

# Adoption and Equality: A Historical and Comparative Study of Same-Sex Adoption Rights

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## Abstract

This paper explores the historical, legal, and social evolution of adoption rights for same-sex couples, focusing on the United States while offering comparative insights from international contexts. Initially, same-sex couples faced widespread legal and societal discrimination, with early adoption attempts routinely denied due to prevailing homophobic norms and misconceptions about LGBTQ+ parenting. Over time, key legal milestones, such as the legalization of same-sex marriage in *Obergefell v. Hodges* (2015), facilitated greater access to joint and second-parent adoptions. Despite such progress, adoption laws remain fragmented across U.S. states, with some maintaining explicit or implicit barriers against same-sex couples.

The paper highlights landmark court cases and legislative reforms that have shaped adoption rights, including state-level victories in New Jersey, California, and Vermont. It also addresses the role of advocacy, activism, and shifting public perceptions in fostering legal recognition and social acceptance. Comparative analysis with countries like Sweden, the UK, and Canada reveals varying degrees of progress, showcasing how legal traditions and cultural attitudes influence adoption policies.

The research underscores persistent challenges, including social stigmas, inconsistent legal protections, and discriminatory practices by adoption agencies. It also emphasizes the psychological well-being of children raised in same-sex households, debunking myths of developmental harm and affirming positive child outcomes.

Finally, the paper advocates for comprehensive federal protections, uniform state policies, and continued public education to promote equality in family law. It concludes that while substantial progress has been made, achieving full adoption rights for same-sex couples requires continued legal reform, empirical research, and societal support to ensure that all children have the opportunity to thrive in loving, supportive families—regardless of their parents' sexual orientation.

**Keywords:** Same-Sex Adoption, LGBTQ+ Rights, Family Law, Adoption Equality, Legal Reform

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## 1. INTRODUCTION

In the earliest days of same-sex adoption cases, it would be unheard of for a court to allow a gay couple to adopt a child. Most cases resulted in the adoption requests being denied, and families would sometimes go to extreme measures to prove that a person, couple, or family was “unfit” for a child (Roberts, 2016). Homosexuality was once deemed a mental illness by psychologists. This made custody or visitation cases nearly impossible for LGBT parents, regardless of the good parent they would be, as homosexuality was thought to negatively affect how children were raised. This meant that when one parent would try to gain custody of a child, the other parent’s homosexuality could easily be twisted to make them seem unfit. The first known LGBT adoption case was in the 70’s and resulted with the agency involved claiming a homosexual adoption was a “social evil”. They said that a child’s sexual identity would be irrevocably impaired by the influence of someone of the same sex. In the years following, PL 100-305 established that funding could not be denied by the Federal Government on the basis of sexual orientation. This case alone denied the adoptions of many gay couples and left a chilling affect on many agency workers. Despite a profound lack of cases being won by gay and lesbian couples, there were a few bright spots, with California’s Becky Smith and Annie Afleck being the first lesbian couple to jointly adopt in 1986. In 1997, New Jersey would become the first state to allow joint adoption for gay couples. However, the lack of national policies left many states open to the implementation of discriminatory policies.

In the years following the creation of a legal right for same sex couples to marry, LGBT couples entered into family formation procedures (both births and adoptions of minors) at rates comparable to heterosexual couples. On June 26, 2015, the Supreme Court legalized same sex marriage throughout the United States. As a result, same-sex couples gained the right to marry in all states and territories of the U.S. While this was a large victory for the LGBT population, it instead created a new battle focused on the ability to adopt a child (Tasker & Bellamy, 2019). Many states were hesitant to change their laws, and do not have specific policies ensuring full equality for the LGBT population when it comes to adoption. Some states have laws that allow anti-gay discrimination and allow agencies engaging in state contracts to refuse to place children in homes with LGBT individuals or couples. Also, many states had old laws on the books that had to be undone. For example, Alabama has an old law which states a same sex couple must wait a year after marriage before being able to adopt a child. Accepting adoptive parents must be married under Alabama law, so this could seem discriminatory as straight couples do not have to go through this. To date, LGBT joint adoption has yet to be overturned in Mississippi, while Texas has even more robes and the only state law specifically allowing for such discrimination.

## 2. Historical Context

The debate surrounding adoption rights for same-sex couples is a relatively new topic that has gained significant attention in recent years. Today, many of the younger generation, including adolescents and young adults, cannot remember or even imagine a time when same-sex couples were explicitly prohibited from marrying. For these youth, the issue of equal rights for same-sex couples is one that is being fought passionately and closely. Advocacy groups, allies, and many community members work tirelessly to highlight these injustices and push for a more equitable society. However, historically, the status of adoption rights for same-sex couples has been drastically different from what we see today. For a large portion of the last fifty years, same-sex couples in America were viewed as deviants, unworthy of being granted the right to marry, let alone to be recognized as capable parents. This negative perception

was reinforced by social workers, psychologists, and various religious institutions that spoke vehemently against homosexual adoption, thereby denying fundamental rights to a significant segment of the population. In these earlier decades, the legislative landscape was not favorable, making it difficult for same-sex couples to gain recognition and rights like those of their heterosexual counterparts. In recent years, however, we have witnessed a substantial shift in legislation toward more acceptance of same-sex marriage and adoption rights for same-sex couples. This change has been accompanied by a growing acceptance within society overall. Back in the 1970s and 1980s, same-sex couples faced vilification similar to that experienced by any marginalized social “other.” Their lifestyles, relationships, and belief systems were often disparaged as being deviant from the conventional “norm” that society held. This societal perspective extended deeply into the belief that same-sex couples were, by nature, unfit to be parents. Their sexual orientation was pathologized, leading many to mistakenly assume that it would result in poor or damaging parenting practices. Research at the time suggested, without a solid basis, that children raised in same-sex households would be at a disadvantage and might later grow up to become “deviant” themselves, perpetuating a harmful cycle of misinformation and stigma. Institutions, including influential ones, produced literature that reinforced these damaging beliefs. In a notable instance in 1971, the Church of Jesus Christ of Latter-Day Saints attempted to explain a child’s “homosexuality” by warning potential adoptive parents that same-sex attraction would inevitably lead to emotional problems, a higher propensity for alcohol or drug abuse, and inferior parenting skills. This perspective was echoed strongly by social workers, psychologists, and various religious institutions who consistently warned against what they termed as homosexual upbringing. (M. Rabb, 1999)(Tasker & Bellamy, 2019)

