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Special Issues in Transcultural, Transracial, and Gay and Lesbian Parenting and Adoption

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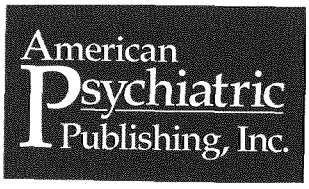

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Chapter 15

Special Issues in Transcultural, Transracial, and Gay and Lesbian Parenting and Adoption

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The adoption of children whose natural parents are unable to or incapable of caring for them by adults who are able to provide for them has existed throughout human history in one form or another (*In re Smith Estate* 1955; Miller et al. 2007). Before the mid-1800s, however, there was no formal mechanism for a person interested in adopting a child in the United States to do so (Bartholet 1999). In 1851, the Massachusetts legislature enacted the Massachusetts Adoption of Children Act (General Court of Massachusetts 1851). Though enacted more than 150 years ago, the act's basic structure is clearly recognizable in many states' present adoption laws. The Massachusetts act permitted any person to petition a probate court to adopt a child; required the child's parents, if one or both were alive, to consent to the child's adoption; required that if an adoption petitioner was married, his or her spouse was required to join a petition to adopt a child; provided that children age 14 years or older also must consent to their adoption; provided for the court to make a determinate judgment that the proposed adoption would serve the child's welfare; and extinguished all rights of the natural parent while granting to the adoptive parents all the rights and responsibilities that would inure to a natural parent. The Massachusetts statute served as a model for other states' adoption laws (*In re Smith Estate* 1955). Many of the requirements of that earliest American adoption law are still present in twenty-first-century adoption statutes.

Courts have consistently held that there is no constitutionally protected right for a person to adopt a child (*In re Adams* 1991; *In re Opinion of the Justices* 1987; *Webb v. Wiley* 1979). Rather, the adoption of children is a "legal creation governed by statute" (*In re Opinion of the Justices* 1987, p. 1098). Indeed, courts consistently hold that adoption law is entirely or exclusively statutory (*Adoption of Tammy* 1993; *In re Adams* 1991; *Lindley for Lindley v. Sullivan* 1989). As such, courts have generally held that a person will be prohibited from seeking to adopt only when the jurisdiction's adoption statute expressly forbids the individual from doing so (e.g., *Adoption of B.L.V.B. and E.L.V.B.* 1993; *Adoption of Tammy* 1993). In *Adoption of Tammy,* for example, the Massachusetts Supreme Judicial Court, the state's highest court, held that a lesbian woman's partner was not prohibited from seeking to adopt the woman's child where the statute required that if two persons were married the adoption petitioner's spouse was required to join in the petition to adopt. In part the court reached this conclusion because the statute did not expressly prohibit two unmarried persons from adopting a child together.

In all proceedings, the overarching issue to be addressed is best interests and welfare of the child (*In re C.D.M.* 2001; *Lindley for Lindley v. Sullivan* 1989; S.D. Codified Laws § 25-6-2, 2008). South Dakota's adoption statute is typical in this regard. It provides that "[i]n an adoption proceeding or in any proceeding that challenges an order of adoption or order terminating parental rights, the court shall give due consideration to the interests the parties to the proceedings, but shall give paramount consideration to the best interests of the child" (S.D. Codified Laws § 25-6-2, 2008). Courts and legislatures generally define the phrase "best interests of the child" broadly so as to encompass virtually any factor that may affect a child. For example, the Supreme Court of Arkansas has noted that "The phrase 'best interest of the child' means more than station in life and material things. 'Best interest of the child' includes moral, spiritual, material and cultural values, matter convenience and friends and family relationships" (*Bush v. Dietz* 1984, p. 707). Michigan's adoption statute (Mich. Comp. Laws Ann. § 710.22[g], 2008) contains a detailed definition of what the legislature intends for courts handling adoption proceedings to consider when addressing the child's best interests. The definition sets out 10 specific and one general consideration that the court must address in each adoption proceeding by making specific findings. For example, the court must make findings regarding "The capacity and disposition of the adopting individual or individuals...to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care" and "The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings." Because of the prominence of the child's best interests and welfare, mental health professionals are frequently called upon to assess the child's needs and the prospective adoptive parents' capacities to meet those needs and to render an opinion to the court as to whether the adults are able to meet the child's needs. Where there are competing adoption petitioners, evaluators may be asked to opine as to which of two prospective petitioners is best equipped to meet the child's needs.

As with other areas of family life, adoption practices have evolved over time, and they continue to evolve (Groza et al. 2005). Today more than at any time in U.S. history, adoption law recognizes the changing structure of the American family, although the law in various jurisdictions is far from recognizing the true complexity of family structures. So, for example, single individuals may adopt children, and some states permit a lesbian woman's partner to adopt her children (*Adoption of B.L.V.B. and E.L.V.B.* 1993; *Adoption of Tammy* 1993) or gay couples to adopt (Vt. Stat. Ann. 15A § 1-102, 2008).

While historically, agreements for postadoption contact between the child and natural parent were unenforceable and contrary to public policy (*In the Matter of the Adoption of Moore-Tillay* 2006), today some states' laws provide for open adoption, that is, adoption with postadoption contact between the biological parent and the child (Ann. Laws Mass. GL Ch. 210 § 3, 2008; Ore. Rev. Stat. § 109.305, 2007). Oregon is a leader in open adoption; its adoption statute provides that "[a]n adoptive parent and a birth parent may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child...." Under that state's law, the agreement for postadoption contact must be agreed to by the adopting parent, who cannot be forced into such an agreement, and then must be approved by the court in which the adoption takes place. Where the agreement for postadoption contact is not approved by the court, it cannot be enforced (*In the Matter of the Adoption of Moore-Tillay* 2006). Additionally, while most states address postadoption contact by way of a statute, some states permit courts, in exercise of their equitable powers to act in the child's best interests, to order contact with an adopted child and his or her biological parent (e.g., *Adoption of Vito* 2000). Even where a court has authority to order postadoption contact between a child and his or her biological parent, that decision must be made on the basis of the needs and best interests of the child and not the parents' needs or desire for continuing contact with the child (*In re Melanie S.* 1998). So, while the law has changed over time, it still seeks to ensure the rights of the child and the adoptive parents to control the child's upbringing and makes these determinations based on the child's best interests. These are just a few of the ways in which adoption law has changed over the past 20 years.

After addressing some general issues relating to adoption—definitions, forms of adoption, and the basic adoption process—this chapter will look in more depth at three areas of adoption law: transcultural (i.e., intercountry) adoption, transracial adoption, and adoption by gay and lesbian individuals and couples. In considering each topic, we address the implications for forensic mental health practice. Before doing so, a few words about limitations: the adoption of children is generally governed by state law, and every state's law is different. This chapter does not attempt to address the tremendous complexity in adoption law generally, or in any of the three specific areas subsequently con-

sidered. Rather, this chapter seeks to highlight a number of practices that are fairly uniform and to address the potential clinical issues of which mental health professionals working in the forensic arena should be aware.

