

January 2008 Updates for LGBTbib.org

This update contains articles, books, and select government documents published between April 10, 2007, and January 22, 2008.

I. General Works on Sexual Orientation and the Law

A. Books

B. Symposia

C. Reference

II. Legal Status of Lesbians and Gay Men

A. General

B. Criminal Law

C. Civil Law / Election Politics

D. Constitution

1. General Works:

Grodin, Joseph R. *Same-Sex Relationships and State Constitutional Analysis*. 43 Willamette L. Rev. 235-249 (2007).

Grodin—a former Associate Justice of the California Supreme Court—argues that “state courts bear responsibility for developing a state constitutional jurisprudence which does not simply follow, in blind lock-step, the most recent pronouncements of the United States Supreme Court with respect to similar or even identically worded provisions, but which instead make a serious attempt to ascribe meaning to the provisions of the respective state constitutions in a principled but independent way.” He then applies this perspective to the problem of same-sex marriage and finds that the incoherency of rationality review provides an opportunity for “creative doctrinal development at the state level.”

2. First Amendment:

Calvert, Clay, and Robert D. Richards. *Gay Pornography and the First Amendment: Unique, First-Person Perspectives on Free Expression, Sexual Censorship, and Cultural Images*. 15 Am. U. J. Gender Soc. Pol’y & L. 687-730 (2007).

The thoughts and opinions of two leading players in today’s gay pornography industry are set forth and analyzed on the topics of free speech, censorship, obscenity law, and the

political and social forces that impact gay pornography today. This Article also describes their views about the values and functions of gay pornography, as well as the business and economic aspects of the industry.

Dent, George W., Jr. *Civil Rights for Whom?: Gay Rights Versus Religious Freedom*. 95 Ky. L.J. 553-647 (2007).

In this article Dent adds to his established list of anti-gay writings. Beginning with claims that “most people have an innate distaste for homosexuality” and that “heterosexuality can be considered intrinsically better,” Dent allows that gay men and lesbians “should be free from harassment and physical abuse,” and that in at least “some cases” they should perhaps not be the object of discrimination. Those familiar with Dent’s work will find few surprises here: Gays unqualified bad, anti-gay religion unqualified good.

Southerland, Abigail Jones. *The Tug of War Between First Amendment Freedoms and Antidiscrimination: A Look at the Rising Conflict of Homosexual Legislation*. 5 Regent J. Int’l L. 183-201 (2007).

A short student note equating homosexuality with bestiality and polygamy as part of an argument that antidiscrimination laws will inevitably undermine the First Amendment free speech clauses. Concluding that “considering almost any group a discriminated class is dangerous,” the author draws heavily upon foreign hate speech enactments from which she analogizes what negative outcomes could arise within the U.S. jurisdiction should gay men and lesbians achieve basic protections under the law.

3. Privacy, Equal Protection, Due Process:

Baxter, Emily K. *Rationalizing Away Political Powerlessness: Equal Protection Analysis of Laws Classifying Gays and Lesbians*. 72 Mo. L. Rev. 891-907 (2007).

Baxter discusses lesbians and gay men as a suspect or quasi-suspect class for equal protection analysis. Reviewing how the criterion of political powerlessness has been applied to women and racial minorities, she concludes that were this analysis applied “evenhandedly by measuring the political power of homosexuals in the same manner it has measured the political power of other groups, the Court may find that laws classifying based on sexual orientation are subject to heightened or strict scrutiny.”

4. Full Faith and Credit / DOMA

E. Foreign / International Law

1. Other than USA:

Balzano, John. *Toward a Gay-Friendly China?: Legal Implications of Transition for Gays and Lesbians.* 16 *Law & Sexuality* 1-43 (2007).

The author describes the considerable growth of China's gay community in the last six years. Although the road toward full protection remains long, he is heartened by recent changes. He discusses policy developments relevant to the gay community in China over the last two decades, and he places them in a larger context of similar legal developments relating to gender law, antidiscrimination law and policy, and society in general. He then discusses the potential for future changes.

