

**INTERJURISDICTIONAL ISSUES IN ADOPTION:
WHERE IS THIS CHILD NOT MY CHILD?**

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I. Some History: Adoption as a Legal and Social Event

- A. Parent/gender replacement model (Anglo-American)
 - 1. male for male
 - 2. female for female
 - 3. both male and female for male and female

- B. Open adoption model versus "confidential" model
 - 1. increasingly in use after a century of closed records
 - 2. meeting child's needs for connectedness
 - a. to his/her ancestral background
 - b. to his/her medical and genetic history

- C. Example: Joint custody between adoptive mother and bio father, leaving adoptive mother's husband as step-parent to the child.

- D. Property theory

- E. Giving way to "best interest" theory

- F. Cultures (with legal sovereignty in U.S.) provide conceptual options
 - 1. traditionally, property is not valued for itself
 - 2. traditionally, children are not valued as propertyor
 - 3. for the property they may provide a single person, i.e., parent.
(Children are be valued as the lifeblood and later livelihood of the tribe.)

- G. Example: Native Americans of the Plains Tribes
 - 1. social structures
 - 2. language
 - 3. duplicating relationships
 - a. instead of severing relationships
 - b. instead of replacing relationships
 - 4. implications for adoption by heterosexual partners
 - a. fully open adoptions
 - b. rejecting Victorian era influences
 - c. drawbacks and rewards

II. Co-Parenting and/or Adoption

- A. "Co-parenting" by same sex partner of a biological parent
 - 1. Co-parenting women
 - a. low tech anonymous artificial insemination
 - b. lower tech known-donor artificial insemination
 - 2. Co-parenting men
 - a. high tech in vitro surrogacy
 - b. low tech known-donor artificial insemination surrogacy
- B. Children of a heterosexual relationship in custody of mother
- C. Children of a heterosexual relationship in custody of father
- D. Translating reality into theoretical constructs
 - 1. Co-parenting without adoption
 - 2. Co-parenting is (informal) adoption
 - a. parent's view
 - b. child's view

III. Beyond Theory: When Adoption Really Counts

- A. An Anglo-American cultural value
 - 1. Counting on legally recognized adoption
 - a. absence of birth parent by death, incarceration, incompetence, court action
 - b. need of the child for action
 - 1) medical
 - 2) educational
 - 3) work
 - 4) insurance
 - c. need of the child for presence
 - 2. Discounting psychological parenthood as a reality
- B. What does "two fathers"/"two mothers" mean?
 - 1. Revisiting the Native American model
 - 2. Revisiting the consequences of fully open adoptions

IV. Acknowledgement Beyond Borders

- A. Historical framework for child/parent decision making
 - 1- Prather v. Prather (1809)
 - 2. Commonwealth v. Addicks (1813)
 - 3. Commonwealth v. Addicks II (1815)
 - 4. Helms v. Franciscus (1830)

- B. Decisions today involving adoptions by same sex partners
 - 1. New Jersey: Best interests of the child
 - a- In the Matter of the Adoption of a Child by J.M.G. (1993)
 - b. In the Matter of the Adoption of Two Children by H.N.R. (1995)
 - c- In re Adoption of Charles R. (1990)

- B. Prohibiting certain classes of persons (same sex partners) from adoption by statute
 - 1. Florida: Adoption is a statutory privilege
 - a. Cox I and Cox II (1993 and 1995)
 - b. Matthews v. Weinberg (1994) [an examination of the facts presented]

- C. Prohibiting certain classes of persons (same sex partners) from adoption by court interpretation of the "best interests" standard
 - 1. New Hampshire: "[B]eing a child...is hard enough without...."
 - a. Opinion of the Justices, No. 87-080, 3/11/87
 - b. Opinion of the Justices, No. 87-080, 5/05/87

- C. Back to Basics in Decision-Making
 - 1. Nexus
 - 2. So-called "best interests"
 - 3. "Least worst" outcomes