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Law and LGBTQ-Parent Families

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Abstract

This paper addresses how the law affects LGBTQ-parent families. We first outline the legal landscape that LGBTQ parents face in the US, underscoring that it varies drastically by state and creates inequity for families. Reviewing existing social science research, we then address how the law affects three processes for LGBTQ people: desiring parenthood, becoming a parent, and experiencing parenthood. Our review indicates that the law affects *if* and *how* LGBTQ people become parents. LGBTQ people consider the law as they make decisions about whether to pursue adoption, donor insemination, or surrogacy and often view the latter two pathways as the most legally secure. Further, the law continues to be salient for LGBTQ parents throughout parenthood and affects family well-being. Specifically, legal inequity diminishes parent's well-being, the relationship among couples who are parenting, and parents' ability to effectively advocate for their children in institutional settings like healthcare contexts. Finally, we address directions for future research for scholars interested in the law, family processes and outcomes, and LGBTQ families.

Keywords: Adoption, Donor insemination, Law, Familial relationships, Same-sex parenting, Surrogacy

Introduction

The social and legal context within which LGBQ parents are raising children in the US has shifted dramatically in recent decades. Whereas LGBQ sexuality and parenthood have historically been understood as an oxymoron, sexual minorities are increasingly having children (Mezey 2015; Patterson and Riskind 2010; Ross and Dobinson 2013). The increasing presence of LGBQ-parent families, however, has outpaced legal definitions, as laws often still assume that families consist of a married heterosexual couple raising biologically related children (Richman 2009). Indeed, LGBQ parents face a number of legal inequities and confront a legal landscape that varies drastically by state (Hopkins et al. 2013; Moore and Stambolis-Ruhstorfer 2013). Some of the ways that LGBQ people are disadvantaged by the law with regard to parenthood include: laws that constrain the ability to become parents by either restricting or leaving uncertain access to various routes to parenthood such as joint adoption or surrogacy; the lack of immediate legal recognition of parenthood; and the difficulty retaining custody after a relationship dissolution (Haney-Caron and Heilbrun 2014; Joslin and Minter 2011; Rosato 2006; Shapiro 2013).¹ Researchers have begun to detail the legal context facing LGBQ-parent families and assess the negative repercussions of this legal context. In this article we review existing social science research to address the question: How does the law affect LGBQ-parent families in the US?² Specifically, we examine how the law matters to three family processes: (1) desiring parenthood (2) becoming a parent and (3) experiencing parenthood. Our review illustrates that the law is salient as LGBQ people create families with children, starting with initial decisions about whether and how to have children and continuing throughout parenthood. Our review also underscores that the unequal legal landscape negatively affects family well-being for LGBQ-parent families. Before turning to our review, we first briefly contextualize LGBQ parenting and outline the legal landscape for LGBQ parents.

Background: LGBQ Parents and the Law

Historically, being a LGBQ individual and being a parent was seen as a contradiction (Berkowitz 2007; Berkowitz and Marsiglio 2007; Bozett 1989; Kazyak et al. 2014; Lewin 2009; Mallon 2004; Stacey 2011; Tasker and Patterson 2007). Many sexual minority individuals who were parents became parents before coming out and/or in the context of different-sex relationships (e.g., Bozett 1989; Mezey 2015). Increasingly,

1 It is important to note that our review highlights only laws that specifically relate to parenthood and sexual orientation. Yet these are not the only laws that impact LGBQ parents. Other laws, including ones relating to immigration, for instance, also affect LGBQ-parent families but are not addressed here (Acosta 2013; Moore and Brainer 2013).

2 We use the term “LGBQ” to reflect the research reviewed (i.e., some of the studies reviewed include self-identified gay, lesbian, bisexual, and queer individuals in the sample). Due to the dearth of literature on transgender parents and the distinct legal contexts and issues facing transgender parents, our review focuses on LGBQ parents. For work addressing transgender parents and families, including the legal context they face, see for instance: Downing 2013; Pfeffer 2012; Pyne et al. 2015; Ryan 2009; Veldorable-Griffin 2014).

sexual minorities are having children after coming out and/or in the context of same-sex relationships and are becoming parents in a variety of ways, including through adoption, donor insemination, and surrogacy (Patterson and Riskind 2010; Tornello and Patterson 2015).³ Despite the fact that LGBTQ individuals are increasingly becoming parents, social acceptance for these families is incomplete. Culturally, Americans conceptualize “family” as a heterosexual, married couple raising their biological children (Powell et al. 2010; Ryan and Berkowitz 2009). In a similar vein, although the law and judges are increasingly recognizing LGBTQ-parent families, legal recognition and equality for LGBTQ parents is incomplete (Barclay et al. 2009; Bernstein and Reimann 2001; Richman 2009). For instance, until June of 2015, same-sex couples who were raising children and were not able to marry lacked the benefits associated with marriage (Bernstein and Taylor 2013; Goldberg and Kuvallanka 2012; Kimport 2014; Meezan and Rauch 2005; Richman 2014; Riggle et al. 2005). It is important to note that all of the research reviewed here was conducted prior to the *Obergefell v. Hodges* ruling. Additionally, the *Obergefell v. Hodges* ruling has not yet altered the varied and unequal legal landscape that LGBTQ people face with regard to parenthood, a point we address in more detail in the discussion section (Eggert 2015; Giambone 2015; Luden 2015; Nejaime 2015).

