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The Description of Gay and Lesbian Families in Second-Parent Adoption Cases

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Lesbians and gay men are turning to the courts to recognize their family relationships. In this article every reported court decision where a lesbian or gay couple has successfully completed a second-parent adoption is reviewed to analyze the presentation and judicial analysis of the petitioning parties in conjunction with the current debates within family theory. Traditional family theorists argue that the contemporary family is in transition but will always be recognizable as the traditional family; postmodern theorists argue that the traditional "family" is a fiction. Results from this study indicate that judges in second-parent adoption cases rely on a traditional definition and vision of the family in evaluating the gay and lesbian petitioners before them. **© 1998 John Wiley & Sons, Ltd.**

Many gays and lesbians have children while in a committed relationship with another same-sex individual who has agreed to second-parent (or co-parent) the child. In these households, state and federal laws usually afford only the biological or adoptive parent legal status (Delaney, 1991; Developments in the Law, 1989). Legal parental status carries numerous rights, duties, and obligations. Federal and state policies such as income tax exemptions, intestate succession, and eligibility rules for entitlement programs require a legally defined family. Most private insurance carriers require a state-sanctioned family for extension of health or life insurance benefits. In some communities a legal relationship is necessary for a family to rent an apartment or reside in a family-zoned neighborhood. Schools, day-cares, doctors, and other institutions often require that parents, and only parents, make arrangements for their children. In general, parents are assumed to be the proper care-givers for their children. Thus gays and lesbians, especially those with children, are turning to the courts for recognition.

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Judicial interpretations of the legal arguments presented by gay and lesbian petitioners, as well as judicial commentary about the petitioners themselves, are setting precedent for subsequent claims. In this article I review the commentary in court opinions regarding the families in successful second-parent adoption cases, and then compare the discussion in these cases with the current debate within family studies. Such an analysis will help further our understanding of the intersection of family theory with family policy. In addition, this analysis can serve to help family practitioners evaluate whether and how to bring forth legal petitions by gay and lesbian second-parents.[1]

FAMILY THEORY AND POLICY

Traditional structural functionalist theory posits that the family is the established pattern for intimate relations as well as child-rearing, and thus has become institutionalized and culturally legitimated. Burgess' (1926) studies of the "modern" family in the 1920s through 1940s led him to conclude that even in periods of change families will reorganize in functionally adaptive ways and will look similar to the family of the past. Other forms of relations are deviant or alternative. According to Scanzoni & Marsiglio (1993):

> The label "alternative," no matter how neutral it appears, necessarily reinforces the conceptual dichotomy between diversity and the family. Accordingly, this dichotomy shores up the functionalist belief that the established pattern is "better" for society than alternatives. The family is said to be beneficial for society because it promotes social order and social stability ... The fear is that as adults pursue alternatives, children suffer, and as a result, society does too. (p. 106)

In contrast to these traditional approaches, postmodern family theorists assume that family diversity is now a permanent state and that the family will not reorganize itself to equilibrium (Bernardes, 1993; Zinn & Eitzen, 1990). Postmodern theorists and practitioners embrace family forms which include such concepts as alternative life-styles, social divisions, diversity, difference, and pluralism. Instead of fitting alternative families into a normative family mold, this contemporary research suggests that the traditional family should be rejected as a relevant category for analysis and comparison (Bernardes, 1993). Some postmodern theorists reject the phrase "the family" and replace it with terms such as "families"; others refrain from using existing vocabulary. Not surprisingly, the challenges and efforts by these theorists to either replace or broaden traditional family definitions are controversial.

Current public policy and legal debates regarding the family mirror the discussions by family theorists. The family in common law is conceived as a private unit formulated and maintained without state interference (Minow & Shanley, 1996). In the wake of challenges to the courts' "hands off" approach to the family by both feminist family scholars as well as by advocates of traditional "family values," political theorists have currently tracked three emerging trends in the courts and legislatures.

[1] It is the view of this author that second-parent petitions should not be summarily dismissed by the courts. Instead, gay and lesbian parents should be afforded the same rights, duties and obligations as heterosexual parents.

