or much easier. If she had been married to her partner, she would have never had to adopt, go through the home study requirements, and spend time as a parent without a legal voice. Nonetheless, Appell explains that

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<sup>139</sup> Appell, “The Endurance of Biological Connection,” 301.

States are beginning to give lesbian and gay couples quasi- or actual marital status that entitles these couples to be treated the same as married couples under all aspects of family law. For example, a handful of states apply marital presumptions to children born to couples in civil unions and permit lesbians and gays to adopt their partner's child just as a stepparent would. Thus, the newly recognized homosexual families resemble traditional notions of intimate adult relationships as coupled, monogamous, and financially productive and intertwined unions.<sup>140</sup>

Although these changes have been beneficial for the gay family, they are not enough. Why should B be analogized with a stepparent?<sup>141</sup> Doesn't this subtract from the validity of a gay partnership and gay parenthood altogether? B. reiterates how demeaning and unjust the process made her feel:

"I was a part of every step of the way. So, it was kind of simultaneously wonderful that I could adopt my own child and humiliating. It's offensive to have to adopt your own kid. To have to have a home study, have them come into your house—and make sure you're a fit parent. Unbelievable. It's simultaneously like, 'Thank God I live in Connecticut and I can't believe they're making me do this,' because it's my kid. She was not of my flesh, but she's my child."

Clearly, the social hardships of gay parents are exacerbated by the legal limitations they encounter with separate, yet simultaneous gay identities. Even for B. the process of adoption was only a necessary condition because of her sexual identity. Like B. said, if she was married, her rights as a legal parent would have been automatic.

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<sup>140</sup> Appell, "The Endurance of Biological Connection," 307.

<sup>141</sup> This question, notably, is not raised to critique the validity and serious worth of stepparents as legal guardians. However, the distinction is held to illustrate the heteronormativity of second parent adoption laws. Although, arguably, second parent adoption laws are better than nothing, they subtract from the sense of validation that joint adoption laws facilitate.

Since the majority of legal barriers for gay adoptive parents arise due to the absence of a marriage license, for both federal and state benefits, I believe that the most effective way to remedy the current predicament faced by gay adoptive parents would be through the legalization of same-sex marriage. With marriage comes a label of validation for the individual, the political rights, and the legal rights that are associated with the gay community.

With these types of validation, gay individuals could adopt jointly and no longer have their abilities as parents assessed in the frame of their sexual identities. Following this cycle, the cultural and social myths that were discussed in Part I would also change. Gay adoption, as enhanced by gay marriage, would become normalized and merely another type of family. The question now sits: When will this change come? Ten years? Twenty? How about fifty years? How can we rest assured that the change will one day come?

## CONCLUSION

In Part I of this thesis the social and cultural myths that surround gay parenthood were examined and shown to be false. Then, in Part II, these hardships were further deconstructed by assessing the legal restrictions of gay adoptive parents and the relative legal battles other marginalized populations have faced in American history. Since the legal restrictions for gay adoptive parents were discussed in Part II, our second research question asking, “How have the social and cultural myths of gay adoption manifested as legal limitations?” can be answered. As my sociolegal model from Part II demonstrates (Social & Cultural Myths  $\leftrightarrow$  Legal Environment), law and society are neither separate nor distant entities. Law is but a crucial ingredient to society, just as society is one with law.

As scholar John Brigham notes in his book, *The Constitution of Interests*, law and society are so intertwined that

“Legal practices [...] are a part of the culture, part of our nature: our basic outlook on life is stamped by the compacts drawn up by the colonists; by the decision that all laborers, black or white, should be free; by the agreements concerning due process for the accused and the convicted and the proper roles of the police and the judiciary.”<sup>142</sup>

Brigham points to the fact of how essential the law is to our daily interplay, in that it not only effects the extreme roles of society, but also the way in which we see and shape our lives. Brigham further illustrates this strong connection by

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<sup>142</sup> Brigham, John. 1996. *The Constitution of Interests: Beyond the Politics of Rights*. New York University.