Definitions

For purposes of this chapter, we refer to adoption as the process by which the parental rights of a child's biological parents are legally extinguished and the child is provided new legal parents. Transcultural adoption refers to adoption of a child into a family in the United States from another country. This form of adoption may be referred to as intercountry adoption; for example, when an American couple adopts a child from China or Vietnam. We use the term *transracial adoption* to refer to the adoption of a child by parents of a different race or ethnicity. An example of transracial adoption would be when a white mother adopts an African American or Native American child who had been initially placed with her for foster care. Finally, this chapter considers adoption by gays and lesbians, whether individually, as second parents, or as couples. Such adoptions may involve a woman adopting her partner's biological child, a gay couple adopting a foster child for whom they have provided care for years, or a single gay man seeking to start a family through adoption.

The parties to an adoption process are typically the natural parents, the prospective adoptive parents, an adoption agency, and, depending on the child's age, the child. If the child is an "Indian child" as defined by the Indian Child Welfare Act of 1978 (i.e., an unmarried person younger than 18 years who is a member of a federally recognized tribe or is the biological child of a member of a tribe and is eligible for membership), the child's tribe will also be a party to the proceeding whose interests may differ from those of both the child and the parents, and failure to involve the tribe in adoption planning may result in disruption of the adoption (e.g., *Mississippi Band of Choctaw Indians v. Holyfield* 1989).

Forms of Adoption

Adoption of a child may come about in any one of several forms or processes. This section briefly describes the basic forms adoption may take.

Release to Agency

The law of every state permits a parent wishing to relinquish a child for adoption to release his or her parental rights to an agency (Gregory et al. 2001). A parent may release his or her rights to either a public agency, such as the state's Department of Human Services, or to a private adoption agency licensed by state authorities to provide adoption services. Private adoption agencies may serve the general population in need of adoption services, or they may serve a niche constituency. For example, some adoption agencies serve a particular religious sect (e.g., *Scott v. Family Ministries* 1976), while others serve the adoption needs of the black community (e.g., "Homes for Black Children," n.d.). If the parent releases the child to the agency, the agency will typically select the adoptive parent.

Direct Placement

Most states permit a child's natural parents to select the adoptive parents for their child (Gregory et al. 2001). In a direct placement adoption, parents wishing to place a child for adoption may select an individual or couple to adopt their child with or without the assistance of a child placing agency. Michigan's law is typical and provides that "A parent or guardian...having legal and physical custody of a child may make a direct placement of a child for adoption....A parent or guardian shall personally select a prospective adoptive parent in a direct placement. The selection shall not be delegated" (Mich. Comp. Laws Ann. § 710.23a[1] and [2], 2008). When the parents have not identified a person or couple to adopt their child, they may turn to a child placing agency and seek its assistance in identifying adoptive parents. From among the possible adoptive families, the parent will then select one. Biological relatives of a child other than the parents have neither the authority to consent to a child's adoption nor any right to be notified when a biological parent releases a child for adoption (*Farnsworth v. Goebel* 1921).

Stepparent Adoption

Historically, before a stepparent could adopt a child, the child's natural parent had to release his or her parental rights to make the child available for adoption, then the couple could adopt the child jointly. However, with the increasing divorce and remarriage rates in the latter half of the twentieth century, a number of states amended their adoption laws to permit a child's stepparent to adopt without the rights of the biological par-

ent having to be released (e.g., *Delgado v. Fawcett* 1973; Mich. Comp. Laws Ann. § 170.5, 2008). In a stepparent adoption, the child's parent consents to the child's adoption by the parent's spouse (Kan. Stat. Ann. § 59-2112, 2006).

Second-Parent Adoption

Second-parent adoption is the analogue in gay and lesbian adoption of stepparent in the heterosexual context. In a second-parent adoption, a gay or lesbian parent—whether biological or adoptive—consents to the adoption of his or her child by his or her life partner without having to first release his or her parental rights. Vermont's Supreme Court was one of the first courts in the country to interpret its adoption statutes to permit second-parent adoption by a lesbian couple (*Adoption of B.L.V.B. and E.L.V.B.* 1993). The legislature subsequently amended the state's Adoption Act to explicitly provide for second-parent adoption (Vt. Stat. Ann. 15A § 1-102, 2008). That statute now provides that "[i]f a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent's parental rights is unnecessary in an adoption under this subsection."

Involuntary Termination of Parental Rights

Every state's law provides a mechanism for state authorities or, in most instances, private actors to involuntarily terminate the parental rights of an abusive or neglectful parent or one who has abandoned or failed to support his or her child. In many instances, the parental rights to these children are terminated only after the child has suffered significant trauma and has spent some considerable period of time in the foster care system. Where the parents' rights have been involuntarily terminated, the state or private agency typically has the authority to consent to the child's adoption. Because the trauma—often multiple traumas—these children have experienced often leads to emotional or behavioral problems, they can be difficult to place and are at increased risk of adoption disruption. It is clear, however, that many children who have suffered multiple traumas do very well in adoptive homes (Bartholet 1999).

In an effort to move these children from temporary placements in the foster care system into permanent adoptive homes, since 1980 the federal government has provided funding for adoption incentive payments to offset some of the additional burdens these children experience as a result of their abusive and neglectful histories (42 U.S.C. § 670 et seq.). These payments may be in the form of either monthly cash assistance payments or the provision of Medicaid to address the child's medical and emotional needs. Additionally, adoptive parents may receive tax credits for adopting a child from the foster care system (Bartholet 1999). Despite the existence of these subsidy programs, large numbers of children in the foster care system remain in need of adoptive placements (Gregory et al. 2001; Pew Commission on Children in Foster Care, n.d.).

Children who have experienced involuntary termination of parental rights may be at heightened risk. They will have typically spent time, in some cases years, in temporary foster care. They may have experienced instability in placement, and their capacity to attach with an adoptive family may be impaired. This group of children may be at increased risk of adoption disruption because of emotional, behavioral, and physical challenges (Festinger 2005; Roberts 2002).

Standby Adoption

In the mid-1990s, largely in response to the AIDS epidemic, a number of state legislatures adopted standby guardianship statutes, which permit parents to name a guardian for their child in the event of their becoming debilitated or dying (McConnell 1995/1996; e.g., Fla. Stat. § 744.304; N.J. Stat. Ann. § 3B:12-68). One state, Illinois, took this concept one step further and permits a terminally ill parent to nominate a standby to adopt his or her child (Ill. Comp. Stat., 750 ILCS 50/1, 1950). Illinois law defines a standby adoption as "an adoption in which a parent consents to custody and termination of parental rights to become effective upon the occurrence of a future event, which is either the death of the parent or the request of the parent for the entry of a final judgment of adoption" (750 ILCS 50/1). In general, the process for putting in place a standby adoption is the same as establishing a typical adoption.

Basic Adoption Process

While there are variations in every jurisdiction, in general adoption follows a standard process. First, before a child may be adopted, he or she must be legally available for adoption. Availability for adoption in circumstances other than stepparent or second-parent adop-

tions requires that the parental rights of the child's biological parent be terminated. Termination of the natural parents' rights typically comes about by way of either release of parental rights directly to an adoptive parent or parents or release to an agency and then entry of a court order terminating rights (e.g., Kan. Stat. Ann. § 59-2136, 2006; Minn. Stat. § 259.24, 2007) or through involuntary termination of parental rights (Gregory et al. 2001). Some states' laws permit a public or private agency to seek adoption even without parental consent and over a parent's objection (Ann. Laws Mass. GL Ch. 210 § 3, 2008; Petition of New England Home for Little Wanderers 1975). (See also Chapter 14, "Adoption," in this volume.)