Indeed, there are a myriad of laws pertaining specifically to parenthood that create legal inequalities for LGBTQ-parent families. Sexual minority individuals pursuing parenthood after coming out or within the context of a same-sex relationship face legal barriers in each of the different pathways to parenthood: adoption, donor insemination, and surrogacy. Also, because laws regarding recognition of legal parenthood are adjudicated at the state level, there is much variation across states with respect to adoption, donor insemination, and surrogacy (Shapiro 2013). Consider adoption laws, which vary by state and are often “murky” (Appell 2011, p. 53). Technically, all states now permit LGBTQ individuals to adopt since the ban in Florida was overturned in 2010 (Pertman and Howard 2011; Shapiro 2013). However, not all states allow same-sex couples to jointly adopt (Davis 2013; Brooks et al. 2011; Mezey 2009; Russett 2011). Moreover, laws like the one recently passed in Michigan that allows adoption agencies to decline placement based on religious beliefs effectively target LGBTQ individuals (Eggert 2015). Legal barriers also exist for LGBTQ people who want to pursue international adoption. Specifically, no country currently allows same-sex couples to adopt internationally and thus often only one person can be legally recognized as the adoptive parent (Goldberg et al. 2013). Further, not all countries allow single LGBTQ people to adopt (ILGA 2015). With regard to donor insemination, no laws explicitly

3 Scholars note a generational shift in how LGBTQ people become parents insofar as older generations are more likely to have become parents in the context of a different-sex relationship and/or before coming out, and younger generations are more likely to have become parents in the context of a same-sex relationship and/or after coming out (see Patterson and Riskind 2010 especially pp. 331–334 for more discussion). However, it is important to note that the majority of LGBTQ parents in the US likely had their children in the context of different-sex relationships (Gates 2013; Goldberg et al. 2014). The literature that we review focuses almost exclusively on LGBTQ parents who had children within the context of a same-sex relationship, a point we return to in the discussion.

deny LBQ women from pursuing insemination, although some clinics refuse to allow LBQ women access to their services (Mamo 2007; Murphy 2001). However, for female same-sex couples who become parents through donor insemination, the non-biological parent is not able to be immediately listed as a parent on the birth certificate in all states. For these families, the non-biological parent must do a second-parent adoption or step-parent adoption in order to be legally recognized as a parent (Boggis 2001; Connolly 1998; Dalton 2001; Sterett 2009). Yet not all states allow same-sex couples to pursue a second-parent adoption; however, step-parent adoption is now available for all married same-sex couples following *Obergefell v. Hodges* (Brewer 2005; Federle 2005; Grossman 2015).⁴ Finally, state variation also exists with regard to laws that regulate surrogacy (Berkowitz 2013). Some states recognize surrogacy contracts and male same-sex couples who are pursuing surrogacy are able to both be listed on the birth certificate; yet other states prohibit surrogacy contracts, resulting in difficulties for intended parents to be legally recognized as parents (Carroll 2015; Creative Family Connections 2015; Spivack 2010).

Another area of the law of importance for LGBQ parents, both those who had children prior to coming out and those who had children after coming out, is custody decisions following divorce or relationship dissolution. In custody disputes between a heterosexual parent and a sexual minority parent (who had come out), scholars who have analyzed judicial decisions argue that the “best interest of the child” standard used to determine custody is ambiguous and can result in sexual minority parents being denied custody of their children because of their sexual orientation (Bozett 1989; Connolly 1996; Falk 1989; Richman 2009; Haney-Caron and Heilbrun 2014; Watkins 2011). In the case of divorce or relationship dissolution for same-sex couples who were raising children, if only one parent had established legal ties, the other parent without legal ties faces difficulty in retaining custody of their child (Allen 2007; Gartrell et al. 2006; Holtzman 2002, 2006, 2013; Shapiro 2013; Shoaf 2005; Vargas et al. 2012). Moreover, the legal contracts that couples may execute, including parenting agreements or donor agreements or visitation for nonlegally recognized parents are not always binding or enforceable (Broverman 2015; Richman 2009; Swift 2007).

In sum, heterosexual and LGBQ individuals face different legal contexts in the US with regard to parenting. The legal context that LGBQ individuals face is unequal, varied, and uncertain. It is also quickly changing. Specifically, the legal context restricts or constrains the ability for LGBQ people to become parents, the ability for LGBQ parents to be recognized as legal parents, and the ability for LGBQ people to retain custody or visitation of their children. Thus, whereas heterosexual parents face a context in where law is, as Connolly (2002, p. 328) puts it: “simultaneously centered and invisible” or, as Shapiro (2013, p. 292) puts it: “well established” and “reasonably uniform,” the opposite is true for LGBQ parents. Our goal in this review is to synthesize research in order to address the question: *how does the law affect LGBQ-parent families?* We focus on the impact of law on three family processes: desiring parenthood, becoming a parent, and experiencing parenthood.

