

# PRACTICE PROHIBITIONS IN RELIGIOUS CHILD WELFARE AGENCIES: THE CASE OF LESBIAN AND GAY ADOPTION

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On March 10, 2006, Catholic Charities of the Archdiocese of Boston announced that it would cease all adoption work following orders from the Vatican ambassador to stop allowing children to be adopted by lesbian and gay parents. This article reviews the current legal and social policy environment in the area of adoption to lesbian and gay parents. It also examines research on gay parenting, devoting particular attention to some of the work that opposes allowing gays and lesbians to adopt. The article makes recommendations for related aspects of policy and practice.

On March 10, 2006, Catholic Charities of the Archdiocese of Boston announced that it would cease all adoption work following orders from the Vatican nuncio (ambassador) to stop allowing children to be adopted by lesbian and gay parents.<sup>1</sup> Discrimination on the basis of sexual orientation has been illegal in Massachusetts since 1989 (Mass. Gen. Laws Ann. chap. 151B, secs. 3–4 [2007]), and since that time, Catholic Charities had complied with the law, adopting 13 of 720 children to gay parents (Colbert, 2006). At present, Catholic Charities of Boston has transitioned adoption services to the Massachusetts state department of children and families. On the level of federal law, the question of whether the First Amendment protects a right to privacy for gay adoption is complicated by the fact that Catholic Charities of Boston also claims a First Amendment right to exercise religious freedom by discriminating against gays.

Catholic Charities organizations in such communities as San Francisco have announced intentions to reconsider their adoption practice with gays in

light of the Boston experience (Buchanan, 2006). Because Catholic Charities plays a substantial role in many public adoption programs throughout the United States, problems of significant scope and severity will follow the implementation of new practice prohibitions that impede the work of adoption professionals in religious child welfare agencies. This article reviews recent legal and policy activity in the area of adoption by gays. It also examines clinical research on gay parenting and recent journal articles that call the findings of available research into question. The article concludes by presenting recommendations for advocacy, practice, and future research in the area of gay adoption.

#### THE LAW, SOCIAL POLICY, AND GAY ADOPTION

In the absence of antidiscrimination laws that directly protect prospective lesbian and gay adopters, discrimination against them is generally legal. On January 11, 2005, the U.S. Supreme Court denied certiorari in the case of *Lofton v. Secretary, Florida Department of Children and Families* (543 U.S. 1081), the most recent challenge to Florida's law against gay adoption.<sup>2</sup> Recent Supreme Court decisions that upheld privacy rights for gay couples have not yet had a direct impact on the issue of gay adoption.<sup>3</sup> As Alison Smith (2003) notes, the *Lofton* case unsuccessfully argued that a ban on gay adoption violated First Amendment rights of intimate association and privacy, as well as Fourteenth Amendment rights to due process and equal protection. The *Lofton* decision also held that as there is no fundamental right to adopt, to be adopted, or to apply for adoption (*Lofton v. Secretary, Florida Department of Children and Families* 358 F.3d 804 [11th Cir. 2004]). Gay adopters therefore cannot be deprived of due process if they have no fundamental right to what is denied them.

There are also difficulties in applying equal protection arguments to lesbian and gay adoption. In *Romer v. Evans* (517 U.S. 620 [1996]), the High Court ruled that homosexuals do not constitute either a "suspect" or "quasi-suspect" class and thus are not especially vulnerable to discrimination. Although individual gays have a right to equal protection, the courts have not yet recognized them as a class or group for purposes of reviewing equal protection. Courts have held that such a categorized class must have a history of experiencing discrimination, have characteristics that make them identifiable as a discrete group, and be either politically powerless or at risk for violations of fundamental rights (Massaro, 1996).