Once a child is available for adoption, the next step in the process is an evaluation of the child's needs and readiness for adoption. In this child assessment, the agency facilitating the adoption or a court social worker assesses the child's needs, details the child's attitude toward adoption if the child is old enough to express a preference, and makes a recommendation about whether a proposed adoptive plan will meet the child's needs.

Next, a home study of the prospective adoptive parent(s) is conducted to determine whether they are able to meet the child's needs. Most state laws contain very few disqualifiers for persons wishing to adopt a child but rely on the adoption study process to screen inappropriate candidates and to match a child with an appropriate individual or family (Gregory et al. 2001). The precise content of the home study varies from jurisdiction to jurisdiction and from agency to agency (Crea et al. 2007). Generally, a home study will include information about the home, community, work history, family life and history, health information, relationships between the adults seeking to adopt, information about other children who may reside in the home, and what categories of children the parties would be interested in adopting or not adopting (e.g., age, race, physically or mentally disabled; Ark. Code Ann. § 9-9-212, 2008; Crea et al. 2007). There is a criminal background check and a check of Child Protective Services records to determine whether there has ever been a referral concerning a child from the family home. Finally, the home study contains a recommendation regarding whether the investigating adoption worker approves the home (Crea et al. 2007). Home studies are also utilized as an opportunity to convey to an adoptive family information about the adoption process and the child the family may be interested in adopting. Because there is a subjective element to adoption home studies, some commentators are concerned about the impact of bias or prejudice in decision making (Mallon 2007; McRoy et al. 2007). A number of jurisdictions have moved to establish more uniform measures to reduce the subjectivity and to facilitate adoption across jurisdictional lines (Crea et 2007).

When a child has been matched with an adoptive family, the next step is to initiate a petition seeking court authorization to complete the adoption. While specific state practices vary widely, there is typically a temporary order for adoption issued that permits the court and agencies to monitor a child's placement for a period of time before a final order of adoption is issued. Once the final order is issued, the court case is closed and the adoptive parent has the full rights of a natural parent.

Clinical Issues

A forensic mental health specialist may be called on to provide an opinion as to a child who is in need of adoption services or may be asked to render an opinion as to an adult's or couple's fitness to parent, either generally or in relation to a specific child. Careful, objective assessment of both the strengths and weaknesses of the child's adoptability and each prospective parent's ability and willingness to parent the child is crucial. As noted earlier, the primary guidepost for courts when making determinations about proposed adoptive placements is the "best interests of the child." Some jurisdictions define the meaning of this amorphous phrase in their statutes, whereas others leave it to courts to make determinations in individual cases. Before undertaking an evaluation for adoption purposes, a forensic expert should take the time to familiarize him- or herself with the jurisdiction's definition of best interest and the factors that courts may use in considering what is best for a child.

Forensic specialists should obtain as much documentary information as possible before undertaking such an evaluation. Reports from social workers, medical providers, schools, and similar agencies may contain crucial information about the child—including special needs he or she may have—and the prospective adoptive parents. Similarly, information regarding criminal histories and histories of contacts with Child Protective Services would be essential to understanding the needs of the child and the capacities of the adoption petitioners.

With this background information, the evaluator should meet with the child and each prospective par-

ent individually to conduct a careful interview to gain additional information and to further assess the needs and capacities of the parties. Next, if the proposed adoption is with two parents, the evaluator should meet jointly with the prospective parents to assess their interactions with one another as well as their interaction with the child by observing them together. Finally, while adults wishing to adopt children typically must provide letters of reference, the evaluator may need to make contact with collateral sources of information, such as extended family members, friends of the family, or members of the clergy, to fully understand the family's circumstances.

Any chapter about adoption would be missing something if it failed to discuss attachment theory. Developed by John Bowlby (1973), attachment theory explains how human beings attach to one another. For adopted children and families, the challenge of attachment can be quite significant as children sometimes come from multiple attachments prior to placement, making attachment to their adoptive parents more difficult. Bowlby suggested that one of the primary goals of any infant is to establish a secure attachment to a parental figure. If a parent or caregiver does not attach to a child in a healthy and safe way, there is little a child can do to change this. When children come from multiple placements and have had a number of caregivers, especially early on in their life, the challenge of attaching to new caregivers can result in difficulties forming a healthy attachment with the adoptive parent and may result in behavioral problems.

Mary Ainsworth's work, in conjunction with Bowlby's research, identified three types of major attachments in her "Strange Situation" experiment (Ainsworth and Bowlby 1965): secure attachments, anxious–ambivalent insecure attachment, and anxious–avoidant insecure attachment. In anxious–ambivalent insecure attachment, the child is anxious about strangers even in the presence of an attachment figure, becomes quite distressed when the attachment figure leaves, and is ambivalent toward him or her upon return. In an anxious–avoidant insecure attachment, the child is avoidant of the attachment figure whether he or she is in the room or not, and strangers are treated similarly to the attachment figure.

Preplacement meetings and postadoption family and individual therapy can assist in the healthy attachment between adoptive parents and adopted children and teens. In a case in which attachment is or may be a problem, forensic evaluators should consider making a recommendation for the number of preplacement meetings and possibly therapy that they believe will help facilitate relationships that are rooted in safety and connection.

On occasion, there may be individuals or couples competing to adopt a single child. This sometimes happens when, for example, a child is in foster care and both the foster parents and a relative, say, an aunt or biological grandparents, are seeking to adopt. In such a circumstance, the forensic evaluator would want to meet with the child and each of the possible parents, conducting evaluations of each individually as well as their workings as a family unit. In circumstances in which there is a contest regarding an adoption, it is tempting for the forensic expert to be pulled in one direction or the other. It is essential, both to the proper working of the legal system and for the expert's own credibility, that she or he remain as objective as possible. In such circumstances an evaluator may be tempted to make comments about or provide opinions regarding an individual the evaluator has not assessed. It is crucial that the evaluator resist this urge. If the forensic evaluator has seen documentary information that suggests concern about one of the parties whom the evaluator has not personally evaluated, it is best to suggest that this information raises concerns that should be evaluated further rather than to take a position or articulate an opinion based on such information.

Transcultural Adoption

The international adoption of children is a fairly recent phenomenon. Before World War II, there were few international adoptions (Barthelot 1999). After the war, the adoption of children internationally into the United States, largely as a result of American soldiers fathering children in European and Asian countries, as well as the visibility of refugees of war and famine in Asia and Africa (Adoption History Project 2007), grew steadily until 2004 when there were 22,884 such adoptions (Navarro 2008). Between 2004 and 2007, international adoptions declined, mainly due to concerns about the ethical practices of some agencies facilitating international adoption. Several of these agencies apparently paid poor birth parents in countries such as Vietnam to release their rights to their children to be adopted or deceived birth parents as to their ability to have ongoing contact with their child (Navarro 2008; Olson 2008). As a result, some countries have stopped sending children to the United States for adoption, whereas other countries, such as Guatemala, have recently slowed the process of inter-

national adoption to ensure that birth parents were not deceived into giving up their children for adoption (Navarro 2008).