⁴ Litigation is pending on this issue in Mississippi (Amy 2015).

In order to find articles and books relevant to our research question, we searched both social science and LGBT studies databases (e.g., Sociological Abstracts, LGBT Life, PsycINFO). We also conducted searches of journals that are particularly close to the topic to find articles (e.g., *Journal of GLBT Family Studies*). In our searches, we started by using phrases like “LGBQ parent” to first identify literature about LGBQ parenthood. We then went through these search results to focus on sources that were about the law; specifically, we looked for articles and books that had the law as part of their main research question. Additionally, we utilized the authors existing catalog of research on LGBQ parents and identified any discussion of the law in these books and articles. Our goal was to identify all social science research, regardless of methodology, discipline, or publication date, that addresses the impact of the law for LGBQ parents.

Desiring Parenthood

Existing work indicates that legal climates have an impact on childfree LGBQ people’s parenthood aspirations and perceptions of whether they can become parents. There is of course variation with regard to LGBQ people’s parenthood desires and some are happily childfree (Kazyak et al. 2014; Riskind et al. 2013; Stacey 2011). Yet scholarship suggests that legal inequities not only are salient as LGBQ people contemplate parenthood, but also have negative consequences for LGBQ people who want to become parents. For instance, Riskind et al. (2013) surveyed 1098 gay men and lesbian women without children to assess the degree to which they felt they could become parents. They found that those living in unfavorable legal and social climates were more likely to express doubts that they would be able to be a parent. In contrast, respondents who were living in a favorable climate reported the highest levels of confidence that they could become a parent. In a different study that analyzed data from the National Survey of Fertility Barriers (NSFB)—a national, population-based telephone survey, Kazyak et al. (2014) found that not all sexual minority women without children are voluntarily childfree. Indeed, some wanted to become parents but pointed to the law as a reason why they did not pursue parenthood. For example, one respondent without children reported that she had considered adoption. In response to why she did not ultimately adopt a child, she said: “I didn’t know if it was legal.” (p. 14). Importantly, this suggests that not all LGBQ people have complete or accurate knowledge about the law, a finding corroborated by Baumle and Compton (2011) and Kazyak (2015). Similarly, Wall (2011) surveyed 479 sexual minority women about their decisions about whether or not to become a parent. She analyzed people’s responses to an open-ended question that asked what the most difficult thing is when deciding about whether not to become a mother. She found that “obstructive law and politics” was one of the five most commonly reported difficulties in the decision about whether or not to become a parent.

Further, Bauermeister (2014) surveyed 1487 gay and bisexual men regarding fatherhood aspirations. He found that men who wanted to be parents and placed high importance on their fatherhood aspirations, but who were living in states with anti-LGBQ

laws reported higher depressive symptoms and lower self-esteem. Thus Bauermeister argues that legal inequalities can hinder the potential for gay and bisexual men to be able to realize their goal of becoming parents. These findings resonate with the findings from Berkowitz and Marsiglio's (2007) study focused on gay men. Analyzing data from 39 interviews (19 of which were with childless gay men), they found that legal context shapes gay men's interpretations about whether or not they can become parents. The men they interviewed were aware of the legal barriers they faced and negotiating the law was part of their experience when considering parenthood. For instance, one man in Florida noted: "I really thought to myself this was never going to happen unless I get out of the country ... but I mean more and more, the country is becoming a little more accepting. There's you know, Massachusetts, New York, and California" (p. 376). Thus, regarding parenthood desires, Berkowitz and Marsiglio conclude that "gay men's desires ... are inextricably tied to legalities mandated by both local and national government" (p. 377). Finally, a study by Baumle and Compton (2011) further suggests that the law can impact the likelihood that LGBQ people are parents. They analyze data from the 2000 Census ($n = 64,728$ same-sex couples) to assess whether family laws (adoption, second-parent adoption, fostering, and surrogacy) affect the likelihood of children being present in same-sex households. States were considered to have "pro-family" laws if they allowed gay men and lesbian women to adopt, or allowed same-sex couples to do a second-parent adoption, or recognized surrogacy agreements (p. 114). They found that "pro-family laws did have a statistically significant, positive effect on the presence of children in the household" (p. 106). This finding suggests that the law may be a factor in whether or not LGBQ people can achieve their parenthood desires.⁵

In sum, research indicates that the law affects whether LGBQ people want to become parents and whether they think becoming a parent is possible. Moreover, the law also affects the process of becoming a parent, as we turn to now.

