Emerging identities: New subjects within gay adoption

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EMERGING IDENTITIES: NEW SUBJECTS
WITHIN GAY ADOPTION

by

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Bachelor of Arts
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ABSTRACT

Emerging Identities: New Subjects within Gay Adoption

by

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This thesis explores the identity construction and subject positions of gay male foster and adoptive parents. Using late twentieth and early twenty-first century cultural texts, I apply a Foucaultian perspective to analyze how controversies over gay adoptions articulate shifts in contemporary American discourses of homosexuality and the family. Identities available to homosexuals have shifted since the nineteenth century; this thesis looks at the emergence of a new contested identity for homosexuals as adoptive parents at the turn of the twenty-first century by employing Foucaultian methodological techniques of archaeology. This work contributes to the sociological literature on gender, law, and the postmodern family, and begins to move theoretical understandings beyond the current state of queer theory and poststructural discourse on identity.
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CHAPTER 1

INTRODUCTION

This thesis explores the identity construction and subject positions of gay male foster and adoptive parents. Using late twentieth and early twenty-first century cultural texts, I apply a Foucaultian perspective to analyze how controversies over gay stranger adoptions and fostering articulate shifts in discourses of homosexuality. Specifically, I analyze statements made by those who oppose such arrangements for reliance on particular discursive constructions of homosexuality, family, gender, sexuality, and religion. I examine the controversy over homosexual adoption as a collision of symbols and codes which contributes to the construction of an emergent subject position for the homosexual male family man.

Subject positions are defined as "empty spaces or functions in discourse from which the world makes sense" (Barker 2000:393). One could envision a linguistically constructed frame encapsulating particular meanings and codes that serves to collapse and

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1 Each case involves a gay male except the Pima County case which involves a bisexual male. Throughout this work I will use the term homosexual to refer generally to the gay participants and the bisexual participant involved in the legal cases I study. Of course, this thesis offers critique of these common categorizations.
categorize specifically known subjects. In poststructural analysis the linguistic codes and the interpretation of these codes becomes important. I visualize a three-dimensional space wherein specific lines of discourse converge to construct the subjective experience of self. Speaking of subject positions, Barker explains “The speaking subject is dependent on the prior existence of discursive positions. Discourse constitutes the ‘I’ through the process of signification” (393). My primary goal is to analyze the discursive constructions surrounding gay males attempting to foster or adopt in the United States since the early eighties when this issue emerged. How does rhetoric about sex, gender, religion, law and the family merge to form and influence this contested identity? This analysis focuses on contemporary cultural discourses, including: (1) five specific cases\(^2\) (2) a selection of pertinent newspaper articles about these cases, (3) Florida’s “Adoptive Home Application,” (4) a website constructed about the *Lofton v. Kearney* case (lethimstay.com), and (5) segments of a *Primetime* (ABC) interview between Diane Sawyer and Rosie O’Donnell that focuses on the *Lofton v. Kearney* case.

\(^2\) I examine judicial opinions for *Lofton v. Kearney* (157 F.Supp.2d 1372); *Cox v. Dept of Health & Rehabilitative Services* (656 So.2d 902); *James W. COX, Petitioner v. Florida Department of Health and Rehabilitative Services* (627 So.2d 1215 n.6.); *In the Matter of the Adoption of Charles B.* (1988 WL 119937 (Ohio App. 5 Dist.)); *In re Adoption of Charles B.* (50 Ohio St.3d 88, 552 N.E.2d 884); *In the Matter of the Appeal in Pima County Juvenile Action* (727 P.R. 2d 830), while I only examined the media’s rhetoric surrounding the *Babets v. Secretary, Suffolk County* (526 N.E.2d 1261) due to the material case itself being settled out of court.
This work heavily relies on the Foucaultian argument that a homosexual status, contextualized within given cultural discourses, emerged in the late nineteenth century as a distinct identity framework (Foucault 1978:43). Once homosexuals were identified as belonging to a meaningful social category, subjects were attributed particular characteristics and a place in the social structure. Specifically, Foucault argues that certain powerful people were able to frame homosexuals as deviant. As Pardie explains, "While unlabeled experiences can go unnoticed and unappreciated, labeled experiences can appear static and reified to the point where they seem to have an isolated existence of their own" (1999:93). The range of identities available to homosexuals and their meanings in society have shifted several times since the nineteenth century. This thesis argues one of the most recent identity position has emerged out of a newly contested space for homosexuals as adoptive parents. For Foucault, a subject does not exist prior to placement in a particular discursive context. Of course, this is not to assert that people did not practice a gay lifestyle, or engage in same-sex behavior, instead I mean to emphasize that these activities did not hold a social stigma and those engaging in such behavior were not denied privileges based on these grounds.

To examine this issue, I analyze the connaissance (or surface discourse) of speech about gay adoption evident in cultural texts, and then connect this connaissance to savoir (the deeper frames of knowledge and bounded thought). Here, connaissance can be seen as the specific meanings and codes given both to the family and to homosexuals (which I

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3 See chapter three for further elaboration and archaeological application of these concepts.
explore in chapters four and five), while savoir would refer to the generalized surface on which these discursive lines intersect. This surface, or historically situated context, is explored in chapter four.

Today, the term homosexual is linked to an entirely new system of knowledge that now intersects with the savoir of the family. I analyze sentences that allude to this new merging of homosexuality and the family as they appear in certain contemporary texts. This requires that I also analyze discourses "in terms of the conditions under which those sentences will have a definite truth value, and hence are capable of being uttered. Such conditions will lie in the "depth" knowledge of the time" (Hacking 1995:119). In other words, statements reflect larger cultural interpretations that are thought to be true, and can only be effectively articulated to the extent they are reliant on the common sense of the time.

I employ the Foucaultian methodological technique of archaeology, with specific focus on the formation of subjects, which incorporates a historical view of the shifts in discourse. Archaeology focuses on the explicit analysis of statements that, like three-dimensional horizontal lines, slash across time through culturally constructed boundaries and groupings. An archaeological analysis focuses on the structure of knowledge and the way particular objects (or subjects) are classified according to common sense. It can be thought of as encompassing four elements: 1) Surfaces of Emergence, 2) Authorities of Delimitation, 3) Grids of Specification, and 4) Spaces of Dissension. Foucault offers discussion of the first three of these elements as central to the formation of objects (here subjects) in chapter three of his work The Archaeology of Knowledge and the Discourse on Language (1972). The final element is adapted from his later discussion of how
linguistic contradictions influence discursive formations. An analysis of spaces of
dissension involves studying points of incompatibility and points of diffraction, as
discussed further in my methodology chapter.

I begin with the presumption that statements reflect a particular historical moment
and are informed by familiar interpretations. First, I analyze this surface of emergence, or
historically situated context, in my discussion of how certain statements about
homosexuals have meaning and intersect with discourses about family, gender, sexuality,
and religion. In this way, archaeology offers an illumination of the surfaces of emergence
wherein marked statements are “manifest, nameable, and describable” (Foucault 1972:41).

These arbitrary (according to Foucault) categorizations are edified by those with
the power to produce discourse. Therefore, my second focus is on the authorities of
delimitation who have the power to speak. Authorities of delimitation are “recognized by
public opinion” as having jurisdiction over locating a particular subject (Foucault
1972:42).

Third, I discuss the grids of specification that differentiate a given object (or
subject) in increasingly complex ways. Grids of specification can be visualized as a
network of horizontal and vertical lines that serve to locate an object (subject) according
to a historical surface. Grids of specification further denote “kinds” of subjects (Foucault
1972:42) by attaching new codes to a known subject over time. In other words, as we
engage in abstract conceptualizations we categorize and group certain objects of
knowledge, thereby locating objects. Once a particular social species is identified, it
acquires different and even contradictory meanings that force a new sub-species to absorb
these new meanings and in effect be defined by difference from the ‘original.’ Foucault
argues that once an object is located and embedded within particular discourses, it becomes increasingly partitioned as new variations of the object emerge. With this insight, I analyze the new codes associated with homosexuals as adoptive parents as reflecting an increasingly complex subject.

Finally, I emphasize the spaces of dissension. Spaces of dissension are points where competitive and oppositional discursive lines cross. From this intersection (wrought with discord and controversy) we can analyze points of convergence that serve to merge disparate and contested classifications of subjects into a novel and more complex subject. Specifically, I look at the formation of a new identity for homosexual adopters based on this convergence. What conceptions of family, gender, sexuality, and religion intersect when locating this subject? After the legal battles over the appropriateness of permanently placing children with homosexuals, what characterizes this new subject?

This work has sociological implications for queer theory and poststructural discourses on identity, as well as the sociological literature on gender, law and the family. As I provide a view of the historical development of the homosexual subject and a theoretical analysis of contemporary discursive constructions of gay adoption in the American judicial system and media, I also speak to the wider debates about modernism and postmodernism in relation to our shifting family form. By analyzing rhetoric, I offer a critique of the common knowledge about gay adoption and the subjects involved.