Laws that affect a suspect class are held to strict scrutiny and must be narrowly tailored to achieve a compelling state interest (Harvard Law Review, 1985). The law also provides protections for members of quasi-suspect classes. Quasi-suspect classes are groups of individuals, such as women and illegitimate

children, who have long experienced violations of rights. Laws affecting quasi-suspect classes are held to heightened scrutiny and must be considerably related to an important state interest (Harvard Law Review, 1985). All other laws are merely subject to the rational basis test, the principle that the law in question achieves a legitimate state interest. Different classes and groups that hope to achieve judicial recognition as classes typically seek to claim the strictest standard (suspect class) or to demonstrate that the state has no legitimate interest in restricting the group involved. In the *Lofton* case, the Eleventh Circuit Court interpreted an earlier decision (*Lawrence v. Texas*, 539 U.S. 558 [2003]) as merely prohibiting criminalization of homosexual conduct; the court held that it did not create a fundamental right to sexual privacy. Under this ruling, the *Lofton* case was thus subject to the rational basis test because the plaintiff could not be considered a member of a suspect or quasi-suspect class, and the court concluded that it was rational for Florida to forbid gay adoption due to concerns about gender roles and social stigma (*Lofton v. Secretary of the Department of Children and Family Services*, 377 F.3d 1275 [11th Cir. 2005]). As Nicole Shkedi (2005) notes, even under a rational basis test, these concerns are subject to a great deal of challenge and disagreement.

Since the late 1970s, research on gay parenting has revealed few significant differences between heterosexual and homosexual parents, and no parenting or child outcome deficits are associated with parenting by gays. Some of this work investigates social work's role in adoption by gays. A review of literature elucidates ongoing discrimination and may assist child welfare workers in formulating a response to religiously motivated adoption practice prohibitions.

#### RESEARCH ON GAY PARENTING

During the so-called Gayby Boom of the 1980s, gay and lesbian childrearing gained a high cultural profile. This development prompted research to consider the social phenomenon of gay families. In 1987, the National Association of Social Workers recommended that gays be recruited as both foster and adoptive parents. By the end of the decade, Sharon Huggins (1989) found in a comparative study that daughters of lesbians had generally high self-esteem, and their self-esteem was increased when their mothers had live-in lesbian partners. James Rosenthal and Victor Groze (1992) soon recommended that adoption agencies explicitly market special needs adoptions to gays, arguing that the gay community has "well-developed resources and organization capability" (1992, p. 207). Rosenthal and Groze especially noted the gay community's successful track record in organizing to deal with the AIDS epidemic.

Throughout the 1990s, research failed to find evidence that children raised by gays had personal, social, or sexual adjustment outcomes that differed from their counterparts in heterosexual households (Golombok and Tasker, 1994). A longitudinal study by Susan Golombok and Fiona Tasker (1994) tracks these children in gay adoptive families from infancy, comparing them to those of heterosexual and single parents. Golombok and Tasker find no significant differences that could be attributed to family structure. Children from gay families are no more likely to exhibit symptoms of depression or to utilize psychotherapeutic treatment. Although they are somewhat more likely to have considered the possibility of having a homosexual orientation, they are not significantly more likely to define themselves as gay when questioned by researchers (Golombok, Tasker, and Murray, 1997). Another study considers children who were born to both lesbians and heterosexual women as a result of donor insemination. It measures children's psychosocial adjustment from birth, finding that neither parental sexual orientation nor family structure influences adjustment (Chan, Raboy, and Patterson, 2000). Identified variables that did affect children's psychosocial development include parenting stress, parental conflict, and partner relationship dissatisfaction. These variables clearly could affect families regardless of parents' sexual orientation.

Ongoing research continues to investigate aspects of family life that improve outcomes across parental sexual orientations, as well as areas in which gay parents could have an advantage in meeting adopted children's best interests. Ruth McRoy (1999) notes that many gays adopted special-needs children who otherwise might have been considered unadoptable. McRoy (1999) surveys disrupted special-needs adoptions and notes that parent factors related to disruption include financial problems, abusive behavior, marital problems, and poor parenting skills. Examples of parental skill deficits include inability to cope with the challenges of raising children who were sexually abused or who sexually act out. McRoy (1999) reports that some parents in her sample held religious beliefs that the acting-out behavior was sinful. Some also are reported to believe that psychotherapy and psychotropic medication for the children were also problematic for religious reasons.