mentioning how “laws come before as well as after people organize. Although people obviously think and act politically on a legal landscape that already exists, the way contemporary social science depicts legal politics makes it challenging to recognize this fact.”<sup>143</sup>

Furthermore, as Patricia Ewick and Susan Silbey’s remark in their book entitled *The Common Place of Law*, this connection is pronounced:

Legality is an emergent feature of social relations rather than an external apparatus acting upon social life. As a constituent of social interaction, the law [as referred to ‘legality’] embodies the diversity of the situations out of which it emerges and that it helps structure. Because legality is embedded in and emerges out of daily activities, its meanings and uses echo and resonate with other common phenomena....Legality is enduring because it relies on and invokes commonplace schemas of everyday life.<sup>144</sup>

Ewick and Silbey capture the true essence of my theoretical argument by discussing how the law is not a separate entity of our society, but instead, a functioning segment of the whole. From birth, the society that one is born into is structured and created by the legal environment that exists (on the premise, of course, that a legal system exists).

Still, there are those that would disagree with this potential for social change. In Gerald N. Rosenberg’s book entitled “The Hollow Hope,” Rosenberg holds the position that the Courts cannot bring social change. In making this

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<sup>143</sup> Brigham, *The Constitution of Interests*, 5.

<sup>144</sup> Patricia Ewick and Susan Silbey. 1998. “The Common Place of Law,” 17.

argument Rosenberg offers a compelling argument of the limitations of the Court.

As Rosenberg states,

A closer examination reveals that before Congress and the executive branch acted [on particular social issues], courts had virtually *no direct effect* on ending discrimination in the key fields of education, voting, transportation, accommodations and public places, and housing. Courageous and praiseworthy decisions were rendered, and nothing changed. Only when Congress and the executive branch acted in tandem with the courts did change occur in these fields.<sup>145</sup>

Essentially, Rosenberg argues that the Courts cannot *make* nor *enforce* social change; the legislative and executive branches are said to be the units of social change. Rosenberg includes a strong example by highlighting the social change, or the so-called lack thereof that occurred after *Brown I and II*.<sup>146</sup>

Calling into question the immediacy and effect of the Court's ruling in *Brown*, Rosenberg claims that desegregation in schools was not a direct result of *Brown*, but instead it was the 1964 Civil Rights Act.<sup>147</sup> Although I find Rosenberg's justifications to be both measurable and quite compelling, I must disagree with the central argument that devalues and minimizes the Court's potential to bring about social change. Social change, as I believe it will need to be constructed for the institution of family, cannot be simply measured as a cause and effect relationship. Curiously, would the 1964 Civil Rights Act have been written with the same force were it not for the *Brown I and II* rulings? Rosenberg

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<sup>145</sup> Gerald Rosenberg. 1991. "The Hollow Hope." Chicago: University of Chicago Press.

<sup>146</sup> Rosenberg, "The Hollow Hope," 45.

<sup>147</sup> Rosenberg, "The Hollow Hope," 45-46.

thoughtfully notes, “A plausible claim is that *Brown* was the spark that ignited the black revolution. By recognizing and legitimizing black grievances, the public pronouncement by the Court provided blacks with a new image and encouraged them to act.”<sup>148</sup> While this statement is likely true, in that it probably gave the Black community a sense of ownership and purpose in reclaiming civil rights, I think it is unjust to minimize *Brown* to a mere spark. *Brown*, like many other cases in Part II, was both the spark and the fuel to the social arguments.

Even in Rosenberg’s most recent edition of “The Hollow Hope,” he makes a parallel argument on the issue of same-sex marriage. As Rosenberg acknowledges,

Beyond the simple practical benefits of marriage, many gay-rights activists argue that same-sex marriage is of enormous symbolic importance. Inclusion of gay men and lesbians in the civil institution of marriage, they argue, would signal their acceptance into mainstream society. Perceiving the difficulty of a legislative fight given the opposition they face, proponents of same-sex marriage have instead turned to the courts.<sup>149</sup>

As Rosenberg argues and as Part II illustrated, obtaining equal rights for the gay community has emphasized the power of the judicial branch. Rosenberg follows with a strong argument, which once again questions the potential of the court to bring about social change. Rosenberg does this with the example of the 1993 case of *Baehr v. Lewin*, in which the Hawaii Supreme Court ruled, “Hawaii’s refusal to

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<sup>148</sup> Rosenberg, “The Hollow Hope,” 131.

