Three Men and a Baby: Second-Parent Adoptions and Their Implications

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THREE MEN AND A BABY:
SECOND-PARENT ADOPTIONS AND THEIR IMPLICATIONS

Society ought to grant legal recognition, by permitting an adoption, to the relationship between a child and a person who functions as that child’s parent.\(^1\) In many instances, this would advance the best interests of the child.\(^2\) The highest courts of three states have already granted joint adoptions to two unmarried people who functioned as parents to a child.\(^3\) In each of these instances, one of the parents already had a legally recognized parent-child relationship with the child by virtue of being the child’s biological parent.\(^4\) Even though the letter of the law in each state prohibited biological parents from sharing parental rights and responsibilities with adoptive parents, each court looked beyond the language of the statute to its purpose, which is to advance the best interests of the child, and allowed the adoptions.\(^5\) Each state’s statute in effect provided that the biological parent lost all parental rights and responsibilities with regards to the child upon the child’s adoption.\(^6\) Yet, in each instance, the court placed primary em-
phasis on the best interests of the child, which was the legislative intent behind the provision, and hence allowed the rights and responsibilities of the biological parent to continue, while permitting an adoptive parent to gain parental rights and responsibilities. 7

Other courts should follow this lead, placing the best interests of the child above all else when considering whether to grant legal recognition to a child’s relationship with a person who functions as his or her parent. 8 In so doing, courts should not preclude the adoption solely on the basis of the sexual orientation of the person seeking to adopt. 9 Furthermore, when more than two people function as parents to a child, society’s laws ought not to limit a child to only two legally recognized parents. 10 Such a limit may not advance the best interests of a child. 11

Section I of this Note surveys the facts, statutory background and courts’ reasoning in cases from three states where the courts permitted unmarried cohabitants to adopt a child. 12 Section II applies the general statutory scheme of the three states, and the “best interests of the child” reasoning used in each of the cases, to argue that a child ought not to be limited to only two legal parents. 13

I. ALLOWING TWO UNMARRIED COHABITANTS TO ADOPT A CHILD

Since June of 1993, the highest courts in three states and the District of Columbia have allowed adoption of a child by unmarried cohabitants. 14 In the most recent case, the New York Court of Appeals

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7 See In re Tammy, 619 N.E.2d at 318, 321; In re Jacob, 660 N.E.2d at 399, 404, 405-06; In re B.L.V.B., 628 A.2d at 1273, 1274, 1276.
8 See Bryant, supra note 1, at 241.
10 See infra notes 161-207 and accompanying text for a discussion of why society ought not to limit a child to two legally-recognized parents when he or she has a parent-child relationship with more.
11 See infra notes 160-206 and accompanying text for a discussion of how limiting a child to two parents may not be in that child’s best interests.
12 See infra notes 14-134 and accompanying text for a discussion of the facts, applicable statutes, and courts’ reasoning which allowed three states to permit adoption by unmarried cohabitants.
13 See infra notes 135-207 and accompanying text for a discussion of how the statutes and potential best interests of the child allow more than two parents per child.
14 See In re M.M.D., 662 A.2d 837, 840 (D.C. 1995); In re Tammy, 619 N.E.2d at 315, 316; In re Jacob, 660 N.E.2d at 398; In re B.L.V.B., 628 A.2d at 1272.
on November 2, 1995 allowed a woman to adopt her partner’s child, and an unmarried man and woman together to adopt the woman’s biological child, without extinguishing the biological mother’s parental rights and obligations in either instance. In September of 1993, the Supreme Judicial Court of Massachusetts allowed two women together to adopt the biological child of one of the women without extinguishing the biological mother’s parental rights and obligations. Similarly, in June of 1993, the Supreme Court of Vermont allowed one woman to adopt her partner’s biological child without extinguishing the mother’s parental rights and obligations.

A. The Adoptions

Although each of these adoptions occurred in different states, the governing laws are similar in salient details. In all of the states, adoption is not a common-law creation but rather a creature of statute. Each state’s adoption statute indicates who may adopt, providing for adoption by either an individual or a husband and wife together. Each state’s statute further provides that adoption extinguishes the parental rights and obligations of the biological parent. However, none of the statutes specifically provide for adoption by two or more unmarried people.

The purpose underlying all of the statutes is an attempt to embody and protect the best interests of the child. Thus, the courts of New York, Massachusetts and Vermont all faced the issue of whether two unmarried individuals who were not both the biological parents of the child could become the legal parents of the child, despite the lack of a specific provision to that effect in the state’s adoption statute.

15 See In re Jacob, 660 N.E.2d at 398, 404.
16 In re Tammy, 619 N.E.2d at 316, 321.
17 See In re B.L.V.B., 628 A.2d at 1272, 1274, 1276.
18 See infra notes 19–23 and accompanying text for a discussion of the similarities in the state adoption statutes.
19 See In re Tammy, 619 N.E.2d at 317; Davis v. McGraw, 92 N.E. 332, 332 (Mass. 1910); In re Jacob, 660 N.E.2d at 399; In re Eaton, 111 N.E.2d 431, 432 (N.Y. 1953); In re B.L.V.B., 628 A.2d at 1272–74.
In re Tammy, 619 N.E.2d at 322 (Lynch, J., dissenting).
23 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 399; In re B.L.V.B., 628 A.2d at 1276 & n.5.
In re Tammy, 619 N.E.2d at 315; In re Jacob, 660 N.E.2d at 398; In re B.L.V.B., 628 A.2d at 1272.
1. Vermont: *In re B.L.V.B.*

In 1993, the Supreme Court of Vermont, in *In re B.L.V.B.*, unanimously allowed one woman to adopt her partner's biological child without extinguishing the mother's parental rights and obligations. In Vermont, adoption is solely a creature of statute. Section 431 of the Vermont adoption statute provides that a single adult, or a husband and wife together, may adopt a child and requires that if an adult seeking to adopt is married, the spouse must join in the adoption. The statute also provides, in section 448, that the adoption terminates the rights of the biological parent.

Because adoption in Vermont is a statutory creation, the court examined the statute in order to decide whether to permit the adoption. The court noted that the statute's primary objective is the promotion of children's welfare. Thus, in applying the statutes, Vermont courts seek to implement that purpose by looking not only at the words of the statute but also at its reason and spirit to avoid results that are irrational, unreasonable or absurd.

The petitioners in *In re B.L.V.B.*, Jane and Deborah, had lived together in a committed relationship since 1986. Together they decided to have and rear children. On two separate occasions, Jane gave birth to a son after being impregnated with sperm from an anonymous donor. Deborah assisted the midwife at both births, and had been equally responsible for parenting the children since their births.