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Contract-based approaches suggest that the law treat the family as a contractual relationship, allowing individuals to establish their own terms and conditions of the relationship as long as minimal standards of care for children are met. Second, community-based theories advocate that the state recognize and privilege only those relationships which conform to a specified model that reflects the moral standards of the community. And finally, rights-based theories center notions of equality and opportunity for each individual and then expand these principles to guide family law. Each theoretical approach has its advocates both in practice and the courts, but none has emerged as dominant.[2] For example, claims for legal recognition of alternatives to the traditional family with the concomitant rights, duties, and obligations that accompany legal status have been both supported and rejected by the courts:

> The Supreme Court pronounced constitutional bases for a right to marry; the right to procreate; the right not to procreate; the right to retain or establish parental ties. The Court rejected claims for a right to engage in consensual homosexual activity, and restricted claims of parental status outside of marriage. The Court also recognized ... certain claims of parental decision-making power and family privacy. (Minow & Shanley, 1996, p. 17, cases cites omitted)

As this quote illustrates, the courts have relied on no clear, unified policy direction. However, the role of the court in granting or rejecting adoption petitions as well as acknowledgement that these family issues can raise constitutional questions, has put the issue of same-sex second-parent adoption squarely within the purview of the courts and legislatures.

GAY AND LESBIAN FAMILIES IN THE EMPIRICAL AND LEGAL LITERATURE

It has been estimated that there are between 1.5 and 5 million lesbian mothers and between 6 and 14 million children with either a lesbian or gay parent (ABA Annual Meeting, 1987; Delaney, 1991; Falk, 1989). The 1990 census counted unmarried partnerships of the same and opposite sex for the first time, and showed 145,000 unmarried partner households of the same sex and over 3 million unmarried partner households of the opposite sex (*In re Camilla*, 1994). PFLAG, the Federation of Parents, Families and Friends of Lesbians and Gays, states that one out of every four families has a gay member (Goodman, 1991).

Empirical studies of gays and lesbians as parents are few in the family literature. According to Allen & Demo's (1995) review of nine outlets for family scholarship, less than four percent of articles published between 1980 and 1993 discuss gay and lesbian families or family issues. Notable exceptions to this lack of reporting include the work by Blumstein & Schwartz (1983) who discuss same-sex partnerships, Lewin's (1993) study of lesbian mothers, and the literature on the psychosocial development of children of gay and lesbian parents (Bozett, 1987; Patterson,

[2] According to Minow & Shanley (1996), each of these three perspectives ignores either the importance of the individual in the family, or the role of the state in privileging certain forms of intimate relations; and thus, none of the current directions in family policy is acceptable.

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1992, 1994). Similarly, several books and anthologies have been written by gay and lesbian parents, including Burke's *Family Values: Two Moms and Their Son* (1983), Pollack and Vaughn's *Politics of the Heart: A Lesbian Parenting Anthology* (1987), and Weston's *Families We Choose* (1991). These works, as well as popular press items such as a Newsweek (Kantrowitz, 1996) cover announcing the pregnancy of rock-star Melissa Etheridge's lover, Julie Cypher, have become part of popular consciousness, but have not yet been translated into empirical social science data. Allen & Demo (1995) conclude that researchers have yet to find meaningful ways to incorporate sexual orientation into studies of family phenomena even though there is a growing recognition of new family forms, and lesbian and gay families often are listed as an example.

Commentary in the legal literature regarding gays and lesbians and their legal status is growing. Articles have reviewed anti-sodomy statutes, legalized marriage, domestic partnerships, child custody, adoption, and foster parenting (Developments in the Law, 1989; Rubinstein, 1993). Though the law review literature is extensive and the authors usually argue in favor of the extension of benefits to gays and lesbians, the results in the courts are equivocal.

In custody cases involving children, the courts have often considered the sexual orientation of the parents in their determinations. Falk's (1989) and Flaks' (1994) extensive reviews of the psychosocial assumptions made by judges indicate that gay and lesbian petitioners encounter numerous problems in child custody cases. Judges have often ignored all other considerations commonly associated with a determination of the child's best interests when the mother is lesbian. A recent example is *Ward v. Ward* (1996), a case where child custody was awarded to the father even though he murdered another ex-wife over visitation. The judge believed that a lesbian home could never be a suitable environment for any child.

