

# BIRDS DO IT. BEES DO IT. SO WHY NOT SINGLE WOMEN AND LESBIANS?

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## ABSTRACT

*Infertile couples have come to take assisted reproductive technologies (ART) for granted. An increasing number of single women and lesbian couples also desire to have children and turn to ART, especially donor insemination, to fulfill this desire. While most married couples find that access to ART is limited primarily by the ability to pay, for single women and lesbian couples, the story may be much different. In the United States, they may find that doctors and infertility clinics view their desires as immoral and refuse to accept them as patients, although other doctors and clinics readily accept them. In most other countries, however, it is against the law for single women and lesbian couples to make use of ART, including donor insemination.*

*In this paper I will argue that marital status and sexual orientation should not serve as a barrier to accessing the world of reproductive medicine. I will base this conclusion on two arguments. First, that justice requires that we treat like cases alike. Just as we would not accept or reject patients for cardiac rehabilitation programs based on factors such as a history of poor eating habits, so too we should not look at nonmedical factors such as marital status when deciding whether to treat infertility. For the second justification for the conclusion of equal access to ART, I will examine the concept of the family. I will argue that it is morally acceptable for single women and lesbian couples to have children and to head families.*

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Societies have rarely been tolerant of those who do not conform to its standards. In many parts of the world, including the United States and Europe, one of these standards is that children should grow up in homes with two loving heterosexual married parents. For years, this was taken as a given. Unmarried women who became pregnant out of wedlock were frequently sent away to stay with a relative or put in a home for unmarried mothers until they gave birth, at which time the babies were given up for adoption. To give birth and keep the child —

to be a single mother — was shameful. Many couples felt forced into marriage because the woman found herself to be pregnant.

Another strongly held belief was (and still is, in many parts of the world) that homosexuality was a form of mental illness; it was a choice made in response to unhappy environmental factors. Lesbians were expected to seek a cure or grow out of it, or just get married to a man. They were not expected to push for things such as equal rights for gays and the legalization of homosexual marriage. If having sexual relations with a man really was an anathema to them, then certainly they were not expected to have children. Being a lesbian is still grounds for removing a child from the custody of his or her mother.

All of this is changing. Today, an increasing number of women, straight and lesbian, are making a conscious decision to have children out of wedlock. U.S. sperm banks report that 10% of their clients are unmarried women.<sup>1</sup> For a heterosexual woman, having a child out of wedlock frequently means having sexual relations with a man just before she ovulates. Some women do not like this option however, because it may be difficult to find a man willing to be used purely for stud purposes, the woman may not approve of casual sex, fear of contracting AIDs, etc. However, for most lesbians, this is not an acceptable option. Furthermore, as many single heterosexual women do not think about single parenthood until they are in their mid-30s, established in careers and discovering there is a dearth of marriageable men, they find, as do many married women in their mid-30s, that they are infertile or subfertile.

One solution to these problems is for the women to adopt. There are drawbacks to this however: it may be impossible for a known lesbian or lesbian couple to adopt either in the United States or abroad unless they are willing to take older, handicapped children. Single women find it difficult to adopt a healthy white baby in the United States and generally have to adopt a baby from another country, usually in Central or South America, or China. This is very expensive (\$10,000–\$20,000) and some people are not comfortable with adopting an infant of another race. Another drawback to this solution is that many of these women wish to give birth to their children. The desire for a genetic link to one's child is just as strong for single women and lesbians as it is for married heterosexual couples.

Another alternative is for these women to attempt to become pregnant by using donor sperm. While this is readily available for purchase, in many states, a woman must be inseminated in a physician's office. Those women who are infertile may need to use

<sup>1</sup> Jane Mattes, *Single Mothers by Choice* New York: Times Books/Random House, 1994, p. 26.

fertility drugs, such as clomiphene citrate (clomid) or human gonadatropins (pergonal. metrodin), as well as assisted reproductive technologies (ARTs), such as in vitro fertilization (IVF) or GIFT (gamete intrafallopian transfer).

It is here, however, that many women encounter a stumbling block: in some countries it is illegal for single women and lesbians to use ARTs.<sup>2</sup> For example, the Swedish Insemination Act of 1985 discusses insemination by husband and donor (AIH and AID). It states: '... AIH and AID can only be used for the medical treatment of infertility only if the mother is married to or co-habiting with the man in question'.<sup>3</sup> It is not illegal for single women and lesbians to use AID or ARTs, although a bill was introduced in Oregon in 1995 which would have made it illegal for physicians to inseminate unmarried women.<sup>4</sup> Even without laws forbidding access to insemination or ARTs, many physicians and clinics simply refuse to help single women or lesbians to become pregnant.