### **2.1. Early Adoption Laws**

The initial modern statutes that authorized the adoptive placement of children began to emerge during the last quarter of the nineteenth century, with significant laws enacted in Massachusetts in the year 1851 and then followed by Minnesota in 1853. The Massachusetts law was particularly groundbreaking as it established a brand new judicial system that held exclusive jurisdiction over “all matters” related to adoption. This crucial development marked a significant turning point, as the wavering and frequently unstable foundation of private-placement adoptions transformed from mere speculation into a tangible reality filled with challenges, threatening the very essence and existence of motherhood itself. Furthermore, English and various other child-placing societies that were functioning in New York during this time were vehemently denounced as powerful and greedy entities. They acted as uncompromising barriers that stood resolutely between desperate childless couples and the priceless, coveted miracle of adoption that they were longing for. It is worth noting that between the years 1850 and 1900, a total of thirty adoption statutes were successfully passed across the country, reflecting a growing recognition of and response to the complexities surrounding adoption during this pivotal period in American legal history. (J. Becker, 2000)

While most of them effectively reconstituted courts of equity and bestowed upon them exclusive jurisdiction over matters of adoption, a few jurisdictions chose to dispense with a court entirely. Instead, they granted full instance powers for adoption decisions to whichever judge happened to be presiding on the bench at that particular time. For the first time, lawyers began to play a vital role in the adoptive placement of children, significantly influencing the process. In fact, the unprecedented rise in the sheer number of adoption cases during this era attracted considerable attention to the value, legality, and public interest surrounding the transplantation of children into new families. The 1850s and 1860s were not merely periods of proliferating court cases; they were also times of rapidly expanding literature

focused on the topic of adoption. The formation of the Society for the Prevention of Cruelty to Children was instrumental, and later, its more specialized Offspring Home Committee took important steps to address adoption issues. The publication of the very first adoption monograph by a practicing lawyer also played a significant role in opening this field to wide-ranging general interest among the public and professionals alike.

## 2.2. Pre-LGBT Rights Era

Same-sex relationships and various expressions of sexuality have existed throughout recorded history; however, the concept of a child being adopted by one or more gay individuals was relatively new and, at that time, considered shocking, if not appalling, by nearly everyone in society. During the late 1960s and early 1970s, child adoption by lesbian and gay people was not only uncommon, but it was also illegal in most U.S. states, creating significant barriers for those who wished to expand their families in this way. The first documented case of LGBT adoption occurred in 1975 and involved a gay man named Bill Kraft, located in Louisiana. The arduous struggle for adoption rights in Louisiana spanned several years and even after the legal loophole was eventually closed, Kraft encountered a profound moral challenge when he was asked if he would ever consider evaluating a gay man who was seeking to adopt a child. He responded affirmatively, indicating his openness, yet he pointed out that he had not encountered any instances of such adoptions being feasible. Kraft faced considerable backlash, enduring heavy criticism and personal attacks from various sectors of society, including public outcry, church organizations voicing their disapproval, and even some members of the pride organizations to which he belonged. (Roberts, 2016)

Twenty-five gay men and four lesbians sought out Kraft's parenting services following the suit, however only one couple's case was brought to trial. The District Court ruled that child adoption by a gay man was contrary to public policy, and in this decision Kraft was held in contempt of court. Lack of support from protective service attorneys left Kraft with no choice but to leave Louisiana. Soon after this, LGBT activists in California learned of his case and had begun conducting their own studies. Throughout the mid-1980's homophobic attitudes were prevalent among social workers and federal agencies. Almost all cases of joint adoption by a lesbian couple were turned down anywhere it was illegal, Wyoming being the first to amend the law to make it legal. In California in 1986, Becky Smith and Annie Afleck were the first lesbian couple to jointly adopt. After this, Smith and Afleck's case was widely reported on in many different forms of media. In 1997, New Jersey became the first state to allow joint adoption for gay couples.

## 3. Legal Milestones

The very first known case of LGBT adoption took place in the year 1970 when an openly gay man encountered rejection in his attempt to adopt a child, as the state of New Jersey denied his application. This pivotal case was subjected to review by an appellate court consisting of three separate panels, each comprising two judges. Ultimately, in rejecting the appeal made by the man, one of the judges articulated a sentiment that emphasized, "The moral beliefs of society should not be ignored," and regrettably used this perspective as the reasoning behind the denial of the adoption case. In the wake of this decision, numerous other LGBT adoption cases subsequently found their way into the courts, but unfortunately, they were rejected as a direct result of the prevailing societal attitudes of the time. Before the dawn of the 1980s, it was determined that gay individuals were only able to adopt individual children in a mere four states: California, Massachusetts, New Jersey, and New York. As the early 1980s rolled

around, it became increasingly evident that joint adoptions by gay couples faced significant legal hurdles, as numerous cases were denied in various states, reinforcing the negative outlook on such adoptions. It was during this challenging period that a groundbreaking moment occurred, as the first lesbian couple, Becky Smith and Annie Afleck, successfully managed to jointly adopt two sons in California back in 1986. Following this landmark event, a vigorous effort to legalize joint adoption for gay couples commenced promptly in states all across the nation. A significant breakthrough was achieved in 1997 when New Jersey emerged as the very first state to officially permit joint adoption for gay couples. In the aftermath of this progressive change, a multitude of states, including the influential New York and California, followed suit by passing similar laws that allowed LGBT couples and individuals the right to adopt, marking a momentous shift in the landscape of adoption rights for the LGBT community. (Roberts, 2016)