Becoming a Parent

Although the law is not likely to figure into the experience of becoming a parent for LGBQ people who had children before coming out and/or in the context of a different-sex relationship (Baumle and Compton 2011), the same is not true for those who had children after coming out and/or in the context of a same-sex relationship. Our review illustrates that the law affects the pathway that LGBQ people take to become parents, as LGBQ individuals perceive donor insemination and surrogacy as being more legally secure than adoption. Moreover, regardless of which pathway LGBQ individuals pursue, they must negotiate the law throughout the process of becoming a parent.

⁵ It is important to note that the law is less likely to have an effect in this regard for LGBQ people who had children prior to coming out and/or in the context of a different sex relationships (Baumle and Compton 2011, p. 107).

To begin, existing research underscores that the law is part of LGBTQ people's decision about *how* to create families with children. Specifically, LGBTQ individuals consider the legality associated with each pathway and make decisions accordingly (Bergstrom-Lynch 2015). Many LGBTQ women and men view donor insemination and surrogacy, respectively, as the most legally secure routes to parenthood. Ryan and Berkowitz (2009) interviewed 40 parents, both gay men and lesbian women, about their experiences becoming parents. They found that the lesbian women thought of donor insemination as the most legally secure route to pursue because the birth mother would automatically be legally recognized as a parent. Additionally, some participants reported being unable to adopt because of their sexual orientation and thus viewed donor insemination as a more legally viable option. Similarly, the gay men in their study reported feeling that adopting could potentially be a less secure pathway because they were worried about the possibility that the birth mother could come back and take the children. In contrast, they thought that surrogacy was the most legally secure route to parenthood to pursue. These findings were corroborated by Park et al. (2015). They analyzed data from 51 gay and lesbian parents in California and Nebraska. Among the lesbian women, some expressed the sentiment that donor insemination was the easiest option to becoming a parent in terms of not experiencing any legal barriers. This was particularly true for those respondents in Nebraska, who viewed adopting as a lesbian couple to be either impossible or extremely difficult. Park et al. (2015) also found that gay men in California discussed their decision to become parents through surrogacy in reference to their state's laws. Namely, that both parents would be able to be immediately listed on the birth certificate contributed to gay men's interpretation that surrogacy was the most legally secure way to become a parent and their decision to choose this route to parenthood. Examples from other studies underscore that gay men often choose surrogacy because it is viewed as a route with the least legal complications (e.g., Berkowitz 2007; Lev 2006).

Further, regardless of which pathway they pursue, LGBTQ people must consider the law. Consider the following examples of how the law factored into people's decisions even for those individuals becoming parents through donor insemination or surrogacy. Bergstrom-Lynch (2012) interviewed 61 gay, lesbian, and bisexual parents in Michigan and Massachusetts. Talking about one gay couple who became parents through surrogacy, she writes: "Because commercial surrogacy is not legal in Michigan, Sean and Edgar chose a surrogacy agency in another state that had experience with gay couples" (p. 180). This example illustrates that the varied legal context affects decision-making about how to become parents for sexual minorities. Other work also shows that gay men who choose surrogacy must navigate a complex legal context and often rely on an agency that can help them to execute the necessary legal documents (Berkowitz 2013; Bergman et al. 2010).

Similar considerations of the law exist for sexual minority women who become parents through donor insemination. Legal considerations influence the decision about donor choice. For example, Hequembourg (2004) interviewed 40 lesbian mothers who had become parents through donor insemination. All had used an unknown donor "in order to avoid any threats to their custody rights by a donor" (p. 758). Park et al. (2015)

corroborate this finding, showing that some respondents chose to use an unknown donor through a sperm bank to eliminate the possibility that someone else could make a legal claim to the child. Those who use known donors often work with a lawyer to execute a donor agreement that stipulates the intended arrangement (Chabot and Ames 2004).⁶

The law also affects the process of becoming an adoptive parent for LGBQ individuals. Of course, all adoptive parents must navigate the law, but a study by Brooks et al. (2011) suggests that it may be a more cumbersome task for LGBQ adoptive parents. Brooks and colleagues analyzed survey data from 1153 families who had adopted children. They compared gay/lesbian families (n = 82) to heterosexual families (n = 1071) across a range of outcomes. Gay and lesbian families were more likely than heterosexual families to report a need for legal advice (p. 174). Wells (2011) analyzed the experiences of 10 gay male couples who became parents through adoption. He found that the participants reported having to manage a “complicated and cumbersome legal system during the adoption” (p. 163). Indeed, research illustrates that some LGBQ people face difficulty adopting. For instance, Brown et al. (2009) surveyed 183 lesbian and gay adoptive parents. They found that one-quarter of the respondents reported experiencing legal barriers during the adoption process (p. 237). As Brown et al. note: “Some [lesbian and gay] families clearly fear that this is not equal protection under the law for their adopted children” (p. 239). Further, studies by Goldberg et al. (2009) and Kinkler and Goldberg (2011) found that some LGBQ adoptive parents had a difficult time finding agencies that would work with them. Scholars argue that Black lesbian and bisexual individuals in particular may be disproportionately affected by anti-LGBQ adoption policies given that “Black children are greatly overrepresented in the foster care system and are most likely to be adopted by Black women.” (Cahill et al. 2003; Ramsey et al. 2010, p. 6). Finally, international adoption in particular is seen as especially difficult if not impossible for LGBQ parents and same-sex couples (Brown et al. 2009; Park et al. 2015). A couple in Park and colleagues’ study, for instance, reflected that in order for them to be able to adopt internationally, they would have to remain closeted. As one partner reflected about this option: “I am not a liar. I just don’t like the idea.” (2015, p. 10). Their comments underscore the fact that same-sex couples need to hide their relationship when adopting internationally (Goldberg et al. 2013).