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25 628 A.2d 1271.
26 *Id.* at 1272, 1276.
27 *See id.* at 1272–74.
28 Vt. STAT. ANN. tit. 15, § 431. Specifically, the statute provides that "[a] person or husband and wife together . . . may adopt any other person" and that "[a] married man or a married woman shall not adopt a person or be adopted without the consent of the other spouse." *Id*.
29 *Id.* § 448.
30 *Id.* Specifically, the statute provides:

The natural parents of a minor shall be deprived, by the adoption, of all legal right to control of such minor . . . [but] when the adoption is made by a spouse of a natural parent, obligations . . . and rights of . . . the natural parent who has intermarried with the adopting parent shall not be affected.

*Id.*
31 *See In re B.L.V.B.*, 628 A.2d at 1272–74.
32 *Id.* at 1273 & n.1.
33 *See id.* at 1273.
34 *Id.* at 1272.
35 *See id.*
36 *See In re B.L.V.B.*, 628 A.2d at 1272.
37 *See id.*
Jane and Deborah filed uncontested adoption petitions seeking legal recognition of their status as co-parents, asking the probate court to allow Deborah to legally adopt the children while leaving Jane's parental rights intact. Both the Department of Social and Rehabilitation Services and a separate psychologist determined that the adoptions were in the best interests of the children, and recommended that the court allow the adoptions for the psychological and emotional protection of the children. The probate court nevertheless denied the petition, holding that the Vermont adoption statute requires that for a couple to adopt together, the couple must be married, and that if the two are not married, the parental rights and obligations of the biological parent terminate upon adoption.

The Vermont Supreme Court first examined the language of the statute to determine whether Vermont law requires the termination of a biological mother's parental rights if her children are adopted by a person to whom she is not married. Noting that section 431 allows an unmarried person to adopt, and that the only limitation on that right is that if the person to be adopted is married, his or her spouse must consent to the adoption, the court determined that only a restrictive reading of section 448, which severs the rights of the biological parent upon adoption, would exclude Deborah from adopting the two children. Because the legislature adopted this provision in 1947, the court determined that the legislature did not consider, and thus neither explicitly condemned nor condoned, adoption by unmarried couples.

Thus, finding no specific guidance, the court turned to the legislative purpose behind section 448. After close examination of the statute, the court concluded that the legislature intended to prevent a biological parent's continued involvement from disrupting the family unit formed by the adoption. The court noted that this intent would not apply to the situation here, because both the biological mother and the adoptive mother comprise the child's family unit.

To avoid frustrating the purpose behind a statute, the court asserted, its interpretation must change as social mores change. Thus,

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38 See id.  
39 See id.  
40 See id.  
41 See In re B.L.V.B., 628 A.2d at 1272.  
42 Id. at 1279.  
43 Id. at 1273-74, 1273 n.2.  
44 Id. at 1274.  
45 Id.  
46 See In re B.L.V.B., 628 A.2d at 1274.  
47 Id. at 1275.
the court refused to conclude that the legislature intended to terminate the rights of a biological parent who would continue raising the child, because such a conclusion would defeat adoptions otherwise in the best interests of the children. 48 Hence, the court allowed adoptions by same-sex, unmarried parents to fall within the provision in section 448, allowing a stepparent to adopt his or her spouse's child without extinguishing the spouse's parental rights. 49

Explicitly declining to approve or disapprove of Jane and Deborah's relationship, and emphasizing that Deborah had acted as a parent to the children from the moment they were born, the court allowed the adoption. 50 In so doing, the court asserted that denying the children of same-sex unions a legal relationship with their de facto second parents would, as a matter of law, violate the best interests of the children and the purpose of the statute. 51 The Vermont Supreme Court thus concluded that the statutory language did not prohibit the adoptions, that terminating the birth mother's rights would reach an absurd result in these circumstances and that such a result was inconsistent with the best interests of the children and the public policy of Vermont. 52 Therefore, the court allowed Jane and Deborah to adopt Jane's biological children whom they both parented from birth. 53

2. Massachusetts: In re Tammy 54

In 1993, a divided Supreme Judicial Court of Massachusetts ("SJC"), in In re Tammy, allowed two unmarried cohabiting women, one of whom was the biological mother of the child, to jointly adopt that child. 55 In Massachusetts, as in Vermont, the law of adoption is purely statutory. 56 Thus, the Massachusetts courts, in determining when to allow an adoption, must examine the relevant statute's language and purpose. 57

Section 1 of chapter 210 of the Massachusetts General Laws provides that any adult may petition the probate court for permission to adopt someone younger, unless the person to be adopted is the wife,
husband, brother, sister, uncle or aunt of the petitioner. The statute does not explicitly forbid or require anyone else to join the petition, other than the prospective parent’s spouse, if he or she is married.

Section 6 of the statute does provide, however, for the termination of the parental rights and obligations of the child’s biological parent upon entry of an adoption decree. The legislative intent to promote the best interests of the child is evidenced throughout the statute governing adoptions.

At the time of the case, Helen and Susan had lived together in a committed relationship for more than ten years. Like Deborah and Jane in the Vermont case, Helen and Susan planned together to have a child whom they would jointly parent. After conceiving by artificial insemination, Susan gave birth to Tammy. Since Tammy’s birth, both Susan and Helen had equally reared her, providing her with what the court determined to be a comfortable home and a warm, stable and supportive environment.

A wide variety of witnesses “testified to the fact that Helen and Susan participate equally in raising Tammy, that Tammy relates to both women as her parents, and that the three form a healthy, happy, and stable family unit.” Evidence also indicated that the adoption was important for Tammy financially as well as emotionally. In addition, Helen and her living children and descendants, whether by blood or adoption, are beneficiaries of three irrevocable family trusts. An attorney appointed to represent Tammy’s interests strongly recommended that the court grant the joint petition.

