

The LGBT Population and the Fight for Adoption Rights  
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In the United States today, there are many social and economic injustices that surround the adoption of children by lesbian, gay, bisexual and transgender (LGBT) individuals. Although LGBT marriage is now legal throughout the U.S., there is still discrimination that exists in adoption cases and behavior toward LGBT couples and individuals. Same-sex relationships have existed throughout history, however the adoption of children by one or more LGBT person is a relatively new concept. The first known LGBT adoption case occurred in the 1970's and at the time, many heterosexual people were appalled by the idea and nearly every case was denied (Lavelly, 2007). In California in 1986, Becky Smith and Annie Afleck were the first lesbian couple to jointly adopt. In 1997, New Jersey became the first state to allow joint adoption for gay couples (Walton, 2004).

On June 26, 2015, the Supreme Court made the long awaited decision to legalize same sex marriage throughout the entire United States. According to Beitsch (2015), "Fourteen states—Alabama, Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee and Texas—prohibited same-sex marriage before the Supreme Court decision". Although this was a large victory for the United States, there are still many issues that the LGBT population faces, including adoption. Since the ruling, the legality of child adoption by the LGBT population has expanded, however not enough has been done. Unfortunately, some states are hesitant to change their laws and do not have certain policies that ensure full equality for the LGBT population. For example, in Alabama a same sex couple must wait a year after marriage to be able to adopt a child, which is a longer wait than a straight couple has. Also, both Mississippi and Texas have strict laws against LGBT joint adoption that have still not

yet been overturned (Beitsch, 2015). The purpose of this paper is to identify the various factors, both political and societal, that deny the LGBT population their right to adopt children and have a family, while examining ways to alleviate the discriminatory policies and practices they face.

The likeliness of approving an LGBT adoption is slimmer than that of a straight couple because there are still policies and practices that can hinder adoption for the LGBT population. According to Lavelly, adoption laws may differ from state to state, but they share some common traits. The most important traits are the well-being and best interests of a child (2007). With this in mind, it is important for discrimination and prejudice to be eliminated from LGBT adoption decisions. For a social worker, it is important to recognize the social and economic problems involved in LGBT adoption and advocate for change on macro, mezzo and micro levels.

With LGBT marriage and adoption still being a controversial subject, a great injustice has been felt by LGBT community. An LGBT adoption rights case in Michigan gained popularity in 2012 with the issues that it had raised. April Deboer and Jayne Rowse are a lesbian couple from Michigan who fought for rights concerning their four children. Deboer had legal custody of two of the children and Rowse had legal custody of the other two. It was illegal for this couple to jointly adopt their children because same- sex marriage was not permitted. Each parent legally could not be considered a parent to their partner's adopted children. The most they were considered was an emergency contact (Michaelson, 2015). Although the judge finally voted in favor of the right to marry, other officials were able to overturn his decision. This lawsuit went on for years, until finally the Supreme Court decision was made in June (Gates, 2015).

In Washington, D.C. in 2013, another case regarding LGBT adoption rights gained popularity when two men shared their story of trying to adopt. They tried and had no success for more than five years to find anyone willing to give them a child. Thousands of dollars were spent on adoption agencies that did not care if they received a child. Their files were conveniently “lost” or at home visits were unsuccessful due to reasons that they couple was not aware of. Even when searching on their own, without an agency, they were constantly being scammed by women pretending to be pregnant that were only looking for money (Johnson, 2013). The social and economic injustices that surrounded this couple are tremendous and should have been avoided completely. Because these cases and many others have gained recognition, the United States will hopefully make LGBT adoption fully legal and unprejudiced in each state.

In the past, adoption was common among white, middle class Americans that were infertile and searching for a child of the same race (Lavelly, 2007). Today, the face of adoption has changed quite a bit. However, the process of adopting children for LGBT couples can be very different in comparison to heterosexual couples. LGBT adoption can take different forms, such as: a joint adoption by a same-sex couple, an adoption by one partner of a same-sex couple of the other’s biological child (a second parent adoption), or an adoption by a single person who is LGBT (Olson, 2009). The average adoption process for both opposite- sex and same- sex couples usually takes 1-2 years, however, there are issues that can deter the process for LGBT people. There are discriminatory factors that can discourage an adoption agency or other person from allowing LGBT parents adopt such as a personal bias or institutional discrimination. Some agencies have a religious affiliation tied to them and will not permit a same- sex adoption (Ross et al., 2008).