The legal context also leads some LGBQ people to not disclose their sexuality when adopting domestically. Berkowitz (2007) provides one example from a gay couple adopting in 1988. Of their experience, she writes:

6 Although this research focuses on sexual minority women who become pregnant through insemination either through a clinic or at home, another route to becoming pregnant for sexual minority women includes having sex with a man. There is very limited research on this population. Reed et al. (2011a, b) focus on pregnancy among young Black lesbians. They find that those who planned their pregnancies had sex with men to become pregnant and referred to these men as “sperm donors” (Reed et al. 2011b, p. 754). For more research on adolescent pregnancy among LGBQ individuals, see Saewyc (2014). Although existing literature does not address how these individuals think about the law, this is an area for future research. For a discussion of legal issues in terms for LGBQ women who have sex with men to become pregnant, see Polikoff (2010).

Only one of the men could legally adopt and the other man had to remain hidden. Although the social worker who agreed to work with them was well aware that they were a gay couple, she made it clear that: 'I will be filling out your answers, but only as if one of you were answering... I'll ignore the other person, he will be invisible.' When the agency representatives finally brought their son to their home, Lawrence had to go upstairs and hide.

Since the couple could not jointly adopt, they were not able to disclose their relationship to everyone involved in the adoption process. Similar findings were found in Bergstrom-Lynch's (2012) more recent study focusing on whether and how parents disclosed their sexuality during the process of becoming parents. Her interview data with 61 gay, lesbian, and bisexual parents included people who had become parents through adoption, donor insemination, and surrogacy. She found that adoptive parents were more likely to be selective or not disclose their sexual orientation in comparison to those who become parents through donor insemination or surrogacy. As Bergstrom-Lynch argues, the decision to not disclose was directly linked to the legal context within which they lived. Adoptive parents who were coupled and living in states where joint adoption was not legal employed similar strategies as the couple in Berkowitz's study quoted above. She writes: "Many parents said that without concealing their sexual identity and relationship status, they would not have become parents in this way, given the prejudices in the system." (p. 186).

In sum, research indicates that the law affects how LGBTQ people choose to become parents and the decisions LGBTQ people make during the process of becoming a parent through adoption, donor insemination, and surrogacy. The law continues to be salient for LGBTQ parents throughout parenthood, as we discuss below.

Experiencing Parenthood

We assess the effect of the law on LGBTQ parents' experiences of parenthood with regard to three domains: the well-being of parents, the relationship between parents in couples, and the experiences of parents in institutional settings like schools or doctors' offices.

First, the unequal legal landscape has a negative impact on parental well-being as it can contribute to stress, anxiety, fear, and depression for LGBTQ parents. For instance, Goldberg and Smith (2011) conducted a study on mental health during the transition to parenthood for adopting same-sex couples. Drawing on interview and survey data from 90 couples (52 lesbian couples and 38 gay couples), they found that participants' state legal climate affected their depressive and anxious symptoms. Namely, participants who lived in states with *unfavorable* laws regarding same-sex couples adopting children and who had high levels of internalized homophobia had the most *increase* in depression and anxiety after becoming parents. Those who had high levels of internalized homophobia but lived in states with *favorable* laws had a *decrease* in depressive and anxious symptoms. Likewise, Kazyak (2015) analyzed the experiences of women

sexual minority parents navigating laws regarding second-parent adoption. Drawing on data from 21 interviews with lesbian and bisexual parents in different legal contexts, she found that participants in each context spent a lot of time researching the laws in their state and that the majority sought to gain information about the law prior to having children. By and large, the interviewees discussed the process of navigating the uncertainty and inequity of the legal landscape in negative ways. Namely, they described that they experienced stress and fear throughout the process.