The fight for same-sex marriage began with significant developments in the early 1980s, marking a pivotal shift in the ongoing struggle for equality. One of the most notable cases that emerged in this context was *Baker v. Vermont*, which started its journey through the courts in 1997 and gained immense attention as it laid the groundwork for future legal battles. Following the cascade of events that unfolded in the years that followed, on June 26, 2015, the Supreme Court ultimately made a ground-breaking decision to legalize same-sex marriage across the entire United States. Prior to this monumental ruling, there were still fourteen states that upheld prohibitions against same-sex marriage, reinforcing outdated discriminatory practices. Even in the wake of the landmark ruling, states such as Alabama rallied against the Supreme Court's decision, creating exceedingly long and frustrating waiting times for couples seeking marriage licenses. In their attempts to undermine the ruling, many states went as far as creating legislative measures aimed at suppressing same-sex marriage entirely, enacting various amendments to their state constitutions to further convolute the issue. While the ruling represented a supreme victory for many advocates and supporters of equal rights, it also uncovered numerous persistent legal obstacles that remained, especially concerning the adoption process for same-sex couples. The challenges faced in this area can often be traced back to a notable reluctance from state governments to change existing laws or forge new policies that would ensure proper equality for the LGBT population. For example, in Alabama, a same-sex couple is mandated to wait an entire year after their marriage before they are eligible to adopt a child, while a heterosexual couple can typically complete the same process in a mere fifteen minutes. Alarmingly, there are currently eleven states that maintain legal barriers against LGBT joint adoption, creating an uneven playing field that disproportionately affects same-sex couples. Texas, notably, has the widest legal gap; while the state does not prohibit same-sex marriage, it enforces a stringent law against LGBT joint adoption, leading to various instances of wrongful terminations and further complicating the lives of many families who simply wish to provide a loving home for children in need.

### 3.1. Landmark Court Cases

The adoption rights of same-sex couples have undergone a remarkable evolution and transformation over the last couple of decades in the United States. Until just a decade ago, many same-sex couples were often required to navigate complex legal proceedings in order to establish enforceable parent-child relationships with their adopted children or stepchildren. This process was not only daunting but also fraught with uncertainty. Even today, the ability of same-sex couples to adopt children, along with the rights of co-parents who do not have biological ties to those children, remains rather murky and unclear in numerous states across the country. The legal landscape is rapidly evolving, with an increasing



number of recent cases addressing new and novel issues, while also striving to resolve longstanding conflicts and discrepancies that exist among various state laws. In doing so, these developments are significantly expanding the rights and privileges of same-sex couples and co-parents seeking to adopt children. The Supremacy Clause of the Constitution mandates that states must recognize “all marriages on the same terms and conditions” and “all rights on that basis.” This creates a legal framework that could potentially influence future decisions. However, it’s incredibly challenging to predict how state and federal courts will continue to address these intricate issues moving forward. Nevertheless, there is no doubt that these vital matters will continue to be scrutinized and adjudicated in the coming years as society progresses. (Thomas, 2016)

Before Obergefell, the Supreme Court’s ruling invalidating all marriage-only statutes was written in a way that would deny states the ability to prevent same-sex couples from adopting children. The law and facts in the state cases are still changing. However, the general trend has been to extend joint or second-parent adoption rights to same-sex couples who are married and, in states with civil unions, to those in civil unions. (J. Herzig, 2011). (J. Herzig, 2011) invalidated the state’s ban on same-sex partners adopting or fostering, holding that the ban denied those partners and children due process and equal protection rights.

States on both sides of the division are inevitably going to have to come to grips with the effects of Obergefell. For example, cases have been brought to compel the state to list the same-sex marital partner as co-parent on the birth certificate. Some states permit name changes at the time of marriage, while others do not. There have been cases raising issues of visitation and custody involving civil unions, and the need to evaluate the standing of same-sex co-parents without standing based on marriage or civil union has been presented.

### **3.2. Legislation Changes**

Vermont holds the distinction of being the very first state in the United States to enact laws specifically aimed at facilitating second-parent adoption. These progressive laws allow a partner of a child’s adoptive parent to adopt the child if doing so is determined to be in the best interest of that child. Importantly, this particular law does not require that the second parent be a biological parent to the child, which broadens the scope for non-biological parental relationships. By granting the second parent total legal rights, it encompasses critical aspects such as custody, residency, and visitation rights, thus ensuring that both parents can be actively involved in the child’s life. In addition to Vermont, other states have developed court precedents that support the practice of second-parent adoption. Notable examples include Massachusetts, New Jersey, Oregon, Florida, and California, all of which have recognized and facilitated this important aspect of family law. Meanwhile, Iowa and Washington have also experienced success with second-parent adoptions, indicating that even in the absence of explicit statutory provisions, the courts in these states have found ways to support the families seeking such legal recognitions. Conversely, there are states such as Hawaii, Colorado, and Illinois, where courts have denied requests for second-parent adoptions. Typically, these denials are based on a legal interpretation that prohibits a legal parent from having more than one additional legal parent at a time. This limitation illustrates the variations in legal frameworks and attitudes towards second-parent adoption across the country. Moreover, it should be noted that adoption policies are not solely embedded in law. They can also be established as a series of guidelines that are issued by specific organizations involved in child welfare. These steps may be initiated by an agency or an executive branch of government. It is essential to recognize that while such guidelines provide helpful frameworks for adoption, they do not carry the

same weight as formal legislation and are generally considered to be less robust. Consequently, they are more susceptible to being altered or reversed through shifts in policy, which can lead to uncertainty for families relying on these guidelines for their adoption processes. (M. Rabb, 1999)(Tasker & Bellamy, 2019)