Hague Convention

On May 29, 1993, the Hague Conference on Private International Law concluded the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("The Convention"), which entered into force internationally on May 1, 1995. The Convention was ratified by the United States on December 12, 2007, and took effect on April 1, 2008. The Convention is implemented in the United States through the federal Intercountry Adoption Act (P.L. 106-279), which establishes procedures to be used when American citizens adopt children from other countries that are parties to The Convention. When the country from which a child is being adopted is not a party to The Convention, the adoption is governed by the Immigration and Nationality Act and the Child Citizenship Act, which provides for an automatic grant of U.S. citizenship for a child who is adopted abroad.

The Convention establishes procedures to ensure that international adoptions are conducted in an ethically sound manner. Basically, an American citizen wishing to adopt from another Hague Convention state must apply to the U.S. State Department, which must make a determination that the prospective adoptive parent(s) is suitable to adopt a child. If the State Department is satisfied that the parent is suitable, it must prepare a report detailing information about the applicant's identity, suitability to adopt, family and medical history, background including reasons for wishing to adopt, and the characteristics of the children for whom the person would be qualified to care. The State Department must then forward this report to the comparable authority in the child's country of origin. If the designated officials in the child's country of origin are satisfied that the child is suitable for adoption, they must prepare a report regarding the child detailing the child's identity, adoptability, social, familial, and medical histories, as well as any special needs the child may have. In preparing the report, the authorities must take into consideration the child's upbringing and his or her ethnic, religious, and cultural background. The child's state of origin must, consistent with its laws, determine that the appropriate parental consents to adopt have been obtained. Finally, the authorities in the child's country of origin must determine that the adoptive placement would serve the child's best interests. If the authorities in the child's state of origin are satisfied that these requirements have been fulfilled, they must transmit the report detailing these matters as well as the consent of each parent to the U.S. State Department.

The Convention does not specify in which of the two countries the adoption will actually occur. Rather, this issue is to be determined by the laws of the respective countries. If the laws of the child's country of origin require that the child be adopted in that country, The Convention requires that the adoption actually take place there.

Recognition of Adoptions From Other Countries

When a child is adopted in another country, one question becomes whether a state in the United States will provide full recognition to that adoption. Generally, American states provide comity—that is, legal recognition and enforceability—to the decrees of foreign courts so long as the parties to a proceeding in that other country benefited from fair procedures unless that order or decree is repugnant to the law of the receiving state (Seymore 2004). The Convention addresses this issue (United Nations 1995). It allows a country to refuse to recognize an adoption if that adoption is "manifestly contrary to its public policy, taking into account the best interests of the child" (United Nations 1995, Ch. V, Art. 24). Additionally, some states have adopted statutes that specifically provide for recognition of adoption decrees issued by other countries (Seymore 2004; e.g., Fla. Stat. § 63.192, 2008; Mich. Comp. Laws Ann. § 710.21b, 2008). Michigan's law provides:

> A court order or decree establishing the relationship of parent and child by adoption and issued by a court in another country is presumed to be issued in accordance with the laws of that country and shall be recognized in this state. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the order or decree were issued by a court of this state. (Mich. Comp. Laws § 710.21b, 2008)

But this leaves open a question as to whether a properly issued court order of adoption issued in another country is enforceable in a particular state within the United States. A short example may help to illustrate these principles and the issues that may arise as a result. Imagine that a gay couple from Michigan adopts a child in Ontario, Canada, where gay cou-

ples can legally adopt children jointly. They then return with their to Michigan. As noted, Michigan generally recognizes adoption decrees granted by other countries. However, Michigan's Attorney General has interpreted Michigan law to decline to permit homosexual couples, even those who are legally married in a state which permits same-sex marriage, to adopt within the state (Opinion of Michigan Attorney General 2004). This opinion is binding on state agencies unless a court arrives at a different conclusion (Mich. Comp. Laws Ann. § 14.32, 2008). That is, marriages performed in states that permit same-sex marriage are not entitled to comity in Michigan. While Michigan's legislature has adopted a statute that generally requires the recognition of foreign orders of adoption, it has also provided that the rights and obligations of the parties are as they would be under Michigan law, which would not grant the adoption. So, it is unclear whether the gay couple's Canadian adoption order would be valid in Michigan.

This section looks at potential clinical vulnerabilities and resiliencies when exploring the effects of transcultural adoption. Two of the potential problematic areas for the transculturally adopted child are the possibility of an ambiguous history and a stressed connection to culture of origin and loss of family.

In some cases, Americans who adopt transculturally may not have accurate or complete information on their adopted child's biological background or social history that precluded their adoption. Poverty is a leading reason that children in foreign countries are in need of adoption services (Groza et al. 2005). This may help to explain why most children who are adopted internationally experience one or more prenatal risk factors such as low birth weight, prematurity, and a lack of prenatal medical care (Miller et al. 2007). Moreover, while most children who are awaiting adoption in the United States are placed in foster family homes, many children adopted from abroad are cared for in congregate care settings such as orphanages or other institutional settings (Groza et al. 2005). As a result, these children may have experienced early deprivation of nurturance and attentive care necessary for optimal development, and specifically may experience problems forming healthy attachments (Groza et al. 2005). These children may have difficulty adjusting to the emotional intensity of family life in their adoptive placements, and they may prove challenging for adoptive parents either immediately or later in adolescence when behavioral problems may manifest. These factors may combine to place internationally adopted children at higher risk of maltreatment and may help to explain why some researchers and clinicians have expressed concern that internationally adopted children may be disproportionately represented among child maltreatment deaths (Miller et al. 2007). While not all children adopted internationally have experienced traumatic events, some of these children may have, and there remains the possibility that an adoptive parent will not be privy to this information. Additionally, for children who have experienced time in the streets, in abusive homes, or in overcrowded orphanages, their issues around attachment may be heightened.

Second, while many adoptive parents do their best to create an environment that is culturally familiar to their adopted child, there are only so many ways an adoptive parent can create lasting and meaningful connections to a child's culture of origin. More often than not, this connection to culture comes later in life, when the child seeks it out. While there are many cities and communities in which children may feel as though they see other individuals who look like them physically, the disconnection from a country of origin can be palpable when trying to form an identity. In transcultural adoptions, issues tend to be more about differences in race as opposed to culture, and although the two may seem similar, they are separate. When children are brought into the United States from countries whose culture differs drastically from American culture, parents may have a difficult time finding those connections for their children. This may be especially true of children from distinct subcultures. As adopted children grow up, their interest in their culture of origin may increase, and if they have a difficult time seeking out information and experiences that are directly relatable to their culture of origin, they may begin to develop an ambiguous feeling toward their adoption.