Other courts have assumed that all gay and lesbian individuals are mentally ill, and that lesbians are less maternal than their heterosexual counterparts and are therefore poor mothers. Courts have presumed that children raised by gay or lesbian parents will develop psychological or developmental problems, or will be molested (Falk, 1989; Flaks, 1994). In contrast, the existing social science research indicates that no significant differences between gay and lesbian parents and their heterosexual counterparts or their children can be documented. Researchers have been unable to establish detrimental results to children from being raised by gay or lesbian parents (Patterson, 1992, 1994; see also Falk, 1989; Flaks, 1994).

Most early court cases addressing gay or lesbian family issues involved a custody or visitation dispute between a gay or lesbian parent and his or her former husband or wife. In these custody cases, which arise from a divorce where one parent has "come out," the court was presented with disputing parties, and the judges often chose to deny custody to the gay or lesbian parent. In contrast, many of the newer cases involve an attempt by the parties to secure recognition of a long-standing gay or lesbian relationship. In cases of same-sex second-parent adoption, courts are not presented with the choice of a heterosexual or homosexual parent. In these cases, no one is challenging the parental status of the gay or lesbian legal guardian of the child. Instead, the court is presented with the choice to recognize or ignore the second-parent's relationship with the child.

Many of the successful same-sex second-parent judicial opinions illustrate the two conflicting views regarding family theory and policy. On the one hand, these

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opinions reflect the belief that there is "[a] paradigm shift ... occurring in family studies, ... from viewing the family as a monolithic entity to recognizing family pluralism" (Allen & Demo, 1995, p. 111, citing Cheal, 1991; Scanzoni, Polonka, Teachman & Thompson, 1989; Sprey, 1990; Thomas & Wilcox, 1987). On the other hand, these cases, through conferring a legal status similar to a heterosexual nuclear family, reflect that the "nuclear family is the standard by which other family forms are evaluated; [and] individuals ... from nuclear families are evaluated more positively than individuals ... from other family forms" (Scanzoni & Marsiglio, 1993, p. 105–106, citing from Ganong, Coleman & Mapes, 1990, p. 293).

METHOD

I have reviewed the judicial opinions of every *reported* successful same-sex second-parent adoption ($N = 10$, see Appendix). The cases were found through a search of the LEXIS data base. The cases in this study represent six states and the District of Columbia. Adoption petitions, including those of second-parents, must conform with the state's adoption statutes and are then evaluated by a state judge or magistrate. No state has a statute which specifically addresses second-parent adoption. However, Florida and New Hampshire have explicit prohibitions in their adoption statutes denying gays and lesbians the ability to adopt. Other states have presumptions in favor of married couples. In contrast, at least ten states prohibit discrimination against gays and lesbians as parents, including adoption.[3] Most states are silent on the issue. None of the cases in this study arise from the states with explicit prohibitions on gay and lesbians as adoptive parents. Two cases are from Massachusetts, a state which prohibits "public" sodomy.[4] Six of the cases represent appellate court determinations. Though the population of cases and jurisdictions represented in this study are small, these cases have set precedent. The legal arguments presented in each of the cases are similar, and the presentation of the petitioners follow predictable patterns.

There are numerous other same-sex second-parent court decisions which have not been "reported."[5] The legal reporting of a case has nothing to do with individual or community knowledge of the case through anecdotes, popular press or other non-legal sources; instead a "reported" case refers only to a judicial opinion

[3] The court in *In re J.M.G.* (1993) reports: "At least ten states have explicitly rejected presumptions against awarding custody to gay and lesbian parents. Courts in these states have held that they will not deny custody to a parent on the grounds of sexual orientation absent proof that the parent's orientation would adversely affect the child" (p. 630). The court lists applicable cases in Alaska, California, Indiana, Massachusetts, New Jersey, New York, South Carolina, Vermont, Washington, West Virginia, and New Mexico (footnote 7).

[4] States which prohibit sodomy can prevent gays and lesbians from adopting. Petitioning gay or lesbian parents who acknowledge private sexual activity which is prohibited by the state's anti-sodomy statute would be engaging in a criminal act, thus possibly rendering them unfit as a parent. Massachusetts, a state which has allowed second-parent adoptions, has an anti-sodomy statute which prohibits acts committed in a "public-place." Thus, private sexual activity is not prohibited by the Massachusetts statute.