<sup>149</sup> Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* 2<sup>nd</sup> Edition. Chicago & London: University of Chicago Press.



recognize same-sex marriages, absent a compelling justification, violated the state constitution's guarantee of equal protection of the laws."<sup>150</sup> Yet, even with this monumental ruling, which notably sounds similar to the language state courts have recently used in legalizing same-sex marriage, Rosenberg highlights that, "Despite these victories in court, same-sex marriage did not become legal in Hawaii. The decisions were quickly outpaced by subsequent political events."<sup>151</sup> Due to this sharp setback for the prospect of same-sex marriage in Hawaii Rosenberg goes so far as to claim that, "Winning a court case is one thing but translating that victory into change is quite another."<sup>152</sup> Yet, can we justly measure and refute 'social change' as a result of this one case? Must this change come as an immediate consequence? Or, is it more appropriate to assess such development across historical periods?

Rosenberg makes the argument that the legislative and executive powers are the units where the potential for social change appears.<sup>153</sup> Rosenberg states,

While the legislative changes in Vermont, Massachusetts, and New Jersey were clearly the direct result of litigation, and arguably the result in Hawaii, that is not the case in California, Connecticut, Maine, New Hampshire, Oregon, or Washington State. However, it doesn't follow that litigation played no role in influencing legislation in these states. It is possible, perhaps likely, that changes in these states were spurred on by the litigation campaign.<sup>154</sup>

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<sup>150</sup> Rosenberg, 2008. *The Hollow Hope*, 343.

<sup>151</sup> Rosenberg, 2008. *The Hollow Hope*, 343.

<sup>152</sup> Rosenberg, 2008. *The Hollow Hope*, 343.

<sup>153</sup> Rosenberg, 2008. *The Hollow Hope*, 352.

<sup>154</sup> Rosenberg, 2008. *The Hollow Hope*, 352.

Here, Rosenberg discusses all states where civil unions, domestic partnerships, or same-sex marriages are institutionalized.<sup>155</sup> In this excerpt Rosenberg illustrates a significant point, in that, even in states where legislative changes for gay couples were not “the direct result of litigation,” it is quite possible that the so-called “litigation campaign,” offered the necessary spark.<sup>156</sup> As Rosenberg remarks,

By providing same-sex couples with rights ranging from hospital visitation and medical decision making to health care coverage to inheritance (when a partner dies without a will) to the use of state stepparent adoption procedures, the lives of gay men and lesbians have been dramatically improved. On this characterization, litigation for same-sex marriage has had important, positive effects.<sup>157</sup>

Considering such benefits that arise for the gay family, it would be foolish to argue that the courts cannot bring about change, even if such change evolves with significant help from legislation. Using Rosenberg’s logic, the following model helps to illustrate Rosenberg’s argument:

**(Litigation →) Legislation → Change**

Unfortunately, Rosenberg’s argument minimizes the implications litigation has on social change. Rosenberg chooses to devalue the progress that has been made in the courts by making a comparison to the aftermath of *Loving v. Virginia*.<sup>158</sup> As Rosenberg argues, “So far, at least, there has been nothing equivalent to *Loving v.*

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<sup>155</sup> Rosenberg, 2008. *The Hollow Hope*, 352.

<sup>156</sup> Rosenberg, 2008. *The Hollow Hope*, 352.

<sup>157</sup> Rosenberg, 2008. *The Hollow Hope*, 352.

<sup>158</sup> Rosenberg, 2008. *The Hollow Hope*, 342-362.

*Virginia.*”<sup>159</sup> Of course there hasn’t been a case equivalent to *Loving*. Not only was the *Loving* case at the U.S. Supreme Court, unlike any gay marriage case to this day, but also, *Loving* was decided twelve years after *Brown*. Furthermore, unlike same-sex marriage cases, in the *Loving* case, the anti-miscegenation laws at question were nonexistent/removed in the majority of states. Clearly, making a connection to *Loving* before the U.S. Supreme Court even hears a case on same-sex marriage is rather premature.