The remainder of this chapter addresses four central points. First, I connect Foucault's conception of power with the formation of the homosexual subject. Second, I provide a historical profile of the shifting positions available to homosexuals in order to further make evident the argument that the position of homosexual is not stable, or
essential and to provide a framework for understanding the current statements made about homosexuals. Third, I briefly introduce the legal cases that constitute the core of my analysis as reflective of particular shifts in codes of homosexuality. This historical view leads naturally into a discussion of the current legal cases. Here I preview the stories of the various men in Florida who mounted challenges to the gay adoption ban, the bisexual prospective adopter in Arizona, the gay foster parents in Massachusetts, and the case of Charles B. Finally, I introduce the notion that these shifts in subject positions reflect conflicting lines of discourse.

Power

How do certain historical shifts lead to the formation of certain discursive subject positions? Foucault can be thought of primarily as an historian of ideas; he was interested in tracing the discursive emergence of particular objects and analyzing the statements made about them. Foucault points out that it is often left to those with situational power to designate labeled subjects in accordance with their specifically bounded discursive formations. For example, authorities of a given discourse (judges and the law, for example) can marginalize certain subjects who come before them through a particularly informed gaze. Thus, Foucault seeks to illuminate the interplay between predominant discursive formations at a given time in history (such as discourses of the state, the family, or sexuality) and the subjects produced by such deployments of power. Who has the power to construct and deploy statements about the homosexual as an adoptive parent?

Foucault’s conceptions of power become especially important in the archaeological analysis of the deployment of discourses, and inform my research question about the
influence of power on the formation of identity positions. Power “circulates through all levels of society and all social relationships” and, after the influence of Foucault, is thought of as both “constraining” and “productive and enabling” (Barker 2000:390). Instead of conceiving of only an overarching power possessed by a few, Foucault adds complexity to this model by conceiving of situational power. Power is best thought of as a “multiplicity of force relations” (Foucault 1978:92-3). Of course, certain authorities of delimitation have more power over their own jurisdiction.

Relatedly, in The Birth of the Clinic Foucault speaks of a certain gaze adopted by clinicians that transformed the subject (through objectification and fragmentation) into specific knowable and diagnosable parts (1973). Thus, as the newly medicalized gaze focused on “homosexuals,” they were now diagnosable as such. Specifically, the emergence of a medicalized discourse, based on the gaze by those with situational power, influenced the formation of a new and distinct social category for homosexuals. After the diagnosable condition of homosexuality became a reified state, particular subjects were viewed as ill, deviant, and dangerous (especially to children). This resulted in increasingly complex social stratification and marginalization of those disempowered by this gaze.

The Enlightenment of the nineteenth century marked decreased jurisdiction of religion and an increase in scientific ‘experts’ that provided a new surface and a newly located sexual subject. “The concept of homosexual and heterosexual individuals emerged during the late nineteenth and mid-twentieth centuries, as science and medicine replaced religion as the major influences in society. The medical and psychiatric professions invented the term “homosexuality” and began to study the illness it described” (The Editors of the Harvard Law Review 1990:4). As this medical discourse gained ground,
laws were constructed to regulate this newly identified deviance. Irvine (1994) also notes this important shift in perception, "A related historical development in the organization of sexual identities was the emergence of the legal, and particularly the medical, professions as central institutions in the regulation of sexuality" (Irvine 1994:237).

This surface was also marked by the emergence of the nuclear family form; I describe this further in chapter four. This medical and legal discourse then converges with existing religious discourse, that then intersects with discourses of the family and gender, and so on, until a subject, and all statements pertaining to a subject, are embedded within a complex network. Most importantly, those with situational power locate a subject in this discursive network and are deemed the experts of the time.

Power is exerted in multiple ways, such as in the slant given to a story by the media, the stares of the concerned community, and through the more legitimate veins of judicial conclusion. "In virtually every case in which openly lesbian and gay parents confront the glare of media publicity or the scrutiny of judicial or administrative review, they must endure spoken and unspoken prejudgements about their unfitness as parents - judgments that arise out of stereotypes to which invisibility and silence offer no challenge" (Ricketts and Achtenberg 1987:90). As posited, "silence" and "invisibility" offer no resistance to the common deployments about the unfit nature of homosexuals as parents and one must embrace the identity of the sexual deviant in order to resist unfair reductionist thought. As contemporary queer writers like Sedgwick (1993) note, there is a constant tension when one must accept a classification, albeit limiting, in order to initiate social change. In this thesis, I offer discussion of the convergence of discourses on family, gender, sex and religion, and those with the power to situate homosexual adopters.
A Brief History of the Homosexual Subject

Homosexuals did not exist before the nineteenth century. Of course, same-sex sexual activity and relationships have always occurred, but there was no linguistic label or master status to differentiate those who engaged in this form of sex or in same-sex relationships from those who did not. Foucault (1978) argues that before this distinctive social category emerged, sexuality was thought of in more fluid terms, and particular activities or relationships did not, forever designate participants as members of certain social groups.

Of course, as Mary McIntosh (1968-1969) suggested, not all “homosexual behavior” necessarily leads to one being deemed a homosexual. One may engage in homosexual sex and not take on the role of the homosexual. She argued that homosexuality, rather than a behavior, is best conceptualized as a role. Her work, which was published before the similar (but hardly identical) argument by Foucault, argued that this “homosexual role” first developed in seventeenth century England (McIntosh 188). She differentiates between these carved out positions one may take on and the actual sexual behavior one engages in, and justifies her distinction: “It may seem rather odd to distinguish in this way between role and behavior, but if we accept a definition of role in terms of expectations (which may or may not be fulfilled), then the distinction is both legitimate and useful” (McIntosh 1968-1969:184). McIntosh argues that although there were few parts for subjects to play (homosexual, heterosexual) in seventeenth century England, there are a plethora of sexual activities to engage in, “Sexual behavior patterns cannot be dichotomized in the way that the social roles of homosexual and heterosexual can” (1968-1969:184). Like Foucault, she effectively points to this plentitude of sexual
expression, and states “[...] such behavior is far from being monopolized by persons who play the role of homosexual” (McIntosh 1968-1969:192). Also like Foucault, McIntosh argues that same-sex sexual behaviors existed a priori the emergence of the social role of homosexuality.

This newly available and carved out subject position thus birthed certain inherent social identities for homosexuals. Epstein (1994) states, “A homosexual identity, in this view, is created not so much through homosexual activity per se (what labeling theorists [Lemert 1975] would call “primary deviance”) as through the individuals reactions to being so labeled, and to the internalization of the imposed categorization (“secondary deviance”)” (191). Therefore, an identity position is best thought of as resulting from an interplay of discourses, that are socially produced and reproduced everyday through multiple and converging interactions that solidify this presentation of self (Goffman 1963).

Many point out that it is only in the last hundred years or so (Halperin 1990) that we, for many reasons, code sexuality as an important indicator of an individual’s essence. Irvine (1994) argues, “The organization of individual identity around sexual feelings and behaviors would have been unthinkable before the last century” (237). Of course, once the notion of homosexuality took hold in the late nineteenth century, meanings about this distinct position also emerged to code homosexuality as deviant; it was as if a new monster arose from the shadows and existed on the perimeter of the normative.

Specifically, before World-War II, “public awareness of lesbians and gay men was limited to occasional lurid newspaper articles linking “sex perverts” to murder and other crimes and to the advice of “experts” warning against masturbation and “darker” evils” (Adam 1995:44). During the [Senator Joseph] McCarthy era, homosexuals were coded as a
threat. “A 1949 Newsweek article called “Queer People” had already named homosexuals as “sex murderers,” echoing a consistent media theme identifying homosexuals as destroyers of society” (Adam 1995:62). It was implicitly assumed that homosexuals, who already are breaking sexual norms, also had the potential to violate other basic rules. So, once the distinction was made between normative sexuality and homosexuality, this way of framing subjects then influenced the view of the (now labeled) homosexuals as more likely than heterosexuals to engage in criminal behavior, and generally to undermine social order. Here we see a movement from the late nineteenth century coding of homosexuals as distinct subjects with a diagnosable illness into the early twentieth century sexual predators who threaten society.

Those claiming this identity inevitably internalized many of the discourses, and eventually some homosexuals resisted. Shaped around a common sense of identity, communities arose. “Between the 1870s and the 1930s, gay and lesbian communities appeared in American cities and continued to grow during and after World War II” (The Editors of the Harvard Law Review 1990:5).

Seidman offers a helpful summary of the work of Adam (1987), D’Emilio (1983), and Faderman (1981) when he states, “homosexual subcultures evolved from the largely informal networks of pre-World War II, to the marginal, clandestine homophile organizations of the fifties, to the public cultures and movements of affirmation and public contestation of lesbian feminism and gay liberation in the seventies” (1996:6). Marked change has occurred in the meanings we attribute to homosexuality.