Bartlett, Peter. *Killing Gay Men 1976-2001.* 47 *Brit. J. Criminology* 573-594 (2007).

A rare empirical analysis, this article draws upon files of the Crown Prosecution Service in order to study the subset of murders of gay men in England and Wales. Bartlett concludes that gay sexual homicide can and should be considered as a coherent and discrete set of cases. They are both demographically, and in terms of the dynamics between the protagonists, different than heterosexual sexual murder.

Kochenov, Dimitry. *Democracy and Human Rights—Not for Gay People?: EU Eastern Enlargement and its Impact on the Protection of the Rights of Sexual Minorities* 13 *Tex. Wesleyan L. Rev.* 459-494 (2007).

Part of a symposium entitled, "Too Pure An Air: Law and the Quest for Freedom, Justice, and Equality," this article offers an in-depth analysis of how treatment of gays by new members of the European Union—many from former communist regimes with a negative record on this issue—impacts their admission process. The author recommends that "the EU should seriously consider allowing gay rights to play a more prominent role in the course of the preparation of future enlargements."

Tsao, Scarlet. *The Debate over the Proposed Sexual Orientation Anti-Discrimination Legislation in Hong Kong: What's the Controversy Really About?* 5 *Regent J. Int'l L.* 203-235 (2007).

The author discusses the context of a possible sexual orientation discrimination ordinance in Hong Kong. She concludes that the real danger in protecting gay men and lesbians from discrimination is in the way such prohibitions would restrict expressions of anti-gay prejudice. Such expressions must be protected, she feels, because they are often supported by "scientific findings showing the harms of homosexual conduct not only to the society but also to those engaging in such practices."

2. International Law / Human Rights

3. Comparative

4. Immigration / Refuges:

Lister, Matthew. *A Rawlsian Argument for Extending Family-Based Immigration Benefits to Same-Sex Couples.* 37 U. Mem. L. Rev. 745-780 (2007).

An “exercise in normative theory,” this article reviews John Rawls’ concept of “justice as fairness” and extends it to same-sex couples in the context of immigration policy. Such immigration benefits, it is argued, “follow from a reasonable working-out” of basic liberties in a society committed to Rawls’ domestic theory of justice.

III. Discrimination

A. Private Employment

1. General

2. Harassment / Title VII:

Diefenbach, Clare. *Same-Sex Sexual Harassment after Oncale: Meeting the “Because of ...Sex” Requirement.* 22 Berkeley J. Gender L. & Just. 42-94 (2007).

This article examines the Supreme Court’s *Oncale* (1988) case and how lower courts have interpreted it in applying Title VII sex discrimination law to same-sex sexual harassment. It urges development of more evidentiary routes for proving discrimination “because of sex” in such cases, beyond the three explicitly enunciated in *Oncale*.

3. Benefits

4. School / Teachers:

Book:

Fossey, Richard, Todd A. DeMitchell, and Suzanne Eckes. *Sexual Orientation, Public Schools, and the Law.* Dayton, Ohio, Education Law Association (2007).

This short monograph examines leading cases concerning the rights of GLBT students to be free from harassment, the right to recognition under the Equal Access Act, First Amendment issues, and several curricular and programmatic issues. It includes a chapter with suggestions for school districts to protect students’ rights while avoiding litigation.

B. Public Employment

1. Military / Campus Recruitment:

Symposia:

2007 Harvard Law School Lambda Second Annual Gay and Lesbian Legal Advocacy Conference “Don’t Ask, Don’t Tell.” 14 Duke J. Gender L. & Pol’y 1173-1288 (2007).

Transcript of proceedings from March 2007 Harvard conference on legal issues related to the “Don’t Ask, Don’t Tell” policy regarding military service members. There were several panel discussions among activists, legal scholars, military veterans and advocates. Topics include the impact of *Lawrence v. Texas* and the degree of judicial deference to the military concerning personnel policies.