Based on this evidence, a judge of the probate and family court entered a decree allowing both Helen and Susan to adopt Tammy, after determining that they functioned separately and together as the custodial and psychological parents of Tammy and that it was in Tammy’s best interests for both to adopt her. The judge asked that the appeals court decide, however, whether such a decree was possible as a matter

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59 See In re Tammy, 619 N.E.2d at 318.
60 Chapter 210, § 6.
61 See In re Tammy, 619 N.E.2d at 319.
62 See id. at 316.
63 See id.; In re B.L.V.B., 628 A.2d 1271, 1272 (Vt. 1993).
64 See In re Tammy, 619 N.E.2d at 316.
65 See id.
66 Id. at 317.
67 See id.
68 See id.
69 See In re Tammy, 619 N.E.2d at 317.
70 See id. at 315-16.
of law.\textsuperscript{71} The SJC then transferred the case to itself on its own motion to determine if anything in the law of the Commonwealth would prevent this adoption.\textsuperscript{72} Acknowledging that the legislature primarily intended that the adoption statute advance the interests of the child, the SJC first considered whether the statute permitted two unmarried cohabitants to adopt.\textsuperscript{73} The court then turned to the issue of whether Susan's legal relationship with Tammy would have to terminate upon Tammy's adoption.\textsuperscript{74}

In considering whether the statute permitted the joint adoption, the SJC applied the "legislatively mandated rule of statutory construction that 'words importing the singular number may extend and be applied to several persons'" to determine that more than one person may adopt a child.\textsuperscript{75} The SJC noted that the legislature specifically demarcated those adoptions which would be counter to public policy in another section of the chapter and did not prohibit adoption by two unmarried individuals.\textsuperscript{76} Furthermore, the SJC indicated, the legislature used general language to define who may adopt and who may be adopted so that the probate court could consider a variety of adoption petitions which might be in the best interests of the child.\textsuperscript{77}

After determining that there was no specific statutory prohibition against Susan and Helen's adoption of Tammy, the SJC considered whether this adoption was in Tammy's best interest.\textsuperscript{78} The court noted that this adoption would result in a plethora of financial benefits to Tammy.\textsuperscript{79} Perhaps more importantly, the SJC reasoned, the adoption

\textsuperscript{71} See id. at 316.
\textsuperscript{72} See id. at 316, 317.
\textsuperscript{73} See id. at 318.
\textsuperscript{74} See In re Tammy, 619 N.E.2d at 321.
\textsuperscript{75} Id. at 319, 321. This maxim requires that one read section 1 of chapter 210 to permit:

more than one person of full age [to] petition the probate court of the county in which [they] reside[ ] for leave to adopt as [their] child another person younger than [themselves] unless such other person is [their] wife or husband, or brother, sister, uncle or aunt, of the whole or half blood.

MASS. GEN. LAWS ch. 210, § 1 (1994); MASS. GEN. LAWS ch. 4, § 6 (1994); See In re Tammy, 619 N.E.2d at 319.

\textsuperscript{76} In re Tammy, 619 N.E.2d at 319. Chapter 210, section 1 of the Massachusetts General Laws lists the "wife or husband, or brother, sister, uncle or aunt, of the whole or half blood" of the adopter as those adoptions counter to public policy. MASS. GEN. LAWS ch. 210, § 1; see In re Tammy, 619 N.E.2d at 318, 319.

\textsuperscript{77} Id. at 319.
\textsuperscript{78} See id. at 320.
\textsuperscript{79} Id. Specifically, the SJC determined that the adoption would:

entitle Tammy to inherit from Helen's family trusts and from Helen and her family under the law of intestate succession, . . . to receive support from Helen, who will be legally obligated to provide such support, . . . to be eligible for coverage under
would allow Tammy to preserve her family relationship with Helen in the event that Helen and Susan separate or Susan predeceases Helen.\textsuperscript{80} In light of these factors, the SJC determined that the adoption would be in Tammy's best interest.\textsuperscript{81}

The SJC next focused on whether Helen's adoption of Tammy required extinguishing Susan's parental rights.\textsuperscript{82} Reasoning that the section extinguishing the rights of the biological parent upon adoption is directed to instances where the child is adopted away from its biological parents, the SJC indicated that the provision's purpose "is to protect the security of the child's newly-created family unit by eliminating involvement with the child's natural parents."\textsuperscript{83} Thus, the SJC concluded that the legislature did not intend for a biological parent's legal relationship with his or her child to be terminated when the biological parent is a party to the adoption petition.\textsuperscript{84} Therefore, the SJC ultimately held that the probate court has jurisdiction to enter a decree on a joint adoption petition brought by two petitioners, and that when a biological parent is a party to the joint adoption petition, that parent's legal relationship to the child does not terminate upon entry of the adoption decree.\textsuperscript{85} This holding allowed Helen and Susan to adopt Tammy under Massachusetts law without extinguishing Susan's parental rights and obligations.\textsuperscript{86}

Unlike the majority, which focused on the fact that the statute did not expressly forbid the adoption, the three dissenting justices would have denied the petition because the statute does not expressly permit the adoption.\textsuperscript{87} They noted that "[t]here is . . . nothing in the statute indicating a legislative intent to allow two or more unmarried persons jointly to petition for adoption," and interpreted the statute narrowly because adoption is a creature of the legislature.\textsuperscript{88} The dissenting justices indicated that unless one of the potential petitioners specifically enumerated in the statute brings the adoption petition, then

\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} In re Tammy, 619 N.E.2d at 321.
\textsuperscript{83} See id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} See In re Tammy, 619 N.E.2d at 321.
\textsuperscript{87} See id. at 318 (majority), 322-23 (Lynch, J., dissenting).
\textsuperscript{88} Id. at 322, 322-23 (Lynch, J., dissenting).
the court should lack jurisdiction to entertain the petition. Because
the only time the statute contemplates a second petitioner is where the
initial petitioner has a living, competent spouse, the dissent would have
held that the statute did not permit Helen and Susan’s joint petition
for adoption of Tammy, but would have allowed Helen to petition
alone to adopt Tammy with Susan’s consent and would further have
permitted Susan to retain all her parental rights and obligations.

Thus, two slightly different approaches to parallel situations
emerged. The Vermont court allowed one partner to adopt the other’s
child without extinguishing the first parent’s parental rights and obli-
gations. In contrast, the Massachusetts court allowed both partners
together to adopt the child of one of them without extinguishing the
first parent’s rights and obligations.