Public policy debate about homosexuality during the latter part of the 20th century strikingly contrasts with the limited public commentary in the immediately
preceding decades. Before the mid-20th century, there were indeed discussions about public policy toward homosexuality. Debate, however, was infrequent and one-sided, premised on the assumption that same-sex sex is both a sin and a menace to society. (Smith and Windes 2000: P.1)

Smith and Windes (2000) argue that our current discourse about homosexuality is less overtly hostile, and less frequently reliant upon religious discourse or notions of “sin” and “menace.” A Foucaultian perspective, as I will show, points to the newly formed views on homosexuals and the attached subject positions as reflective of an ever increasing complexity in the grids of specification of the homosexual species. The following excerpt describes a particular moment in history often referred to as a significant catalyst for a newly constructed resistance to the commonly disparaging codes:

The beginnings of rapid social change are typically ascribed to an incident in June 1969, when gay bar patrons, many of them drag queens, fought back with uncharacteristic violence against the New York vice squad conducting a routine raid on the Stonewall Inn in Greenwich Village. In the aftermath and in a social context that included an established civil rights movement, a developing movement for women’s liberation, and changing sexual mores, lesbians and gay men began forming organizations dedicated to transforming their cultural and political status. (Chambers and Polikoff 2000: 524)

After the civil rights movement, the now distinctive cultural and political group identified as homosexuals embraced this identity and began the long political struggle to attach new meanings to the homosexual subject position. As our discursive systems shift, as our institutions reel in attempts to keep up with our shifting mores, the homosexual
subject embedded within these discourses is, of course, also likely to be significantly altered. “In the last thirty years, the social and political landscape for gay and lesbian couples has undergone radical shifts. Changes in laws and social policies, new definitions of what constitutes “family,” the AIDS epidemic, the queer movement, and the antigay backlash - all affect gay and bisexual men, lesbian and bisexual women” (James and Murphy 1998:99). These pro-gay/anti-gay controversies can be viewed from a poststructural stance as carving out and producing new subject positions for homosexual subjects. Our discursive relations produce knowledge through a repetition of statements. This repetition contributes to the maintenance of stereotypes regarding those who are (self) labeled as homosexual.

The lesbian and gay rights movement, along with the women’s movement, produced subjects deemed as militant revolutionaries by the conservative right. This newly constructed position as an activist for the “gay agenda” co-exists with remnants of the rhetoric of the sex-maniac.

Thus, the distinctive homosexual social identity was reified even by those supportive of diverse forms of sexual expression in that the premise of the new movement was based on shifting the codes for a state assumed to be pre-existent. As the homosexual

4 This term is based on essentialist notions and is quoted here only to exemplify a rhetorical construction. I offer evidence in chapters four and five that the rhetoric produced about homosexuals as adoptive parents is in part a reaction to constructed collision between the so-called “gay agenda” as oppositional to the best interests of children.
subject-as-political activist became dominant in the 1960s, the notion of the usefulness of
the distinctive social category of homosexual was also promoted. "The women's
movement's attack on traditional gender roles, increased openness about and lessened
taboo on sexuality, and the "culture of protest" in the sixties all contributed to the spread
of "gay liberation"" (The Editors of the Harvard Law Review 1990:6). If one was not
politically active, one was deemed "in the closet" (Sedgwick 1993).

In academia, during the eighties a standpoint perspective emerged that assumed
that those occupying specific subject positions had unique access to their own source of
accumulated knowledge and their own characteristic worldview. Scholars (Ponse 1978;
Cass 1979; Troiden 1988) during this period sought the expression of the unique
experiences and voices of gay, lesbian, bisexual, and transgendered (g/l/b/t) subjects, and
attempted to incorporate specific g/l/b/t standpoints of history. This new conception of the
unique g/l/b/t viewpoints cut across disciplines, and can still be detected in current rhetoric
assuming this unique viewpoint. Still others, such as Plummer (1981) and Weeks (1987)
emphasized the stigma and labeling of these subjects.

Then, in the early nineties, the term "queer" was reappropriated from the past
deleterious usage (such as in the 1949 Newsweek article associating queer's with sex-
maniacs) and commandeered as a battle cry and a point of pride (de Lauretis 1991).
Whereas "queer" was earlier a slanderous term, it now marked a shift in academic thought
and a new perspective on the usefulness of identity categories (such as homosexual) for
expressing meaningful information about the self. Should homosexuals continue to be
promoted as a political body? Identity politics, which are based on a standpoint
perspective, began to be considered passe by self-identified and empowered 'queers.'
Some scholars now critiqued any system creating a master status based on deviant sexuality. The new coding of the term ‘queer’ challenged the all-encompassing definition of self based solely on sexual orientation (that was promoted by both those for and against homosexual relationships).

Outside of the walls of academia, a new wave of self-proclaimed gay men and lesbians were quietly adopting children in the United States. “In the 1980s, individual gay men and lesbians began adopting children in significant numbers, both domestically and internationally. Often, the adoption agency knew that the adopting parent had a same-sex partner, but only one member of the couple would be permitted to go forward as the adopting parent” (Polikoff 2000:731). For example, Don Harrelson adopted two boys, Doug and Jeff, in the late seventies, and was the first homosexual to spark national attention in this role.\(^5\) Harrelson, who was then in the closet and kept his sexual orientation a secret from the courts, was able to take the boys home from a public adoption agency in Los Angeles. Harrelson was described in another article\(^6\) as “a pioneer of sorts.”

I am concerned with cases of those who are known to the courts to be gay and the discourse surrounding the appropriateness of permanently placing biologically unrelated children with these men. As the first cases are heard in court, we are privy to the


\(^6\) *The Los Angeles Times* printed “‘Married With Children,’ but Wholesome” by Scott Harris Jul 11, 1996.
emergence of the homosexual as a legitimated (in some cases) father figure and family man. The rhetoric about the sex-maniac who threatens social order directly clashes with the notion of the homosexual as a safe caretaker of a child and a family man (especially because family is associated with the function of reproducing a legitimated social order).

The Legal Cases

This new contested discourse of the homosexual as a family man emerged in the mid-eighties as the courts began hearing controversial cases. This section offers a brief introduction to each case and is meant as an orientation for my later arguments, analysis, and theorizing about the specifics of each case. Chapter four offers analysis of the Lofton and Babets cases in light of the merging discourses of sex, gender, and religious beliefs on the family. In chapter five I look at the final three cases, including the Pima County case, the Charles B. case, and the Cox cases as evidencing clashing discursive formations.

The current case in Florida (157 F.Supp.2d 1372) was a central focus in a recent (March 2002) interview between Diane Sawyer and Rosie O’Donnell, and the focus of a popular website (lethimstay.com) that has spurred over 300,000 letters of protest to be sent to Jeb Bush, the governor of Florida. A national debate has emerged over the fate of Bert, a ten year old boy who was placed as a foster child with Steven Lofton and Roger Croteau when he was nine weeks old. His placement with Lofton and Croteau only recently became an issue because Bert no longer tests positive for HIV and Florida now considers him adoptable (as opposed to being a foster child). Florida does not allow homosexuals to adopt, and herein we find the crux of this case. Should Bert be removed from his family because Steven and Roger are homosexual? Representing Lofton and three
other families (Houghton, Smith and Skahen) the American Civil Liberties Union (ACLU) filed a challenge in 1999 to Florida’s statute 63.042(3) that states “No person eligible to adopt under this statute may adopt if that person is a homosexual.” Arguments were heard in federal court on March 4, 2002. This case is still pending.

The mass media surrounding the Babets case (526 N.E.2d 1261) serves as evidence of one of the first national controversies over homosexuals as caretakers of children. Two boys were placed in the foster care of David Jean and Donald Babets in Boston, Massachusetts in 1985, and were subsequently removed after a flood of media attention. I study the construction of these subjects in news articles and statements made by Michael Dukakis, who, in response to the placement of these boys with Babets and Jean, supported a new policy that in effect made it difficult for homosexuals to become foster parents in Massachusetts. The Civil Liberties Union of Massachusetts brought a case against the Department of Social Services (DSS) in 1986 in Superior Court on behalf of the Babets and others in order to challenge their policy that placed married heterosexuals with parenting experience before single or gay parents in a constructed hierarchy. The actual case focused on the release of internal DSS documents. This policy was later reversed in April of 1990, but the two boys were never returned to Babets and Jean.

An interesting case (727 P.R. 2d 830) emerged from Pima County, Arizona in 1986. Here a bisexual petitioned to be eligible to adopt children (no particular children were involved), and was ultimately found unacceptable by Judge Philip Fahringer because of his bisexuality. The construction of this applicant based on the line of questioning he was subjected to by the court is analyzed in chapter five.
In 1988 Ohio was given the opportunity to address this issue, as well. In 1988 Mr B, who had a stable counseling relationship with a boy named Charles B (with both physical and mental challenges), petitioned to adopt Charles. Mr B was approved to adopt Charles in trial court, but was found unacceptable in appellate court (1988 WL 119937 (Ohio App. 5 Dist.) before the final ruling of the Supreme Court of Ohio granting the adoption in 1989 (50 Ohio St.3d 88, 552 N.E.2d 884). As in all the cases, here the question was raised about whether or not Mr B fit the mold of a proper caregiver in light of his homosexuality.