Article:

Westcott, Kathi and Rebecca Sawyer. *Silent Sacrifices: The Impact of “Don’t Ask, Don’t Tell” on Lesbian and Gay Military Families.* 14 Duke J. Gender L. & Pol’y 1121-1139 (2007).

This article provides an overview of the DADT policy, emphasizing its practical impact on gay service members and their families. It addresses questions of employee benefits, recognition of same-sex relationships, adoption of children and same-sex marriage in Massachusetts. It argues that DADT damages LGBT service members, their units and the nation’s security.

2. Non-Military

C. Hate Crimes

D. Housing / Sports

Baldacci, Paris R. *Protecting Gay and Lesbian Families from Eviction from their Homes: The Quest for Equality for Gay and Lesbian Families in Braschi v. Stahl Associates.* 13 Tex. Wesleyan L. Rev. 619-644 (2007).

This article examines the 1989 New York case that upheld the rights of same-sex partners (as members of “functional families”) against eviction from rent-controlled apartments in New York; and it scrutinizes the choices made by advocates and the Court in how they defined “family” in that case.

Williams, Claire. *Sexual Orientation Harassment and Discrimination: Legal Protection for Student Athletes.* 17 J. Legal Aspects Sport 253-283 (2007).

This article considers sexual orientation harassment of student athletes in high school and college, and examines cases decided under Title IX and the Equal Protection Clause. Given the limited protection afforded by federal law, the author urges use of state laws and institutional policies to combat sexual orientation discrimination and harassment.

E. Other

IV. Family Issues

A. General

B. Couples

1. General:

Book:

Doyle, Oran and William Binchy. *Committed Relationships and the Law.* Dublin, Four Courts Press (2007).

This anthology consists mostly of papers presented at a 2005 conference at Trinity College in Dublin. Contributors explore moral, philosophical and legal issues related to committed relationships under law, with an emphasis on same-sex couples and their families and the law of Ireland.

Articles:

Dorocak, John R. *Same-Sex Couples and the Tax Law: Tax Filing Status for Lesbians and Others.* 33 Ohio N.U. L. Rev. 19-39 (2007).

This article examines the tax law implications of the contradiction between state law recognition of same-sex relationships, notably marriage in Massachusetts, and the federal DOMA. It considers policy and constitutional issues and suggests arguments that might be advanced by a lesbian couple seeking to file jointly their tax returns.

Epstein, Phyllis Horn. *Straight Talk about Same-Sex Taxes.* 29-JUN Pa. Law. 31-34 (2007).

Because of the federal Defense of Marriage Act (DOMA), the unions of same-sex couples are not recognized for purposes of the filing federal taxes. This reality has advantages and disadvantages, and the author looks at both. Specifically, the author explains the “marriage penalty” and the “marriage bonus”. The author also discusses

adjustments to gross income, including mortgage interest, retirement account contributions, the Child Tax Credit. Finally, the author explores the issues involved in estate planning for same-sex couples, breaking up, and joint and several liability.

Weiss, Adam. *Federalism and the Gay Family: Free Movement of Same-Sex Couples in the United States and the European Union.* 41 Colum. J.L. & Soc. Probs. 81-124 (2007).

This Note examines how the branch of law known in Europe as free movement law and in America as the right-to-travel doctrine copes with the problems created by the free movement of same-sex couples across internal borders.” The author explains that the European Union has required member states to protect the rights of migrating same-sex couples, while the United States has done exactly the opposite through the Defense of Marriage Act (DOMA). The author suggests that same-sex couples in America seeking to challenge DOMA on federalist grounds should look to the EU for inspiration.

2. Marriage

a. General

Book:

Pinello, Daniel R. *America’s Struggle for Same-Sex Marriage.* New York, Cambridge University Press (2006).