3. New York: In re Jacob

In 1995, the Court of Appeals of New York, in In re Jacob, allowed
adoptions in two separate cases it joined together: one in which one
partner sought to adopt the other’s child without extinguishing the
parental rights of the first parent; and one in which both partners
together sought to adopt the child of one of them without extinguishing
the first parent’s parental rights. The court held that New York’s
adoption statute both permitted the petitioner in each case to adopt,
and did not require termination of the biological parent’s rights in
either case. Section 110 of the Domestic Relations Law, New York’s
adoption statute, provides that an “adult unmarried person or an adult
husband and his adult wife together may adopt another person.” The
Domestic Relations Law further provides that the biological parent’s
rights and obligations terminate upon the adoption. In New York,

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97 Id. at 322 (Lynch, J., dissenting).
98 Id. at 323 (Lynch, J., dissenting). This result, though not supported by reasoning in the
dissenting opinion, would likely have been reached by the SJC in an analysis of the Massachusetts
laws similar to that performed by the Vermont court nearly two years earlier. See id. (Lynch, J.,
dissenting); In re B.L.V.B., 628 A.2d at 1271; 1273-76 (Vt. 1995).
99 See In re Tammy, 619 N.E.2d at 321; In re B.L.V.B., 628 A.2d at 1273-76.
100 In re B.L.V.B., 628 A.2d at 1272, 1276.
101 In re Tammy, 619 N.E.2d at 321.
103 Id. at 398.
104 Id.
105 N.Y. DOM. REL. LAW § 110 (McKinney 1988).
106 Id. Specifically, the statute states that “after the making of an order of adoption the natural
parents shall be relieved of all parental duties toward and of all responsibilities for and shall have
no rights over such adoptive child or to his property by descent or succession.” Id.
neither marital status nor sexual orientation may alone be determinative in an adoption proceeding.\(^9\)

In one of the two joined cases, Jacob’s mother and his biological father had separated before Jacob’s birth.\(^{10}\) When the child was one year old, his mother, Roseanne M.A., began living with Stephen T.K.\(^{11}\) Three years later, Stephen and Roseanne filed a joint petition to adopt Jacob.\(^{12}\) In the other case, G.M. and P.I., two women, had lived together in a close relationship for nineteen years.\(^{13}\) In 1989 the two women decided that P.I. would have a child they would rear together, and after artificial insemination by an anonymous donor, P.I. gave birth to Dana in 1990.\(^{14}\) Since then, G.M. and P.I. have shared parenting responsibilities.\(^{15}\) In April of 1993, G.M. filed a petition to adopt Dana, to which P.I. consented.\(^{16}\)

The family court which first considered Jacob’s adoption acknowledged that granting the adoption would be good for Jacob, yet dismissed the petition because the adoption statute did not authorize adoptions by an unmarried couple.\(^{17}\) The Appellate Division affirmed, although two justices dissented.\(^{18}\) In the other adoption proceeding, a disinterested investigator’s report had recommended that G.M. be permitted to adopt Dana and indicated that G.M. and P.I. provided her with a “family structure in which to grow and flourish.”\(^{19}\) Even so, the family court denied the petition, holding that the statute did not grant the petitioners the power to adopt, and further held that the adoption statute prohibited the adoption by requiring the termination of P.I.’s relationship with Dana upon adoption by G.M.\(^{20}\) The Appellate Division concluded that G.M. had statutory permission to adopt, but affirmed that the provision extinguishing the biological parent’s rights and obligations prohibited the adoption.\(^{21}\)

The Court of Appeals of New York began its analysis by acknowledging that adoption in New York is solely the creature of statute, and

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\(^{9}\) See N.Y. Comp. Codes R. & Regs. tit. 18, § 421.16(h)(2) (1988).

\(^{10}\) See In re Jacob, 660 N.E.2d at 398.

\(^{11}\) See id.

\(^{12}\) See id.

\(^{13}\) See id.

\(^{14}\) See id.

\(^{15}\) See In re Jacob, 660 N.E.2d at 398.

\(^{16}\) See id.

\(^{17}\) See id.

\(^{18}\) See id.

\(^{19}\) See id.

\(^{20}\) See id.

\(^{21}\) See In re Jacob, 660 N.E.2d at 398.
thus the court must strictly construe the adoption statute. The court went on to indicate that the requirement of strict construction applies equally to legislative purpose and statutory language. Thus, the court indicated "that in strictly construing the adoption statute, [the court's] primary loyalty must be to the statute's legislative purpose—the child's best interest."

The court found that allowing the two adults who function as a child's parents to become the child's legal parents would advance the policy of protecting the child's best interests. The benefits of such a recognition, the court continued, would include the right of the child to receive social security and life insurance benefits from both parents, the right to sue for the wrongful death of either parent, the right to inherit from both parents under the laws of intestacy and eligibility for coverage under both parents' health insurance policies. The court went on to emphasize that in addition to these financial benefits, the child would also gain the emotional security of knowing that if anything should happen to the biological parent, the other parent would have presumptive custody, enabling the child's relationship with extended family members to continue. Having concluded that the proposed adoptions thus satisfied the purpose of the adoption statute, the court turned its attention to whether the adoptions also comported with the language of the statute.

The court began by emphasizing that the patchwork nature of New York's current adoption statute, caused by innumerable amendments, made it difficult to discern with precision any specific legislative intent. The court then turned to the particular statutory provisions at issue. Reasoning that section 110, entitled "Who May Adopt," explicitly permits an adult unmarried person to adopt, the court concluded that both petitioners, as adult unmarried persons, had permission to adopt. Turning then to the issue of whether the phrase "or an adult husband and his adult wife together" in section 110 of the statute requires that only married people may adopt a child together, the court asserted that the statute requires only that if a married person seeks to adopt, his or her spouse must join in the adoption, rather than

112 Id. at 399.
113 Id.
114 Id.
115 See In re Jacob, 660 N.E.2d at 399.
116 Id.
117 See id.
118 See id. at 400.
119 See id.
120 See In re Jacob, 660 N.E.2d at 400.
121 Id.
that only married couples may adopt together. The court concluded that amendments to the adoption statute indicate a legislative intent to broaden the field of potential adoptive parents, regardless of their marital status or sexual orientation.

Having concluded that section 110 did not preclude the adoptions, the court examined whether section 117, which extinguishes the rights of the biological parent upon adoption of his or her child, required termination of Jacob and Dana's biological mothers' rights. Noting that the legislature which codified section 117 in 1938 probably did not contemplate families with same-sex parents, the court asserted that the legislature designed section 117 "as a shield to protect new adoptive families," and not "as a sword to prohibit otherwise beneficial intrafamily adoptions by second parents."

First, the court indicated, section 117 speaks primarily of estate law, so it appears that the legislative intent is to clarify the resolution of property disputes upon the death of an adoptive parent or child, rather than to control the granting of the adoption in the first place. Second, the court examined recent amendments to other sections of the adoption laws, which allow the biological parent to remain involved in the child's life even after the adoption. The court reasoned that these provisions imply legislative acceptance of biological parents ongoing role in their children's lives, even after an adoption. Based on this reasoning, the court concluded that section 117 does not require termination of the biological parent's rights when the biological parent has consented to the adoption and will continue to rear the child together with the second parent. Thus, having determined that the adoptions would generally be in the best interests of the children, that section 110 granted permission to adopt to the petitioners, and that section 117 did not require termination of the rights and obligations of the biological parents, the court reinstated the adoption provisions and remitted the cases to the family court for further proceedings.