James Cox challenged Florida statute 63.042(3) long before the current Lofton case, and petitioned to be eligible to adopt. Again, after approval in trial court he was denied on appeal and then again by the Supreme Court of Florida in 1995 (656 So.2d 902; 627 So.2d 1215 n.6.) before ultimately dropping the challenge. At issue was the definition of the term homosexual, which produced interesting discussions of sexuality by the judges involved.

Discourse and Discursive Analysis

Foucault uses the term discourse in two ways: first, to describe all texts and systems of meaning; and second, to describe technical 'lingo' generated within certain socially privileged disciplines. Fillingham (1993) states, "In its broadest sense it means anything written or said or communicated using signs" and that it specifically refers to "technical knowledge" (100-1). For Foucault dispositif "describes the congeries of discourses, practices, institutions, architectures, among other things, that variously intertwine and overlap in the construction of an object of inquiry" (Turner 2000:51).
Discourse, as described by Barker, is "Language and practice, regulated ways of speaking which define, construct and produce objects of knowledge" (2000:384). In short, we attach certain meanings and code certain objects as always belonging to a specific dispositif. This serves to reify the entire system of discourse and classification. Through this process, certain subjects emerge. Foucault writes, "One of the most productive ways of thinking about discourse is not as a group of signs or a stretch of text, but as 'practices that systematically form the objects of which they speak' (Foucault 1972b:49). Discourse analysis can free objects and subjects "of all groupings that purport them to be natural, immediate, universal unities, one is able to describe other unities, but this time by means of a group of controlled decisions" (Major-Poetzl 29). By using discursive analysis, I aim to (1) deconstruct and challenge certain essentialist notions of identity, and (2) explore the power relations inherent in the discursive production of sexed subjects.

In the sixties the social constructionists Berger and Luckmann wrote of what is now termed discourse by poststructuralists "Language becomes the depository of a large aggregate of collective sedimentations, which can be acquired monothetically, that is, as cohesive wholes and without reconstructing their original process of formation. [...] In other words, legitimations can succeed each other, from time to time bestowing new meanings on the sedimented experiences of the collectivity in question" (1966:69). Berger and Luckmann also wrote of this reification of certain linguistically categorized objects: "Language is capable not only of constructing symbols that are highly abstracted from everyday experience, but also of "bringing back" these symbols and presenting them as objectively real elements in everyday life. In this manner, symbolism and symbolic language become essential constituents of the reality of everyday life and of the
commonsense apprehension of this reality” (1966:41). As discourse on these grouped objects shift, the meanings given to these not-so-stable objects also shift. Discourse on a subject who becomes the focus of a particular gaze, for example, is much like a branch from a tree rooted in previously constructed formations. This branch thus grows from an established frame of grounded and reified postulates into a novel offshoot. But Foucault argues that this process is not linear, rather, one must picture a three-dimensional discursive line intersecting with other lines in a constant process of interrelations which again re-situate and re-group objects of knowledge.

Groups with differing agendas (such as pro-gay/anti-gay advocates) can be seen as active producers of discourse. “They build arguments through language, employ ideographs, deploy condensation symbols, and spin narratives out of symbols” (Smith and Windes 2000:35). Smith and Windes (2000), who study rhetoric, argue that what is of most importance is the “process of collision in which multiple symbolic words are created and reconstructed,” and the way in which “competing texts weave around and through each other in an ongoing national town meeting on human sexuality” (Smith and Windes 2000:xii). From a Foucaultian perspective, these colliding meanings, these discursive intersections, form a new subject niche.

Discourse is produced and maintained in three distinct ways, according to Major-Poetzl (1983). First, it involves the formation of subject positions and generalized concepts in relation to each other. Second, discourse is produced through the transformation of existing conceptions of a particular subject. Finally, a discursive production must be correlated and situated in relation to other discourses as part of a larger framework (1983:23). Mills characterizes discourse as:
something which produces something else (an utterance, a concept, an effect),
rather than something which exists in and of itself and which can be analyzed in
isolation. A discursive structure can be detected because of the systematicity of the
ideas, opinions, concepts, and ways of thinking and behaving which are formed
within a particular context, and because of the effects of those ways of thinking
and behaving. (1997:17)

Discourse analysis seeks to reveal opposing statements existing on the same plane.
For example, the categorizations of homosexuality and heterosexuality exist on the same
plane (that is, as possible sexual orientation options) but are viewed as polarized. Queer
theorists challenge this dichotomy (as I further elaborate in the next chapter) and Foucault
argues for an outright *transgression* of the rules that govern this plane. It is often useful to
analyze the "distinction between lesbian and heterosexual" by studying the "series of polar
opposites: the perverted and the normal, 'gay' versus 'straight', 'good' versus 'bad'
(Beresford 1998:60). Once we effectively (through a pattern of explicit discursive
statements) distinguish clear niches waiting, in a sense, for individuals to enter, there
inevitably arises a preferred valuation of one position over the other. This stratification of
valuations marks not only the inherent assumption of essential differences between the
opposing positions, but also of which position is hierarchically superior. Spargo (2000)
states, "No opposition exists in splendid isolation - all work through relationships with
others" (2000:46). Through identification of the polar opposite of a given state, we more
clearly see the object or state of being (homosexual, for example) not as stable and well-
defined, rather, as existing on a plane alongside what it is not. In this way, we articulate
the Foucaultian premise that objects do not exist before their discursive formation.
Conclusion

This chapter introduced my fundamental research questions and offered an overview of the texts I analyze, my methods of analysis, and the theoretical perspectives I employ. I offered a discussion of power as it relates to the formation of subjects and a brief history of the evolution of the homosexual subject as evidence of the constantly shifting codes and meanings associated with this discursively situated subject. This historical framework situates my discussion of the late twentieth and early twenty-first century legal cases I analyze. I have explained the significance of discourse to this process and the place of discourse analysis in this study.

In chapter two, I expand the view of homosexuals as a distinctive with contemporary queer interpretations of identity and identity politics. I present the main debates within queer theory about the usefulness of critiquing the inside/outside model and fixed identity positions and about how the notion of sex and gender performativity informs Foucaultian poststructuralism.

In chapter three I present archaeology, which is informed by the Foucaultian theory of the process by which discursive subjects are formed. In an archaeological analysis of texts, the context, speaker, site of speech, and repeated phraseology all become important. Therefore, I have directed my analysis to the illumination of the surfaces of emergence upon which discursive statements are deployed, the authorities of delimitation who have the power to speak, and the grids of specification which differentiate a given object (or subject) in increasingly specified and complex ways. I emphasize the spaces of dissension that reveal the points of convergence of contested discourse (which speaks to the formation of a new identity based on this convergence).
Titled “The Confluence of Sex, Gender, and Religious Discourses on Family,” chapter four looks specifically at the surface, or context, currently framing notions of the idealized family form to compare this ideal to the meanings given to homosexuality. Specifically, I analyze texts associated with the Babets and Lofton (526 N.E.2d 1261 and 157 F.Supp.2d 1372 respectively) cases for the discursive construction of the homosexual subject in response to discourses on the family. I analyze the website lethimstay.com in order to explore new meanings given to homosexuals as adopters. I present Florida’s “Adoptive Home Application” as evidence in my discussion of the construction of sex, which then informs my analysis of the proper gender performances associated with legitimized families. My focus then moves to the Primetime telecast not only in a study of gender, but also in an analysis of religious statements that intersect with the social construction of the “proper” family.

In chapter five I analyze the intersection of codes that inform the newly emergent homosexual as an adoptive parent. I specifically look at the statements made in the Charles B. case (50 Ohio St.3d 88, 552 N.E.2d 884) that set up the “gay agenda” as explicitly hostile to the best interests of children. I also look at the power of certain authorities of delimitation who not only look upon homosexuals with a particular gaze based on particular codes, but who also actively produce both normative and deviant sexuality (which speaks to Foucault’s repressive hypothesis). I pay special attention to the debate over the term “homosexual” in the Cox case (656 So.2d 902; 627 So.2d 1215 n.6.), and to the craving of Judge Fahringer in the Pima County case (727 P.R. 2d 830) to require a standardized testing to measure the bisexual applicant’s propensity for molesting children, which informs my research question about power on the formation of identity positions.
In conclusion, I pull together my analysis of texts to show how, given a time line, certain late twentieth and early twenty-first century rhetoric constructs a new but contested position for homosexuals as adoptive parents. This identity is influenced by the collision of disparate discursive formations that articulate (on one hand) the safe (properly sexed and gendered) family, and on the other, the sexual deviant who exists only outside the role of parent. This new subject is, for the first time, specifically coded as family-oriented as opposed to wholly sexually-oriented. The homosexual position, then, results from a public declaration of identity, an internalization of this distinct identity, and a social recognition and carved out space for those who adopt it. Identity positions result from internalized states as well as socially available and recognized positions. This new position stands on shaky ground; each discourse from which it is tenuously balanced views this subject from a different angle, and thus emphasizes differing characteristics. This new ground must address that which it is borne from, specifically, the intersection of conservative Judeo-Christian discourses, discourses on sexuality, the family, gender, law, and the so-called radical agenda of those who promote gay rights.
CHAPTER 2

THEORY AND LITERATURE REVIEW

In this chapter I present the theoretical framework for this thesis. I build on Foucault’s discussion of the development of the homosexual as a distinct social species (presented in chapter one) and analyze Foucault’s epistemology in order to inform my examination of texts in chapters four and five. However, my discussions of Foucault and homosexual identity positions cannot proceed without first turning to queer theory, its history, and its current contributions to sociology.