Morag Owen (1999) notes that some children's individual therapeutic needs may make it desirable to target or select the gender of the adoptive parents. It may be in the best interest of sexual abuse victims to have a parent or parents of the opposite sex of the abuser. In such cases, adoptions by single parents of either sexual orientation or gay couples would have advantages in achieving recommended family structures that traditional married couple adoptions do not. Owen (1999) also suggests that the needs of some adopted children are best met if all of the children in the family have the same adopted status and none

are the biological children of the parents. Membership in an intentionally and visibly diverse created family may better meet some children's needs. Gay adoptions clearly have an advantage here over heterosexual married couples, who may have later biological children and thereby change the recommended family structure.

In the *Lofton* case, judges used the fear of stigmatization and bullying of children of gay parents as a rationale to refuse to allow adoptions by gays. Vignette studies in which a hypothetical problem is presented as affecting diverse individuals are often an effective way of detecting bias against certain types of individuals if the individual is described by study subjects as having a worse problem than the one actually assigned in the vignette. Beverly King and Kathryn Black (1999) use vignette studies to show that this perceptual stigmatization of children of gay parents can be a function of unconscious bias; in vignettes of children with the same presenting problems, children of gay parents were perceived to have more severe issues even though the same presenting problem was assigned to children of heterosexual parents in otherwise identical vignettes. This raises a question of whether the belief that children of gay parents face stigmatization may itself indicate ongoing stigmatization of gay families.

Findings from the Toronto Lesbian Family Study (Dundas and Kaufman, 2000) suggest that children of gay parents may not experience stigma at all. The findings also suggest that parents' perceptions of stigma and homophobia may be positively correlated with being closeted and negatively associated with the extent to which the parent's gay identity is public (Dundas and Kaufman, 2000). In tracking stressors unique to gay families, Charlotte Patterson (2000) finds that these stressors include disputes over how public a family's gay identity should be; she points out that such stress may be related to the fact that American laws generally do not protect gay members from discrimination on the basis of sexual orientation.

Kyle Weir (2003) notes that homosexual adoptions almost automatically face social disclosure of adoptive status; it is generally obvious that both members of a same-sex parenting dyad are not biologically related to all of their children. He also notes that gay parents may face other negative social perceptions that make it very difficult to create a control group for analysis. In most social situations, it can be almost impossible to ascertain whether negative social perception is due to the sexual orientation of the parent or parents, public adoptive status of the family, or marital status and perceived legitimacy of the family unit. Families created through adoption and foster care may be subject to unique forms of social scrutiny that are unrelated to the sexual orientation of the parents.

Judith Stacey and Timothy Biblarz (2001) suggest that social science research must avoid an excessively negative perspective that searches for potential deficits in gay parenting and focuses on benchmarking clinical indicators for the children involved. They instead favor a genuinely pluralistic approach that examines differences between heterosexual and homosexual parents with confidence in the repeatedly documented, demonstrated benefits of family diversity. They note that research investigating genuine differences between heterosexual and homosexual parenting of families can be comparative without being competitive or focused on declaring one better than the other. Their review of 21 studies of gay parenting and child outcomes suggests that gay parenting may free children “from a broad but uneven range of gender prescriptions” (Stacey and Biblarz, 2001, pp. 168–70), which might be desirable outcomes worthy of further study.

#### OPPOSITION TO GAY ADOPTION

Very little research questions that gays can be effective adoptive parents. Paul Cameron and Kirk Cameron (1996) suggest that a contagion theory of sexual orientation, in which contact with homosexuals is believed to cause homosexuality, is the traditional psychological opinion and common sense position for researchers. This study examined self-reports of homosexuality culled from large random samples. Cameron and Cameron (1996) note that 5 of 17 respondents who reported being raised by homosexual parents also reported having sexual relations with their parents.