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122 Id.
123 See id. at 400-01.
124 Id. at 401.
125 In re Jacob, 660 N.E.2d at 405.
126 Id. at 402.
127 Id. at 403-04. Section 117(1) (d) of the domestic relations law allows a stepparent to adopt a child with consent of the biological parent, without extinguishing the biological parent's rights and responsibilities. N.Y. Dom. Rel. Law § 117(1) (d) (McKinney 1988). Further, social services law section 383-c allows the parties to an adoption to agree to different terms as to the nature of the biological parents' post-adoptive relationship with the child, expressly permitting the biological parent to retain certain rights. N.Y. Soc. Serw. Law § 383-c(3) (b) (McKinney 1988 & Supp. 1996).
128 See In re Jacob, 660 N.E.2d at 404.
129 Id.
130 Id. at 399-400, 401, 404, 406.
Three dissenting justices did not agree with the majority's interpretation of the statute, and would have held that the petitioners lacked statutory permission to adopt and that the rights and obligations of the biological mother terminated upon adoption.\textsuperscript{131} The dissent wondered whether, under the majority's reasoning and holding, there would be any limit to how many people could join together to adopt a child.\textsuperscript{132} It also expressed concern that the majority's interpretation of the adoption statute constituted judicial overstepping into the legislative arena.\textsuperscript{133} Because of these concerns, and a stricter reading of the adoption statutes, the dissent would have denied the petitions to adopt.\textsuperscript{134}

II. \textbf{Why We Should Not Limit a Child to Two Parents}

A. \textit{Established Precedent and Policy Support Multiple-Parent Adoptions}

The majority opinions in all of the cases discussed above address three main issues: (1) whether the petitioners have power to adopt under a "who can adopt" provision of the state statute; (2) whether the biological parents' rights and obligations must terminate upon the adoption; and (3) whether the adoption will effectuate the best interests of the child.\textsuperscript{135} I suggest that, under the logic of these cases, nothing in any of the state statutes denies permission for more than two petitioners simultaneously to adopt a child; that nothing in any of the state statutes requires termination of the biological parent's rights upon such an adoption, if the biological parent intends to continue raising the child; and that such an adoption may be in the best interests of a child.\textsuperscript{136} Thus, allowing three or more parents to adopt the same child flows logically from the reasoning of these three decisions.\textsuperscript{137}

1. Statutory Scheme, Generally

Because I propose a situation which the courts of Vermont, Massachusetts and New York have not yet addressed, I will discuss the applicable law as though it were an amalgamation of the statutory law

\textsuperscript{131} \textit{Id.} at 408, 410 (Bellacosa, J., dissenting).

\textsuperscript{132} \textit{Id.} at 408 (Bellacosa, J., dissenting).

\textsuperscript{133} \textit{See In re Jacob}, 660 N.E.2d at 414-15 (Bellacosa, J., dissenting).

\textsuperscript{134} \textit{Id.} at 415 (Bellacosa, J., dissenting).


\textsuperscript{136} \textit{See In re Tammy}, 619 N.E.2d at 318, 321; \textit{In re Jacob}, 660 N.E.2d at 399, 400, 401; \textit{In re B.L.V.B.}, 628 A.2d at 1273.

\textsuperscript{137} \textit{See In re Tammy}, 619 N.E.2d at 318, 321; \textit{In re Jacob}, 660 N.E.2d at 399, 400, 401; \textit{In re B.L.V.B.}, 628 A.2d at 1273.
in all three states. Thus, my generic statute contains those provisions that are common to the adoption statutes of the three states, specifically, a provision naming who can adopt and indicating that "a person or a husband and wife together" may do so, and a provision indicating that upon adoption, the parental rights and obligations of the biological parents terminate. Additionally, in this generic state, adoption is a creation of the legislature and of statute and, as in Vermont, Massachusetts and New York, consideration of the child's best interests motivates the adoption statute.

2. Statutory Permission to Adopt

Under the reasoning of the three cases, three or more people would have statutory permission to adopt the same child. In each case, the court allowed an adoption in part on the grounds that it was not specifically prohibited by statute. The situation I propose is similarly not prohibited by statute.

In Vermont, the court determined that a provision that "[a] person or husband and wife together" may adopt did not deny one woman the right to adopt her partner's biological child, in part because the statutory language did not prohibit such adoptions. In allowing two women to join together to adopt a child, the Massachusetts SJC focused on the fact that the statute neither expressly prohibits joinder by any person to an adoption petition nor prohibits adoption by two unmarried individuals. The New York Court of Appeals also focused on the fact that the statute did not preclude an unmarried person in a relationship with another unmarried person from adopting. The common logic to the reasoning of the three courts is that the statute does not specifically prohibit the proposed adoption. In the same way,

139 See In re Tammy, 619 N.E.2d at 317, 319; In re Jacob, 660 N.E.2d at 399; In re B.L.V.B., 628 A.2d at 1273 & n.1, 1272-74.
140 See In re Tammy, 619 N.E.2d at 318-19; In re Jacob, 660 N.E.2d at 400-01; In re B.L.V.B., 628 A.2d at 1273.
141 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 398-99; In re B.L.V.B., 628 A.2d at 1273.
142 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 398-99; In re B.L.V.B., 628 A.2d at 1273.
143 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 398-99; In re B.L.V.B., 628 A.2d at 1273.
144 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 398-99; In re B.L.V.B., 628 A.2d at 1273. See supra notes 137-38 and accompanying text for discussion of statutory scheme.
145 See In re B.L.V.B., 628 A.2d at 1272-73, 1273-74.
146 See In re Tammy, 619 N.E.2d at 318, 321.
147 See In re Jacob, 660 N.E.2d at 400-01.
148 See In re Tammy, 619 N.E.2d at 318; In re Jacob, 660 N.E.2d at 398-99; In re B.L.V.B., 628 A.2d at 1273.
none of the statutes prohibit adoption of a child by more than two people.\textsuperscript{147}

For example, if a child's parents divorce and one remarries, the stepparent could adopt the child, the remarried parent and the stepparent could adopt the child, or the stepparent, the remarried parent and the single parent could adopt the child.\textsuperscript{148} Furthermore, if the single parent also remarried, there is no reason why the second stepparent could not also adopt, either alone or in combination with any of the other parents, provided the court found the adoption to be in the best interests of the child.\textsuperscript{149} Much attention is given in each of the above cases to the role the second parent plays in raising the child.\textsuperscript{150} If everyone petitioning to adopt the child functions as a parent to the child, then the reasoning of the Vermont, Massachusetts and New York courts grants each functional parent statutory permission to adopt.\textsuperscript{151}