Queer theory is informed by Foucaultian poststructuralism and can be categorized into three specific schools of thought. The first challenges identity politics and is waged by queer theorists like Seidman, Butler, Vance, Spargo and Turner. It follows logically that if queer theorists question the usefulness of accepting a common political identity based on sexual orientation that some also find sexual orientation categories limiting and even empty. Therefore, my second focus connects conceptually with the challenge to identity politics, but diverges in particular ways. Here queer theorists (Sedgwick 1993; Nameste 1994; Fuss 2001) have worked particularly on critiquing the inside/outside model, which presupposes a normative center of sexuality (namely heterosexuality) and envisions homosexuals as outsiders. Finally, I present sex and gender as performative (informed by the influential work of Judith Butler) in connection with Foucaultian poststructural theory.
To begin, numerous studies, arguably enough to warrant their findings robust, have established that children raised by homosexual parents suffer no measurable ill effects (Silverstein and Auerbach 1999; Stacey and Biblarz 2001; Perrin 2002) and that parenting styles are not significantly different between gay fathers and heterosexual fathers (Bigner 1989). In fact, “In 1995, the American Psychological Association issued *Lesbian and Gay Parenting: A Resource for Psychologists*, a review of forty-three empirical studies and numerous other articles that concluded that ‘not a single study has found children of gay and lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents’” (Chambers and Polikoff 2000:539).

An article claiming significant risks exist for children of gays and lesbians (Dailey 2001) is, like other articles of this kind, not published in a credible, peer-reviewed journal. A book by Lerner and Nagai (2001) that finds that the numerous studies used in support of gay and lesbian parenting are all methodologically flawed is often cited by those who oppose gay adoption. Opponents of gay adoption, in a similar line, argue that the American Psychological Association and the American Academy of Pediatrics are basing their position on studies with flawed methodology and are overly concerned with the rights of gay individuals and not enough with the safety of children.

As evidenced in the case of Charles B, this construction of the “gay agenda” as oppositional to the well being of children is common. Given that the preponderance of the scientific evidence originates with the larger organizations, this thesis begins with the premise that children raised by gay and lesbian parents are not significantly harmed, and goes on to dissect the social concerns over placing children with homosexuals.
Queer Theory

Queer theory, a interrelation of concepts that on the whole critique fixed identity categories, emerged in the late eighties (Epstein 1994) as an academic extension of the radical gay rights movement. "Queer theory [...] is indirectly related to the emergence of an increasingly visible queer politics, a confrontational form of grass-roots activism embodied in ACT UP, Queer Nation, and other direct-action groups during the last decade" (Stein & Plummer 1994:181). Queer theory filled an academic void; the silence in the discipline of sociology on the topic of sexuality is often pointed out (Seidman 1994, 1996) and related to "privileged gender and sexual positions" held by some sociologists (1994:167). Seidman argues that queer theory emerged after the rise of AIDS and the related backlash, as a reaction to rising controversies within the gay movement, and largely due to the spread of French poststructuralism and Lacanian psychoanalysis (Seidman 1996:11).

Queer theory is a fledgling endeavor, and is greatly shaped by particular writers and their focus. Contemporary queer theorists include Judith Butler, Ki Namaste, Diana Fuss, Eve Kosofsky Sedgwick, Steven Seidman, Michael Warner, Ken Plummer, Arlene Stein, Steven Epstein, and Janice Irvine. Others who study g/l/b/t issues, but are not necessarily queer theorists\(^7\) include David Halperin, the social historian Jeffrey Weeks, and John D’Emilio. Ortiz (1993), Hacking (1999) and Vance (1987) each offer an in-depth summary of the controversial debate regarding essentialism versus constructionism, while Eskridge, Jr. and Hunter (1997) study the confluence of sexuality and the law.

\(^7\) One can study issues surrounding homosexuality without adopting a queer perspective.
In order to better articulate the construction of sexual boundaries, I will now shift my focus to the three main tenets of queer theory including: the opposition to identity politics; challenges to the inside/outside model; and the performativity of gender and sexuality.

Queer Theory as a Challenge to Identity Politics

Much like postmodernism, queer theory is difficult to define. Some characterize queer theory as theory produced by queer people, about queer concerns (Kepros 2000). A broader argument appears in the works of Seidman (1994) who asserts that queer theory is a new way of thinking that critiques fixed identity categories. If the classification system used to distinguish gay, lesbian, bisexual and transgender people is flawed and constraining, how can the essence of this new theory be exclusively based on identically flawed identity classifications, as is the case with standpoint theorists? In other words, to say that queer theory is only to be employed by those that identify themselves as queer is constraining. If identity politics should be a thing of the past (Seidman 1994) queer theory is not ‘by and for’ queers (unless queers are defined as those that shed all identity classifications). Only if we alter the meaning of queer to encompass more than those with marginalized sexual orientations, the first definition offered by Kepros is feasible. As Butler aptly argues, as we deconstruct the term “queer” we should, instead of rendering it

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2 Gayle Rubin (1993) provides an important piece on the specifics of constructed sexual boundaries in her work “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality.”
a meaningless term, "extend its range" (Butler 1993:229). The primary thought that motivates queer theorists is the idea that we can deconstruct fixed and foundational identity categories in order to better articulate both the subjective and structural components that influence certain subject positions, especially those carved out for those labeled homosexual. This insight builds off of Foucault's work on the limiting nature of categorizations of the self, and the need to "queer" (as a verb) such readings of fixed identity states.

Butler is highly attuned to the structural constraints on even the most deconstructed identity positions. She states, "One might be tempted to say that identity categories are insufficient because every subject position is the site of converging relations of power that are not univocal. But such a formation underestimates the radical challenge to the subject that such converging relations imply" (Butler 1993:230). By stating this, she reaffirms the multitude of societal constraints on the individual. I, along these lines, argue that the homosexual subject (although not defined entirely by this category per se) is constricted (to adopt, for example) by discourses on the idealized nuclear family, proper gender performances, sexed categories, and religious discourse that views homosexuality as a sin.

The work of Steven Seidman contributes an important element to our discussions of the discursively constructed homosexual subject through his articles "Queer-Ing Sociology, Sociologizing Queer Theory: An Introduction" and "From Identity to Queer Politics: Shifts in Normative Heterosexuality," as well as through his books Embattled Eros: Sexual Politics and Ethics in Contemporary America (1992) and Queer Theory/Sociology (1996). His critique of the essentialism inherently seen in identity
politics brings us to what has been deemed an unresolvable debate. My thesis speaks to this debate as I offer an analysis of shifting identity positions in chapters four and five, and then critique codes associated with the evidenced identity positions for their usefulness in my concluding chapter.

It is often pointed out that marginalized characteristics seem to take on great importance as identity markers and serve even as bearers of a master status. Add to this the academic trend of standpoint theory, and we are left with a system that reifies the homosexual as a socially distinctive subject type. Sexual orientation becomes a fundamental identifier. Foucault, too, noticed the tendency toward embracing a marginalized identity. “There is no question that the appearance in nineteenth-century psychiatry, jurisprudence, and literature of a whole series of discourses on the species and subspecies of homosexuality, inversion, pederasty, and ‘psychic heraphrodism’ made possible a strong advance of social controls into this area of ‘perversity’; but it also made possible the formation of a ‘reverse’ discourse: homosexuality began to speak in its own behalf […]” (1978:101). Homosexuals, then, claim this discursive identity construction as their own, and deploy new codes in association with it. Weeks (1987) states that sexuality is very uncertain, “Yet we constantly strive to fix it, stabilize it, say who we are by telling of our sex” (31). Debate arises as g/l/b/t persons who claim this identity seek to, as a social bloc, challenge social policies that restrict the rights of homosexuals.

Smith and Windes (2000) argue that claiming the homosexual identity is an act that yields social power. “In the politics of representation, social identities become epistemological strategies in which the ascription and ownership of characteristics become inextricably involved in struggles for power” (95). If we can name it, we can then claim
rights for this known position, and clearly point to discriminatory practices. In certain political arenas, it is more powerful to claim a common group essence. Although politically motivating, Seidman argues that these separatist movements need to be critiqued for their inherent reliance on identity categories. Queer theory emerged as a response and as resistance to essentialist ideology. This acceptance of the homosexual subject position, although theoretically limiting, may be necessary politically. Thus the debate over identity continues. Many have argued that this tension, between the realization of the non-definable self, and the organizational imperative to clearly demarcate identity positions, is unresolvable (Vance 1987:30; Seidman 1992:4; Butler 1993:230; Spargo 2000:57; Turner 2000:54).