### *Looking Forward*

In Part II, three significant cases, or the GLR as I like to refer them, were highlighted: *Griswold v. Connecticut*, *Loving v. Virginia*, and *Roe v. Wade*. With more than three decades since the Supreme Court decided these cases, it is quite clear how greatly these cases have affected both the law and society. To make a further argument, let’s compare the social interactions of gay individuals (not to mention gay parents) from today with that of fifty years ago. Unlike our present culture, it would be extremely different to live in a time where any sexual relationship between persons of the same sex was a punishable offense. What if the precedent in *Bowers v. Hardwick* was never overturned by *Lawrence v. Texas*? Would gay marriage have logically come in the states of Massachusetts, Connecticut, Iowa, and Vermont only less than a decade later? Would it be too

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<sup>159</sup> Rosenberg, 2008. *The Hollow Hope*, 353.

drastic for one state to criminalize any form of same-sex intimacy while another state recognizes the commitment of same-sex couples in marriage?

As my initial argument was made, the cultural myths and legal restrictions that create social hardships for gay adoptive parents forge a vicious and discriminatory *cycle* of marginalization that American legal history illustrates is best remedied through judicial intervention at the Supreme Court level. In conducting a macro-level assessment and evaluation of the inequality faced by the gay community, it is evident that too much variation remains between the states, which, of course, is a commendable aspect of the American tradition—whereby certain laws, taxes, and institutions apply solely to the state in which they are created. However, when state variations exist drastically and without valid justification, in such as gay adoption and gay marriage, judicial intervention at the Supreme Court level is both a necessity and an inevitable remedy.

I strongly believe that the legalization of marriage, as I suspect the Supreme Court anticipates, will be a central remedy for gay parenthood. It will not, however, be a remedy that instantaneously repairs *all* of the hardships of the gay community. However, I do believe, with the knowledge from the scholarly research and the interviews, that the legalization of same-sex marriage will serve as a means to validate the normality of a gay sexual identity. As a result of such normalization, and with the aid of legal reparations, the social and cultural myths will fade while a more favorable perception of the gay community is embraced.

Finally in legalizing same-sex marriage, the Supreme Court will effectively initiate the move toward positive and beneficial change for society. Since gay families will obtain most, if not all, of the same legal rights as heterosexual families, the unique hardships examined herein will either diminish or become moot.<sup>160</sup> Furthermore, with the legalization of gay marriage, gay adoptive parents are likely to find the process of adoption much easier and with more emphasis placed on the best interests of the children, instead of the sexual identity of the parents—once the perception of couples becomes predominately normalized, so too will the prospect of adoption.

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<sup>160</sup> This, however, is not to negate the potential that forms of discrimination and inequality will still exist, at least in part. Even more than forty years after *Griswold v. Connecticut*, opponents still voice their opinions, disproportionately with religious argumentation. Thus, although the hardships would significantly lessen over time, the religious attitudes would necessitate change, of either inclusion of new practices or abandonment of old beliefs, if the ideal atmosphere of social equality will be reached.

## APPENDIX

### APPENDIX A: RECRUITMENT MATERIALS

#### **I. Online Advertisement for Research Participation**

##### Title for Advertisement

Senior Honors Student at UConn Seeks Interview with Gay Male Couples with Adopted Child/ren

##### Body of Advertisement

I am currently seeking to interview gay male couples with at least one adopted child. As a senior honors student at the University of Connecticut, in collaboration with Principal Investigator, Dr. Kristin Kelly of the University of Connecticut's Political Science Department, I plan to use the knowledge gained from these interviews to supplement my senior honors thesis in political science.

The purpose of this study is to investigate the various legal and social hardships gay male couples confront when they choose to adopt children. By allowing each partner in the couple to voice his personal experiences, the in-depth interviews will be tailored to understand each individual's path to parenthood.