3. Termination of Biological Parents' Rights

Because the courts did not terminate the biological parent's rights and obligations in a second-parent adoption when the biological parent remained involved in the life of the child, third-parent (or fourth-parent) adoptions need not terminate the parental rights and responsibilities of the already recognized parents.\textsuperscript{152} The Vermont court concluded that the policy behind the termination provision was to protect the security of family units, and that to enforce the provision where the biological mother intended to take part in raising the child would reach an absurd result.\textsuperscript{153} In Massachusetts, the court reached a similar conclusion by indicating that the termination provision attempts to protect the security of the child's newly created family unit, rather than to sever the relationship between a biological parent and his or her child when the parent is a party to the adoption petition.\textsuperscript{154} Similarly, in New York, the court concluded that the termination provision exists

\textsuperscript{147} See \textit{In re Tammy}, 619 N.E.2d at 318–19; \textit{In re Jacob}, 660 N.E.2d at 400–01; \textit{In re B.L.V.B.}, 628 A.2d at 1273.

\textsuperscript{148} See \textit{supra} notes 140–47 and accompanying text for a discussion of statutory permission to adopt.

\textsuperscript{149} Id.

\textsuperscript{150} See \textit{In re Tammy}, 619 N.E.2d at 316; \textit{In re Jacob}, 660 N.E.2d at 398; \textit{In re B.L.V.B.}, 628 A.2d at 1272.

\textsuperscript{151} See \textit{In re Tammy}, 619 N.E.2d at 316, 318–19; \textit{In re Jacob}, 660 N.E.2d at 398, 400–01; \textit{In re B.L.V.B.}, 628 A.2d at 1272, 1273.

\textsuperscript{152} See \textit{In re Tammy}, 619 N.E.2d at 321; \textit{In re Jacob}, 660 N.E.2d at 404; \textit{In re B.L.V.B.}, 628 A.2d at 1274.

\textsuperscript{153} See \textit{In re B.L.V.B.}, 628 A.2d at 1274.

\textsuperscript{154} See \textit{In re Tammy}, 619 N.E.2d at 321.
as a shield to protect new adoptive families and need not apply where
the biological parent either consents to or joins in the adoption, agrees
to retain parental rights and intends to continue raising the child.155

Under this reasoning, if the biological parent of a child were to
continue raising the child along with his or her stepparent, then the
termination provision of the generic statute need not extinguish the
parental rights and responsibilities of the biological parent.156 This is
especially true if the legislature of my generic state, as in Vermont,
Massachusetts and New York, intended the termination provision to
protect the sanctity of the adoptive family from intrusion by a biologi-
cal parent who is not a part of that family.157 Thus, neither the "who
may adopt" provision nor the termination provision of my generalized
statute prohibits adoption of a child by three or more people who all
function as the parents of that child, or requires termination of the
rights of a biological parent who remains involved in the upbringing
of the child.158 Therefore, a child’s divorced parents and his or her two
stepparents could all become the legal parents of the child.159

To take the example only a bit further, imagine that rather than
two women seeking judicial acknowledgment of both of their relations-
ships with the child of one of them, that two men seek the same judicial
recognition. From there, one can imagine the dissolution of the rela-
tionship between the two men, and the introduction of a stepfather
into the child’s life. Just as two biological parents and a stepparent
could become the legal parents of a child, so could the two adoptive
parents and the stepparent.160 Thus, a judicially recognized family could
consist of three men and a baby.

B. The Best Interests of the Child?: Counter-Arguments Considered

Allowing a child to have three parents may seem a bit absurd—after
all, it is not biologically possible for a child to have more than two
parents. Is it really in the best interests of the child to have more than

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155 See In re Jacob, 660 N.E.2d at 404, 405.
156 See In re Tammy, 619 N.E.2d at 321; In re Jacob, 660 N.E.2d at 404, 405; In re B.L.V.B., 628
A.2d at 1274. See supra notes 138–99 and accompanying text for hypothetical statutory scheme.
157 See In re Tammy, 619 N.E.2d at 321; In re Jacob, 660 N.E.2d at 405; In re B.L.V.B., 628 A.2d
at 1274.
158 See supra notes 138–57 and accompanying text for a discussion of how the reasoning of
the cases and my generalized statute allow adoption by three or more people without terminating
the biological parent’s rights.
159 See id.
160 See supra notes 148–51 and accompanying text for a discussion of adoption by two
biological parents and a stepparent.
two parents, or are three or more parents detrimental to a child? The two parent nuclear family is the time-honored, tried and tested, best way to rear a child, is it not?

In many instances, it will be in the best interests of the child to grant legal recognition to the child's relationships with more than two parents. The three cases discussed in this Note advance several arguments for allowing legal recognition of a second parent that apply equally to allowing legal recognition of a third or fourth parent. The Vermont court, in considering the best interests of the child, focused on the benefits and security of a legal relationship with someone who functions as a parent to the child. The Massachusetts court noted the ability of the child to inherit under laws of intestacy, to receive support from both women who would both be legally obligated to provide such support, to be eligible for coverage under both women's social security benefits and health benefits, as well as the fact that the child perceived both women as her parents and that her relationship with each should be preserved in the event of the termination of their relationship to one another. Similarly, in New York, the court focused on the child's right to receive social security and life insurance benefits, the right to sue for the wrongful death of a parent, the right to inherit under the laws of intestacy, eligibility for coverage under his or her parents' health insurance policies and the benefit of preserving the child's relationship with the adoptive parent in the event of the dissolution of the parents' relationship with each other or the death of one parent.

The benefits which accrue to a child upon adoption by more than two people include both the pecuniary and the emotional. The child will become eligible for coverage under all parents' insurance policies, allowing the family to choose the best policy and protecting the child from loss of insurance should one or more parent(s) become unemployed. "In addition, . . . a [third] parent adoption enables the child

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161 See infra notes 162-207 and accompanying text for a discussion of how granting legal recognition to more than two parent-child relationships could be in a child's best interest. I want to emphasize from the outset that it may be in a child's best interest to have more than two legally recognized parents. I do not claim that this will be in the best interests of all children, everywhere.