I believe that it is wrong to discriminate against single women and lesbians. Unmarried fertile women should be allowed to purchase sperm and to be inseminated by a physician. Unmarried infertile women should be permitted the same access to ARTs that is permitted married infertile women and should suffer from the same constraints, which are mainly financial (the use of ARTs is expensive and usually not covered by insurance).

In order to answer the question of the permissibility of medically assisted reproduction for single women and lesbians, two questions must be addressed: is there a right to reproduce and, if so, is this a right which is restricted to married, heterosexual couples? Is a child wronged if he or she does not have two parents? I will argue that there is a right — a liberty right — to reproduce; a right which is had by all who desire children.<sup>5</sup> Single women and lesbians ought not to be denied access to insemination and ARTs.

If we look to US law as a guide, we find that there are no Constitutional provisions which would deny unmarried women access to ARTs. The Supreme Court has consistently ruled that states may not interfere with the decision to bear children. Most of these rulings focused on decisions not to bear children (*Griswold v.*

<sup>2</sup> Robert H. Blank, *Regulating Reproduction* New York: Columbia University Press, 1990, pp. 147–59.

<sup>3</sup> Marc Bygdemna, 'The Swedish Insemination Act', *Acta Obstet Gynecol Scand* (70), 1991, p. 265.

<sup>4</sup> Oregon House Bill 2303, *USA Weekend*, 14–16 April 1995, pp. 16–18.

<sup>5</sup> Here I am discussing only those people with reasonably stable personalities who would make, at least, adequate parents. I am not considering people such as child abusers.

Connecticut: contraception; *Roe v. Wade*: abortion). However, the justification for these decisions was based on the right to privacy. This justification applies to individuals as well as married couples because the right to privacy resides in individuals, not couples. Furthermore, the right to privacy serves as a justification for the right to procreate as well as a right not to procreate. A single woman or lesbian who is denied access to insemination or ARTs is deprived of her right to procreation just as she would be were she denied access to contraception or abortion.<sup>6</sup>

As a right to privacy is a moral, as well as a legal right, the preceding legal justification will serve as a moral justification. A right to privacy covers the very personal decision of whether or not to beget children.

Procreation is generally understood as a liberty right due to the intense need many people feel to procreate and raise a family. A liberty right is generally understood to be a right with which others ought not to interfere. However, these are cases in which women (and men) are unable to procreate on their own due to infertility and must turn to the medical profession for help. In such cases, the woman has a medical problem and, just as in the case of other medical problems, has a claim against the medical profession to receive help, unless there are good reasons to deny her care. In other words, a woman has a right to receive medical care for a problem — a claim right — unless competing moral considerations override it. I will argue that such purported moral considerations do not exist. Objections to single women and lesbians becoming single mothers by choice are based on prejudice, not reason. Mere prejudice does not constitute adequate moral grounds for overriding a right.

Access to medical technology has not traditionally been limited by the perceived social worth of the individual seeking treatment. This is a criterion which has been repeatedly criticized in the medical ethics literature. We would not deny a woman a heart transplant simply because she is an abusive mother, or even a type A personality. Such factors are irrelevant to her need for treatment. Similarly, we should not deny a woman access to medically assisted reproduction simply because she is single or a lesbian unless it can be shown that such factors are morally relevant (e.g., any children born to such women will be irrevocably harmed) and not merely social worth factors. As justice demands that like cases be treated alike, unless we are willing to have a social worth litmus test for access to medical technology (with 'social worth' presumably being defined by narrow minded

<sup>6</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review* (102), 1989, pp. 1649–51.

conservative members of society), we must allow single women and lesbians to have access to donor insemination or ARTs.

It is not enough merely to argue that unmarried women have a right to procreate. Rights can be trumped by competing moral considerations. It is frequently argued that even though single women and lesbians have a right to privacy, they ought not to exercise this right in the area of procreation because children will be harmed if they are raised by unmarried women, especially if such women are lesbians. It is claimed that children are wronged if they do not have two parents. In this section I will first examine arguments which purport to show that single women, regardless of sexual orientation, do not make good parents and hence ought not to procreate. I will then examine arguments which focus on lesbians and purport to show that lesbians, either single or in a committed relationship, ought not to procreate.