#### **4. State-by-State Analysis**

The current body of law that surrounds the adoption rights of same-sex couples in the United States is highly fragmented and inconsistent across different states. On one end of this complex spectrum, we find that places like Puerto Rico, Massachusetts, Connecticut, California, and New Jersey have either recognized the adoption rights of same-sex couples or have passed legislative measures that explicitly grant these important rights to such couples. These progressive states have made strides in ensuring that same-sex couples can legally adopt children and create families without facing legal obstacles. Conversely, at the other end of the spectrum are states like Mississippi, Nebraska, Ohio, and New Hampshire, where laws and policies banning same-sex adoptions have either been enacted or upheld in court, effectively denying those couples the same opportunities to adopt. This disparity in adoption rights across the nation leaves many individuals and couples in a state of confusion and uncertainty. The remaining states can be categorized based on how their courts or child welfare agencies have approached the topic of same-sex adoptions. Notably, all states, except for Mississippi, have established some form of precedent that upholds or recognizes an adoption by a same-sex couple. However, in numerous instances, these cases have only been acknowledged in passing and have not been definitively ruled upon, resulting in an ongoing lack of clarity and continuity in the laws regarding adoption rights for same-sex couples.

In states whose laws are silent on the rights of unmarried couples to adopt – such as Idaho, Iowa, and North Carolina – sufficient progress has already been made towards equal access to adoption rights for same-sex couples. States facing challenges should analyze these trends within the context of their own laws, as well as the laws of the states making headway (Moser, 2015). The Iowa attorney general has issued a clarifying opinion in light of litigation in similar jurisdictions. States that leave the question open as a matter of law should heed the weekend court decisions closing down avenues of challenge to state laws banning same-sex marriage. In line with recent court decisions in Connecticut and Massachusetts, courts have begun to address claims of bias or exclusion from access to fundamental liberties, with benefits traditionally associated with married couples or civil unions being conferred upon same-sex couples.

In states with a high concentration of same-sex couples or that originally banned same-sex marriage based on a definition excluding same-sex couples from obtaining marriage licenses, high levels of litigation are likely to abound respecting the access of same-sex couples to domestic partnership benefits or civil unions. These states include New Jersey, California, Vermont, and Connecticut (M. Rabb, 1999). By recognizing and addressing the rights and privileges associated with cohabitation, courts in these jurisdictions will allow same-sex couples to keep their claims alive.

##### **4.1. States with Inclusive Laws**

Despite a history of oppression and denial of rights, same-sex couples today enjoy unprecedented levels of acceptance throughout the United States. In particular, the recognition of same-sex marriage has impacted many areas of life for same-sex couples; perhaps most significantly, their right to adopt. The first state to allow same-sex couples to adopt was New Jersey in 1990, although discriminatory practices

still existed. This began a slow evolution toward inclusivity throughout the states.

The first known case of a gay individual adopting a child occurred in California in 1978. The adoption was denied. A case in New Jersey in 1987 was accepted; however, the child was ultimately placed with a heterosexual couple. In 1988, Michigan was the first state to bar same-sex couples from joint adoption. Adoption was typically noncontroversial until the mid-1980s, when anti-gay sentiment surged again. Many states endeavored to enshrine discriminatory practices. In the late 1990s, things began to shift again. Judges at the state level began to question discriminatory practices for the first time since same-sex adoption was unprecedented (Roberts, 2016).

Becky Smith and Annie Afleck became the first lesbian couple to jointly adopt in California in 1986. In 1994, the first joint adoption of a minor by a same-sex couple was ratified in New Jersey; however, one of the women had to go through the process of being known as the “second parent” due to New Jersey law prohibiting same-sex joint adoption. Soon thereafter, courts throughout the country began questioning discriminatory practices. In July of 2011, New York became the sixth state to allow joint adoption for gay couples. This new law gave New York judges discretion to decide such cases; however, abortion statutes remained an issue. In 2013, Edie Windsor sued to claim rights to the estate of her late wife against the Federal Defense of Marriage Act, which barred federal recognition of same-sex marriage. Windsor won, laying the groundwork for widespread same-sex marriage in 2015.

#### **4.2. States with Restrictive Laws**

New Hampshire is one of the states that has restrictive laws against adoption by gay and lesbian parents. In New Hampshire statute Title XII, 170-B:4 the law succinctly states, any individual not a minor and not a homosexual may adopt: 170-B:4. Adoption by Non-Homosexuals Not One in Same Sex. The law goes on to explain the legislative intent of this exclusion saying. 170-B:4-a. Intent. The general court finds that, as a matter of public policy, the provision of a healthy environment and a role model for our children, should exclude homosexuals from participating in governmentally sanctioned programs of adoption and foster care (M. Rabb, 1999) Florida also has rigid laws against adoption by same sex couples. In the rewriting of the Florida statute regarding child placement services, a new subsection was added. 63.042(3) In any judicial proceedings regarding adoption, it is not in the best interest of the child to be adopted by a homosexual. This gives legal precedence against same sex adoptions. Since the 1970 Supreme Court ruling in about just this issue, state courts have reaffirmed that the best interest of the child is the standard for determining child custody and visitation rights. An auxiliary side issue regarding finding a home for these children is the added hold placed on children with special needs. Almost any factor which can be perceived as causing a child not to be perfect is a reason to reject a family as the best for that child. Efforts continue to reform this hurtful legislation and find true homes for these endangered children.