162 See In re Tammy, 619 A.2d at 320; In re Jacob, 660 N.E.2d at 399; In re B.L.V.B., 628 A.2d at 1276.

163 See In re B.L.V.B., 628 A.2d at 1276.

164 See In re Tammy, 619 A.2d at 316, 320.

165 See In re Jacob, 660 N.E.2d at 399.

166 See infra notes 167-77 and accompanying text for a discussion of benefits accruing to a child upon adoption by more than two people.

167 See Bryant, supra note 1, at 241 (citing Chancellor v. Chancellor, 23 S.W.2d 761, 763-65 (Tex. Ct. App. 1929) (holding that the term "child" in insurance policy includes adopted children)).
to inherit from [all] parents through the law of intestate succession." The pecuniary interests mentioned by the Massachusetts and New York courts when considering second-parent adoptions apply similarly to consideration of third-parent adoptions. The rights to social security and life insurance benefits, to inherit under the laws of intestacy, to sue for the wrongful death of a parent, to be covered by a parent's health insurance policy and to have a parent obligated to provide support for a child do not diminish in economic value when tripled or quadrupled (for three or four parents) as opposed to when doubled (for two parents).

Despite the fact that courts may limit children to two legal parents, legal rules do not constrain the realities of many children’s lives. Children form strong bonds with their daily caregivers, whether biologically related or not. What matters to children are the day-to-day interactions with the adults who take care of them and thus become their parent figures. Children often form attachments to adults outside the nuclear family. When parents create a nontraditional family, that family becomes the reality of the child’s life. Furthermore, although experts are divided on much about rearing children, “[n]ear consensus . . . exist[s] . . . for the principle that a child’s healthy growth depends in large part upon the continuity of his personal relationships.” Thus, where a child has bonded with more than two

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168 Bryant, supra note 1, at 240.
169 See In re Tammy, 619 N.E.2d at 320; In re Jacob, 660 N.E.2d at 399.
170 See In re Tammy, 619 N.E.2d at 320; In re Jacob, 660 N.E.2d at 399.
171 See Bartlett, supra note 1, at 881-82; Polikoff, supra note 1, at 473. The legal doctrine of equitable adoption recognizes this fact by permitting a child to inherit from a person who was not the child’s legal parent when that person had demonstrated an intent to adopt the child. See Jesse Dukeminier & Stanley M. Johanson, Wills, Trusts, and Estates 100-08 (5th ed. 1995); Polikoff, supra note 1, at 473 n.52.
172 See Bryant, supra note 1, at 239 n.37.
173 See id. (citing Joseph Goldstein et al., Beyond the Best Interests of the Child 12–13 (1979)).
174 See Bartlett, supra note 1, at 882.
175 See Polikoff, supra note 1, at 473, 483.
parents, the law ought to recognize these bonds in order to promote the emotional well-being of the child.\textsuperscript{177}

1. Perhaps Allowing a Child to Have More Than Two Parents Might Subject the Child to Peer Ridicule for Being "Different"

Ridicule for being "different" might so impact a child with more than two parents that allowing the adoption is not in his or her best interests per se.\textsuperscript{178} This argument shares a common basis with that which holds that children of homosexual or lesbian parents suffer a stigmatic harm.\textsuperscript{179} In fact, studies have shown that children of lesbians or gay men do not suffer from growing up outside the mainstream.\textsuperscript{180}

Furthermore, peer teasing, taunting and ostracism ought not to provide a legal basis for denying an adoption petition, since it is not the role of any court to give effect to private bias and social prejudice.\textsuperscript{181} While acknowledging that issues surrounding prejudice and discrimination are very real for young people growing up in nontraditional families, one must remember that children in many families need to cope with differences due to race, ethnicity or socioeconomic class, which may not be the overriding concerns that adults sometimes imagine.\textsuperscript{182} Although I have not found any surveys to this effect, my own informal collection of anecdotal reports indicates that almost everyone receives incessant teasing about something as a child.\textsuperscript{183}

\textsuperscript{177} See Bartlett, supra note 1, at 944; Polikoff, supra note 1, at 488.

\textsuperscript{178} See Marianne T. O'Toole, Gay Parenting: Myths and Realities, 9 PACE L. REV. 129, 146 (1989).

\textsuperscript{179} See id.


\textsuperscript{181} See O'Toole, supra note 178, at 146.

\textsuperscript{182} See Patterson, supra note 9, at 200. Often, things are more simple from a child's perspective than an adult's. See id. One lesbian mother described the experience of telephoning the parents of her daughter Emily's school friend. See id. (citing Martin, supra note 180, at 326). The child who answered passed the phone to her mother, explaining "It's Emily's mom. Well, it's one of them—she's got two." See id. (citing Martin, supra note 180, at 326). Another child, whose teacher asked who the other man who lived at the child's house was, answered simply "that's my father's husband." See id. (citing Jane Gross, New Challenges of Youth: Growing up in Gay Home, N.Y. TIMES, Feb. 11, 1991, at A1).

\textsuperscript{183} I received ribbing about my last name ("Rover" rapidly became "Bow-Wow" for many of my classmates); others I know experienced such lovely comments as "what are all those spots on
2. Most Children Live in Traditional Nuclear Families and Have No Need for Legal Recognition of More than Two Parents

Maybe courts need not recognize more than two parents, because most children live in nuclear families and have only two parents. In fact, many children live in extended and nontraditional families. As the United States Supreme Court acknowledged:

[o]urs is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. . . . Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family.

Not only does our culture contain instances of children raised by more than two people, some other cultures allow an even more extended definition of family. For example, in Polynesia, parenting is a collective task; the language generalizes the words for mother, father and grandparent to all relatives of equivalent age and gender, children have several houses that they regard as home and parental rights are not exclusive of those of other adults.

3. Permitting Adoptions by More than Two Parents Might Contribute to Ongoing Disintegration of the Nuclear Family

These adoptions would not lead to the downfall of the nuclear family in the United States, in part because the nuclear family does
not constitute the reality of many children's lives already. Historian Stephanie Coontz argues that "families have always been in flux and often in crisis; they have never lived up to the nostalgic notion about the way things used to be." There are many versions of "family": single parents raising children; children traveling between two homes; children living with stepparents; grandparents, aunts, uncles and siblings caring for children; heterosexual, unmarried cohabitants rearing children together; and families with two parents of the same gender.

Today, fewer Americans are living in traditional nuclear families than earlier in the twentieth century. By 1988, the traditional family unit accounted for only about one-fifth of total families, compared with more than three-fifths in 1940. The percentage of children living in never-married single parent households more than quintupled between 1970 and 1982. In 1985, there were 6.8 million children living in stepfamilies. Thus, large numbers of children already live outside traditional nuclear families.