In another study, Paul Cameron (2003b) seeks to review “molestations by homosexual foster parents,” but uses a sample based on newspaper records and combines several distinct populations of persons who molested both boys and girls into one category. Cameron counted child molesters of both boys and girls as homosexual, so that a man who molested more girls than boys would still be counted as a homosexual molester. Cameron (2003b) also counts married heterosexual couples as homosexuals if both spouses molested the same child; the spouse who molested the same-sex child would be counted as a homosexual in this study. In the 33 news articles Cameron reviewed, only 24 of the reported cases involved actual sexual abuse. Cameron (2003b, 797) notes only one case involving an “openly homosexual” perpetrator. Cameron assigned sexual orientation in all other cases because he thought that the subject’s “sexual preference could be determined based on the sex of the child molested” (2003b, p. 799). If a perpetrator molested children of both sexes, Cameron classified that individual as homosexual.

In a later article, Cameron (2005a) defends his use of the term “homosexual” instead of “pedophile” by noting that the Centers for Disease Control’s 1996

national sexuality survey used the term “homosexual” without regard for the age of sexual partner. This defense does not explain why Cameron uses “homosexual” to describe child abusers who molest both boys and girls. Cameron suggests that the term pedophile “is not particularly useful” (2005a, p. 228) and should be applied only to those who engage in sexual contact exclusively with children or are who incapable of any other sexual contact. In fact, pedophilia is diagnostically considered a broader category that includes individuals over age 16 “who have a pedophilic arousal pattern and act on these fantasies or urges with a child” (American Psychiatric Association, 2000, p. 571).

The same study examines child abuse records from the Illinois Department of Children and Family Services for the period between 1997 and 2002 (Cameron 2005a). Cameron finds that 1 percent of foster children were sexually abused by a foster parent; he describes approximately one-third of those cases as homosexual. Cameron points out that this estimated proportion is much higher than the estimated proportion (1–3 percent) of homosexuals in the general population (2005a, p. 229). Defining “pedophile” in the way that Cameron does, as someone exclusively attracted to children or incapable of any other form of sexual contact, leaves out the majority of actual child molesters. If Cameron’s (2005a) categorization is used, child molesters among Illinois foster parents are twice as likely to be heterosexual as they are to be homosexual. In contrast to Cameron’s (2005a) work, a study by Devon Brooks and Sheryl Goldberg (2001) provides a comprehensive review of the literature from the 1960s to the 1990s, examining the lack of correlation between homosexuality and child molestation. They note that the vast majority of child molesters are adult males seeking juvenile females. In a 2005 interview, Cameron reiterated his view that those who commit same-sex child abuse are homosexual, regardless of whether they self-identify as homosexual (Bialik, 2005).

A recent article by Walter Schumm asserts that decreased rates of homosexual orientation and questioning among children of homosexuals is a “socially valuable outcome” (Schumm, 2004, p. 423). In a response to Schumm (2004), Martha Kirkpatrick (2004) questions why this would be so, noting that sexual experimentation has not succeeded historically in converting homosexuals to heterosexuality and conversion is unlikely to move orientation in the opposite direction. Kirkpatrick (2004) also references an earlier study of lesbian mothers (Kirkpatrick, Smith, and Roy, 1981), noting that she expected to find associations between lesbian parenting and negative outcomes but that such expectations were never supported by the findings. Paul Cameron later responded by asserting that Kirkpatrick’s initial negative expectations

were actually “the ‘collective common sense’ that has informed society over the course of history” (2005b, p. 400).

Opponents of gay adoption seem to rely on a vague and erroneous definition of homosexuality that includes many who would otherwise self-assess and be identified by others as heterosexuals. This definition inevitably results in an overcount of homosexuals, assigning orientation to subjects without interviewing them about their own sexual orientations. The assertion of vague common sense and social value arguments about homosexuality simply cloud the issue without clarifying how generalizations about homosexuality can be drawn from people who may not be homosexual at all.