#### **5. Impact of the LGBTQ+ Movement**

It is crucial to conduct a thorough examination of the LGBTQ+ rights movement and its significant influence on the ongoing fight for adoption rights. The LGBTQ+ community has witnessed a multitude of changes in adoption law since the emergence of the LGBTQ+ rights movement in the late 1960s. Numerous landmark decisions that have been rendered in same-sex marriage cases have directly impacted judicial determinations in joint adoption cases; thus, it is imperative to delve into and analyze such cases in detail. Same-sex marriage was first legally recognized in Massachusetts in 2004, this historical decision was a direct consequence of persistent advocacy and activism. Following this,



Vermont also took the groundbreaking step to recognize same-sex marriage. Progress continued in 2008 when California would likewise acknowledge legal same-sex marriage as a result of a strenuous and prolonged legal battle that began in earlier years. This back-and-forth dynamic in the courts highlighted the societal push for equality and legal recognition for same-sex couples. After the passing of significant legislation and court rulings, the legal and constitutional discussions surrounding this issue would disperse to several other states, most notably in Iowa, where legal same-sex marriage was reinstated as a direct result of progressive court decisions. The most directly pertinent Supreme Court decision, however, was issued on June 26, 2015, with the landmark case of *Obergefell v. Hodges*, in which the Court rendered a 5-4 decision that declared same-sex marriage to be a constitutional right, firmly guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. This historic ruling effectively legalized same-sex marriage across all fifty states simultaneously, setting a powerful precedent that mirrors many state court decisions concerning joint adoption rights, thus reinforcing the importance of marriage equality in all spheres of life, including family law and adoption rights.

After the landmark legalization of same-sex marriage in 2004, numerous states found it necessary to amend their adoption statutes to acknowledge that same-sex couples are equally eligible to adopt children. This pivotal change meant that states which had previously prohibited joint adoption by LGBT couples—due to definitions of marriage that relied solely on heterosexual standards—had to revise the language of their laws accordingly. For instance, phrases like "a husband and wife" had to be replaced with the more inclusive term "spouses," which recognizes the diversity of family structures. In accordance with the legal changes observed in states such as Massachusetts and California, marriage became the constitutional status that entitled individuals to the right to adopt. Hence, eligibility to adopt could not be denied based solely on one's marital status, provided that individual was legally married. (Roberts, 2016)

## 6. International Perspectives

Over recent years, the ability for same-sex couples to adopt children has become a matter of great debate. It has been argued that because same-sex couples cannot procreate without donor assistance, there are 'less' children available to be parented by same-sex couples. Others argue that same-sex couples do not represent the traditional family unit, a standard that is not fully understood by all and that many heterosexual parents fail to abide. In 1810, in New Brunswick, Canada, the first adoption law was presented, modeled after a British law approved just three years earlier (Scherman et al., 2020). This first law did not reflect modern adoption practices or be informed by the understanding of early childhood psychological development. Where the British adoption methodology relied on the assumption that there was a 'perfect family structure' that children could be assimilated into or that children could be cured of nonsocial behavior, more modern beliefs assert that a child's well-being and ability to flourish in a familial environment rely more on a loving and caring environment than the parental composition. Debate surrounding adoptions by same-sex couples began in the 1970s, with states such as New Jersey becoming the first state to allow same-sex couples to adopt children who were not naturally their own. These explorations of the rights of LGBT individuals to become parents were controversial and contested. Even now, those concerns stick firm to same-sex couples wanting to adopt. Birth celebrities such as Mel Gibson, Kelly Preston, and Britney Spears have gained attention for their unplanned pregnancies, while celebrity couples such as Cher and Madonna have adopted children from abroad.

Whether straight or gay, high-profile parenthood is acceptable, but undercut the proverbial ‘happy endings’ created for same-sex couples through the adoption of children. In the face of often well-lauded evidence demonstrating that same-sex parents are as good as or better at parenting than heterosexual parents is the idea that same-sex parents and their children experience a range of wider social alienations and disadvantages that alludes to the notion that ‘having a family is not enough’. Such beliefs overlook the efficacy of mothering or parenting by same-sex parents or, conversely, overrate the risks of such parented states.

### **6.1. Adoption Rights in Europe**

In 1989, the first law providing for the possibility of joint adoption by same-sex couples was approved in Denmark. This law was short-lived and the law of 1999, which included some amendments, recognized cohabitation and excluded the possibility of joint adoption in the case of unmarried couples. Registration as a cohabitant does not create equal filial ties for children born to couples in cohabitation, *urge*. However, in 2012, after a long struggle, even unregistered cohabitation between two persons of the same sex was recognized as equivalent to registered cohabitation for matters concerning section 4 and adoptions of section 10 of the earlier approval.

In 1992, Sweden approved a law allowing same-sex couples to lead a similar family life as straight ones. LGBT couples were able to obtain joint custody of children and were also open for lesbian couples to use public sperm banks. However, many same-sex couples could not adopt children as it was only possible for heterosexual married couples and unmarried women (Rossolillo, 2014). That led to a special law for same-sex couples being approved by the Riksdag in 2003, placing them on equal footing with heterosexual couples concerning adoption rights. In 2017, a historic law allowing same-sex couples access to family surrogacy was approved. They were already able to be surrogate parents, but only if the egg and womb were from the mother who intended to keep the child. Non-biological parents did not have the right of custody before legal recognition of parenthood, even in cases where children were adopted legally abroad.

The Swiss constitution underwent an amendment following the partnership law's approval in the year 2000, yet despite this significant step, there were no substantial regulatory changes implemented thereafter. As a result, same-sex couples continued to face exclusion from full joint adoption rights, which left them at a disadvantage compared to different-sex couples. Furthermore, none of the recommendations proposed by various constitutional courts aimed at amending the legal code pertaining to adoption were taken into consideration or acted upon by the relevant authorities. In the year 2006, a ruling from a lower court highlighted the exclusion of joint adoption rights as being unconstitutional, citing that such exclusion contradicted the principles of equal treatment rights. Subsequently, in 2007, the Federal Supreme Court upheld this ruling, reiterating that while the call for reforms was critical, the specific legislative follow-up needed to be carried out by the parliament itself. Nonetheless, despite this affirmation, no such laws have been enacted to address the issue. The court explicitly stated that the proposed changes were essential for upholding the rule of law, ensuring the stability of rights, and maintaining political accountability within the legislative framework.