Although you will not be compensated for the interviews, by vocalizing your individual stories, you will be lending a voice to academia, the gay community, and our larger society.

It is important to note that an audio recording device will be utilized during this study. Still, confidentiality of such recordings and other records will be held to the highest of standards. The joint interview should take approximately one hour (both partners will be interviewed at the same time).

If you feel that you & your partner would be willing to arrange an interview with me, I can be contacted at [Nicholas.arntsen@uconn.edu](mailto:Nicholas.arntsen@uconn.edu) or (203) 317-1613.

Thank you very much for your time and consideration! Have a wonderful day!

The UConn IRB has approved this study, Protocol #H08-318.

## **II: Interview Questions** (*general outline of open-ended questions*)

When exactly did you decide you wanted to become a parent? Was there any particular situation attached to this?

How did your sexual orientation, as a gay male, play a role in your decision to become a father?

Before adopting, what had you come to expect about gay adoption? Has that changed in any way?

Did you experience any hardships before adopting? If so, could you please explain? Did you experience any hardships during the process of adoption? If so, could you please explain?

What type of role has your sexual orientation played in your position as a parent?

How has your relationship changed with your partner as a result of becoming a parent?

How have you personally changed as a result of adopting?

What would you say is the hardest thing you have faced as a parent?

How do you think your parenting style as a gay couple might differ from that of a heterosexual couple?

In light of the ways our society encourages boys and girls to be raised, in that boys play with trucks and girls play with dolls, in what ways has/have your child/ren been raised that either follows or does not follow these gender roles?

Has marriage, or would the possibility of marriage affect your role as a parent?

What type of information would you want to give to other members of the gay community who are considering adopting children?

Are you considering adopting any more children? And, what has led you to this decision?

### **III: Notes on Research Design**

Although the variables and select cases have strong face and internal validities, the concept of reliability holds definite caveats. It would be illogical to assume that an interviewee's responses would parallel those that would be given if the interviews were conducted in fifty years. This, of course, is based on a strong conviction that gay issues are greatly molding over time. Although specific examples will likely exemplify a time-specific interaction, the greater themes will hopefully render large-scale generalization.



APPENDIX B: SUPPLEMENTARY STATISTICS

Utilizing variables from the 2000 National Election Study, a frequency table was constructed to first demonstrate how a sample of American voters in the year of 2000 felt toward gay individuals. The following table illustrates this phenomenon:

**Gay Thermometer Recoded**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	235	13.0	16.2	16.2
	2	61	3.4	4.2	20.4
	3	81	4.5	5.6	26.0
	4	82	4.5	5.7	31.7
	5	14	.8	1.0	32.7
	6	98	5.4	6.8	39.4
	7	103	5.7	7.1	46.5
	8	61	3.4	4.2	50.8
	9	88	4.9	6.1	56.8
	10	92	5.1	6.4	63.2
	50	533	29.5	36.8	100.0
Total		1448	80.1	100.0	
Missing	System	359	19.9		
Total		1807	100.0		

First, it is important to note that as evidenced by the title of this frequency table, “Gay Thermometer Recoded,” the data herein has been recoded to simplify the visualization and assessment process. Instead running a frequency table with the initial ‘thermometer ratings’ of 0 to 100, the numbers were grouped into new variables, whereby old ratings of 0-10 equate 1, 11-20 equate 2,..., 41-49 equate 5, 51-59 equate 6,..., and “50” equates the sole response of “50.” The data was recoded in this fashion to illustrate how a score of 50, which assumes a neutral-type feeling, was answered in much greater frequency than others—36.8% of the sample responded with a score of 50.

Now, the ‘thermometer rating’ that was provided, is based on the following question, “How would you rate gay men and lesbians, that is, homosexuals?” (NES2000.sav). On the initial scale of 0 to 100, the sample was able to offer their feelings on gay and lesbian individuals, with 0 relating to the most unfavorable feeling (“cold”) and 100 corresponding to the most favorable feeling (“warm”). Although 359 participants were labeled “missing” from this survey question (meaning that they did not partake in the required post-interview, did not know of the specific population, did not know where to rate, or refused to answer the question), the data is nonetheless valuable to the research question.