As with many second generation writers concerned with issues of sexuality, I critique the assumptions embedded within identity categories. Stein and Plummer (1994:179) point out that while the first wave of queer academic writers sought to ever-more increasingly describe, in detail, aspects of the homosexual community and the etiology of homosexuality, contemporary writers seek foremost to challenge identity categories by which we make distinctions.

Challenges to the Inside/Outside Model

The inside/outside model is evident in rhetoric that positions homosexuals as somehow outside of the center, such that homosexuals must ‘come out’ to express this differentiated position. While some draw from the model of homosexuals as distinctive others, many works offer a “challenge of the representation of lesbians, gay men, and transgender persons as ‘outsiders’ within legal cultures” (Moran, Monk and Beresford...
In his article challenging the inside/outside model, Namaste (1994) states, "Drawing on both Michel Foucault and Jacques Derrida, queer theory explores the ways in which homosexual subjectivity is at once produced and excluded within culture, both inside and outside its borders" (220). Namaste, a Canadian sociologist, adds to this body of work that challenges common constructions as he looks at the concepts of heterosexuality and homosexuality using Derrida’s framework of supplementarity, and argues that "what appears to be outside a given system is already fully inside it; that which seems to be natural is historical" (1994:222).

Heterosexuality does not exist in a perfect, well-delimitated state of naturalness, rather, it is defined by the very thing it is not. In fact, it is the ever-looming state of homosexuality that serves to give heterosexuality any meaning. "The “good” self-concept, grounded in heterosexist parameters, is again protected by establishing a clear boundary line, through repression or suppression, between oneself and everything one associates with homosexuality, whether the associations are valid or not" (Pardie 1999:100). So, homosexuality is a necessary component of the notion of heterosexuality, because without the other to define the one, the one has no meaning.

As homosexual identities emerge, so does the sense that these identities are different from the norm. What is commonly thought of as an excluded thing is actually an integral part of the construction of normative sexuality (Namaste 1994:222). What can we conclude about Namaste’s positions on the discursive construction of the homosexual subject? Namaste’s work, especially through his articulation of the limitations of the inside/outside model, enhances the notion of certain identity positions as completely embedded within discourses. Statements and terms (homosexual/heterosexual) are
produced from within these discourses deemed binary in nature, and reify distinctive identities based on these linguistic dichotomies. Through the realization that linguistic binaries are not, in fact, representations of some essential differences, and are not even independently constituted, we also deconstruct any subject position solely reliant on such terms.

Many, along with Namaste, are concerned with the deviant label affixed to those marginalized. “The label “homosexual” stands in sharp contrast to the term “heterosexual” and creates difference by forcing individuals to choose exclusively between their same- and opposite-sex attractions - in effect, to choose to be “deviant” or “normal,” as society has defined those terms” (The Editors of the Harvard Law Review 1990:8). Therefore, “heterosexuals” are not immune to this linguistic reliance on an oppositional concept; the often taken-for-granted state of normalcy is constrained by that which it is not.

Diana Fuss, in her article “Theorizing Hetero-and Homosexuality” (2001) argues that we cannot simply dispense of the inside/outside model, no matter how appealing this may be, for

Inside/outside functions as the very figure for signification and the mechanisms of meaning production. It has everything to do with the structures of alienation, splitting, and identification which together produce a self and an other, a subject and an object, an unconscious and a conscious, an interiority and an exteriority.

(347)

We must realize that “Homosexuality, in a word, becomes the excluded […]” (348). Fuss interestingly argues that this exclusion may not necessarily mean lack, in fact, it may be heterosexuality that is most lacking, and therefore in “need for an outside to
contain" it (349). Although homosexuality is seen as deviant from the center, this view
argues that without homosexuality as a distinct deviance, heterosexuality would have little
meaning. Often, discursive positions are best defined by all that they are not; the
homosexual as an adoptive parent is only what he is because he is not heterosexual.

In her frequently cited piece "Epistemology of the Closet," Eve Kosofsky
Sedgwick (1993) proposes all Western knowledge is based on a flawed presupposition
based on binary thinking. Much in line with Namaste and Fuss, Sedgwick also notes the
"pseudo-symmetrical opposition homosexual/heterosexual (or gay/straight)"
categorizations, and points to Foucault for a historical view of the emergence of this
particularly-formed, skewed perspective (55). She sees this organization as "a radical and
irreducible incoherence" in that the homosexual subject is always compressed by
contradictions (56). She argues that the closet, or the state of hiding (intentionally or not)
one's sexual orientation, is imposed by the ever-present social assumption of
heterosexuality (46). A relentless question arises in social situations: Should one disclose
one's sexual orientation in order to challenge the assumption of heterosexuality? In a
Foucaultian move, she attributes a productive function of this constant holding of sexual
secrets. Using legal cases as exemplars, she claims that "The most obvious fact about this
history of judicial formations is that it codifies an excruciating system of double binds,
systematically oppressing gay people, identities, and acts by undermining through
contradictory constraints on discourse the grounds of their very being" (Sedgwick 1993:
47). In Sedgwick's view, the identity position carved out for gay people is very limiting,
disempowering, and incoherent. In chapters four and five I analyze the tangible
ramifications of holding a particularized identity position coded as deviant.
Gender and Sexuality as Performative

Judith Butler, who is a foremost poststructural theorist of gender, explains that "gender and sexuality are not only constructed, but performed" (Kepros 2000:290). This insight, that emphasizes a more social aspect of self presentations, can also be applied to the roles carved out for homosexuals, and the expected performances attached to this subject position. Judith Butler’s discussion of identity politics and her work on the intersection of gender and the gay and bisexual identity is fundamental within contemporary queer theory. She clearly points to this confluence of gender and sexuality, and argues that reified gender ideals spill over into visions of an idealized heterosexual man and woman (1993:237). As one realizes that “Identity categories [are] a necessary error” (Butler 1993:230), one then begins to internalize the notion of the subjective self as non-definable yet labeled in certain ways for specific societal purposes. Much like Foucault, Butler does not conceptualize a subject a priori to the performance, and is influenced by the Lacanian conception of the subject as constantly striving to realize a symbolic version of the self.

Performances are not altogether freely chosen; they exist as the result of an intersection of societal constraints. Butler nevertheless conceives of agency in a very interesting way. Agency (here we may think specifically of the homosexual subject) is produced within the gaps of the idealized identities and the actualized self, the difference between the expected role and the actual performance:

Butler argues that discursively mandated performance must produce agency from within itself, in the following way: gender as performance over time necessitates repetition; and repetition inevitably involves failure or slippage, which in turn
creates a self-reflexive stance; the consequence is a produced agency - by the same
discursive regulations which produce gendered subjectivity. Central to this is
Butler’s paralleling of anthropology (or structural) psychoanalysis’s process of
gendered subject formation and Foucault’s notion of discourse as productive.
(Strozier 88)

Butler’s discussion of the frenzied and constant attempts to reify this performance
is salient. She describes a state of “anxiously repeated effort” that serves the continuation
of gender norms (Butler 1993:237). Others also note the fragility of our constructed
performances, based on our contextual meanings and values. Values have only relational
meanings. “The relativity of values is the best proof that they depend closely upon one
another in the synchrony of a system which is always being threatened, always being
restored” (Laclau & Mouffe 2001:77). We must continually remind ourselves and others
of the carved out role expectations, not only regarding gender, but also governing
sexuality.

It is this constant discourse, this never-ending chatter, that we can analyze for the
inherent discursively constructed identity positions appropriated to those who practice
certain sexual behaviors. The most important thing to realize is not only that there really is
no essential nature to reveal, but also that this focus on squeezing every individual into this
binary system of male/female, hetero/homosexual, is an immense tragedy of reductionism,
and must be spoken of as such. The confluence of such discourses leave little room for
freedom, and often leads the superficial thinkers to stigmatize and condemn those who do
not conform.

Spargo (2000) also sees similarities between Foucault and Butler, and argues that
Butler, in a stroke of genius, deconstructs any remaining essentialist strands remaining in certain conceptions of gender while offering the notion of performativity:

Like Foucault's analysis of the interimplication of knowledge and power in the production of subject positions, gender performativity literally destroys the grounds of political movements whose goal is the liberation of repressed or oppressed natures, whether gendered or sexual, but opens up possibilities of resistance and subversion closed down by identity politics. (Spargo 2000:57)

This leaves us with a performative gender, which is more useful than the concept of gender as reflective of the essence of being male or female. Butler emphasizes the intersection of societal constraints that simultaneously work to bound an individual. Therefore, we continue the production of a gender informed by idealized versions of male and female and heterosexuality and homosexuality.