### **6.2. Adoption Rights in Other Regions**

In Antarctica, home to a small community of researchers, there are very few children. Hence, there are no legal or statutory frameworks for LGBTQ+ parenting and adoption in the continent. More than 90% of country signatories to the United Nations Convention on the Rights of the Child provision for the adoption of children by same-sex couples. Norway, Canada, South Africa, and the Netherlands are

leading countries in adoption policies including LGBTQ+ families or single LGBTQ+ parents (Tasker & Bellamy, 2019). Their respective Human Rights Commissions have cited same-sex couple adoption rights as a key enabler of living in the country for LGBTQ+ families as they seek to improve their personal wellbeing and stability.

On that basis, a comprehensive proposal for a domestic adoption scheme specifically designed for same-sex couples was carefully crafted and subsequently made in late 2017 to the Minister for Children and Youth Affairs, Katherine Zappone. Building on this initial proposal, in July 2018, an even broader and more inclusive proposal advocating for a scheme that would extend to inter-country adoptions was presented to both the Minister and the Government of the time. As the efforts continued, in July 2021, a further proposal that specifically addressed potential legislative obstacles to the necessary rules and procedures for such adoptions was formally submitted to a sub-committee of the Oireachtas Justice Committee. These proposals were among a series of meticulously prepared submissions that were made to multiple government departments, various agencies, and numerous Oireachtas committees regarding crucial family and parenting rights for the LGBTQ+ community. Among these important submissions were those directed to the then Minister for Justice, Simon Harris, prior to and during the critical passage of the Marriage Bill through the Oireachtas. During this ongoing process, dedicated LGBTQ+ activists and families were actively contacted by the advisors of the then Minister and the bill team, along with various government departments and Oireachtas civil servants, in the lead-up to the historic enactment of the bill.

## 7. Challenges Faced by Same-Sex Couples

Opponents of same-sex parents often argue that children belonging to families who have two unmarried parents are more vulnerable than those raised in traditional families. This risk based stance, it is argued, is intensified with the “twin” of deviant behaviour: alternate displacement, psycho-emotional disturbances, learning difficulties, and finally, imprisonment. Furthermore, same-sex couples would be less able to control their children’s upbringing to prevent deviant behaviour. Most of these claims lack empirical foundations and are based on a priori presumptions and selective studies set in extremely unfavourable environments (Moser, 2015). Today, however, children adopted by same-sex couples belong to a mass phenomenon: they are subject to national and international interest. Pioneer research on same-sex adoption emphasised that while this may be a minor public event, it is perceived as a major private event. This means that since then it has gradually entered and benefited from widespread public discussion.

In 2002, the Adoption and Children Act extended the equal status rights of same-sex parents by allowing them to share full parental responsibility. Almost a decade later, yet another ground-breaking ruling led to the awarding of joint adoption rights to same-sex couples in the British Overseas Territory of Gibraltar. Subsequent adaptations to the Children Act led to the ruling that same-sex parents have equal parental responsibility before and after two legal parents establish a family unit (Tasker & Bellamy, 2019). In the last two decades of the twentieth century, the question of the legislation of homosexual unions was raised in many countries of the world. However, social service and child welfare organizations were often accused of pointing their noses where it did not belong: into somebody else’s kitchen. Gay and lesbian partnership families, it was asserted, could not be studied yet, as the comparative and intercultural perspective was lacking. Furthermore, the discretion of adoption agencies and children’s institutions was sometimes protected by secrecy (among others by spreading the naive

interpretation of “family” as a children’s shelter). Nonetheless, some possibilities of legally documented parenthood (homo)couples were already offered.

A year after the first successful homosexual couple adoptions in the USA, a British same-sex couple was refused residency in a council flat with the argument that only a de jure family unit was worthy of consideration. The refusal was backed by reference to the then existing Family Relations Act which defined a family unit as exclusively biological or legal. Simultaneously, the latter was questioned in relation to court rulings concerning a married male bank official anonymously fathering children on his white collar home visits.

### **7.1. Legal Barriers**

The first legal right for same-sex couples was granted on September 1, 2010, marking a significant milestone in the ongoing struggle for LGBT rights. Lawmakers hastily drafted and vigorously debated the bill, which raised numerous important questions that schools, medical professionals, and the public at large would have to wrestle with over the ensuing months and years. Gays and lesbians across the country began to seriously consider how their lives would fundamentally change under the new law. Would they finally be able to adopt a child and create families just like their heterosexual counterparts? Attitudes towards parental rights in the LGBT community, especially regarding the complex issue of adoption, are crucial to understanding how this monumental shift will be incorporated into society. The potential impact on family dynamics, legal recognition, and societal acceptance could pave the way for further advancements in equal rights and opportunities for all.

Some groups have posed challenges to same-sex adoption, but since 2000 same-sex couples have been allowed to marry in Massachusetts, opening a new area of adoption rights for same-sex couples. The case of Adoption of Tammy may have established clear limitations on these rights, but controversy surrounding perceptions of adoption by gay couples persists nonetheless. Arguments against gay adoption typically fall into three broad categories. Firstly, a child’s gender identity is important. Opponents argue that same-sex couples cannot help their children develop healthy gender identities because they lack both male and female influence respectively. However, sophisticated studies provide ample evidence of children raised in same-sex environments developing equally functional gender identities as those of heterosexual couples. Similarly, important is a child’s sexuality. Some argue that being raised by same-gender parents puts children at risk of “becoming” gay themselves. However, dozens of studies examining the sexual identity development of children raised in same-sex environments oppose this assertion, finding no greater occurrence of a child’s same-sex preference than with heterosexual parenting.