Transracial Adoption

Few issues in the field of adoption have proved as controversial as transracial adoption. Scholars from various disciplines have hotly debated the propriety and impact of this practice on minority communities and individual children (e.g., Bartholet 1999; Kennedy 2003; Roberts 2002). For instance, the National Association of Black Social Workers has long opposed the adoption of African American children by white parents (Bartholet 1999; Kennedy 2003). Harvard Law School Professor Randall Kennedy (2003) pointed out

that during the time of slavery in the United States, children were assigned one race in part to prevent interracial child rearing, a practice which continued well into the twentieth century. He observed that before 1950 the question of transracial adoption "was hardly ever posed, simply because the very idea of interracial adoption was inconceivable" (Kennedy 2003, p. 387). In the decades between the enactment of the first modern adoption law by an American state in 1851 and the civil rights movement, interracial adoption was so stigmatized that it was not a serious issue, although two states' statutory law prohibited the adoption of children by parents of a different race (Bartholet 1999; Kennedy 2003). Louisiana's statute, for instance, provided that "A single person over the age of twenty-one years, or a married couple jointly, may petition to adopt any child of his or their race" (*Compos v. McKeithen* 1972). Similarly, Texas law provided that "No white child can be adopted by a negro person, nor can a negro child be adopted by a white person" (*In re Gomez* 1967). These statutes were challenged by persons wishing to adopt children across racial lines, and courts struck them down as violating the federal and state constitutions (e.g., *Compos v. McKeithen* 1972; *In re Gomez* 1967).

Even though the Federal District Court for the Eastern District of Louisiana struck down Louisiana's statute prohibiting all interracial adoption, the nation's last such law, it made clear that race could be legitimately considered as one factor in assessing a child's best interests in an adoption process. The court said:

> Cognizant of the realities of American society, this Court would agree that an interracial home in Louisiana presents difficulties for a child, including the possible refusal by a community to accept the child, and other community pressures, born of racial prejudice, on the interracial family. A determination of reasonableness of racial classification in this statute would seem to follow recognition of such difficulties, but we regard the difficulties inherent in interracial adoption as justifying consideration of race as a relevant factor in adoption, and not as justifying race as the determinative factor. (*Compos v. McKeithen* 1972, p. 266)

Such consideration of race as a factor in assessing an adoptive placement was commonplace and persisted until the 1990s (e.g., *Drummond v. Fulton County Department of Family and Children's Services* 1977; Groza et al. 2005; *In re Adoption of Minor* 1955; *In re Moorhead* 1991; Kennedy 2003).

In 1994, Congress enacted the Multiethnic Placement Act (MEPA; P.L. 103-382), which sought to prohibit the routine consideration of race, color, or national origin in adoption planning for children from the public foster care system. This statute, which provides a private right of legal action against officials who violate its provisions, sought to speed the exit of children from the foster care system, to increase the number of foster and adoptive homes to meet the needs of children in the child welfare system awaiting adoption, and to eliminate discriminatory actions in relation to placement in foster or adoptive homes (Groza et al. 2005). Congress amended the law to make the prohibitions against the consideration of race stronger, in part by eliminating the use of the word *routine*, which seems to imply that race can never be considered in making adoption placement decisions for children in the foster care system (Roberts 2002). This amendment, referred to as the Interethnic Adoption Provisions (IEP; P.L. 104-188), was enacted in 1996. As Groza et al. (2005) pointed out, "This is contrary to what is known about the needs of some children for support in the development of racial or ethnic identity" (p. 436). In interpreting the statute as amended, the Children's Bureau, the agency within the federal Department of Health and Human Services responsible for administering the nation's child welfare system, has made clear that while any consideration of race, color, or national origin will be subjected to strict scrutiny, it is permissible to consider these factors if doing so is necessary to meet the needs of an individual child for whom placement decision making is being made (Herring 2007; Hollinger 1998).

Most advocates who have argued that race should be considered in adoption decision making have done so based on a belief that children, particularly African American children, benefit psychologically and culturally from being raised by parents of the same race (Bartholet 1999; Kennedy 2003; Roberts 2002). They assert that for these reasons, adoption of children by same-race parents is best for the individual child as well as the community, particularly the racial or ethnic community to which they argue the child belongs (Kennedy 2003). The community, they argue, will lose the benefits it may derive from having these transracially adopted children as part of the minority community while the children will not learn to cope with the racism that is inherent in society, that the children will lack self-love, and that the children will be deprived of the wider community's guidance and will not absorb the cultural lessons available in the broader community (Kennedy 2003). Opponents of race matching argue that children need nurturing and capable parents regardless of the race, color, or national

origin of either the child or the adoptive parent (Bartholet 1999; Kennedy 2003).

University of Pittsburgh Law Professor David J. Herring has hypothesized, based on research findings in social psychology and behavioral biology, that children placed in racially congruent foster homes may receive more favorable treatment than those placed across racial lines (Herring 2007). By prohibiting the consideration of race, Herring suggested that we may place children at increased risk of maltreatment and poor developmental outcomes. He urged that additional research be done to explore the viability of his hypothesis. While the law generally prohibits consideration of race, color, or national origin in selecting adoptive placements for children in foster care, it addresses the "Indian child" in an entirely different way.

In 1978 Congress passed the Indian Child Welfare Act (ICWA; P.L. 95-608), which is substantive law that governs, among other things, how state courts handle adoption proceedings involving an "Indian child." In this chapter, consistent with the ICWA, *Indian child* refers to a child who is a member of or eligible for membership in an Indian tribe recognized by the government of the United States. In addressing issues regarding the adoption of an Indian child, one must be aware of both issues of race and ethnicity on one hand and sovereignty on the other. That is, federally recognized Indian tribes are sovereign entities with their own laws and legal apparatus. While some commentators have criticized the strength of the evidentiary foundation on which the ICWA was erected (Kennedy 2003), Congress expressed several reasons for adopting the law (25 U.S.C. § 1901). These included the special relationship between the tribes and the federal government, the importance of their children to the continued existence of the tribes, and that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes" (25 U.S.C. § 1901(4)). This displacement of large numbers of Indian children was due, at least in part, to the Indian Adoption Project, which began in the late 1950s and which had as its explicit purpose the placement of Indian children with white adoptive families (Roberts 2002). In adopting the ICWA, Congress sought to protect the interests of not only the child's immediately biological parents but also the interests of the child's tribe.

The ICWA applies only to an "Indian child" as defined in the statute: "an unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" (25 U.S.C. § 1903(4)). Each federally recognized Indian tribe is free to establish its own membership criteria, so it is entirely possible for children to have substantial Native American heritage yet not qualify as an "Indian child" for purposes of the statute. If a child qualifies as an "Indian child," then the statute applies and the child's adoption is governed by the dictates of the federal law even if the case is being heard in a state court. In terms of adoption, unlike the MEPA and IEP which prohibit the consideration of race, the ICWA demands that children be placed in conformity with its provisions, which are unabashedly race conscious. Whenever a qualifying child is to be placed for adoption, the court must place the child pursuant to a statutorily mandated placement criteria, first with a member of the child's extended family, next with members of the child's tribe, and, finally, with other Indian families (25 U.S.C. § 1915(a)).