Dan Quayle, a man not known for his deep analysis of issues, summarized the beliefs of many Americans in his infamous Murphy Brown speech. One of his main points is that two parents, married to each other, are better for children, in most cases, than just one parent. He believed that what he called 'the breakdown of the family structure' is responsible for much of what ails society because it leads to a lack of personal responsibility and social order, and a dependence on welfare. Boys who grow up without a father in the family to serve as a role model will join gangs.

When families fail, society fails. The anarchy and lack of structure in our inner cities are testament to how quickly civilization falls apart when the family foundation cracks. Children need love and discipline. They need mothers and fathers . . . It is from parents that children learn to behave in society; it is from parents above all that children come to understand values and themselves as men and women, mothers and fathers.<sup>7</sup>

Dan Quayle however, is wrong. I will argue that single women and lesbian couples are at least as good as heterosexual couples at being parents: that children are not harmed by being raised outside of what is considered to be the traditional household. Single women and lesbian couples are capable of raising happy, well adjusted children: they do it all the time. In fact, it is quite likely that it is better for a child to be raised by a stable, loving, committed single woman or lesbian couple than by a couple who is heterosexual and married, but nonetheless are dysfunctional and abusive. Societies will

<sup>7</sup> Dan Quayle, 'Restoring Basic Values: Strengthening the Family', *Vital Speeches of the Day* (58), 15 June 1992, p. 519.

flourish, not fail, when children grow up in the care of loving, committed parents who take seriously the responsibility of raising healthy, well adjusted children. Given all the costs involved with the use of ARTS, financial, as well as physical and psychological, it is likely that the unmarried women who go to such lengths to become mothers will be responsible parents. These costs ensure that reproduction is a well thought out decision; not merely something done on a whim.

Many people, such as Quayle, object to permitting any unmarried women, regardless of sexual orientation, to have access to medically assisted reproduction on the grounds that unmarried women, without a constant male presence in the home, do not make good parents. The reasons for this are varied: they range from the claim that unmarried women are more likely to live in poverty which puts children at risk, to the belief that without a father in the home, children will grow up maladjusted due to a lack of male role model.

The claim that single mothers typically live in poverty is a familiar one. However, especially among white American women, this decline into poverty occurs as a result of divorce. In such situations, a woman and her children who lived comfortably on the income of either the father or both parents, become reduced in economic status when no longer supported by the father's income. It is assumed that single mothers by choice will also have the problem of an impoverished situation due to a lack of a father's income, especially as the woman's income is generally less than her husband's.

However, the average single mother by choice is better educated and has a better (higher paying and higher prestige) job than her married counterpart.<sup>8</sup> According to Lynne Wilcox of the CDC, 59% of women seeking infertility services have 16 or more years of education.<sup>9</sup> Furthermore, those who seek out medical assistance to reproduce have to be financially sound as such services aren't cheap. A woman can expect to pay \$140–\$175 for a vial of sperm,<sup>10</sup> \$200 or more for an insemination, while fertility drugs can cost upwards of \$2000 a month, and a single attempt at in vitro fertilization (IVF) can cost \$12,000.<sup>11</sup> Obviously, a woman who uses medically assisted

<sup>8</sup> Behnaz Pakizeg, 'Emerging Family Forms: Single Mothers by Choice — Demographic and Psychosocial Variables', *Maternal-Child Nursing Journal* (19) Spring 1990, pp. 6, 11.

<sup>9</sup> Lynne Wilcox, MD., M.P.H., Centers for Disease Control, speaking on US regulatory issues at 'Assisted Reproduction: a Process Ripe for Regulation: Social, Ethical and Legal Issues', a workshop offered by the National Advisory Board on Ethics and Reproduction, 20 Oct. 1995, Washington, DC.

<sup>10</sup> Price list, California Cryobank, Los Angeles, CA 90024.

<sup>11</sup> Shannon Brownlee, 'The Baby Chase', *US News and World Report*, 5 Dec. 1994.

reproduction must have an income well above the poverty line: such services are rarely covered by insurance.<sup>12</sup>

Another oft heard objection to single mothers by choice is that without a male parent in the household, the children will grow up maladjusted. Pop psychology books, as well as many psychology courses, teach that children, especially boys, need to have a male role model. Girls need to learn how to relate to men and boys need to learn how to become men. This, it is hypothesized, can only happen with a father. By having only a mother, children miss an essential part of psychological development and hence will be psychologically maladjusted.