Foucaultian Poststructuralism

Foucault's work in *The History of Sexuality* was translated into English in 1978 and has since become a canonical piece of both poststructural and queer theoretical insight. Foucault's work is viewed, along with the work of Mary Macintosh's "The Homosexual Role" (1968-69) as the most influential work in the development of the newly forming queer theory, which is currently molded by academic writers like Butler, Namaste, Fuss, Sedgwick, and Seidman. The following paragraphs connect, respectively, Foucaultian insights with the current tenets of queer theory.

To begin, in poststructural thought a subject (such as a homosexual) does not exist *a priori* discursive placement. As I articulated in chapter one, homosexuals as a distinctive
social species did not exist before the convergence of discourse about them. With this in mind, how could a subject not be defined by his position, as claimed by those who challenge identity politics? It is only when certain characteristics are given meaning, and become a master status that problems with identity arise. Here, I must point out a fundamental difference between discourse and actual people; discourse can locate a subject (like a homosexual as adopter) according to interwoven constructions (like that of family, gender, sexuality, and religion), can constrain a subject (from adopting, for example) when certain authorities remain reliant upon such constructions, can become internalized and reappropriated by the subject, but fundamentally can never converge to pinpoint the subject in his entirety (thus the motivation to transgress limiting categorizations).

Preceding challenges to the inside/outside model made by Fuss, Namaste and others, Foucault argues that subjects are best defined not in their coherence, but in the distances that separate them from other subjects on the same plane (Foucault 1972b:35). Thus, Foucault is interested in describing the linguistic systems of dispersion (1972b:37) that reproduce particular relationships and distances between objects (subjects), otherwise termed discursive formations. He states that the "unsaid" is best thought of as essential to "the determination of [a given fields] very existence" (Foucault 1972b:110). Objects are defined by what they are not; this is essential to their discursive existence.

It is vital, in order to dispel the naturalization of the linguistic categorical systems so often critiqued by poststructuralists, to recall that "The archaeological writings operate not on a binary system but on a ternary one: inclusion/exclusion/transgression" (May 1993:13). May offers insight into this often overlooked third option and explains the
transgression challenges the inside/outside model by breaking the foregone rule requiring
the linguistic placement of subjects into set sexual categories. Options include not only
heterosexual or homosexual but both or neither. Here we are challenging not only the rule
of engagement on a particular plane by disrupting the common linguistic filter that serves
to delineate specified subjects into particular niches, but also the logic preceding such
ordering. “Crossing and recrossing the limit between the included and the excluded,
[transgression] is pursued by the forces of reason, health, and order, who seek either to
appropriate it or to confine it” (May 1993:14).

Michel Foucault’s work challenges the notion of ontological knowledge and stable
truth. Notions of truth are reified through constant referral to an elusive but original
source of knowledge. Truth statements, even if they are notably flawed, are said to arise
from an original text. Foucault’s vision of the constant referral back to some elusive
original source of knowledge parallel Judith Butler’s argument of the frenzied attempts to
perpetuate particular gender performances. As Foucault argues that certain statements are
granted a truth value because they refer back to some past moment can be connected to
legal statements made based on edified statutes.

Conclusion

This chapter built off the argument by McIntosh and Foucault that homosexuals
have been constructed as a distinctive social species, and further extended this notion with
contemporary queer interpretations of identity and identity politics. A queer reading of
identity emphasizes the relation of definitional categories to what they are not, in this way
the queer challenge to the inside/outside model parallels a Foucaultian emphasis on the
nature of objects (here homosexuals and heterosexuals) existing on similar discursive planes. Foucault’s (1972:91) notion of the “referential” can be related to notion that heterosexuality is reliant upon reference to homosexuality; both possibilities exist on similar levels and abide by similar rules of formation. This ties in with the queer reading of homosexuality as neither inside nor outside of the center, rather, as existing on the same plane as heterosexuality and being literally defined by it. The rules governing sexuality are broader than the categorizations of heterosexuality or homosexuality and speak more generally to the notion that it is even possible to differentiate specific states of sexuality. Relatedly, Butler’s notion of performativity is informed by a poststructural emphasis on the constraints placed upon given subjects to act out specified roles based on sexualized gender expectations. This connects to the Foucaultian insight that the subject position (such as homosexual) does not exist a priori placement into a discursive framework which includes specified sexed and gendered expectations. According to Foucault, we perform discursive formations.

In chapters four and five I analyze specific evidence (such as Florida’s application for adoption) of these discursive formations with respect to contemporary controversies over gay male stranger adoption.
CHAPTER 3

ARCHAEOLOGY AS A METHODOLOGY

This chapter explores Foucaultian archaeology as a method for analyzing cultural discourses on gay adoption. I begin with my rationale for selecting specific texts, and then discuss the logic guiding archaeological analysis. Embedded within archaeology are Foucault's assumptions about knowledge. Therefore, before I begin my discussion of my method of analysis, I must present his distinction between levels of knowledge and the basic epistemological assumptions of archaeology. Next, I discuss analytical tools including: the illumination of the surfaces of emergence upon which discursive statements are deployed; the authorities of delimitation who have the power to speak; the grids of specification that differentiate a given object (or subject) in increasingly specific and complex ways; and Foucault's use of statement analysis. Finally, I explain the spaces of dissension that reveal the points of convergence between contested discourses.

In an archaeological analysis of texts, the context, speaker, site of speech, and repeated phraseology all become important. How do we know what to focus on, with the plethora of discursive statements produced about the homosexual as an adoptive parent? This leads to my decisions regarding the selection of particular texts that depict focal points of power in the contentious discursive battle over homosexuals as adoptive parents.
Selection of Texts

I specifically sought evidence of contentious discourse in order to better analyze the points of convergence and divergence that frame the discursive construction of gay male adoptive parents. After studying relevant microfiche, the Lexis-Nexis database (using the terms “gay adoption” and “homosexual adoption” and searching for specific known cases), the American Digest System, Law Review articles, books, and media resources I selected specific cases and media sources for analysis. I conducted a comprehensive review of the Decennial Digest (American Digest System) for the years 1981-2001 using the keynumber system. Two research tracks were employed, including starting with keynumbers provided in specific cases I already possessed (these cases lead me to the keyterm ADOPTION), and secondly, using the Descriptive Word Index using the word “Homosexual Adoption” (this is the only related wording offered in the Descriptive Word Index).

I sought early contested cases wherein a known homosexual attempted to adopt or foster an unrelated child. A significant criterion for selection involved the production of contested discourse in order to best illuminate the spaces of dissension between the commonly deployed codes about homosexuality and the commonly deployed codes about the family and children. Another significant criterion for selection was the necessity that the case provide evidence of a newly emerging discourse on the homosexual subject, such as adjectives describing the subject, as well as reasons for and against the placement of children with him. The perceived ability for a subject to take on the role of a caretaker is also influenced by sex and gender performances, which is why I narrowed my focus to a particularly sexed and gendered subject to study, namely, the homosexual adopter.
In order to better articulate shifts in discourse over time, I chose to look at very early cases that occurred in the eighties (In re Adoption of Charles B.; In the Matter of the Appeal in Pima County Juvenile Action; Babets v. Secretary, Suffolk County) and a progression of cases throughout the nineties in Florida (Cox v. Dept of Health & Rehabilitative Services; James W. COX, Petitioner v. Florida Department of Health and Rehabilitative Services) leading up to a nationally recognized, pending case9 (Lofton v. Kearney). The legal cases involve a gay male couple (or single man in the Pima county case) who are (is) not biologically related10 to the children in question. Further, the important “stranger” cases that generate media attention focus on gay and bisexual struggles to foster/adopt, and exclude the experiences of lesbians and transgenders.11 From this starting point, my criteria for selection of cases was set prior to the actual discovery. This helped reduce researcher bias in the selection process.

9 On March 4, 2003 the federal appeals court heard arguments in the Lofton case (the judgement is pending at this time).

10 “Stranger” adoptions occur when the person or persons seek to adopt a child whose biological parents are unable or unwilling to rear the child and the child is not related to either of the putative adoptive parents” (Adams 1996:589).

11 It happens that generally lesbians are more often involved in either custody battles, in vitro fertilization or second-parent adoptions in which they already have some biological link to the child involved. I believe it would be an entirely different, and interesting, track to focus on the positions and discourse of lesbians (presuming this term is useful on a discursive level).
My analysis of the mass media texts include national newspaper articles, a website about the *Lofton v. Kearney* case (lethimstay.com), and a *Primestime* television interview conducted by Diane Sawyer discussing the *Lofton v. Kearney* case in Florida. Also associated with the *Lofton v. Kearney* case is Florida’s “Adoptive Home Application,” which I analyze in chapter four. I selected newspaper articles that refer directly to one of the six specific legal cases, provide a substantiative discussion (are not only a few summary sentences), are national in scope (except for the articles about the Pima County and the Charles B. case which did not receive national exposure), and most importantly, provide controversial and contested discourse directly referring to homosexuals as adoptive parents.