Because the ICWA seeks to protect tribal interests in their children as well as the interests of the parent, a parent is not free to consummate the direct placement of an "Indian child" under state law for purposes of adoption without taking the steps necessary to protect the tribe's interests (*Mississippi Band of Choctaw Indians v. Holyfield* 1989). In *Mississippi Band of Choctaw Indians v. Holyfield,* the U.S. Supreme Court addressed the separate interests of the tribe when a parent sought to do so. In that case, a woman gave birth to twins born out of wedlock. The mother and father were both members of the Choctaw tribe and were domiciled on the tribe's reservation. When it was time for the mother to deliver the children, she traveled some 200 miles and gave birth off the reservation. She and the father signed consent-to-adoption forms placing the twins with the Holyfields for adoption. Six days after the mother signed the release, the Holyfields petitioned to adopt the children and the court issued a final adoption order 12 days later.

Two months after the final order of adoption was entered, the Choctaw tribe petitioned the court to set aside the orders of adoption asserting that its court had exclusive jurisdiction of the children because they were domiciled on the reservation. The state court denied the tribe's motion for two reasons: 1) the mother traveled away from the reservation and promptly placed the children for adoption; and 2) the children had never resided on the reservation. The tribe ap-

pealed the trial court's decision. The Supreme Court of Mississippi affirmed the trial court's decision, holding that the children had been abandoned and that they had never resided on the reservation. The tribe appealed to the U.S. Supreme Court, which reversed that ruling. The Court ruled that the ICWA's jurisdictional provision made clear that the tribal court had exclusive jurisdiction over children who were domiciled on the reservation, that is, that the state court lacked any legal authority over the children. It also ruled that the children were domiciled where the parents were domiciled, on the reservation, despite the fact that the children had never physically been on the reservation. Three years after the children were initially placed with the Holyfields, the Supreme Court vacated the orders of adoption and sent the case back to the tribal court, which it ruled had exclusive jurisdiction over the case. As this case illustrates, although the ICWA applies to relatively few cases, it is crucially important that when it does apply its jurisdictional provisions be carefully considered and followed.

In some circumstances where the Indian child resides off the reservation, the tribe has an absolute right to intervene in the state court proceedings at any point in the case (25 U.S.C. § 1911[c]). In most circumstances where the state court and the tribal court share concurrent jurisdiction over the child, the state court must transfer the case to the tribe's court upon a request by the tribe that it do so (25 U.S.C. § 1911[b]). Even if the state court is required to handle the case, it must do so pursuant to the unique proceedings, higher evidentiary burdens, and the more strenuous demands of the ICWA.

Clinical Issues

As with many of the adoptive families mentioned in this chapter, a major struggle from children's or teens' perspective may come from their need to develop their identity. As with all children and adolescents, the task of developing an identity is one that is challenging, perhaps the most difficult developmental milestone of becoming an adult. When children find themselves looking different from their parents, the pressure that they put on themselves to cope with that difference and the pressure they can receive from the outside world can be quite damaging. Additionally, institutionalized racism in the United States is still a fact of life. For interracial families the bias from schools, day cares, and communities can feel quite hurtful. Forensic evaluators should assess carefully the potential for these types of reactions and the prospective adoptive parents' capacities to address issues of racial identity when they arise.

As children age into adolescence, it is possible that adopted children may seek to spend more time with communities that reflect their own racial identities. This can be challenging for both the adoptive parent and adopted child, as each part of the family may feel a sense of loss, rejection, and confused sense of reality. The forensic evaluator should consider whether a recommendation for individual and family therapy can assist family members in creating a plan that feels comfortable to all parties and that does not compromise the emerging identity of the adopted child.

Because transracial adoption is a contentious issue, it may impact the objectivity of home studies, evaluations, and recommended services in particular cases. Forensic evaluators should be aware of the parameters of this controversy so that they can assess objectively the quality of information they may receive when asked to evaluate a case in which a child may be adopted by parents of a different race.

Adoption by Gays and Lesbians

As with transracial adoption before the civil rights movement, the adoption of children by gay and lesbian persons and couples was not historically an issue because it was not openly discussed and there were no laws addressing the practice (Wardle 2005a). Lesbians and gay men likely have adopted children for many years by simply failing to disclose their sexual orientation (Mallon 2007). It is unknown how many gay or lesbian individuals or same-sex couples are raising children, although it seems clear that this number is growing, and gay, lesbian, and same-sex headed households are becoming more visible.

Just as the movement for civil rights for African Americans in the 1950s and 1960s included legal challenges to laws prohibiting interracial adoption and marriage (*Compos v. McKeithen* 1972; *In re Gomez* 1967; *Loving v. Virginia* 1967), the gay rights movement, which has its origin in the Stonewall riot of 1969 (D'Emilio 1983), has sought to address the rights of gay, lesbian, bisexual, and transgendered persons to form families by way of marriage and adoption (*Baker v. State* 1999; *Goodridge v. Department of Public Health* 2003; *Lofton v. Secretary of the Department of Children and Family Services* 2004).

Laws Prohibiting Gay and Lesbian Individuals From Adopting

In response to the efforts by gays and lesbians to achieve recognition of their relationships and to establish families, a number of states enacted laws prohibiting members of these sexual minority groups from adopting children. In 1977, Florida enacted a law prohibiting homosexual persons from adopting children (Fla. Stat. § 63.042[3]; *Lofton v. Secretary of the Department of Children and Family Services* 2004). That statute provides that "No person eligible to adopt under this statute may adopt if that person is a homosexual." Although the statute does not contain a definition of "homosexual," Florida courts interpreted the law to apply only to persons who were actively engaged in voluntary homosexual activity (*Lofton v. Secretary of the Department of Children and Family Services*, 2004). A decade later, the New Hampshire legislature was considering a bill that would prohibit gay and lesbian individuals from adopting, becoming foster parents, or operating day care centers. The legislature certified questions regarding the constitutionality of such a bill to the state's supreme court, which held that prohibiting adoption and foster care was permissible and did not offend due process because it was rationally related to the legislature's purpose of providing "appropriate role models for children" (*In re Opinion of the Justices* 1987, p. 1099).[1] While the New Hampshire court ruled that a ban on adoption by gay and lesbian individuals was not unconstitutional, it did so as a hypothetical case rather than in the context of an actual case in controversy. For this reason, the court cautioned "that this opinion makes no attempt to anticipate particular issues that may arise only as the statutory amendments are in fact applied, assuming enactment of the bill" (*In re Opinion of the Justices* 1987, p. 1098).

In *Lofton*, the federal courts were confronted with a challenge to Florida's statutory ban on adoption by homosexual individuals. Two gay individuals, one gay couple, and one minor brought suit against the State of Florida alleging that its prohibition against homosexual individuals adopting children violated the U.S. Constitution's guarantee of substantive due process and equal protection. The case involved two individuals, each a male nurse and a homosexual, who had acted as foster parents for children for years and who sought to adopt a foster child placed in their care who was available for adoption. Additionally, a gay couple that had been licensed as foster parents filed an application to jointly adopt a child, although none of the children in their care were then currently available for adoption. The care these men provided to the foster children entrusted to their care was by all accounts exceptional. For example, Mr. Lofton, who had considerable experience working with HIV-positive patients, provided care for a child who had tested positive for HIV at birth and was placed in his care immediately. Eighteen months later, the child no longer tested positive for HIV.