Future parents (whether LGBT or not) have certain human rights that should be upheld in the adoption process. Children also have certain human rights such as the right to a stable family and a nurturing relationship (Reichert, 2011). There are specific policies and procedures in New York State that pertain to child adoption and child welfare. Certain standards and qualifications are needed to adopt a child. There are three main categories of who can adopt: an unmarried adult, a married adult couple and an unmarried intimate adult couple (Child Welfare Information Gateway, 2012). There are also policies that say who can place a child for adoption. First are agencies that are authorized to place adoptions, then parents, legal guardians and relatives within the second degree (Child Welfare Information Gateway, 2012). Moreover, there are policies that state when parental rights can be terminated. Parental rights can be terminated by things such as incarceration, murder conviction, abuse, abandonment, neglect and similar behaviors (Child Welfare Information Gateway, 2013).

Inter-country adoption has become popular among LGBT couples in the U.S. The process for inter- country adoption is more taxing than a regular adoption. Although the process varies depending on the state, adoption agency, and foreign country involved, there are similar requirements in every case. Primarily, it is necessary that all children adopted through inter-country adoption obtain a visa from the U.S. Citizenship and Immigration Services and the U.S. Department of State (Mertus, 2011). There are four categories LGBT people are put into when they have the desire to adopt internationally: individual, coupled partner, couple and married spouses (Mertus, 2011). This type of adoption has increased because of decreasing safety and health issues, along with a lack of birth control available in some foreign countries. One reason that makes inter- country adoption more difficult is the

possibility of child trafficking and exploitation. In some unfortunate cases, children are brought to the U.S. for harsh labor or sex work. The adoptive parents see these children only as business opportunities (Voigt, 2013). Clearly not all adoptive parents have these intentions, but because of problems in our society such as this, inter-country adoption has become a very difficult process.

A study shows that if a same-sex couple appears too deviant from gender norms, they are less likely to be approved to adopt. Ross et al. writes, “Lesbians (and by extension, gay men) must present themselves as similar to, or indeed the same as, heterosexual applicants... lesbian couples were also evaluated more favorably if they complied with traditional gender role stereotypes about caregiving (one partner would participate in paid work while the other stayed at home with the child)” (2008). Therefore, even if an agency does not noticeably show favoritism toward heterosexual couples, the influence of societal norms may still be present in their decisions. Although gender and family norms are different than they were in the past, the idea of a traditional and nuclear family seem to be hard to let go of in our society.

It is apparent that when a same- sex couple adopts, there are certain risks they might take that a straight couple does not worry about. LGBT parents and their adopted children must endure certain social and economic injustices from the government. Social injustices are common according to Jay Kaplan. He writes, “...children of gay parents are denied the opportunity to have the legal protection of both parents, including the guarantee of continued care and custody with one parent in the event of the other parent’s death or illness” (2012). There are times when a court will deny custody to a rightful LGBT parent, and give custody to a family member of the partner that has passed away. In some states, if an LGBT couple

should happen to divorce, there is a large possibility that the parent who is the legal parent will receive custody. Even more, if both LGBT parents have full adoptive rights in their state, if they move to another state, they are not guaranteed the same rights (Olson, 2009).