Pinello chronicles the same-sex marriage movement in the United States by interviewing fifty same-sex couples as well as numerous public officials and interest group representatives. These in-depth interviews are woven together to recreate the story of the struggle for same-sex marriage in communities around the country. He concludes with a discussion of children and same-sex marriage, a comparison of the various same-sex civic models (civil unions, domestic partnerships, reciprocal benefits), and the roles of the courts and legislatures.

Articles:

Durand, Melissa. *From Political Questions to Human Rights: The Global Debate on Same-Sex Marriage and Its Implications for U.S. Law.* 5 Regent J. Int’l L. 269-298 (2007).

The author contends that the movement in support of same-sex marriage is inconsistent with traditionally recognized human. The author argues that same-sex relationships are distinctly different from heterosexual marriage, and that they “do not fit well with the social and economic characteristics of traditional marriage laws.” The author explores the legalization of same-sex marriage in the Netherlands, Spain, Canada, and South Africa, as well as Massachusetts, and attempts to draw a correlation between legalizing same-sex marriage, and a break-down in the institution of marriage, the family, and community.

Eaton, Sarah. *Lewis v. Harris: Same-Sex Marriage is a Question for the Legislature, Not the Courts.* 16 Law & Sexuality 157 (2007).

This article provides in-depth review and analysis of the New Jersey Supreme Court's decision in *Lewis v. Harris*, requiring that same-sex couples be treated equally under the law, but deferring to the legislature the decision of whether or not to call it "marriage". Ultimately, the New Jersey legislature adopted civil unions instead of same-sex marriage. The author argues that civil unions are inherently unequal.

Kindregan, Charles P., Jr. *Religion, Polygamy, and Non-Traditional Families: Disparate Views on the Evolution of Marriage in History and in the Debate Over Same-Sex Unions.* 41 Suffolk U. L. Rev. 19-48 (2007).

The author argues that marriage has not been static, but rather has adapted to a changing society. The author then explores the evolution of the non-traditional family during the years leading up to the struggle for same-sex marriage, and ultimately, the *Goodridge* decision in Massachusetts, before comparing same-sex marriage in Massachusetts with same-sex marriage in other countries such as Canada, South Africa, Belgium, The Netherlands, and Spain. The article concludes with a discussion of interstate conflict arguments that may result from *Goodridge*.

b. Pro

Books:

Mohr, Richard D. *The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights.* New York, Columbia University Press (2007).

The author argues that we are in the midst of a cultural shift with respect to the societal view of gay men and lesbians. The book begins with a review of the events of the past decade, and a discussion of the prejudices and obstacles still faced by lesbians and gay men. The author dedicates chapters to the issues of sexual privacy (from *Bowers v. Hardwick* to *Lawrence v. Texas*), same-sex marriage, equal protection, civil rights (housing, employment, and public accommodations), and gays in the military.

Polikoff, Nancy D. *Beyond Straight and Gay Marriage: Valuing all Families Under the Law.* Boston, Beacon Press (2007).

The author believes the LGBT community has been too narrowly focused on obtaining access to civil marriage, when the focus should be on creating a legal framework that values all families equally. She explores the laws of other countries where marriage matters less and argues for domestic partner benefits for all families. She explores the issues of medical care, family and medical leave, dissolution of relationships, death, providing for children, wrongful death, worker's compensation, and social security.

Articles:

Bonauto, Mary. *Ending Marriage Discrimination: A Work in Progress.* 40 Suffolk U.L. Rev. 813-859 (2007).

The author explores same-sex marriage in the larger social context of the struggle for equal rights for queer people. She begins with a review of the types of discrimination homosexuals have faced over the years. In this context, the author addresses the issues of sodomy, pathology, employment, military service, hate crimes, parental rights, and ultimately family law and marriage. The author then retraces cases in Hawaii, Alaska, and Vermont, leading up to the *Goodridge* decision legalizing same-sex marriage in Massachusetts, before summarizing the post-*Goodridge* cases in New Jersey, Connecticut, Maryland, and Iowa, as well as the losses to the same-sex marriage cause in New York and Washington. Finally, the author concludes with her view of what the future may hold for same-sex marriage.