## DISCUSSION

Religiously motivated practice prohibitions on gay adoption raise several concerns for child welfare agencies and workers. Culturally competent social work practice easily recognizes gays as a minority culture without the need of meeting suspect or quasi-suspect judicial classifications. Competent child welfare workers trained in adoption matching will assess potential parents and adoptees but will not categorically rule out any group of prospective parents on such grounds as sexual orientation. Although courts have not yet affirmed a fundamental right to be adopted, child welfare practice naturally focuses on a child’s rights to permanency and to connection with at least one caring adult. Highly motivated gay adopters can easily be helpful to children with special needs, as Catholic Charities of Boston itself (Wen, 2005) has conceded. All 13 of the gay adoptions completed by this agency were placements of foster children with special needs.

In reviewing assertions of religious freedom, the U.S. Supreme Court has ruled that neither religious sponsorship nor church ownership exempts agencies from otherwise general laws (*Employment Division v. Smith*, 494 U.S. 872 [1990]). Furthermore, a legal prescription that requires an agency to provide a specific service is significantly and obviously different from a legal proscription that forbids an agency to discriminate against a certain subgroup or class. Antidiscrimination laws are specifically intended to be general laws; it is obvious that antidiscrimination laws would be powerless if those agencies most likely to engage in discriminatory practice were exempted from them. In the many states where antigay discrimination remains legal, social work professional ethics forbidding unjust discrimination are not suspended, and social workers engaging in even legal discrimination would still be guilty of a gross ethical violation. Adoption practitioners should consider their professional ethical principles and training when they encounter organizational discrimination against gays.



Justice and equity are especially important in the area of gay adoption, both for the parents and for the children involved. The depiction of justice as blind presumes that justice acts equitably without preferring or sanctioning one group over another. Agencies that offer services to the public are therefore obligated by justice and equity to offer services to the public as it truly is, without preferring or sanctioning a specific group within the general population.

Currently, all 50 states recognize the best interests of the child as the standard for child custody determinations (Artis, 2004). The children involved are often dependent on adoptive parents to meet their needs. If agencies reduce the pool of potential adopters by discriminating against whole categories of potential parents, the organizations injure the children in their care by reducing the opportunities for those children to be adopted.

Perhaps it would be helpful to draw a distinction between legal prescriptions and the proscriptions to which agencies might be subject. Legal prescriptions require agencies to provide a particular service. Legal proscriptions prohibit agencies from undertaking a specific activity or offering a particular service. Massachusetts antidiscrimination law (Mass. Gen. Laws Ann. chap. 151B, secs. 3–4 [2007]) does not burden Catholic Charities with a prescription requiring the agency to provide new services; it merely proscribes Catholic Charities from discriminating in offering the services it freely chooses to offer.

Barbara Melosh (2002) notes that although many more agencies are welcoming gays as prospective parents, adoption in the United States is reverting to a pre-World War II market model. Adopters with means increasingly choose to avoid adoption agencies with “long waits and discouraging prospects” (p. 288) in favor of private and international adoptions. Traditional adoption agencies largely serve only special-needs children and already face a significant shortfall of prospective parents for this population.

## RECOMMENDATIONS

As shifting events in Massachusetts suggest, adoption practitioners facing the dilemma of practice prohibitions by discriminatory religious child welfare agencies should remain informed about the legal, policy, and clinical issues. Such preparation will help them to advocate on behalf of clients facing this discrimination. Social workers may face an unfamiliar challenge in developing the legal and policy competencies necessary to confront the illogical and inequitable environment that confronts gay adopters.

Adoption practitioners should remember that discrimination against gay adopters is generally legal unless state antidiscrimination laws provide direct protection. As the *Romer* decision shows, federal law does not protect gays from discrimination based on sexual orientation. The Court refused to grant such protection, asserting that gays have not faced a history of discrimination and thus are not entitled to recognition as a suspect class. Moreover, gays face additional discrimination because of their decision to adopt. As Timothy Lin (1999) points out, gays historically have been excluded even by other excluded groups. One might also suggest that it is a legal fiction to imply that gays do not face regular violations of their fundamental rights; it would seem that just such a fiction keeps them, as a class, in an intentional legal limbo.