Economically, LGBT individuals are treated unjustly as well. For example, in some instances, “without a legal relationship with the second parent, a child has no right of financial support or inheritance from the non-legal parent and cannot receive social security, retirement, or state workers' compensation benefits if the non-legal parent dies or becomes incapacitated. The child may also be ineligible for health or other insurance benefits supplied by the non-legal parent's employer, and the non-legal parent could be ineligible for leave under the Family Medical Leave Act if the child became seriously ill” (Palmer, 2013). This is very problematic, especially in cases of emergency. When a non-legal parent is unable to consent to medical treatment or visit the child in the hospital, this causes an enormous problem, especially if there are no other blood relatives in the area. There are also economic injustices when it comes to housing. LGBT couples and families are less likely to be approved for apartments and homes compared to their straight counterparts (Appleby 2011). Refusing housing to anyone is completely against article 17 and article 25 of the Universal Declaration of Human Rights (Reichert, 2011). Also, depending on what state an LGBT couple lives in, they may feel pressured to move completely out of state. If their relationship or family life is not recognized by law, or frowned upon by society, they may move to a more accepting area, which could cost thousands of dollars (Appleby, 2011).

When adoption cases are being reviewed, candidates are evaluated on who will provide the best life for a child. Although children of LGBT parents have been

known to have wonderful mental and social health, some courts decide that LGBT parents cannot provide a proper upbringing to a child. A popular argument is that children need both a strong male and female parental figure in their life as role models. According to Gates, however, "Research overwhelmingly shows that the gender composition of a two parent household is not associated with the differences in their children's health and wellbeing" (2015). Also, many children with straight parents do not have traditional maternal and paternal figures either, with data showing: "Only 24% of homes were composed of a married mother and father with children living at home" (Registry of California Adoption Facilitators, 2015). Therefore, the idea of a "traditional" family is very hard to come by, even if a child does have straight parents. It is important to recognize that male and female figures can be much more than parents, such as other family, friends, teachers and neighbors (American Civil Liberties Union, 1999). Above all, a child who needs to be adopted requires a safe and loving home environment as their top priority, not necessarily a male and female parental figure.

Some studies demonstrate that same-sex couples are even more capable dealing with diverse children and children with special needs than heterosexual couples. LGBT individuals are more willing than heterosexuals to adopt children with serious physical, emotional and behavioral issues. They also are more willing to adopt older children rather than babies and various races opposed to just their race (Ross et al., 2008). Another study says that LGBT parents can relate to their children better. Issues such as bullying, teasing and exclusion are things that many LGBT individuals have dealt with, and many kids do at some point as well (Kaplan, 2012). A popular argument is that children who grow up with same- sex parents will be influenced to be LGBT as well. However, there has been no sound proof to back up

this argument, therefore these children have the same possibility of being LGBT as any other child with straight parents (Gates, 2015). Fortunately, children with LGBT parents have been examined to be more open to diversity. When growing up around LGBT parents, children proved to be more accepting and friendly with their peers (American Civil Liberties Union).

It is important to address the root causes for the social and economic injustices surrounding LGBT individuals and couples. Our society is very hetero-centric, meaning that heterosexuality is fully accepted and practiced in our norms, traditions, behaviors and feelings (Appleby, 2011). This means that any deviant behavior, or same-sex desire, caused a feeling of unease in some people. These feelings of homophobia goes beyond the fear of LGBT people and toward the hatred or discrimination of them. A noticeable gain occurred in the homophobic population when the AIDS epidemic began and started to spread in the 1980's (Appleby 2011). Some religions also condemn same-sex relationships, and believe that AIDS was brought about to kill LGBT people. Some people feel very justified being homophobic because they truly believe that their God is against homosexuality as well (Appleby, 2011). After centuries of heterosexual privilege, there is a threat to the power and control complex that resides in our heteronormative society, and the back lash has been completely unfortunate and unjust.

The processes and procedures that the LGBT community must endure in order to adopt a child can be grueling. Although there have been many policy changes made from state to state, there needs to be more action taken. As we become more diverse and accepting, hopefully the LGBT population can live equally, as they should. Some current policies in place have proven to still be very socially and economically unjust for LGBT individuals. Currently, same- sex couples are

raising 4% of the country's adopted children (Registry of California Adoption Facilitators, 2015). With there being such a great need for adoptive parents, there should not be any discriminatory policies or practices that deny LGBT couples to adopt. No matter what sexual orientation a couple is, there are a shocking amount of children in need of a home. Without LGBT parents, thousands of children would not have a permanent and safe home with loving parents (Registry of California Adoption Facilitators, 2015).