Brown, Herbert C., Jr. *History Doesn't Repeat Itself, But it Does Rhyme- Same-Sex Marriage: Is the African American Community the Oppressor This Time?* 34 S.U. L. Rev. 169-200 (2007).

The author compares the arguments against same-sex marriage with the arguments used to oppose interracial marriage. The article begins by recounting the history of miscegenation laws and their ultimate demise in *Loving v. Virginia* [388 U.S. 1 (1967)]. Then, after a brief history of same-sex marriage case law, the author demonstrates similarities between this debate and miscegenation laws, focusing on the application of the Due Process and Equal Protection Clauses of the U.S. Constitution. The article concludes with a comparison of the African-American community's unfavorable reaction to the comparison.

Cahill, Courtney Megan. *"If Sex Offenders Can Marry, Then Why Not Gays and Lesbians?": An Essay on the Progressive Comparative Argument.* 55 Buff. L. Rev. 777-814 (2007).

The author discusses the Progressive Comparative (PC) Argument and how it is structurally imitative to conservatives' slippery slope argument in regard to same-sex marriage. The PC argument states that it is irrational for the state to withhold marriage from committed same-sex partners because the state already allows other "unsavory" people to get married. The article provides multiple explanations why same-sex marriage proponents utilize the PC Argument and concludes by stating that such reliance is strategically counterproductive and normatively undesirable.

Cahill, Courtney Megan. *The Genuine Article: A Subversive Economic Perspective on the Law's Procreationist Vision of Marriage.* 64 Wash. & Lee L. Rev. 393-468 (2007).

The article discusses the procreation rationale that has been employed in same-sex marriage litigation. The author discusses the idea that same-sex marriage is a type of counterfeit and how this designation has become common in the same-sex marriage debate. Cahill argues that even though the procreationist argument and the counterfeit rhetoric don't make much sense as separate ideas, they make much more sense when examined together. She analyzes the history of sodomy and miscegenation in counterfeit terms to explain the procreationist rationale for prohibiting same-sex marriage. The author suggests that the image of same-sex marriage (and reproduction) as fraud is circular and revives the imagery of disgust that once surrounded sodomy regulation.

Ho, Jeremiah A. *What's Love Got to Do With It? The Corporations Model of Marriage in the Same-Sex Marriage Debate.* 28 Whittier L. Rev. 1239- 1301 (2007).

The article provides a survey of an alternative model of marriage within contract and corporations law and seeks to evaluate this model's potential effectiveness for arguing the recognition of same-sex marriage. After a discussion of the traditional "fundamental rights" path to recognition, the article turns to an examination of the corporations model of marriage and reviews the recent legal scholarship about this model. The author makes predictions regarding how courts might approach this model and concludes with a discussion about how this model could impact current notions of marriage.

Landers, Renee M. *A Marriage of Principles: The Relevance of Federal Precedent and International Sources of Law in Analyzing Claims for a Right to Same-Sex Marriage.* 41 New Eng. L. Rev. 683-709 (2007).

This article argues that *Goodridge v. Dep't of Health* [798 N.E.2d 941 (Mass. 2003)] is consistent with U.S. Supreme Court precedent describing the right to marriage and the protections that the U.S. Constitution affords individuals with respect to this right. In addition, the article argues that in defining the rights of gay men and lesbians, it is appropriate for courts to consider actions by courts and legislative bodies of other countries. The author argues that when courts recognize rights for same-sex couples, they consequently respect the rights and dignity of all individuals.

Lavelly, Vanessa A. *The Path to Recognition of Same-Sex Marriage: Reconciling the Inconsistencies Between Marriage and Adoption Cases.* 55 UCLA L. Rev. 247-291 (2007). Note: Cross post in Adoption.