[5] Interested scholars can find citations to unreported second-parent adoption cases in many of the reported cases (e.g. *In re Evan*, 1992) and in law review articles including Delaney (1991) and Zuckerman (1986). States with successful second-parent adoption cases which have not been officially reported include California, Washington, Alaska, and Connecticut.

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which has been included in a court reporter. There is no hard and fast rule indicating which cases are reported. Most marriages, divorces, adoptions, and settlement agreements, though matters of law and a judicial decree, are not reported; i.e. there is no factual summary of the particulars of the petition and the court's determinations of fact and law. In these unreported cases, the petition to the court is simply approved or denied and then recorded, usually with little comment. Cases which are not reported rarely serve as precedent because of their lack of facts and legal reasoning, and the difficulty of finding them using the typical methods of legal research (Connolly, 1996). In contrast, reported cases usually include the facts of the case as well as the judicial findings. When an opinion is reported it may be used as precedent by other judges when formulating opinions, and by lawyers developing arguments.

An examination of successful second-parent adoptions as a sub-set of all reported judicial opinions involving gay and lesbian petitioners is informative because of the consideration of the family. Other gay and lesbian family cases often turn exclusively on a legal argument. For example, in cases where a lesbian has argued for recognition of her relationship with the children of her former partner over the objection of that ex-lover, most courts have ruled that the petitioner is a ''legal stranger'' to the child without rights to visitation or custody (see e.g. *Alison D. v. Virginia M.*, 1991).[6] Similarly, in the unsuccessful second-parent adoption cases the courts have relied on strict statutory analysis to deny the petition (see e.g. *In re Angel Lace M.*, 1994). In these cases the courts rarely discuss the petitioners, their children, or their home life. Instead, the petition is denied strictly on legal grounds, such as the inability to meet a statutory marriage requirement or a requirement that current legal parents be ''cut-off'' from a child who is to be adopted. In these cases, the courts have refused to make an exception to the formal statutory step-parent criterion (Connolly, 1996).

In contrast, courts in the successful second-parent adoption cases are willing to broaden the existing statutory interpretations of adoption law through bypassing the marriage requirement and ''cut-off'' provisions. In doing so, most of these courts thoroughly discuss not only the legal issues but the petitioners themselves ($N = 9$). An examination of this commentary reveals three reoccurring and overlapping themes which are discussed in the next section of the paper: the socio-economic status of the family, the couple's parenting, and their family life.

RESULTS

In several of the cases the courts described, in detail, the financial assets and economic well-being of the petitioners. Most represent an upper middle-class life-style. In the New Jersey case *In re J.M.G.* (1993) the court commented that the petitioning second-parent ''... is an executive for a large communications company,'' and that the couple ''... owns a home and other properties for investment purposes. They have a low six-figure combined income'' (p. 624).

[6] There have been several recent cases in which state courts have not summarily rejected the visitation petitions by non-adoptive second-parents (see e.g. *A.C. v. C.B.* (N.M. 1992), *In re Hirenia C.* (Ca. 1993), *In re H.S.H.-K.* (Wisc. 1995)).

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One New York court was impressed with the homes of the petitioners: ''The family lives in a large two-story 100-year old house in excellent repair, in a quiet neighborhood on a tree-lined street populated with young families'' (*In re Caitlin and Emily*, 1994, p. 21), and *In re Adam and Katy* (1994) the same court revealed: ''The family lives in a nearby suburb in a neat and well-furnished raised ranch'' (p. 21). A New Jersey court stated that the petitioning parents '' ... own a home in a prosperous suburban community which they purchased as joint tenants with rights of survivorship'' (*In re Two Children*, 1995, p. 2).

The courts also reviewed the parenting abilities of the petitioning couples. Though a review of parenting is necessary for adoption petitions, a minimal home study is often adequate when the petition is for a heterosexual stepparent adoption, and many jurisdictions do not mandate a home study when the child has lived in the home of the petitioning stepparent for a minimum of six months. In contrast, the courts in these same-sex second-parent adoptions often extensively evaluate and comment on the home-life of the petitioning couple, though many of these families have been raising the child(ren) together for years and will continue to do so whether or not the adoption is granted.