Although there are still many social and economic problems surrounding the LGBT community, there are people, groups and organizations that are fighting for LGBT rights every day. The Donaldson Adoption Institute (DAI) believes that every hopeful adopting couple deserves an equal chance at having a family. The DAI conducts research on children living with LGBT parents to further prove that these families are happy and healthy (Dinwoodie & Paglino, 2015). Also, an important act that will hopefully be passed by congress in the near future is the Every Child Deserves a Family Act (ECDFA). "ECDFA prohibits any public child welfare agency receiving federal financial assistance from discriminating against any potential foster or adoptive family on the basis of sexual orientation, gender identity, or marital status. In addition, ECDFA prevents discrimination against any foster youth because of their sexual orientation or gender identity" (Johnson, 2013). This act has the potential to give a home to thousands of children and adolescents who desperately need one.

Although there are organizations such as these that promote equality among LGBT adoption and are helpful to some LGBT people, there are other factors that can affect an LGBT adoption. Racism exists personally and systemically in adoption cases and even in the gay community itself. Some research has shown that women

and men of color are viewed as the least desirable part of the LGBT community. This may make some individuals and agencies hesitate to let them adopt a child (Anderson & Collins, 2013).

I believe that there is an immense possibility for all LGBT individuals in the United States to have equal rights in the near future. However, there is a challenging road ahead and injustices that need to be addressed. Primarily, I believe that we as a country need both the LGBT population and all straight allies to advocate for change in their local, state and federal governments. I believe that peaceful protests and gay pride parades are helpful and make everyone aware that LGBT individuals are strong and fighting for equality. Letters and phone calls to local representatives could be very helpful as well. Although most states are fairly progressive and accepting, issues of prejudice and discrimination are still present throughout the entire country.

I also believe that the importance of education on topics such as acceptance and diversity cannot be stressed enough. These topics can be incorporated in everyday schooling curriculum, beginning at a young age and continuing through high school and college. Especially as a social worker, once you can educate yourself on various LGBT issues, it is not only important, but necessary to educate others. Also, education can come in other forms besides lecturing and schooling. I believe that the media's representation of LGBT individuals and families is very important. Only very recently have LGBT individuals been cast as main characters on popular television shows. Typically, the LGBT population shown on television is demonstrated by a commonly known stereotype. Characters such as the effeminate gay male or the butch lesbian are most popular and joked about (Raley, 2006). However, there are some programs that go beyond stereotypes and highlight the

lives of LGBT parents and their children. Many people are familiar with ABC's comedy *Modern Family* as being one of the most popular shows that feature a gay couple. Although the show is a comedy, it demonstrates a gay couple's family life and how LGBT families really are not that different from straight families (Levitan, 2009). It also demonstrates the gay couple's adoption of their Vietnamese daughter, and how they raise her.

Another program that demonstrates an LGBT family is ABC Family's *The Fosters*. Although it is severely dramatized, this show goes beyond the more simple issues portrayed in *Modern Family*. It focuses on the more critical struggles of LGBT adoptive parents including never ending custody battles and children who feel as if they don't fit in with their adoptive family. The two interracial lesbian mothers are parents to some biological, adopted and foster children. (Bredeweg, 2013). The importance of LGBT media representation cannot be understated. Because we still live in such a heteronormative society, some LGBT individuals have expressed frustration with the lack of proper acknowledgment in today's media. Shows such as these two have made a very large and overall positive impact on our society, and it would be extremely beneficial to see similar programs that demonstrate accurate LGBT families.

Our country had taken large steps forward toward the acceptance of diversity, but more needs to be done. Hopefully within the next few months, same- sex adoption policies can be fully changed for the better. Both individuals in an LGBT relationship need to be given complete social and economic justice when it comes to the rights of themselves and their children. However, when such laws come in to place, there will still be issues of prejudice and discrimination that we need to be aware of. Whether legal or not, the LGBT community will continue to face oppression

until their fundamental human rights are completely acknowledged by all. As our nation progresses in terms of acceptance of diversity, it is critical that we not only allow, but fight and advocate for the human rights of the LGBT population.