This article analyzes the inconsistent stances of those states that deny same-sex couples the right to marry, yet allow them to adopt children. The author urges courts to reconcile these inconsistencies by incorporating broader definitions of family and relationships into same-sex marriage cases. The author suggests that such an approach would allow courts to conclude that gay men and lesbians have a fundamental right to marry that states could not legally impede.

Morrison, Adele M. *Same-Sex Loving: Subverting White Supremacy Through Same-Sex Marriage*. 13 Mich. J. Race & L. 177-225 (2007).

The author focuses on the antistatutory aspect of *Loving v. Virginia* [388 U.S. 1 (1967)], and how it can be utilized in the same-sex marriage context. The article begins with a summary of the debate which compares antimiscegenation laws to laws banning same-sex marriage and how *Loving's* principles of freedom of choice, antidiscrimination, and antistatutory apply in both contexts. The article also argues how same-sex relationships challenge White supremacy and concludes by focusing on same-sex marriage as a civil rights issue.

Newstrom, Lisa. *The Horizon of Rights: Lessons from South Africa for the Post-Goodridge Analysis of Same-Sex Marriage*. 40 Cornell Int'l L.J. 781-804 (2007).

This article provides an extensive comparison between recent U.S. case law regarding same-sex marriage and the landmark case of *Minister of Home Affairs v. Fourie* from South Africa which established same-sex marriage in that country. The author also analyzes the role that foreign and international law could and should play in deciding future cases and legislation regarding same-sex marriage in the U.S. in light of its consistent reluctance to do so.

Samar, Vincent J. *Privacy and Same-Sex Marriage: The Case for Treating Same-Sex Marriage as a Human Right*. 68 Mont. L. Rev. 335-361 (2007).

The author argues that marriage (same-sex or otherwise) should be seen as a human right. He contrasts the external benefits of marriage (e.g., relational permanency, financial stability, child-rearing) with its internal benefits (the "connection to individual human dignity via the opportunity it provides its participants to achieve levels of human self-fulfillment"), stating that attainment of the latter should be the true goal of getting married. Despite this ideal, he notes that by limiting marriage rights to securing only its external benefits, as has occurred in recent U.S. same-sex marriage jurisprudence, human dignity is consequently demeaned.

Tamayo, Yvonne A. *"I Just Can't Handle It": The Case of Hernandez v. Robles*. 28 Women's Rts. L. Rep. 61-72 (2007).

Tamayo provides a critical analysis of the New York Court of Appeals' decision in *Hernandez v. Robles*, which upheld the restriction of marriage in New York state to opposite-sex couples. Tamayo argues that the court's decision is representative of a view of marriage as a static institution which is at odds with historical reality.

c. Con

Wardle, Lynn D. and Lincoln C. Oliphant. *In Praise of Loving: Reflections on the "Loving Analogy" for Same-Sex Marriage.* 51 How. L.J. 117-186 (2007).

Wardle and Oliphant present a variety of arguments against analogizing prohibitions of same-sex marriage with the prohibition on interracial marriage struck down in *Loving v. Virginia*, an analogy which they argue devalues *Loving*. Among the arguments articulated are those based upon court decisions refusing to extend the principle of *Loving* to same-sex marriage and the authors' assertion that the African-American community is opposed to same-sex marriage.

3. Civil Unions / Domestic Partnership

Purvis, Dara E. *The Right to Contract: Use of Domestic Partnership as a Strategic Alternative to the Right to Marry Same-Sex Partners.* 28 Women's Rts. L. Rep. 145-162 (2007).

Purvis provides a potential line of argument for those seeking domestic partnership rights drawing upon cases in the late 19th century seeking to use the right to contract to overturn interracial marriage bans. Although those cases were unsuccessful, Purvis argues that an increasingly contractual view of marriage makes this a viable argument for domestic partnership rights.

4. Dissolution

C. Parenting

1. General

Cruz, David B. *Heterosexual Reproductive Imperatives* 56 Emory L.J. 1157-1172 (2007).