In terms of social policy, adoption practitioners should note that no adoption agency can regulate the lives of adoptive parents after the process is legally complete. The concept of an ideal family structure can be illusory. Some married heterosexual couples that adopt children also go through divorces and separations. Some adoptive heterosexual parents who are single and divorced will date and cohabit with partners who have enormous influence in the lives of the adopted children. Even outlawing adoption by single heterosexuals would do nothing to prevent married heterosexual adopters from divorcing. Agencies should evaluate the quality of adoption applicants according to nonsectarian principles that allow for the possibility of divorce and separation and do not stigmatize or sanction families shaped by these realities. As Paula Pfeffer (2002) notes, Catholic Charities' adoption organizations have submitted to nonsectarian oversight since the early 1930s. In Boston, Catholic Charities followed the antidiscrimination law for almost 20 years; the shift came only after the appointment of a new Vatican ambassador (Colbert, 2006). Policy changes at the Vatican should not be allowed to interfere with U.S. social policy. If Catholic Charities and other religious child welfare agencies are no longer able to follow longstanding antidiscrimination laws, it is likely better for both the agencies and the general public that the agencies cease performing adoption work.

In examining the reality of gay adoption, adoption practitioners should remember the recommendation by Stacey and Biblarz (2001) to avoid an excessively defensive stance. Study after study confirms that children of gay parents experience no special deficits or negative outcomes (Huggins, 1989; Golombok and Tasker, 1994; Chan et al., 2000; Brooks and Goldberg, 2001). Clinical research should focus on exploring the positive benefits and outcomes of the new family forms and relationships that are becoming increasingly common.

Studies that are methodologically flawed and critical of gay parenting, especially those that designate child molesters of both boys and girls as homosexuals and those that fail to study noncloseted gays, are unconvincing at best. These efforts demonstrate the vital importance of objective, empirical and evidence-based research on gay parenting and adoption practice. Future research will increasingly center on gays who have never known the closet, and today, many new adoption practitioners themselves are younger than the first encouraging studies of gay parenting from the late 1970s and early 1980s.

Adoption professionals should continue to be vigilant in guarding against the spread of ideology in child welfare agencies. Proactive steps, such as union organizing, civil and human rights training, whistleblowing, and watchdog activity, may be helpful in securing the protection that adoption practitioners need to do their work with the ethics and professionalism it requires. As Rita Simon and Howard Altstein (2000, p. 147) note, "Social work was, at its birth, an 'unconventional' profession that many times supported unpopular causes. Social workers took these positions because in their estimation they were correct." Research suggests that the best interests of some children are served in their adoption by gays, but such adoptions are sometimes met with fierce opposition. The faithful track record of social workers provides reassurance that religious ideology will not succeed in trumping the best interests of these children. Social workers and child welfare practitioners working in the area of adoption face enormous challenges in day-to-day practice. They do not need and should not bear the incredible burden of being asked by their employers and colleagues to discriminate and violate their professional ethics.

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## NOTES

<sup>1</sup>In this article, for the sake of brevity “gay” is used to refer to both lesbian women and gay men.

<sup>2</sup>*Lofton v. Secretary of the Department of Children and Family Services*, 93 F. Supp. 2d 1343 (S.D. Fla. 2000); 157 F. Supp. 2d 1372 (S.D. Fla. 2001), *aff'd.*, 358 F.3d 804 (11th Cir. 2004), *reh'g en banc denied*, 377 F.3d 1275 (11th Cir. 2005), *cert. denied*, 543 U.S. 1081 (2005).

<sup>3</sup>For a recent High Court decision, see *Lawrence v. Texas*, (539 U.S. 558 [2003]), in which the Court held that private homosexual conduct is protected under the Fourteenth Amendment and cannot be criminalized.

## ABOUT THE AUTHOR

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