

# Gender has no place in the legal definition of parenthood, says family law expert

November 5 2010, By Jessica Martin

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The continuing debate over same-sex marriage has put the issue of gender at the forefront of conversations about whom the law recognizes as a child's parents.

“The shift in family law’s treatment of gender has been transformative,” says Susan Appleton, JD, family law expert and the Lemma Barkeloo and Phoebe Couzins Professor of Law at Washington University in St. Louis.

Family law has gone from a regime that “systematically and explicitly classified gender and subordinated women, especially married women, to a body of rules that, with few exceptions, insists that gender must be

ignored, at least formally,” Appleton says.

Some legal scholars and activists, however, resist what Appleton calls “family law’s equality project.” They argue, she says, for an “integrated model of parenthood,” which would bring together biological and other functions and aspects of parentage.

Appleton challenges the constitutional validity of the integrated approach because “most proponents of the model conclude that children need exactly one mother and one father — a gendered combination missing or disrupted when a child has two legal parents who are both women or both men, when a child has only one legal parent, or in the occasional case in which courts have recognized three legal parents for a given child.”

Appleton supports legal recognition of a diverse range of parent-child relationships, without regard to sex or gender. She argues that this diversity approach follows directly from family law’s equality project, with its rejection of traditional gender roles and sex-based classifications.

“Family law today seeks to change the way things are, not reinforce existing gender scripts and inequities,” Appleton says.

“Proponents of the integrated model fail to provide a persuasive reason why gender should matter legally even if men and women perform parental functions differently,” she says.

The legal debate about gender and parentage has increasingly relied on empirical data from the social sciences claiming to show how children fare in different familial arrangements.

“Although the most recent studies provide support for the diversity

approach and evidence from the social sciences might be valuable on a range of issues, looking to these data to resolve whether gender should matter in the law of parentage is misguided, regardless who momentarily holds the upper hand,” Appleton says.

“Studies looking at sexuality, gender performance and family characteristics are fraught with value judgments, and findings about overall well-being are often met with counter-evidence, among other problems.

“Such studies also often reflect the marginalization of nontraditional families under the prevailing legal regime, including the exclusion of same-sex couples from [marriage](#) in most states,” she says.

Appleton says that parentage rules are important because of the authority and responsibility that family law invests in those individuals deemed parents and the relative lack of legal status and protection accorded to non-parents.

She discusses her support for the diversity approach to the law of parentage and the problems in constructing a legal regime based on empirical findings in “[Gender](#) and Parentage: Family Law’s Equality Project in Our Empirical Age,” a chapter in the forthcoming book, *What is Parenthood?*

Provided by Washington University in St. Louis

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