David Cruz examines the ideology of the heterosexual reproductive imperative--the belief that the "species and society must be reproduced [and that] this is naturally and properly done only by women and men acting together, and women, queer, and transfolk should just recognize the primitive truth of that and willingly bear the burdens of laws designed to reinforce this natural reality"--for its impact upon women's reproductive autonomy, same-sex marriage claims, and transgender demand for recognition.

Dye, Bonnie D. *Expanding Parental Rights for Lesbian Couples*. 16 *Law & Sexuality* 169-179 (2007).

Miller-Jenkins v. Miller-Jenkins is a complicated interstate custody dispute between lesbian ex-partners involving conflicting decisions of Virginia and Vermont state courts. Dye provides a detailed history and analysis of the situation and the more recent Vermont decision, which has resulted in a conflict that “will have to be resolved by the United States Supreme Court.”

Reed, James A. and Michael R. Kohlhaas. *Family Law Issues Concerning Gays, Lesbians and Their Children Under Indiana Law*. 50-MAY *Res Gestae* 14-24 (2007).

Reed and Kohlhaas provide an overview of Indiana case law addressing two family law issues important to homosexuals. The authors first provide a history of cases addressing property rights gained during non-marital cohabitation, including cases involving heterosexual couples which may be applicable to homosexual couples. The authors then detail the cases addressing the status of homosexual parents in child custody and adoption proceedings.

Simmons, William J. *Three's Company for Lesbian Parental Rights and Obligations: A Discussion of Three California Decisions*. 28 *Women's Rts. L. Rep.* 163-179 (2007).

The authors examine in detail three California Supreme Court decisions handed down in August 2005 affecting lesbian parental rights: *Kristine H. v. Lisa R.*, *Elisa B. v. Superior Court*, and *K.M v. E.G.* After discussing the decisions, the authors address questions of California law left open and the potential ramifications of the decisions for other states.

Taub, Alyson. *Fit or Unfit? Homosexuality and Parenting*. 16 *J. Contemp. Legal Issues* 29- 32 (2007).

This short article presents a refutation of common arguments against the fitness of homosexuals as parents. The article argues against claims that children of homosexual parents will become homosexuals, that homosexual households produce troubled young adults, and that “dual-gender parenting” is superior to “homosexual parenting.”

Turner, William B. *The Lesbian De Facto Parent Standard in Holtzman v. Knott: Judicial Policy Innovation and Diffusion*. 22 *Berkeley J. Gender L. & Just.* 135 (2007).

Turner’s article begins with a discussion of *Holtzman v. Knott*, the first United States decision to recognize a lesbian partner as the “de facto parent” of her partner’s biological child conceived and born during the relationship. After a summary of the case, Turner explores the sociopolitical factors leading to the Wisconsin decision and its varying reception in other states.

Wald, Deborah H. *The Parentage Puzzle: The Interplay Between Genetics, Procreative Intent, and Parental Conduct in Determining Legal Parentage*. 15 Am. U.J. Gender Soc. Pol'y & L. 379-411 (2007).

Wald explores the parentage issues affecting children conceived using assisted reproductive technologies (ART) and children resulting from extra-marital affairs. She analyzes how courts have traditionally determined who should be recognized as legal parents. The author argues that courts should entertain parenting, custody, and visitation actions brought by as many adults as have meaningfully contributed to a child's parenting.

2. Custody / Visitation

Gartner, Nadine A. *Lesbian (M)otherhood: Creating an Alternative Model for Settling Child Custody Disputes*. 16 Law & Sexuality 45-75 (2007).

This article proposes an alternative framework for settling child custody disputes among lesbians. This framework incorporates a mediation model that grows from and is supported by the local lesbian community. The article discusses why lesbian families are not adequately represented within existing court frameworks.

Richman, Kimberly D. *Talking Back: The Discursive Role of the Dissent in LGBT Custody and Adoption Cases*. 16 Law & Sexuality 77-109 (2007).