However, when children of single parents, be they heterosexual or lesbian, are studied, they are found to be no different, psychologically, than children raised by a mother and father. The initial research which was done on children being raised in homes headed solely by women found that these children did suffer from psychological problems. However, these studies only looked at children of divorced mothers. This research did not recognize that there was a confounding variable: in addition to any psychological problems which might result from only having a female parent in the home, psychological problems might also be due to the trauma of the parents' divorce. When research was done which examined the psychological development of children raised by single mothers by choice, of whatever sexual orientation, researchers discovered that children who only had a mother but who had not gone through a divorce were as well adjusted as their peers who were raised by a mother and father. Hence the lack of a biological father is not, in and of itself, detrimental to a child's well-being.<sup>13</sup> Furthermore, many single mothers by choice make sure that their children are exposed to men such as teachers or friends, so the children don't grow up knowing only women without the presence of a male role model.<sup>14</sup>

<sup>12</sup> Shannon Brownlee, 'The Baby Chase', *US News and World Report*, 5 Dec. 1994, p. 92.

<sup>13</sup> Patricia J. Falk, 'Lesbian Mothers: Psychosocial Assumptions in Family Law', *American Psychologist* (44), June 1989, pp. 941-7.

David K. Flats, et. al., 'Choosing Motherhood: a Comparative Study of Lesbian and Heterosexual Parents and Their Children', *Developmental Psychology* (31), 1995, pp. 105-114.

Charlotte J. Patterson, 'Children of Lesbian and Gay Parents', *Child Development* (63), 1992, pp. 1029-33.

<sup>14</sup> Ruth Mechaneck, 'Single Mothers by Choice: A Family Alternative', in Marjorie Braude, ed. *Women, Power and Therapy: Issues for Women*, New York: The Haworth Press, 1989, p. 274.

Charlotte J. Patterson, 'Children of Lesbian and Gay Parents', op. cit., pp. 1033.

Not only did these children not grow up suffering psychological harm, but being raised either by a single mother or by a lesbian couple may confer some benefits on the children. When children grow up having mothers who must take on all parenting functions, instead of a mother and father who may divide parenting functions along traditional gender lines, they learn that women don't have to be just wives and mothers, but can be anything they want to be.<sup>15</sup> Some studies, though not all, showed that children of married heterosexual parents tended to be more bossy, domineering and negative than were children of lesbian parents.<sup>16</sup>

Single women and lesbians have also been found to have the same level of parenting skills as traditional married couples.<sup>17</sup> This should not come as a surprise given that they do not usually decide to become parents until they are in their mid to late 30s, by which time people have generally gained maturity and patience. Additionally, the four years it usually takes single women to decide to become single parents are spent figuring out how to deal with problems such as child rearing, child care and finances.<sup>18</sup>

Many people who might accept single heterosexual woman as mothers object to lesbians choosing to become parents. Many courts have removed children from the custody of their lesbian mothers on the grounds that such women are unfit parents.<sup>19</sup> I have already addressed the issues that lesbians do not make good parents and their children are psychologically maladjusted, and found that neither assertion is supported by the evidence. In this section I will examine three arguments which target lesbian parents: the children will grow up to be homosexual, the children will suffer social ostracization or harassment, and the children will be sexually abused. I will argue that none of these assertions are supportable, this eliminating the last group of moral considerations which would override a lesbian's right

<sup>15</sup> Jean Renvoize, *Going Solo: Single Mothers by Choice*, London: Routledge and Kegan Paul, 1985, pp. 7–8.

<sup>16</sup> Charlotte J. Patterson, 'Children of Gay and Lesbian Parents', op. cit., pp. 1032–3.

<sup>17</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review*, p. 1645.

David K. Flaks, et. al., 'Choosing Motherhood: a Comparative Study of Lesbian and Heterosexual Parents and Their Children', op. cit., pp. 105–14.

<sup>18</sup> Ruth Mechaneck, 'Single Mothers by Choice: a Family Alternative', p. 272.

<sup>19</sup> 'Custody Denials to Parents in Same-Sex Relationships: an Equal Protection Analysis', *Harvard Law Review* (102), pp. 617–36.

Patricia J. Falk, 'Lesbian Mothers: Psychosocial Assumptions in Family Law', op. cit.

'Virginia High Court Declares Lesbian Unfit to Raise Son', *St. Louis Post-Dispatch*, Sat., 22 April 1995.

to procreate. There are other objections to lesbian parenting, however, space constraints permit me only to examine these, the strongest of the arguments. However, if the strongest arguments raised against a position fail, it is unlikely the position can be felled by weaker arguments.