This investigation into the perceptions of same-sex adoptions strongly suggests that outside of a small cognitive elite, many believed that such adoptions should either be thoroughly vetted or remain illegal. Though this stigma is beginning to recede, the persistence of these views will secure a long, arduous transition for same-gender couples lobbying for legal adoption.

### **7.2. Social Stigmas**

The prevailing social stigmas surrounding adoption by same-sex couples are deeply engrained in society, resulting in a widespread belief that children raised in such households would face significant ostracism and bullying more frequently at school compared to their peers. Many supporters of same-sex couple adoptions have emphatically emphasised that these parents create extremely loving, nurturing, and supportive homes that can provide a stable and secure environment for children. They argue that there is no valid basis for children's rejection or any negative judgement of being born into such homes.

However, there are still some who argue that the absence of a parent of the opposite sex may be detrimental to a child's development. Providing thorough explanations about sexual orientations and various aspects of attraction early in life could significantly aid in the normalisation of these diverse family structures and help combat the potential bullying that may arise from ignorance. Furthermore, clear and age-appropriate discussions about the particulars surrounding the adoption process, alongside a child's role within it, are absolutely necessary for fostering understanding and acceptance. Adoption agencies also play a crucial preventative role in this context; they are responsible for educating the public on the realities, common fallacies, and normalities associated with families that include same-sex couple adoptions. This education is vital to combatting prejudice and the negative, prejudice-based treatment that can result from misconceptions. By spreading awareness and understanding, society can move towards greater acceptance, breaking down the barriers that currently hinder loving families from forming through adoption, regardless of the sexual orientation of the adoptive parents. (Scherman et al., 2020)

## **8. Comparative Analysis**

The case law and legislation that are relevant and pertinent to adoption law specifically for same-sex couples in several carefully selected states has been summarized comprehensively. The primary concern when undertaking an examination of these particular areas of law is how judicial decisions and statutory laws regarding lesbian and gay parental rights interact with and relate to their children's rights, highlighting how these aspects converge and diverge within the unique legal frameworks of these states. Any meaningful comparative analysis of LGBT law must first take a comprehensive look outwardly at LGBT law as it exists across various jurisdictions, focusing on a certain guiding principle, established doctrine, or specific legislative initiative. The subsequent analysis will then home in on a curated selection of jurisdictions which can effectively highlight and showcase some of the key similarities and notable differences that exist regarding that guiding principle, established doctrine, or legislative initiative in the realm of adoption law for same-sex couples. (Scherman et al., 2020)

The states chosen have been thought to vary in their relative acceptance and tolerance of homosexuality but still engage in a common tradition of law. This common legal tradition has been thought to manifest common beliefs about justice and rights that make their laws similar but not necessarily identical in shaping the fundamental rights of persons. It should be noted that common historical roots are precisely what allow legislation and interpretation to be compared. This analysis will thus examine the case law and legislation that are relevant to the question of adoption law for same-sex couples in some selected states, highlighting any substantive similarities and differences (Tasker & Bellamy, 2019). Such insights will be illustrated in respect of several sub-issues under the main question; deciding who is a parent, eligibility for joint adoption orders, and applications for adoption orders without prior placement. Admittedly, the comparative survey will focus on case law from a limited number of jurisdictions. However, attention will also be paid to the laws of other states and to the relevant policy debates and bodies of literature.

## **9. Case Studies**

After years of legislative inertia and extensive public debate regarding the parenting capacities and capabilities of same-sex couples, the very first same-sex couple was able to adopt a child in New Zealand in the significant year of 1996. Since that pivotal moment, gay and lesbian individuals who wish



to become adoptive parents have enjoyed legal standing that permits them to adopt children who had previously been categorized as ‘hard-to-place’. Nevertheless, adoption as an entire legal field remains a complex and nuanced area of law, filled with various intricacies and challenges. The fundamental differences that exist between ‘step-parent’ adoptions and ‘public law’ adoptions are often misunderstood by those outside the legal profession. A stepparent adoption is considered a private matter between individuals, while a public law adoption, which is perhaps more commonly recognized as an ‘agency’ adoption, involves the child being removed from their current parental care. In such cases, contact with the birth parents is usually terminated, and this process culminates in the granting of new legal parent(s) with an irrevocable order of adoption that permanently alters the child’s legal relationship with their birth family. Historically, homosexuality has been construed by society at large as a potential ‘risk’ to the well-being of children. This prevailing ethos becomes even more magnified when considering the possibility of state involvement and the removal of a child from their parental environment. As a result, the anonymity of a public law adoption process is maintained, put in place to mitigate the intense hostility and prejudice that often surrounds issues related to sperm donation, lesbian motherhood, and the perceived abilities of gay fathers to effectively parent. Thus, the landscape of adoption continues to evolve, reflecting broader societal changes while still grappling with deeply entrenched biases. (Scherman et al., 2020)

With a few notable exceptions, the vast majority of the legal discussion regarding adoption by same-sex couples is predominantly concentrated in the realms of family law or children’s law journals, as well as within notes pertaining to legislation and discussions that take place during parliamentary debates. While there exists a certain extent of literature that explores the experiences and challenges faced by gay fathers, there is alarmingly little available when it comes to the experiences and issues encountered by lesbian mothers in similar situations. This significant gap is troubling and highlights an area that requires further exploration and attention. In comparison to other jurisdictions, there still remains a striking lack of case law that is directly related to the interpretation of adoption provisions concerning same-sex couples. The legal provisions in England have not been rigorously tested in court, and while there were specific cases heard in New Zealand before the Family Court that dealt with adoptions by openly lesbian applicants, it is disheartening to note that none of these decisions have been reported in any accessible format. The cases of *Attorney-General v. Heffernan* and *ADN v. A* indirectly raise pertinent issues related to this topic. However, it is important to clarify that the former case primarily deals with employment-related issues, whereas the latter pertains to a post-adoption contact order. Additionally, the recent decision in *Re C*, although not strictly confined within the boundaries of this particular discussion, still bears relevance to the ongoing conversation regarding adoption and same-sex couples, as it may offer insights that contribute to the evolving legal landscape. (Tasker & Bellamy, 2019)