## References

- Adoption policy. (2010). *Social Work Policy Institute RSS*. Retrieved from <http://www.socialworkpolicy.org/research/adoption.html>
- Anderson, M.L., & Collins, P.H. (2013). *Race, class, & gender: An anthology*. USA: Wadworth, Cengage Learning.
- Appleby, G., et al. (2011). *Diversity, oppression and social functioning*. Boston, MA. Pearson Education Inc.
- Beitsch, Rebecca. (2015). Despite same-sex marriage ruling, gay adoption rights uncertain in some states. *The Pew Charitable Trusts*. Retrieved from <http://www.pewtrusts.org/en/research-andanalysis/blogs/stateline/2015/08/19/despite-same-sex-marriage-ruling-gay-adoption-rights-uncertain-in-some-states>
- Bradley, R. R. (2007). Making a mountain out of a molehill: A law and economics defense of same- sex foster care adoptions. *Family Court Review*, 45(1), 133-148.
- Bredeweg, B. (Executive Producer). (2013). *The Fosters*. [Television Series]. Los Angeles, CA: ABC Family.
- Child Welfare Information Gateway. (2012). *Who may adopt, be adopted, or place a child for adoption?* Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.
- Child Welfare Information Gateway. (2013). *Grounds for involuntary termination of parental rights*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

Dinwoodie, A & Paglino K. (2015). In good conscience. *The Donaldson Adoption Institute*.

Gates, G. J. (2015). Marriage and Family: LGBT Individuals and Same-Sex Couples. *Future of Children*, 25(2), 67-87.

Johnson, R. (2013). A same- sex couple's struggle to adopt. *John Hopkins Magazine*. Retrieved from <http://hub.jhu.edu/magazine/2013/fall/gay-couple-adoption>

Kaplan, J. D. (2012). The Invisible LGBT Family. *Michigan Bar Journal*.

Lavelly, V. A. (2007). The path to recognition of same-sex marriage: Reconciling the inconsistencies between marriage and adoption cases. *UCLA Law Review*, 55(1), 247-291.

Levitan, S. (Executive producer). (2009). *Modern Family* [Television series]. Los Angeles, CA: ABC.

*Life Long Adoptions- LGBT adoption*. (2015). Registry of California Adoption Facilitators. Retrieved from <http://www.lifelongadoptions.com/lgbt-adoption>

Mertus, J. (2011). Barriers, hurdles, and discrimination: The current status of LGBT intercountry adoption and why changes must be made to effectuate the best interests of the child. *Capital University Law Review*, 39, 271.

Michaelson, Elex. (2015). Same- sex couple's adoption case headed to supreme court. *ABC 7, Los Angeles*.

Olson, C. L. (2009). Second-class families: Interstate recognition of queer adoption. *Family Law Quarterly*, 43(1), 161-180.

Overview of lesbian and gay parenting, adoption and foster care. (1999). *American Civil Liberties Union*. New York, New York.

Palmer, T. L. (2003). Family matters: Establishing legal parental rights for same-sex parents and their children. *Human Rights*, 30(3), 9.

Raley, A. B., & Lucas, J. L. (2006). Stereotype or success? Prime-time television's portrayals of gay male, lesbian, and bisexual characters. *Journal of Homosexuality*, 51(2), 19-38.

Reichert, E. (2011). Human rights: children and others. In *Social work and human rights: A foundation for policy and practice* (2nd ed.). New York: Columbia University Press.

Ross, L., Epstein, R., Goldfinger, C., Steele, L., Anderson, S., & Strike, C. (2008). Lesbian and queer mothers navigating the adoption system: The impacts on mental health. *Health Sociology Review*, 17(3), 254-266.

Voigt, K. (2013). International adoption: Saving orphans or child trafficking? *CNN*. Retrieved from <http://www.cnn.com/2013/09/16/world/international-adoption-saving-orphans-child-trafficking/>

Walton, C. (2004). Gay rights timeline. *Unitarian Universalist Association of Congregations*. Retrieved from <http://www.uuworld.org/articles/stub-2026>