Many courts first reviewed the social-psychological literature on gays and lesbians as parents, and the effects on children of growing up in a gay or lesbian household. A New York State court expressed concern that children raised in gay or lesbian households will grow up homosexual. The court reported, however that ''[t]his assumption ... is ... disproved by reported studies. Every study on the subject has revealed that the incidence of same-sex orientation among the children of gays and lesbians occurs as randomly and in the same proportion as it does among children in the general population'' (*In re Caitlin and Emily*, 1994, p. 21). This same court also indicated that the relevant literature shows that children of lesbians have normal relationships with peers and are not subject to emotionally damaging social stigma.

The court in the New Jersey case *In re J.M.G.* (1993) addressed the same concerns and quoted from Patterson (1992) in concluding that there were no documented differences between children raised in homes of gays and lesbians and those raised in heterosexual homes. After reviewing the empirical literature, many courts then turn to an evaluation of the specific families and their parenting. In one case the court favorably commented that the children were being raised with appropriate gender-role socialization: '' ... each child has a bedroom beautifully decorated in appropriate childhood motifs with M. having a feminine design and Z. a masculine design'' (*In re Two Children*, 1995, p. 6).

In the one reported case involving gay men, the court was assured that the men can take care of Hillary, their adopted child: ''Bruce cooks most of the meals, while Mark often reads the bedtime stories'' (*In re M.M.D. and B.H.M.*, 1995, p. 841). Another court favorably commented on each of the petitioner's relationships with her family of origin, and with the couples' strong institutional-level commitments: ''Each [of the parents] has a warm relationship with her nuclear family, visiting them often ... Both are excellent parents, with fine values, spiritually, culturally, educationally, and emotionally. M.E.F. is a practicing Catholic and she has been highly recommended by her pastor'' (*In re Caitlin and Emily*, 1994, p. 21).

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Similarly, in *In re Tammy* (1993) the court discussed how well Helen, Susan, and Tammy fit into a middle-class heterosexual family life-style, enjoying the approval of everyone, from the neighbor to the parish priest:

> Over a dozen witnesses ... testified ... that Tammy relates to both women as her parents, and that the three form a healthy, happy, and stable family unit. Educators familiar with Tammy testified that she is an extremely well-adjusted, bright, creative child who interacts well with other children and adults. A priest and nun from the parties' church testified that Helen and Susan are active parishioners ... Neighbors testified that they would have no hesitation in leaving their own children in the care of Helen and Susan. Susan's father, brother and maternal aunt, and Helen's cousin testified in favor of the joint adoption (p. 208–209).

It seems as if the court has made sure that concerns based on negative gay stereotypes have been addressed: the couple is monogamous (not promiscuous) and the child is happy (as opposed to maladjusted). Neighbors are not fearful that their own children will be harmed by lesbians; even representatives of the Catholic church, which condemns practicing homosexual behavior, spoke on behalf of the couple. This court, concluding its review of the petitioners, quoted the *guardian ad litem*, who summed up this exemplary home life as follows:

> The maturity of these women, their status in the community, and their seriousness of purpose stands in contrast to the caretaking environments of a vast number of children who are born to heterosexual parents, but who are variously abused, neglected, and otherwise deprived of security and happiness. (*Adoption of Tammy*, 1993, p. 210)

Though the outcome in this case is wholly positive for the petitioners, the court's final review of the family favorably compared it to an abusive heterosexual home. Surely, more positive commentary was warranted.

The depth of investigation and commentary regarding the parenting abilities of same-sex couples contrasts starkly to cases where the petitioners are heterosexual, as illustrated in the New York State appellate opinion *In re Jacob* (1995). This case reflects appeals from two negative lower court determinations, one involving an unmarried heterosexual couple, where the male partner of the child's biological mother is seeking to adopt the child, and the other a lesbian second-parent adoption case. The court describes the heterosexual petitioner and his parenting in the following manner: "Jacob was a year old when Stephen T. K. began living with him and his mother in early 1991. At the time of filing the joint petition for adoption, three years later, Stephen T. K. was employed as a programmer/analyst with an annual income of $50,000 while Roseann M. A. (the mother) was a student" (p. 656). In contrast, the court described the same-sex couple and their parenting in far more detail:

> In [*In re Dana*] (1995), appellants are G.M. and her lesbian partner P.I. who have lived together in what is described as a long and close relationship for the past 19 years. G.M. works as a special education teacher in the public schools earning $38,000 annually and P.I. is employed at an athletic club and has an annual income of $48,000. In 1989, the two women decided that P.I. would have a child they would raise together. P.I. was artificially inseminated by an anonymous donor, and on June 6, 1990, she gave birth to Dana. G.M. and P.I. have shared parenting responsibilities since Dana's birth and have arranged their separate work schedules around her needs ...

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> In the court ordered report recommending that G.M. be permitted to adopt, the disinterested investigator described Dana as an attractive, sturdy, and articulate little girl with a "rich family life," which includes frequent visits with G.M.'s three grown children from a previous marriage "who all love Dana and accept her as their baby sister." Noting that G.M. "only has the best interests of Dana in mind," the report concluded that she "provides her with a family structure in which to grow and flourish," (p. 656–657)

Though G.M., the lesbian second-parent, passes the court's scrutiny her commitment and parenting are carefully evaluated. In contrast, only Stephen's income and occupation are reported in the companion case; we know nothing of the home report or of his parenting skills.

In re Jacob (1995) emanates from the highest court of New York and will most likely be used as precedent in granting petitions to gay and lesbian second-parents in jurisdictions without specific presumptions in favor of married couples. This opinion, unlike any other second-parent adoption case, analyzes together petitions by heterosexual and homosexual individuals and ultimately treats them the same. However, the case also exemplifies the different treatment of heterosexual step-parents and lesbian second-parents. It articulates a standard of family life for gay and lesbian petitioners which is far more difficult to achieve than for heterosexuals.

DISCUSSION

A resultant question for family theorists is: are these cases where statutory interpretation of "family" includes same-sex parents expanding or merely maintaining the traditional family? On the one hand the definition of the family has broadened—the parents are not heterosexual and there are no marriages; but on the other hand, by establishing ideal criteria for recognition of gay and lesbian family relations these cases are maintaining the status quo.

In contrast to radically challenging the normative order, the courts in this study portray same-sex petitioners as similar to a traditional, even if non-existent, heterosexual model of family where financial intermingling, well-being, and stability illustrate commitment to parenting. By doing so, they center the model of the upper-middle class family with two parents, regardless of sexual orientation, as normative.[7] It could be argued that such recognition does reflect a postmodern paradigm shift from viewing the family as a monolithic entity to recognizing family pluralism but it could also be seen as the functionalist legitimation of the nuclear family—with a twist. Gay and lesbian families which meet the standards

[7] One court, however, disavowed that a traditional family exists:

> With the myriad of reproductive techniques available to unmarried women for having children besides heterosexual intercourse ... coupled with the elimination of the social stigma attached to having children out of wedlock, it is obvious that there will be an increasing number of children similarly situated to Camilla, for whom legal protections will be sought through the adoption process. To suggest that adoption petitions may not be filed by unmarried partners of the same or opposite sex because the legislature has only expressed a desire for these adoptions to occur in the traditional nuclear family constellation of the 1930's ignores the reality of what is happening in the population (In *re Camilla*, 1994, p. 278–279).

This judge expressly dismissed any arguments that the heterosexual nuclear family is the current norm which the courts must protect.

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established in these second-parent cases are recognizable as "the family."[8] However, it is arguable that the boundaries of the family are moved or that significant societal social change can be expected by the success of these petitions, as these opinions do not confront the deeply institutionalized heterosexism in contemporary society. Instead, the courts narrowly extend the band of eligibility for entitlement to family status without questioning the broader issue of inclusion and exclusion to these benefits, and the role of the state, especially the courts, in granting the status necessary for inclusion.

Because gay and lesbian couples cannot marry, the courts in the successful second-parent adoption cases have evaluated gay and lesbian relationships in comparison with their own ideas of a heterosexual marriage.[9] The articulated standards, though, far exceed those for a married couple who must simply produce their marriage certificate to show commitment. Case (1993) has shown that married couples in this society are not required to prove the same "rather conservative things" that gays and lesbians must prove. Heterosexual couples with marriage certificates are allowed to have "open" marriages, they may live in different cities or in different homes in the same city, and they may structure their finances as they please without a challenge to their commitment or legal benefits that follow. Results from this study indicate, however, that gays and lesbians may not have the same type of flexibility.