Other research corroborates the finding that the legal context negatively impacts the well-being of LGBQ parents. For instance, Goldberg et al. (2013) interviewed gay and lesbian couples in Florida before and after the ban on gay adoption was lifted. They found that the legal discrimination created and worsened the stress for lesbian and gay parents. Another study conducted by Shapiro et al. (2009) compared 52 lesbian mothers in the US (less supportive legal context) and 35 in Canada (more supportive legal context). They found that mothers living in less supportive legal contexts reported more depressive symptoms. Similarly, Bos (2013) conducted a cross-country analysis and found that in countries where rights were extended to the parents, those families were less worried about discrimination. Moreover, the negative impact of the law on LGBQ parent's mental health may be especially exacerbated for parents who are not legally recognized as parents. Given the lack of legal recognition, they experience anxiety and fear that their child will be taken away from them and that they will have no legal recourse to remedy the situation (Butterfield and Padavic 2014; Goldberg et al. 2009; Kazyak 2015; Kinkler and Goldberg 2011; Lev 2006).

In addition to affecting the well-being of individual parents, the law also impacts the relationship between parents in same-sex couples. Specifically, in coupled families where only one parent is legally recognized, the law creates a power imbalance between parents wherein the legally recognized parent maintains power. Research by Butterfield and Padavic (2014) most clearly illustrates this theme. They studied 27 parents in planned lesbian families living in states that restricted second-parent adoption. They found that despite parents wanting to create an equal parenting partnership, the law made it harder, and in some cases impossible, for that desire to be realized. Since the non-legally recognized mothers feared not being able to maintain contact with their children in the event that their relationship ended, they engaged in three different strategies to try to keep their relationship intact: acquiescing to the biological mother's decisions about parenting to minimize conflict, creating dependency (either financially or emotionally) so that the biological parent would be less able to leave the relationship, and becoming active in the larger lesbian community so that others could pressure the biological parent to stay in the relationship. As Butterfield and Padavic write: "these actions, often acts of intentional manipulation, had the unintended result of shaping family dynamics to more closely resemble those of a patriarchal, heterosexual relationship of a bygone era rather than the equitable planned lesbian families they desired to be" (p. 11).

Similar to Butterfield and Padavic discussion of planned lesbian families, scholars have addressed how the law impacts the relationship between parents in other family

types, including lesbian stepfamilies (where partners are parenting children had in a previous relationship, often a different-sex relationship) and adoptive families. For instance, Moore (2008) found that the non-biological and non-legal parents often played a lesser role in Black lesbian stepparent families. Moore gathered survey, interview, and participant-observation data from 32 participants who were in lesbian stepfamilies. Particularly relevant to the current review is the fact that biological (and legally recognized) parents often wanted to maintain control in the family with regard to making decisions about their children and thus did not want their partners to become legally recognized parents (p. 349). As a result of the lack of legal tie for the stepparent, Moore writes: “that partner’s position in the family [is] less certain and less permanent” (p. 349). Further, Acosta (2013) draws on data from 42 in-depth interviews and 14 months of participant observation to address Latina lesbian families. With regard to how the law affects the dynamics between parents in stepfamilies, similar to Moore, she finds that the lack of legal ties for the non-biological mother results in their lack of authority to make parental decisions both within and outside of their households (see especially pp. 86–98). The law can also affect relationship dynamics in adoptive families. For example, in their discussion of gay and lesbian adoptive parents, Goldberg and Gianino (2011) present a case example of a couple where only one person could adopt. They discuss that this caused tension and resentment in the couple’s relationship (pp. 218–219).

Finally, along with negatively impacting parental mental well-being and the relationship between parents, the law can also affect LGBQ parents’ experiences in institutional settings, such as schools and doctors’ offices. For instance, Kellas and Suter (2012) analyzed the narratives of 44 mothers who self-identified as lesbian, bisexual, and fluid/undecided. Many recounted experiencing difficulties having their families recognized in schools or hospitals. One of the most striking example was from a mother whose child was in the Neonatal Intensive Care Unit and was not able to hold him because according to the nurse, she “wasn’t family” (p. 486). Another mother described that the lack of legal tie to her son resulted in the inability for her to list him on her benefits through her employer. Speaking of what her benefits manager told her, she recounted: “I’m just saying legally I can’t, nothing I can do for you. You’re not legally related” (p. 485). Another example comes from Brown et al. (2009) who surveyed adoptive parents (n = 183). They found that among adoptive parents, 37 % of their sample reported concerns about their families within schools. Specifically, one mentioned the challenge of “making sure that school officials recognize us both as legal parents” (p. 240). The saliency of law for LGBQ parents in institutional interactions can also be seen in studies that assess how a LGBQ parent’s experiences change after having established legal ties to their children. For instance, Connolly (2002) studied parents who had established a legal tie to their children through a second-parent adoption. Having the ability to be addressed and known as the parent of your child in institutional interactions, such as in school or hospitals gives the parents “both a sense of relief and pride” (Connolly, 2002, p. 199).

In sum, the experience of being a LGBQ parent is influenced by the legal context. Specifically, the law can affect not only parental well-being and the relationship between

parents, but also the experiences of parents when interacting with health care providers or schools.