In her analysis of 78 dissents in appellate cases involving gay, lesbian, and bisexual parents between 1975 and 2004, the author posits that dissenting opinions are a valuable source of new information about cases and legal issues at hand. The role of dissenting opinions in family law and sexuality and law cases is also more broadly discussed.

Trimacco, Courtney. *K.M. v. E.G., My Two Moms: California Courts Hold That a Child Can Have Two Natural Mothers*. 38 U. Tol. L. Rev. 1065-1086 (2007).

In this analysis of the California case of *K.M v. E.G.* [117 P.3d 673 (Cal. 2005)] the author argues that state legislatures should more clearly define parenthood in light of recent advances in reproductive technologies. She asserts that parents using in vitro fertilization, surrogacy, ova donation or sperm donation should have statutorily defined rights.

3. Adoption / Fostering

Harvard Law Review. *Constitutional Law—Full Faith and Credit Clause—Tenth Circuit Invalidates Oklahoma Statute Barring Recognition of Out-of-State Adoptions by Same-Sex Couples—Finstuen v. Crutcher*, 496 F.3D 1139 (10th Cir. 2007). 121 Harv. L. Rev. 660-667 (2007).

This brief note asserts that adoptions by same-sex couples should not be recognized by other states under the Full Faith and Credit Clause because this practice abrogates citizens' rights to establish their own state's public policy through their legislatures. It argues that Congress should use the Effects Clause to combat such recognitions.

Kohm, Lynne Marie, Megan Lindsey, and William Catoe. *An International Examination of Same-Sex Parent Adoption*. 5 Regent J. Int'l L. 237- 267 (2007).

Kohm et al. provide a cursory review of European laws and comparative analysis in order to extrapolate the effect that permissive same-sex parent adoption standards are having on the U.S. Rather than concede the issues as inextricably intertwined, the authors' proclaim that the "best interest of the child" standard is often subordinated by gay rights concerns. The authors also illogically postulate that trends of low fertility rates correlate with more permissive adoption standards, therefore risking population decline.

4. Pregnancy / Insemination

Paonessa, Louis. *Straightening Your Heir: On The Constitutionality of Regulating the Use of Preimplantation Technologies to Select Preembryos or Modify the Genetic Profile Thereof Based on Expected Sexual Orientation*. 33 Rutgers Computer & Tech. L.J. 331-366 (2007).

A clear overview of the science and ethical issues of embryonic technologies precedes an examination of case law and prediction of how the Court should rule on genetic modification of embryos predisposed to an undesirable sexual orientation. Paonessa articulately surmises that the state's interest arises at viability, and prior intervention is insufficient to preclude the use of these technologies should they become available.

D. Wills, Trusts, Estates / Elders

E. Domestic Violence

V. GLBT Youth / Student

VI. Health Issues

VII. Prison(er)s, Corrections, and Criminal Justice

VIII. Gender Identity

A. General

Millman, Bruce R. *Litigating Sexual Orientation and Gender Identity Issues: Developments from Coast to Coast.* 759 PLI/Lit 75-93 (2007).

Millman provides a concise practitioner's guide to recent statutory and case law on the issue of employment discrimination. Summaries are culled from New York, New Jersey, and California cases that utilize gender identity, sex, sexual orientation, and disability discrimination as litigation claims. The article goes on to provide advice to employers and briefly describes federal protections and developments in other jurisdictions. (Note for editors: This entry might best fit under the Gender Identity subheading: C. Discrimination.)

B. Legal Status

C. Discrimination

D. Family

E. Health

DeCleene, Anne C. *The Reality of Gender Ambiguity: A Road Toward Transgender Health Care Inclusion.* 16 Law & Sexuality 123-144 (2007).

DeCleene delineates the plight of transgender discrimination in healthcare caused by the legal and medical professions too often relying on a polarized definition of sex, rather than the preferred sexual continuum paradigm. DeCleene documents examples of stigmatization and urges legal reform as a catalyst for social change, health care reform, and nondiscrimination laws inclusive of transgender persons.

F. Prisoners