Strict adherence to the structure of nuclear families may not be best for children and parents in industrial societies. One commentator has argued that the nuclear family cannot provide adequate health, education and welfare for the young and the old so effectively as an extended family. The parent-child relationship of nuclear fami-

189 See Hayghe, supra note 184, at 16.
190 See Davies, supra note 186; see also Bartlett, supra note 1, at 880-81 (stating that 25% of children did not live with two natural parents in 1982 and predicting an increase to 40% by 1990); Wetzel, supra note 185, at 4 (indicating that fewer families currently live in a married, two-parent family arrangement).
191 See Wetzel, supra note 185, at 4. Wetzel states: "The past 75 years brought momentous changes in family life patterns of Americans as we adapted to dynamic economic, social, and demographic developments." Id. at 12.
192 See Hayghe, supra note 184, at 16.
193 See Bartlett, supra note 1, at 991 n.9 (citing Bureau of the Census, U.S. Dep't of Commerce, Current Population Reports, Special Studies Series P-20, No. 380, Marital Status and Living Arrangements: Mar, 1982 5, Table E (1983) (percentage of children under the age of 18 living in never-married single parent households increased from 0.8% in 1970 to 4.4% in 1982)).
lies can become unbearably intense and exhausting if unrelieved. Thus, the media, celebrities and community groups increasingly assert that "it takes a whole village to raise a child."

For the law to stagnate while society evolves may harm those children already living in nontraditional situations. Additionally, such noted legal minds as Chief Justice Oliver Holmes and Justice Harry Blackmun have argued that it is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.

4. Recognizing Multiple Parent-Child Relationships Might Lead to Complicated Custody Disputes if the Parental Relationships Dissolve

Recognizing multiple parent-child relationships might complicate custody disputes so much that courts ought never to acknowledge more than two parents of any one child. Denying recognition to multiple-parent relationships would not prevent such confusion—it already exists. Custody disputes frequently involve more than two people. At least one court has already ordered a three-way custody and visitation arrangement. Furthermore, various courts and com-

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198 See id. (Brennan, J., concurring) (citing BETTY YORBURG, THE CHANGING FAMILY 194 (1975)); Eisaguirre, supra note 190, at 87A. The May 1995 issue of Psychology Today includes a list titled "21 Tricks for Taming Children," which recommends that parents "share [their] baby with other parents, grandparents, aunts, and uncles. Never try to do it alone; you will exhaust one another with your needs. As the old African proverb says, 'It takes a whole village to raise a child.'" Frank Pittman, How to Manage Your Kids, 28 PSYCHOL, TODAY 42 (May, 1995).


200 See In re B.L.V.B., 628 A.2d 1271, 1276 (Vt. 1993).


203 See infra notes 204-07 and accompanying text for a discussion of the already existing confusion in custody battles.


205 See Polikoff, supra note 1, at 470 n.35. In a ruling deemed "highly unusual," a Chicago judge issued an order by agreement
mentators have attempted to develop doctrines to apply to situations where a child who is the subject of a custody dispute has bonded with an adult who is not a legally recognized parent of that child. Perhaps, then, granting legal recognition to these relationships, in the form of allowing an adoption before the dissolution of the parents' relationships to one another, would actually simplify some custody disputes by clarifying for the court whether a particular adult had a parental relationship with the child.

III. CONCLUSION

The Vermont, Massachusetts and New York courts allowed second parents to adopt their children. The courts accomplished this by looking past the strict language of their states' adoption statutes to the legislative intent underlying those statutes, and by examining the best interests of the children. The same reasoning suggests that courts should allow third parents to adopt their children. The state adoption statutes neither forbid such adoption nor require termination of already extant parent-child relationships. Rather, the statutes seek to

of all parties, awarding custody of a five-year-old girl to her mother, her mother's ex-husband (whom the girl knew as her father), and the girl's biological father. The girl will live with her mother and will visit her two fathers on weekends and in the summer.

Id. (citing Wagner v. Erber, No. 85-D-6382 (Ill. Cir. Ct., Cook Cty., Sept. 29, 1987)).

206 See Bartlett, supra note 1, at 944-51. The California Supreme Court has suggested that visitation should be granted to a de facto parent which it describes as "that person who, on a day-to-day basis, assumes the role of parent, seeking to fulfill both the child's physical and psychological needs for affection and care." See Burks, supra note 202, at 245-45. Katherine Bartlett developed a test for a "psychological parent" that redefines parenthood into a non-exclusive status and permits awards of custody and visitation based upon the child's best interests. See Bartlett, supra note 1, at 944-51. Nancy Polikoff proposes expanding the definition of parenthood employed in custody and visitation disputes "to include anyone who maintains a functional parental relationship with a child when a legally recognized parent created that relationship with the intent that the relationship be parental in nature." Polikoff, supra note 1, at 464.

207 See supra notes 202-06 and accompanying text for a discussion of the current complexities facing courts when considering custody and guardianship awards.

208 See supra notes 18-134 and accompanying text for a discussion of courts allowing adoptions based on legislative intent to embody child's best interests in the adoption statute.

209 See supra notes 140-207 and accompanying text for an application of this reasoning to the situation where a third parent seeks to adopt a child.

210 See supra notes 140-60 and accompanying text for a discussion of how the adoption statutes neither precluded this adoption, nor required termination of parents' rights.
implement the best interests of the child, which may include recognition of more than two parental relationships.212

First, such recognition provides enhanced financial and emotional stability for the child.213 Second, it acknowledges the reality of many children's daily lives.214 Third, to the extent that such recognition challenges the structure of the nuclear family, many families already do not conform to such a structure.215 Fourth, although dissolution of the relationships between the multiple parents may lead to complex custody cases, such complexities already exist and lack the guidance that a legally validated relationship could give.216 Hence, courts should grant legal recognition, in the form of permitting an adoption, to the relationship between a child and every one of his or her parents.217

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212 See supra notes 161-207 and accompanying text for a discussion of how recognizing more than two parental relationships could advance the best interests of the child.

213 See supra notes 161-77 and accompanying text for a discussion of how such an adoption enhances the child's emotional and financial well-being.

214 See supra notes 171-77 and accompanying text for a discussion of children's day-to-day lives and interactions with adults.

215 See supra notes 184-201 and accompanying text for a discussion of the myriad versions of family.

216 See supra notes 202-07 and accompanying text for a discussion of extant complexities of guardianship and custody disputes.

217 See supra notes 135-207 and accompanying text for a discussion of why a court should not limit a child to two parents.