



## Parenting

by Geoffrey W. Bateman

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Even though glbtq people have been parents throughout history, the political movements of the late 1960s and early 1970s and advances in fertility technology in the early 1980s have given rise to a much more visible and self-identified group of gay and lesbian parents over the past thirty years.

Gay men and lesbians become parents primarily in one of two ways. They either have children in heterosexual relationships and subsequently come out or plan to raise children as out gay and lesbian parents.

For those glbtq people who have not had children from heterosexual relationships, parenting options have increased in the past few decades but remain difficult in the more conservative areas of the United States.

Since the 1980s, lesbians have often turned to alternative insemination and used anonymous sperm donors from sperm banks to get pregnant, allowing them to avoid legal tangles with a known biological father. Gay men have more typically chosen to adopt children or serve as foster parents, although in recent years a small number have turned to surrogacy to have their own biological children.

Another option has been for gay men and lesbians to have biological children together and co-parent, with each biological and non-biological parent playing a role in the child's life to varying degrees.

### **Legal Issues for Parents Who Come Out**

A number of legal issues face glbtq parents. Custody and visitation rights were among the first issues to confront gay and lesbian parents in the early and mid-1970s and continue to be important concerns today.

The earliest divorce case in which the homosexuality of a parent was an explicit issue dates back to 1952, and a handful more were recorded over the next twenty years. But it was not until the gay liberation movement of the 1970s allowed more glbtq people to embrace their sexual orientation that such cases became increasingly common. As gay men and lesbians with children came out and filed for divorce, they began slowly and quietly to challenge the assumption that homosexuality made them unfit parents.

The success of such custody battles often depended, as it still does today, on both the state in which the case was heard and the judge who presided over it. In the United States, individual states are responsible for most aspects of family law, especially standards that cover disputes, divorces, child custody, and visitation rights. Each state legislature is responsible for laws that address these issues, and for the most part state appeals courts determine how families resolve disputes over such matters.

Since the United States Supreme Court and other federal courts have generally not ruled on such issues, each state determines for itself the legitimacy of gay and lesbian parenting. For glbtq parents the result has been mixed, ranging from severely restricted visitation rights to full custody without conditions.

## **Early Successes and Ongoing Challenges**

In spite of the difficulties that gay men and lesbians experienced early on in retaining custody of their children, there were a handful of visible cases in which lesbian mothers succeeded in keeping their children.

In Seattle in 1972, after divorcing their respective husbands, Sandy Schuster and Madeleine Isaacson, two lesbians in a relationship with each other, were allowed to retain custody of the six children between them. Yet the judge also ordered that the two women could not live together. They responded by renting apartments across the hall from each other and maintaining joint households.

Two years later, their ex-husbands sued again for custody, but this time the judge not only awarded custody to the mothers, but also lifted all restrictions. Ultimately, the Washington State Supreme Court ruled in favor of the mothers, setting an important precedent in that state for the rights of gay and lesbian parents.

Not all states have been so affirming, nor has the passage of time necessarily improved the prospects for gay and lesbian parents in the courts. States such as Indiana, North Dakota, South Dakota, and Virginia were among the first states to deny custody to glbtq parents in the 1970s. According to Polikoff, in 1985, the Virginia Supreme Court ruled that a "gay parent living with a partner was always an unfit parent."

In 1995, the Virginia Supreme Court ruled in perhaps the most visible lesbian parenting case of the decade, when it gave custody of Sharon Bottoms' son Tyler to Sharon's mother, Kay Bottoms, and prohibited Sharon from visiting her son with her partner April.

Even in 1998 and 1999, state supreme courts in Indiana, Missouri, North Carolina, Alabama, and Mississippi ruled that custody could be denied or visitation rights restricted based on a parent's homosexuality.

## **Legal Issues for Planned glbtq Families**

Although a pressing issue for those gay men and lesbians who decide to adopt or have children, legal rights for parents in alternative glbtq families have yet to be resolved adequately. They continue to be unpredictable and are especially elusive for non-biological parents.

Most disputes in planned glbtq families result after a break-up in which the non-biological parent wishes to retain contact with a child or when the biological father, often a gay man who has served as a sperm donor, wishes to claim his parental rights.

In most cases, courts have consistently affirmed the biological parent's right to custody over the interests of the non-biological parent, even in cases in which the non-biological parent served as the primary caregiver. Even in a gay-friendly state such as Vermont, the State Supreme Court could find no reason that would compel a biological parent to maintain contact between her child and a non-biological, legally unrecognized parent.

Both types of claim have proven difficult for legal activists working on issues related to gay parenting. The same legal doctrine that privileges close biological ties and protects gay and lesbian biological parents from an ex-husband or ex-wife's homophobic extended family is the very same doctrine that prevents non-biological gay and lesbian parents from attaining full privileges in the event of a break-up.

Adoption and foster care have been options open to gay men and lesbians for some time in many states, even as other states have moved to restrict them. In Florida, for example, gay men and lesbians are permitted to be foster parents, but not adoptive parents. In New Hampshire, Mississippi, and Alabama, gay men and lesbians are prohibited from either foster care or adoption, while only heterosexual married couples are permitted to adopt in Utah.