The main objection to lesbian parenting is that being continually exposed to a homosexual parent will cause a child to become a homosexual. This objection assumes that there is something wrong or immoral with being a homosexual. While I disagree with this assumption, I will not explore what is wrong with it here as there is no need to: even if we grant the assumption that homosexuality is wrong, the evidence does not support the idea that children of homosexuals will choose to be homosexual. First, it is becoming increasingly accepted that there are biological determinants for a person's sexual orientation. Thus sexual orientation is a matter of nature, not nurture. Second, most lesbians were raised by heterosexual parents, yet that did not alter their sexual orientation: they became homosexual nonetheless.<sup>20</sup> Third, an increasing number of researchers are doing research on the offspring of homosexual parents and have consistently reported that the percentage of children living with homosexual parent who are themselves homosexual does not differ from the percentage of children living with heterosexual parents who are homosexual.<sup>21</sup>

Another objection to lesbian parenting is that their children will be ostracized or harassed.<sup>22</sup> There is some truth to this claim as it is well known that children can be cruel to those who are different from the norm. Even so, there are two points to be made. First, if this is a genuine objection to lesbian parenting, then it should also serve as an objection to anyone who deviates from the norm becoming parents (for example: philosophy professors!). However, no one takes seriously the argument that only 'normal' people (whatever that means) should be permitted to procreate, so the fact that lesbians deviate from current societal norms should not serve as an impediment to their begetting children. Second, studies of children of lesbian parents have shown that many of these children are

<sup>20</sup> J. Michael Bailey, et. al., 'Sexual Orientation of Adult Sons of Gay Fathers', *Developmental Psychology* (31), p. 124.

<sup>21</sup> J. Michael Bailey, et. al., 'Sexual Orientation of Adult Sons of Gay Fathers', *ibid.*, p. 125.

Charlotte J. Patterson, 'Children of Lesbian and Gay Parents', *op. cit.*, pp. 1030–32.

<sup>22</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review*, *op. cit.*, p. 1638.

Charlotte J. Patterson, 'Children of Lesbian and Gay Parents', *op. cit.* p. 1029.

accepting of their parents' sexual orientation and brush off any harassment. Of those children who are embarrassed by what their peers know about their mothers, most still support their mothers' willingness to stand up for what they believe.<sup>23</sup>

A final objection to lesbian parenting is that their children will be sexually abused.<sup>24</sup> However, since most child molesters are heterosexual men,<sup>25</sup> the argument could be made that children are actually safer living with single heterosexual women, single lesbians or lesbian couples than they are living in a home with a heterosexual adult male. Thus this objection actually ends up supporting the argument that becoming a single mother by choice is permissible.

It should now be apparent that single women and lesbians can be good parents and raise psychologically healthy children. This does not mean that all single women and all lesbians will be great parents any more than all heterosexual married couples will be great parents. But if there are no differences between single mothers and couples in the ability to parent nor in the psychological health of their offspring, then this should not be used as a reason to deny single women and lesbians the right to reproduce.

I have argued that single women and lesbians have a right to procreate: the same right had by married, heterosexual couples. When insemination or ARTs are denied to them, they are prevented from procreating. Such women should only be prevented from begetting children if there are competing moral considerations which override their right to reproduce. If children of single women and lesbians were seriously harmed by having a single mother, regardless of sexual orientation, then there would be competing moral considerations which would trump their right to reproduce. However, there is no evidence that these children are harmed. Hence, single women and lesbians should be permitted to bear children and should be granted access to AID and ARTs. In the United States, clinics and physicians which currently refuse to accept single women and lesbians should change their policies. Countries which have laws which

<sup>23</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review*, p. 1638.

Charlotte J. Patterson, 'Children of Lesbian and Gay Parents', *op. cit.*, p. 1033.

<sup>24</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review*, *op. cit.*, p. 1638.

Patricia J. Falk, 'Lesbian Mothers: Psychosocial Assumptions in Family Law', *op. cit.*, p. 942.

<sup>25</sup> 'Developments — Sexual Orientation and the Law', *Harvard Law Review*, *op. cit.*, p. 1638.

Patricia J. Falk, 'Lesbian Mothers: Psychosocial Assumptions in Family Law', *op. cit.*, p. 944.

interfere with the right of single women and lesbians to reproduce should change their laws. The desire to reproduce is nearly universal and the right to reproduce should not be denied to women merely because they are unmarried or lesbians.

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