Discussion

Our review of the literature highlights that the unequal and varied legal context facing LGBQ people affects LGBQ-parent families in a myriad of ways. The law affects the process of *desiring parenthood* insofar as it is part of LGBQ people's decision about *whether* to create families with children. The legal barriers that exist shape LGBQ people's perception about whether parenthood is possible. The law is also salient in the process of *becoming a parent* insofar as LGBQ people consider issues of legality as they make decisions about *how* to become a parent. The existing literature illustrates that donor insemination and surrogacy are seen as more legally secure paths to parenthood in contrast to adoption. Finally, the law affects the process of *experiencing parenthood*, as research indicates that parent's well-being, the power dynamic among coupled parents, and parent's ability to advocate for their children in settings such as doctors' offices or schools are all negatively impacted by legal inequality.

It is important to consider these findings in light of the recent Supreme Court case that extended marriage recognition for same-sex couples to the entire country (Obergefell v. Hodges 2015). Although marriage recognition will address some of the legal inequality facing LGBQ parents, it will certainly not alleviate all of it (Giambrone 2015; Nejaime 2015). The ruling of course will not impact single LGBQ parents or same-sex couples parenting who do not wish to marry. Yet even its impact on married same-sex couples with regard to parenting is yet to be seen. For instance, questions remain about how, if at all, the ruling will affect adoption laws for LGBQ prospective parents given that some states that did not recognize same-sex marriage effectively banned same-sex couples from adopting by stipulating that couples had to be married to adopt. It might be the case that the marriage ruling makes adoption more possible for married same-sex couples; however, it also might be the case that states will continue to effectively prohibit LGBQ people from adopting by other means, such as through religious freedom bills (Eggert 2015). Similar questions exist for same-sex couples that are married and pursuing parenthood through donor insemination with regard to whether the non-biological parent will immediately be able to be listed on the birth certificate. In Iowa, for instance, there was a lag between when same-sex marriage was recognized and when married same-sex couples having children through donor insemination could list both parents on the birth certificate (Kazyak 2015). Some, but not all states, have ruled that married same-sex couples must be treated similarly to different-sex couples with regard to both being assumed to be the parents and thus both being listed on the birth certificate (Ludden 2015). Yet LGBTQ organizations still advise such couples to do an adoption (National Center for Lesbian Rights 2015). Underscoring the remaining uncertainty, a recent decision in Alabama serves as one example that even in instances when couples do an adoption, the nonbiological mother's legal tie may still be called into question and not honored in

custody disputes (Broverman 2015). Although this case is limited to Alabama, LGBTQ parents in any state may nonetheless experience additional stress and fear given that any uncertainty exists or may also incorrectly assume that the ruling applies in their state (Kazyak 2015). Questions also remain about how laws relating to surrogacy will change, if at all, with marriage recognition (Eggert 2015). In sum, the legal terrain with regard to parenting following *Obergefell v. Hodges* still remains uncertain and varied across states. This suggests that the negative outcomes for LGBTQ-parent families addressed in this review will continue despite the access to marriage. It will be important for future research to address if and how the *Obergefell v. Hodges* ruling eventually changes the legal landscape with regard to recognition of LGBTQ parenthood.

Moreover, it is important to note that the law is not the only factor affecting LGBTQ-parent families. Decisions about whether and how to become a parent, for instance, are also shaped by race and class (Mezey 2008, 2013; Moore 2011). LGBTQ parents and prospective parents also navigate a social context that privileges heterosexual, married couples raising their biological children as the ideal type of family (Powell et al. 2010; Smith 1993). Further, not all LGBTQ parents consult the law (Baumle and Compton 2011) or have accurate knowledge about the law (Kazyak 2015). Additionally, it is important to highlight that LGBTQ-parent families are also resilient in the face of legal inequality. Some LGBTQ parents create expansive understandings of family and parenthood that reject legal classifications (Baumle and Compton 2014). Finally, more work is needed in this area to corroborate findings from existing studies. Nonetheless, our review illustrates that the legal context disadvantages LGBTQ parents and prospective parents.

This review raises a number of implications for policy and fruitful avenues for future research. Perhaps most obviously, our review suggests that creating a more equitable and clear legal context may result in more LGBTQ people pursuing parenthood. Of course, it is important to note that not all LGBTQ individuals want to become parents (Mezey 2008; Kazyak et al. 2014). However, the degree to which the law plays a role in restricting LGBTQ people's ability to pursue parenthood can be alleviated. In a related vein, a more equitable legal context may result in LGBTQ people perceiving different pathways to parenthood, namely adoption, as possible and legally secure. Removing the legal barriers for LGBTQ people adopting may be particularly important given that some LGBTQ people are more open to adoption and have more expansive understandings of family and parenthood that do not rest on biology in comparison to their heterosexual peers (Goldberg et al. 2009; Kazyak et al. 2014; Weston 1991). Additionally, our review suggests that creating a more equitable legal context may increase family well-being. In sum, our review illustrates the necessity for a more expansive legal definition of family and parenthood to include the diverse kinds of LGBTQ-parent families.