In many states, however, state and adoption agencies permit adoptions by individual gay men or lesbians, but do not allow joint adoptions by gay or lesbian couples. In such states, one person of a couple frequently applies to adopt a child as an individual, leaving the other without parental rights.

In states such as California, where second-parent adoption is permitted, the second parent can eventually apply to adopt the child.

### **Lesbian Mothers**

Lesbian mothers were among the first activists who pushed for the inclusion of parenting issues in the gay liberation movement. They gained visibility in 1972, when Phyllis Lyon and Del Martin included a chapter on lesbian mothers in their book, *Lesbian/Woman*. In 1973, *Ms.*, *The New York Times*, and *Newsweek* all ran articles on lesbian mothers.

In 1974, visibility for lesbian mothers transformed into focused political activity. During that year, activists formed the Lesbian Mothers National Defense Fund (LMNDF) in Seattle to support Sandy Schuster and Madeleine Isaacson. In Philadelphia, Rosalie Davies started Custody Action for Lesbian Mothers after losing custody of her children.

Judges who rule against lesbian mothers typically rely upon homophobic and stereotypical language to justify denying them custody of their children. They tend to view homosexuality as unnatural or sinful and the idea of a lesbian parenting a child as abnormal and damaging.

In cases where the individual lesbian mother has been shown to be a competent and caring parent, judges have still denied custody for fear that a lesbian household will harm the child's social development. In certain judges' eyes, lesbianism remains such a stigma that no child could grow up happily in such an environment.

Such sentiments have motivated psychologists to study the impact a lesbian mother has on her children. From these studies there is no evidence to suggest that a lesbian mother's sexual orientation in any way harms her child. As Julie Schwartz Gottman concludes, "children of lesbian mothers do not demonstrate greater social maladjustment than children of heterosexual mothers."

In the 1980s, lesbian mothers became increasingly more visible, so much so that their decision to have children was dubbed the "lesbian baby boom." Ironically, what appears to many as a contradictory identity—lesbian and mother—has normalized and mainstreamed parts of the lesbian community. Research by Ellen Lewin shows that as lesbian mothers restructure their lives around raising children and interact with other mothers, many of them come to identify more as mothers than as lesbians.

### **Gay Fathers**

As much as lesbian mothering may strike some as contradictory, the idea of gay fathering has been regarded as even more of an anomaly. Up until the early 1990s, very little research had been done on gay fathers, and scholars such as Gottman and Frederick Bozett suggest the reasons for this may lie in how our culture sees fathers as less important parents and gay men as anti-child or anti-family.

Yet anecdotal evidence and research suggests that the children of gay fathers may number in the millions. Gay fatherhood may be more common than research is currently able to show. But because fathers in general continue to be less likely to gain custody of their children, gay fathers in particular are more likely to be restricted and much less visible.

Research on gay fathers has focused primarily on gay men who have had children in previous heterosexual

relationships. Very little work has been done on gay men who become partners to men with children or gay men who plan to have children.

Bozett shows that gay fathers who have had children from heterosexual marriages or relationships struggle to integrate their two identities. Often they must hide their sexual orientation from ex-wives and children, especially if they wish to retain visitation rights. Equally difficult can be finding acceptance from gay peers who are not necessarily aware and sensitive to the realities of raising children. According to Bozett, gay fathers who gradually find acceptance from their biological families and gain support from other gay men are able "to express both identities in both worlds" and lead happier lives.

As is the case with research on lesbian mothers, virtually all the research on gay fathers suggests that children of gay fathers experience no negative impact from their father's sexual orientation.

Contrary to the alarms frequently sounded in custody disputes, there is no evidence that gay men are more likely than heterosexual men to commit sexual crimes against their children. Nor is there any evidence that the children of gay fathers are more likely to be gay or bisexual than other children. A study examined the sexual identity of sons raised by gay men and found that only nine percent of them identified as gay or bisexual. Another has found that the large majority of sons and daughters of gay fathers identify as straight.

In their research on how gay fathers parent, Bigner and Bozett report that relationships between gay fathers and their children are positive, that sexual orientation has little impact on these relationships, and that gay fathers actually work harder than their heterosexual counterparts to create stability and positive relationships for their children.

## **Conclusion**

In spite of the many legal successes in many states for gay and lesbian parents in the past thirty years, the issue continues to be debated in just as many other parts of the country. The right of glbtq people to parent will have to be secured state by state. In addition, without legal sanction for gay and lesbian partnerships in some manner, custody battles will continue to stymie the courts and result in unfair decisions against non-biological parents.

As daunting as the legal obstacles may be, the research that has been done on gay and lesbian parenting undeniably shows that glbtq people are effective, loving parents whose sexual orientation has no negative impact on their children. And in spite of the legal issues, it is fair to assume that gay men and lesbians will continue to find creative ways to parent and continue to create their own versions of family.

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### **About the Author**

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