Though the courts in these successful second-parent adoption cases were willing to acknowledge the complexity and diversity in existing families, no court has questioned its role in recognizing and sanctioning family units. Both explicitly and implicitly these opinions show that family relationships should be recognized. Not only did the courts acknowledge the financial and other benefits from recognition, one judge explicitly stated her belief that an adoption would help to legitimate the petitioners and their child through formal recognition in an organized society: "As he matures, his connection with two involved loving parents will not be a relationship seen as outside the law, but one sustained by the ongoing legal recognition of an approved court ordered adoption" (*In re Evan*, 1992, p. 844). Though this judge indicates that a formal adoption can confer emotional security for the child and can confront prejudice and discrimination, an adoption decree does not explicitly confront heterosexism, nor does it prevent individual or institutional-level bias or discrimination; an adoption decree provides only for a legal relationship to the individuals named.

[8] However, it should be noted that some states have now established adoption procedures for second-parents which mirror procedures for stepparents. Thus, heterosexual and gay and lesbian petitioners will, statutorily, be treated the same. For example, Vermont has eliminated the need for a home-study of second-parents by social services when the child has been in the home for six or more months.

[9] Analyses of other types of gay and lesbian petitions before the courts have indicated similar findings. In the case of *Braschi v. Stahl* (1989), a gay man was permitted to maintain a rent-controlled apartment after the death of his lover who was the original and sole lessee. According to Zicklin (1995) the case hinged on whether the court would consider Braschi's relationship to his partner as equivalent to a legal or biological family tie. The court decided in favor of Braschi after determining that family status did exist. The court evaluated the couple's emotional commitment and interdependence, their interwoven social life, financial interdependence, cohabitation, longevity, and exclusivity. The court concluded that the "financial commitment [of the couple] as well as [other] ... economic facts prove[d] the elusive requirements of dedication, caring and self-sacrifice" (74 N.Y.2d 213; Robson, 1994, p. 983).

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CONCLUSION

Current discussions of the family are lacking not only in analysis of gay and lesbian family relations, but also in the forums where gay and lesbian family theory and policy are taking place. Family scholars and practitioners need to inform themselves of the debate on the use of the law to promote social change. The call for formal studies of gay and lesbian family relations can not overlook the courts, which is the arena where much of the discussion is taking place and policy is currently being developed.

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In re Dana, 624 N.Y.S.2d 634 (N.Y. App. Div. 1995), rev'd sub nom. In re Jacob, 660 N.E.2d 397 (N.Y. 1995).

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In re Hirenia C., 18 Cal. App. 4th 504 (1993).

In re K.L. & M.M., 653 N.E.2d 888 (Ill. App. Ct. 1995).

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In re M.M.D. & B.H.M., 662 A.2d 837 (D.C. Ct. App. 1995).
In re Susan, 619 N.E.2d 323 (Mass. 1993).
In re Tammy, 619 N.E.2d 315 (Mass. 1993).
In re Two Children by H.N.R., 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).
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APPENDIX

SUCCESSFUL REPORTED SECOND-PARENT ADOPTION CASES

CASE[1]	STATE	YEAR
In re Evan	N.Y.	1992
In re Tammy[2,3] and In re Susan[2,3]	Mass.	1993
In re B.L.V.B. and E.L.V.B.[2]	Vt.	1993
In re J.M.G.	N.J.	1993
In re Caitlin and Emily[3] and In re Adam and Katy[3]	N.Y.	1994
In re Camilla	N.Y.	1994
In re Children[2]	N.J.	1995
In re Jacob[2] (also appeal of In re Dana)	N.Y.	1995
In re K.M and D.M[2,3] and In re K.L and M.M.[2,3]	Ill.	1995
In re M.M.D. & B.H.M.[2]	D.C.	1995

[1] The full case citation is in the reference section.
[2] These cases were decided by appellate courts.
[3] Cases grouped together were decided simultaneously.

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