Despite the quality of care provided to the children and the years that the children had resided in the foster homes, Florida would not permit these men to adopt because of their homosexuality. The two individual foster parents and the couple filed suit, alleging violations of their right to substantive due process, right to privacy (of their sexual relationships), and equal protection of the laws, and they requested that the statute be declared unconstitutional and that the state be enjoined from enforcing its provisions. The district court dismissed the case for failure to state a claim on which the relief sought could be granted. The plaintiffs appealed, and the United States Circuit Court for the Eleventh Circuit affirmed the district court's decision, holding that the state has an obligation to provide the best possible home for children for whom it is responsible and because there is a rational relationship between the statute's purpose and its bar to homosexuals adopting children. The plaintiffs then sought a review *en banc* and, when that request was denied, appealed to the Supreme Court, which was also denied. Thus, the Florida statute was upheld.

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[1] The history of this New Hampshire statute provides an interesting example of the fluidity and speed with which the law is changing in regard to adoption by gays, lesbians, and same-sex couples. After the state's supreme court approved the bill, it was enacted into law and gays and lesbians were not permitted to adopt in New Hampshire. Twelve years later, in 1999, the legislature repealed the statute and has now provided gay and lesbian persons the ability to adopt children (N.H. Rev. Stat. Rev. Ann. § 179B:4, 2008; Wardle 2005a, 2005b). Moreover, effective January 1, 2008, New Hampshire recognizes same-sex civil unions (R.S.A. 457-A:1 et seq., 2008). The same-sex parties to a civil union are entitled to all the rights and responsibilities of a heterosexual couple entering marriage, including the right to adopt jointly (R.S.A. 457-A:6).

Law Prohibiting Same-Sex Couples From Adopting

Some states' laws explicitly deny same-sex couples the ability to jointly adopt a child. Mississippi's statutory law, for instance, provides that "[a]doption by couples of the same gender is prohibited" (Miss. Code Ann § 93-17-3(5), 2008). Utah's adoption law establishes a presumption in favor of placing children for adoption only with heterosexual couples. It provides for children to be adopted by persons who are legally married to one another and provides that if the child is in the custody of the state at the time of the adoption proceeding, the authorities "shall place the child with a man and a woman who are married to each other" unless there is no married couple available to adopt the child and adoption by a single person is "in the child's best interests" (Utah Code Ann. § 78-30-1, 2008). As noted above in *Lofton*, Florida's prohibition on adoption by gay or lesbian individuals was upheld against its application to a same-sex couple.

Laws Not Specifically Addressing Sexual Orientation

Most states' laws do not specifically address whether gay or lesbian individuals or same-sex couples may adopt. These states' adoption laws are typically sexual orientation neutral; that is, they are written in a general way that does not explicitly address the sexual orientation of the prospective adoptive parent or parents. Michigan's law is typical of this type of statute and provides that "If a person desires to adopt a child...that person, together with his wife or her husband, if married, shall file a petition with the court" (Mich. Comp. Laws § 710.24, 2008). Since 1990, a number of states' courts have interpreted their sexual orientation–neutral adoption statutes to permit one form or another of adoption by gay or lesbian individuals or by same-sex couples (e.g., *Adoption of B.L.V.B. and E.L.V.B.* 1993; *Adoption of Charles B.* 1990; *Adoption of Tammy* 1993). Meanwhile, courts in other states have declined to read their statutes to permit adoption by either gay or lesbian individuals (e.g., *In re Adoption of T.K.J. and K.A.K.* 1996; *In the Interest of Angel Lace M.* 1994) or same-sex couples (e.g., *In re Adoption of Luke* 2002).

Cases testing the application of sexual orientation neutral adoption laws have most often arisen in the context of second-parent adoption (e.g., *Adoption of B.L.V.B. and E.L.V.B.* 1993; *Adoption of Tammy* 1993). In *Adoption of B.L.V.B. and E.L.V.B.* (1993), the Vermont Supreme Court addressed the question of whether the state's sexual orientation neutral stepparent adoption provision should be applied to a same-sex couple. Under the state's law, a parent was permitted to consent to the adoption of his or her child by a stepparent without the rights of the natural parent having to be terminated. The lesbian couple who were involved in the case had lived together for several years when they decided to begin a family. One of the women became pregnant via artificial insemination by an anonymous donor. Later the couple decided to have a second child, and the same partner became pregnant again using sperm from the same donor. After the birth of the second child, the couple petitioned for the nonbiological mother to adopt the children. A home study by the requisite state agency resulted in a positive recommendation, and an evaluation by a psychologist likewise recommended that the adoption would be in the children's best interests.

Two provisions of the state's adoption law were at issue. The first provided: "A person or husband and wife together, of age and sound mind, may adopt any other person as his or their heir.... A married man or a married woman shall not adopt a person...without the consent of the other spouse. The petition for adoption and the final adoption decree shall be executed by the other spouse as provided in this chapter." The second stated the general rule that when a child is adopted, the child's natural parent no longer has any rights or responsibilities regarding the child. It then made an exception to this rule for adoption by a stepparent: "Notwithstanding the foregoing provisions of this section, when the adoption is made by a spouse of a natural parent, obligations of obedience to, and rights of inheritance by and through the natural parent who has intermarried with the adopting parent shall not be affected" (*Adoption of B.L.V.B and E.L.V.B.* 1993, pp. 1272–1273). Read together, these provisions permitted a natural parent and a stepparent to petition the court for adoption of the child by the stepparent without the rights of the natural parent being extinguished. Although the adoption petitions were uncontested, the trial court denied the petitions because it interpreted the law to require that the parties to a stepparent adoption be married before such a petition could be granted.

On appeal, the Vermont Supreme Court noted that on their face these statutes prohibited only one form of adoption, by one spouse of a married couple. Since the same-sex partners at issue in the case were not married, that provision did not apply. Moreover, the statute provided that "a person" who is unmarried may adopt. Finally, the stepparent adoption provision of

the law was adopted in 1947 and it was unlikely that the legislature had contemplated denying same-sex couples the right to avail themselves of stepparent adoption. The court went on to find that while the specific circumstances of the case had not likely been contemplated by the legislature at the time it adopted the statute, its intent was consistent with permitting the same-sex partner of a child's parent to adopt. Finally, because the petitions were uncontested and had been recommended by the state agency, and there was no evidence presented that the adoptions were contrary to the children's best interests, the court approved the adoptions.

Quality of Same-Sex Parenting

As was noted early on in this chapter, the key question in an adoption proceeding is the best interest of the child. In part because of this focus on the best interest of the child in adoption proceedings, and also because of the more general effort to recognize same-sex relations through civil unions and marriage, social science researchers have sought evidence to assess outcomes for children reared by gay or lesbian individuals or by same-sex couples (e.g., Bos et al. 2007; Goldberg 2007; Meezan and Rauch 2005; Stacey and Biblarz 2001). Despite the need for such research, both proponents (Meezan and Rauch 2005) and opponents (Wardle 2005a, 2005b) of gay, lesbian, and same-sex couple parenting have observed that there is insufficient research to speak comprehensively about the impact of gay, lesbian, and same-sex couple parenting on children. Similarly, advocates on both sides of the debate have acknowledged that the research that does exist suffers from various methodological flaws (Meezan and Rauch 2005; Wardle 1997). For instance, Professor Lynn D. Wardle of Brigham Young University Law School, a longstanding opponent of gay, lesbian, and same-sex couple parenting, has stated that the social science research that does exist regarding the impact of these individuals and couples parenting on children is mostly "immature, defective, biased and irrelevant" (Wardle 2005b, p. 515).