## 10. Final Conclusion and Thoughts

In the modern world we live in today, the traditional family unit has significantly evolved over time as the socially constructed idea of what truly constitutes a family has changed dramatically. A family can now be defined not merely by the presence of two heterosexual parents raising children born or adopted as a result of that union, but rather by the presence of a deep emotional bond and love that connects its members. Indeed, there are now numerous families where children are being raised in loving environments by same-sex parents. These diverse families are constructed as a result of advancements in assisted reproductive technology, where one biological parent may be in a same-sex relationship, or the

adopters themselves are same-sex couples who have chosen to adopt either through public or private adoption services. Regardless of how each family unit is formed, children who are raised in these loving families have the same emotional and developmental educational needs as any other child in society. The understanding of family has broadened, and with it, society's acceptance of various family structures continues to expand, emphasizing that love, care, and emotional support are the true foundations of a family.

Same-sex couples have been actively engaged in a significant and ongoing struggle for achieving equality across all areas of the law on a global scale, particularly when it comes to their rights in terms of parenting, which is an essential aspect of familial life. Their persistent fight for recognition and equal treatment has gained notable momentum over the years in various international regions and jurisdictions. A number of countries have successfully enacted important and progressive changes in their laws specifically aimed at allowing adoption and enabling the use of assisted reproductive technology for same-sex couples who wish to start families together. This marked progress represents a crucial step towards achieving justice and fundamental rights for all couples, irrespective of their sexual orientation or identity. However, the disparities remain glaring and problematic. In stark contrast, there are still many countries where same-sex couples are outright denied equal parenting rights, highlighting the ongoing and complex challenges that they continue to face in this journey. In addition to this, there are nations that are in various stages of contemplating and implementing crucial changes to their respective laws, illustrating the intricate and dynamic evolution of social norms and legal frameworks surrounding this pressing issue. Despite the advancements made, a crucial gap exists in the research regarding these important developments. There is a noticeable absence of comprehensive comparative studies that examine how the laws governing adoption by same-sex couples are evolving across different nations, as well as how legislation addresses the use of assisted reproductive technology to assist same-sex couples in their unique journey towards parenthood. Such a comparative analysis would not only be deeply intriguing and insightful, but it would also provide valuable insights into the ways in which legal reforms align with, or diverge from, societal attitudes and perceptions about same-sex parenting. This exploration could significantly contribute to the ongoing and critical discourse surrounding equality and parental rights in the context of diverse family structures in the modern world.

The change in law as it pertains to adoption by same-sex couples around the world can be viewed as an intricate process that unfolds in three distinct phases. The first phase represents a scenario wherein there exists no explicit prohibition against adoption by same-sex couples, allowing these couples to adopt children without any legal barriers. This period has enabled many same-sex couples to realize their dreams of parenthood and contribute to the well-being and upbringing of their adopted children. The second phase emerges when explicit prohibitions are introduced into the law, creating legal challenges for same-sex couples who wish to adopt. However, this phase is often followed by a repeal of those prohibitions, signaling a return to a more inclusive legal framework. The third and final phase is characterized by the implementation of prohibitive laws that explicitly ban adoption by same-sex couples, laws which have yet to be repealed. By examining the current legislative landscape, including recent changes or proposals across various countries, it becomes evident that many nations are making strides back toward the first phase, where acceptance and legal support for adoption by same-sex couples is not only allowed but actively encouraged. This overall trend suggests a growing recognition of the importance of protecting the rights of same-sex couples and ensuring that children in need of loving homes can find them, regardless of the sexual orientation of their adoptive parents.

**REFERENCES**

1. Roberts, K. (2016). The LGBT Population and the Fight for Adoption Rights. [\[PDF\]](#)
2. Tasker, F. & Bellamy, C. (2019). Adoption by same-sex couples - reaffirming evidence: could more children be placed?. [\[PDF\]](#)
3. M. Rabb, N. (1999). Same sex marriage and homosexual adoption in Indiana : an honors thesis (HONRS 499). [\[PDF\]](#)
4. J. Becker, S. (2000). Second-Parent Adoption by Same-Sex Couples in Ohio: Unsettled and Unsettling Law. [\[PDF\]](#)
5. Thomas, T. (2016). The Reverberating Effects of Obergefell in Family Courts. [\[PDF\]](#)
6. J. Herzig, D. (2011). DOMA and Diffusion Theory: Ending Animus Legislation through a Rational Basis Approach. [\[PDF\]](#)
7. Moser, M. (2015). Intestacy Concerns for Same-Sex Couples: How Variations in State Law and Policy Affect Testamentary Wishes. [\[PDF\]](#)
8. Scherman, R., Misca, G., & Xing Tan, T. (2020). The Perceptions of New Zealand Lawyers and Social Workers About Children Being Adopted by Gay Couples and Lesbian Couples. [ncbi.nlm.nih.gov](http://ncbi.nlm.nih.gov)
9. Rossolillo, G. (2014). Spunti in tema di riconoscimento di adozioni omoparentali nell'ordinamento italiano. [\[PDF\]](#)
10. McCutcheon, J. (2011). Attitudes toward adoption by same-sex couples: Do gender roles matter?. [\[PDF\]](#)