In terms of future research in this area, one recommendation is to ensure that multiple types of families are included in research (Tasker 2013). Many have voiced concerns that existing knowledge about LGBTQ parents relies too heavily on LGBTQ parents who are white, middle and upper-class, and reside in urban locales (Moore 2011; Oswald and Holman 2013). Likewise, the bulk of existing research about the impact of the law focuses on LGBTQ parents who had children within the context of a same-sex

relationship; we know less about LGBQ parents who had children in the context of a different-sex relationship. Differences likely exist based on factors such as race and ethnicity, class, citizenship status, geographic place of residence, and the timing of having children in relation to coming out (Acosta 2013; Kazyak 2011; Moore and Brainer 2013; Moore 2011). Future research should interrogate these differences. The need for such research is especially acute because the demographics of the families most represented in research do not reflect the demographics of LGBQ people raising children (Gates 2013). For instance, same-sex couples of color are much more likely to be raising children and are also more likely to be economically disadvantaged compared to their White counterparts (Moore and Brainer 2013); LGBQ parents are more likely to be economically disadvantaged compared to their heterosexual counterparts (Gates 2013); the regions with the highest percentage of same-sex couples raising children include the South and Midwest (Gates 2013); and the majority of LGBQ parents had their children in the context of a different-sex relationship (Goldberg et al. 2013). Additionally, bisexual and transgender parents, along with polyamorous families are under-represented in current research (Biblarz and Savci 2010) (for exceptions, see: Downing 2013; Pfeffer 2012; Ross and Dobinson 2013; Sheff 2010). Researchers should strive not only to include such diversity with regard to family structure and identity of parents in their sample, but also more clearly identify who is part of the sample in their publications (e.g., people in same-sex couples or people who identify as gay or bisexual). Further, although our focus in this article is on the US, research shows similar legal barriers in other countries, including legal and social definitions of family that preclude LGBQ parents and legal restrictions on access to adoption, donor insemination, and surrogacy (Chapman et al. 2012; Eady et al. 2009; Lubbe 2013; Malmquist 2015). Future work can continue to interrogate cross-national variation in laws and their impact on families.

Other important avenues for future inquiry include asking how the intersection between the social and legal contexts affects LGBQ parents. LGBQ people face social discrimination in the absence of prohibitive laws, for instance when pursuing adoption or donor insemination, that may impact their ability to become a parent (e.g., Davis 2013; Johnson 2012; Ryan and Cash 2004; Ryan and Whitlock 2007; Shelley-Sirici and Ciano-Boyce 2002). Some of the experiences in institutional interactions may also persist despite legal equality. For instance, healthcare providers may not readily perceive LGBQ-parent families as families (even if they have the same legal rights as heterosexual-parent families) or perceive nonbiological parents as legitimate parents (even if they have the same legal rights as biological parents). In contrast, people may face social acceptance that may mitigate the negative consequences of legal inequality. Future research should more fully explore the interplay between the legal and social contexts for LGBQ parents and their families. Another avenue for future research is the question of how the law exacerbates inequalities among LGBQ individuals that stem from class, race, and gender. For instance, many researchers note the high cost involved in hiring lawyers or executing legal documents for LGBQ parents such that those without the economic resources to do so are all the more disadvantaged (Bergman et al. 2010; Berkowitz and Marsiglio 2007; Boggis 2001; Dalton 2001; Kazyak 2015). Additionally,

understanding how parents communicate about the law with others (including their children and family members of origin or friends) is another question future research can ask. We also argue that equally important to research addressing the effect of law is research addressing LGBTQ parents' response and resiliency in the face of the legal inequity facing their families. Such work could identify practices that families might employ to most effectively mitigate the negative consequences of legal inequality and promote familial well-being.

Finally, three family outcomes are understudied with regard to LGBTQ parents: the effect of the law on parent-child relationships, on child well-being, and on the relationship between parents and their family of origin. We know that legal inequality, namely the inability for both parents when coupled to be legally recognized as parents, has negative consequences in terms of the non-legal parent having less power; but does that translate into the relationship quality among (nonlegally recognized) parents and their children? A study by Gartrell et al. (2011) suggests yes insofar as children reported higher levels of closeness with both parents in families who had done a second-parent adoption. Future research should continue to explore whether and how the law can affect parent-child relationship quality. Further, it is important to better understand how the law matters for children being raised by LGBTQ parents. Specifically, that legal inequality can decrease parent's mental health and that parental and child well-being are linked raises questions about the effect of law on the mental health of children who are being raised by LGBTQ parents (Shapiro et al. 2009). In a related vein, research could address whether the lack of being legally recognized as a parent impacts how family members of origin understand their LGBTQ family member who is parenting. Research on those who have done a second-parent adoption, for instance, indicates that often these parents feel like either their family of origin or their partner's family of origin more fully accepted their parenting role as a result (e.g., Connolly 2002). More work can continue to address the degree to which the law may matter for LGBTQ parents in terms of support from their family of origin. In short, there are a number of areas that researchers can explore to more fully understand how the law affects the family experiences of LGBTQ parents and their children.

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