Conservative critics of adoption by gays, lesbians, or same-sex couples have argued that the rearing of children by heterosexual married couples is the gold standard, and that children reared by sexual minorities potentially face substantial risks to their well-being (Wardle 1997, 2005a). For these reasons they argue that the burden of proving the fitness of gays, lesbians, and same-sex couples as parents rests with their supporters. Recognizing the limitations of the research, most researchers have found that although there are differences in various outcomes for children raised by gays, lesbians, and same-sex couples, those differences are not something with which society should be concerned or that concern arises not inherently from those differences but from a normative judgment made about the differences (Bos et al. 2007; Goldberg 2007; Stacey and Biblarz 2001). For instance, Goldberg's (2007) study of 46 adults (36 women and 10 men) who had at least one gay or lesbian parent found that these individuals tended to have less rigid notions about gender and sexuality. On its face there may be nothing concerning about this; however, some would be inclined to be concerned based on a normative judgment that such an outcome is less desirable than the more well-defined understanding of sexuality and gender identity present in adults raised by heterosexual parents.

Indeed, Wardle (2005b) argued that it is precisely the sexual practices of homosexual parents and their partners and their impact, if any, upon the children they are raising that should be the focus of social science research if one is to determine the real impact of gay, lesbian, and same-sex couple adoption on children. He suggested numerous research questions regarding the sexual behavior of gay, lesbian, and same-sex couples that should be addressed before informed policy decisions about permitting them to adopt may be made. While Wardle has focused on the sex lives of prospective homosexual parents, he has not suggested that such research should be conducted regarding heterosexual or single-parent adoptive families. Moreover, Gerald P. Mallon, a professor at the Hunter School of Social Work, an expert in adoption and proponent of adoption by gays, lesbians, and same-sex couples, has observed that "The assessment process for lesbian and gay prospective foster or adoptive parents can become skewed if the assessing worker is either overfocusing on sexuality or totally ignoring it" (Mallon 2007, p. 69). He urged that a prospective adoptive parent's sexual orientation and activities not be ignored and that they not be the primary focus of an adoption assessment. Mallon suggested that sexuality should be considered for every person or couple seeking to adopt, regardless of sexual orientation, but that it not be the focus of the evaluation. He also suggested that the report of an evaluation be written, to the extent possible, just as an evaluation of a heterosexual individual or couple would be written. If a couple is being evaluated, each partner should receive an equal amount of attention within the report, and the evaluation should consider the length of the relationship, its strengths, and its weaknesses (Mallon 2007).

Positions of Major Professional Organizations

Despite the methodological weaknesses in the social science research outlined above, several major professional organizations have taken positions regarding parenting or adoption by gays, lesbians, or same-sex couples based on the existing body of research. First, in November 2002 the American Psychiatric Association's Board of Trustees and Assembly adopted a position statement regarding adoption and coparenting of children by same-sex couples that concludes, "The American Psychiatric Association supports initiatives which allow same-sex couples to adopt and co-parent children and supports all the associated legal rights, benefits, and responsibilities which arise from such initiatives" (American Psychiatric Association 2002).

Next, in 2004 the American Psychological Association's Council of Representatives adopted a policy statement on sexual orientation, parents, and children that concludes, "Overall, results of research suggest that the development, adjustment, and well-being of children with lesbian and gay parents do not differ markedly from that of children with heterosexual parents" (Paige 2005). The American Psychological Association has long held the position that a parent's sexual orientation should not be the primary or main basis on which to make determinations regarding adoption (Conger 1977).

Similarly, the American Academy of Pediatrics (2002) adopted a policy statement in favor of granting adoption rights to gay and lesbian coparents and second parents, which states that "Because these families and children need the permanence and security that are provided by having two fully sanctioned and legally defined parents, the Academy supports the legal adoption of children by coparents or second parents. Denying legal parent status through adoption to coparents or second parents prevents these children from enjoying the psychological and legal security that comes from having two willing, capable, and loving parents."

Clinical Issues

In addition to the basic challenges presented in raising *any* child, the added stressors of not just adoption but adoption into a lesbian or gay household increase the challenges and potential vulnerabilities. When considering the adoption possibilities of a child with a particular gay or lesbian individual or with a same-sex couple, the basic question that underlies all adoption determinations—the best interest of the particular child at issue—should be carefully assessed. As in all other adoption situations, this entails an assessment of the particular child's needs and the capacity and willingness of the prospective adoptive parents to meet those needs.

For children and teens placed into lesbian and gay adoptive households, the pressure faced from peers about the differences of not only their adoptive status but also their status as coming from a lesbian and gay family may be more relevant than some of the other issues mentioned previously. Some children and teens will move through a stage of anger at their adoptive parents for being different from their peers before they are fully accepting of their adopted parents' sexuality. Forensic evaluators should assess the awareness and capacity of gay and lesbian prospective adoptive parents to anticipate these difficulties and to address them in ways that will be supportive of and helpful to the child they wish to adopt.

As described earlier, adoption by gays and lesbians is controversial. This controversy may color the objectivity of professionals working on particular adoption cases. Forensic evaluators who are conducting evaluations of a child and prospective adoptive parents should familiarize themselves with the controversy to discern when homophobia has played a part in home studies and needs assessments.

—*Key Points*

All evaluations for the purpose of assessing potential adoptive placements are focused on the best interest of the child.

No individual or couple has a "right" to adopt a child.

Forensic evaluators should familiarize themselves with the jurisdiction's criteria for assessing the child's best interest.

While adoption generally follows a basic process, the specifics of the process will vary from jurisdiction to jurisdiction.

Forensic evaluators should provide an objective assessment of the needs of the individual child and the capacities of the prospective parents to meet those needs.

Transcultural adoption poses a number of unique issues for both the child in need of adoption and the prospective adoptive parent. A forensic evaluator conducting an evaluation in a transcultural adoption should become familiar with these issues and assess the needs of the child to be adopted and the abilities of the prospective adoptive parents to meet the child's needs.

Transracial adoption within the United States is controversial. Forensic evaluators should be aware of the contentiousness of this issue when conducting evaluations as it may influence how issues are presented in reports, home studies, and the like.

The adoption of American Indian children is governed by the federal Indian Child Welfare Act. Forensic evaluators should be familiar with the rudiments of this statute when evaluating a case in which an Indian child may be adopted.

A growing number of states permit adoption by single or coupled gays and lesbians. Adoption by individual gay and lesbian persons or by same-sex couples is controversial in some quarters.

Forensic evaluators should be aware of this controversy and should focus on what is best for an individual child when assessing the ability of a gay or lesbian person or a same-sex couple to meet the child's needs for adoptive parents.

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