Although this survey question is extremely subjective, in that the inherent meaning behind each rating on the thermometer will undoubtedly vary person to person, a general perspective can be uncovered. As the frequency table illustrates,

feeling toward gay and lesbian people is quite variable, with extreme opinions offered on each end of the spectrum. As the data illustrates, only 30.6% of the sample provided a score of 6 or higher (51 to 100). Similarly, it can be stated that 32.7% of the sample offered a score of 5 or lower (0 to 49). As such, from this sample, a greater percentage of persons have negative feelings toward gay and lesbian individuals than those who have positive feelings toward this group.

Now, it is beneficial to follow this understanding with another survey question that asked research participants the following question: “Should homosexual couples be allowed to adopt children?” Unlike the last question, this permitted responses of only “yes” and “no.” The following table illustrates the research data:

**Figure 1: Gay Couples Adopt Children**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1. Yes	747	41.3	45.1	45.1
	5. No	909	50.3	54.9	100.0
	Total	1656	91.6	100.0	
Missing	System	151	8.4		
Total		1807	100.0		

As illustrated, only 45.1% of the sample is in favor of gay adoption, while the majority opposes it (54.9%). As such, a cross tabulation was administered to show the relationship between an individual’s feelings on gay and lesbian people and how it corresponds to his or her opinion on gay adoption.

**Figure 2: Cross Tabulation - Gay Thermometer Recoded \* Gay Couples Adopt Children**

			Gay couples adopt children		
			1. Yes	5. No	Total
Gay Thermometer	1	Count	15	215	230
		% within Gay Thermometer Recoded	6.5%	93.5%	100.0%
	2	Count	11	47	58
		% within Gay Thermometer Recoded	19.0%	81.0%	100.0%
	3	Count	15	59	74
		% within Gay Thermometer Recoded	20.3%	79.7%	100.0%
	4	Count	19	61	80
		% within Gay Thermometer Recoded	23.8%	76.2%	100.0%
	5	Count	5	7	12
		% within Gay Thermometer Recoded	41.7%	58.3%	100.0%
	6	Count	56	34	90
		% within Gay Thermometer Recoded	62.2%	37.8%	100.0%
	7	Count	62	33	95
		% within Gay Thermometer Recoded	65.3%	34.7%	100.0%
	8	Count	34	19	53
		% within Gay Thermometer Recoded	64.2%	35.8%	100.0%
	9	Count	63	18	81
		% within Gay Thermometer Recoded	77.8%	22.2%	100.0%
	10	Count	71	15	86
		% within Gay Thermometer Recoded	82.6%	17.4%	100.0%
	50	Count	252	232	484
		% within Gay Thermometer Recoded	52.1%	47.9%	100.0%
	Total	Count	603	740	1343
		% within Gay Thermometer Recoded	44.9%	55.1%	100.0%

The preceding cross tabulation (Figure 3) illustrates a strong relationship between these variables. Within the first two sets of columns, each percentage shows the proportion that approves and disapproves of gay adoption within each gay thermometer rating. Intuitively, survey participants who rated gays with a score of “1,” have the highest group percentage in opposition to gay adoption at a level of 93.5%. Oddly, those who rate gays at a score of “10” only had 82.6% who approved of gay adoption—10.9 percentage points lower than the majority opinion at the lowest thermometer rating. These numbers offer the potential explanation that opposition to gay adoption is not merely associated with feelings toward gay individuals.

The data from this cross tabulation illustrates a rather linear relationship—signifying the possibility of a strong correlation. For ratings of persons that favor gay adoption, cell percentages tend to *increase* as the thermometer rating *increases*. Similarly, for survey participants that disapprove of gay adoption, cell percentages tend to *decrease* as the thermometer rating *decreases*.

On one last note, the unit “50” illustrates a majority that favors gay adoption. For persons that responded with a thermometer rating of “50,” the so-called neutral point of the initial scale, 52.1% responded in favor of gay adoption, while 47.9% responded in opposition. Evidently, other independent variables beyond thermometer ratings are interconnected with gay adoption.

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