The website (lethimstay.com) was created to draw national attention to the struggle of a gay couple in Florida to retain custody of a boy they have raised since infancy. It is now a part of the national dialogue about the *Lofton v. Kearney* case, and must be analyzed for the inherent constructions of the issue and subjects involved, as well as for the rhetoric deployed by those who support gay adoption.

The *Primestime* television interview and the website (lethimstay.com) are reflections of the massive media attention surrounding the *Lofton v. Kearney* case, and must be included in a thorough analysis of the national discussion on this issue. As Diane Sawyer discusses pertinent questions about the *Lofton v. Kearney* case with Rosie

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12 Although I could have studied a multitude of media texts (radio talk shows, news telecasts, etc.) I limited my analysis to newspaper articles either found in a search of the LEXIS database or referred to by literary sources due to time and focal constraints.
O’Donnell, she also frames the national dialogue surrounding this issue. Analyzing the ways the media articulate this struggle between the state and homosexual parents is fundamental to the study of discursive constructions.

Forms of Analysis:

An Archaeology of Subject Formation

As I state in chapter one, my primary goal is the analysis of the discursive constructions of the subject positions for gay males attempting to foster or adopt in the last decade. To do so, I must illuminate the systems of knowledge and power that merge to form this new position of gay men as adoptive parents. As such, Foucaultian archaeological analysis is an appropriate method, as it aims at uncovering and revealing the discursive realms shaping our current state of reality. Much like digging for traces and indications of a civilization’s existence, archaeology sifts through our deployment of statements to reveal the power possessed by speakers who are able, from certain sites, to shape and produce our knowledge. This form of methodology focuses on the structure of knowledge. “Rather than focusing on what was known (history) or why knowledge is possible (epistemology), [Foucault] investigates how fields of knowledge are structured (archaeology)” (Major-Poetzl 1983:21). This focus on the structure of knowledge brings into light the linguistic frames of knowledge about an object springing from other pre-existent frames (although not necessarily in a linear fashion), and the increasingly complex web of categorizations all knowledge is reliant upon.

Foucault’s usage of the terms relating to levels of knowing, *connaissance* and *savoir*, is significant. While *connaissance* refers to specific knowledge relating to a subject
or object, *savoir* is used in a generalized way to describe the rules that govern particular formations of *connaissance*. A.M. Sheridan Smith, the translator of Foucault's *The Archaeology of Knowledge* (1972) shares his understanding of *connaissance* and describes it as “a particular corpus of knowledge, a particular discipline” while *savoir* is “knowledge in general, the totality of *connaissance*” (15). To examine rhetoric informing the homosexual adopter, I analyze the *connaissance* (or surface discourse) of speech about gay adoption evident in cultural texts, and then connect this *connaissance* to *savoir* (the deeper frames of knowledge and bounded thought). Here, *connaissance* can be seen as the specific meanings and codes given both to the family and to homosexuals (which I explore in chapters four and five), while *savoir* would refer to the generalized *surface* on which these discursive lines intersect. This *surface*, or historically situated context, is explored in chapter four.

These levels of knowledge apply to my archaeological focus on the formation of subjects in specific ways. For example, *authorities of delimitation* produce *connaissance* and are reliant upon the *savoir* of the time. Specifically, in chapter four I show how the *savoir* of the family as ideally nuclear is based on a modern *surface*. Statements about this idealized structure are able to emerge. The postmodern family (also spoken of in chapter four) would then, as I carry this example out, be seen by an archaeologist as a new form reflecting the growing complexity of the *grid of specification* of family.

Foucault has a unique epistemological slant in that knowledge does not exist *a priori* discursive formations, and subjects do not await discovery (Turner 2000:51). As described in chapter two, Foucault “wanted us to stop looking for an ultimate truth behind the appearances that will give them proper articulation once and for all” (May 1993:71).
Again, this can be connected to Butler’s notion of the frenzied attempts to reproduce gender based on some elusive conception of idealized versions of man and woman; Foucault argues that all statements refer back to some elusive original moment or purported original text. For Foucault, the prototype is non-existent and origins are not grand but become so through the reification of certain texts and statements made by those who claim respect and homage to the past, a more “real” tradition, or reference to a “true” word.

Therefore, one must make apparent to social formation of certain lines of knowledge by tracing their emergence, not to bolster the argument of an original truth, rather, to show the context in which certain statements first became available (such as statements about gay male adoptive parents). This depiction of shifting, emerging statements serves to reduce essentialist notions of the subject. Foucault demystifies certain conventions that remain reliant on some original text as a justification for their continued perpetuation. As Turner states, “Those processes-or practices- are, for Foucault, arbitrary in the sense that practices of prisons, or of sexuality, obey no transcendent or transhistorical laws; in no way do they reflect the operation of some unified subjectivity, a deeper, teleological force of history, or the operation of any sort of natural law. At the very least, one who would understand those practices fully must begin by refusing the comforts of such explanatory or justificatory schemes” (2000:44).

Turning to legal discourse, we can view statutes from a Foucaultian perspective in that they are often cited and reified as original sources of knowledge. In the elusive “secret origin” which serves to legitimate edified systems of power, this legitimation, this “manifest discourse” which is explicit and surface-level, is often “based on an ‘already-
said'; and that this ‘already-said’ is not merely a phrase that has already been spoken, or a text that has already been written, but a ‘never-said’, an incorporated discourse, a voice as silent as a breath” (Foucault 1972b:25). For example, Florida’s statute 63.042(3) is an example of an “already said” position on gay adoption constantly edified as an original source.

Ultimately, Foucaultian analysis aims at critically analyzing the formations and juxtapositions we take for granted as knowledge by retracing our path backwards from, and then again toward, common sense understanding. The historian as an archaeologist seeks to illuminate the fact that there never was an original truth. As Foucault wrote, “We must question those ready-made syntheses, those groupings that we normally accept before any examination, those links whose validity is recognized from the outset [...]” (Foucault 1972b:22). Knowledge about a specific object (or in this study subject) is the result of dominant discursive formations about that object. An object is located in particular linguistic categories that are historically bound. Once one realizes that people construct these characterizations and codes, it is then of great importance to illuminate the power structures by which these codes are deployed; Foucault argues that “freeing [coded objects] of all the groupings that purport to be natural, immediate, universal unities” serves to underline the construction of these groupings by means of “controlled decisions” (1972b:29). My research question regarding the influence of power over the formation of identity positions is thus informed by a Foucaultian examination of the “ready-made syntheses” that are purportedly based on real, fixed, original truth.

Once we realize that discourses have no transcendental origins, and originate (on an everyday level) from those who have the power to speak, we also become aware of the
power relations inherent in any discourse that labels another as deviant. “The way in which people become labeled as homosexual can now be seen as an important social process connected with mechanisms of social control” (McIntosh 1968-1969:184). Mills (1997:26) emphasizes the shifts of discourse that inform subjects and often are so familiar we forget their arbitrary nature:

Foucault’s archaeological analysis of discourse [is] not interested in simply analyzing the discourses [but] the arbitrariness of this range of discourses, the strangeness of those discourses, in spite of their familiarity. He also wants to chart the development of certain discursive practices, so that we can see that, rather than being permanent, as their familiarity would suggest, discourses are constantly changing and their origins can be traced to certain key shifts in history.

Although discourse is arbitrary in one sense, it is a mistake to dismiss the reach of discourse into everyday practices and institutions; there is a very real material component.

**Analytical Application**

In this section I briefly describe the process and the steps employed in my archaeological analysis. To illuminate the contours of the new homosexual subject, I analyze pro-gay and anti-gay rhetoric that locate homosexuals through the intersection of discourse on the family, gender, sexuality, and religion. Specifically, I analyze the construction of homosexual adopters through the gaze of judges as informed by particular notions of gender, sexuality and family. I also include descriptions of these subjects by journalists, neighbors, and other interested parties (including statements made by these subjects themselves).
I examine five cases and the mass media surrounding each case by studying judiciary findings (in all cases except Babets), reading relevant literature about each case and gay adoption in general, quoting statements from news articles, examining the rhetoric about the Lofton case on lethimstay.com, and quoting statements from the *Primetime* special about the Lofton case. I analyze each of these textual statements in specific ways. I organize chapters four and five according to the legal cases; for each case I apply the four elements of the archaeological study of subject formation (discussed below) and connect specific statements with Foucaultian and queer theoretical insights.

In order to best analyze the power relations involved in the formation of the new subject position, I focus on four distinct areas. First, I analyze the historically based “surfaces of [...] emergence” (Foucault 1972b:41) lending to the formation of the homosexual adoptive parent. Our specific 21st century surface weaves and juxtaposes discourses of the family, law, religion, sex and gender to form the subject position of the homosexual as an adoptive parent. This surface may be analyzed according to the codes attributed to both the sexualized homosexual and the idealized family man; I engage in this analysis in chapter four.

This analytic focus establishes the context of other superficial objects of discourse that make the emergence of a particular group “manifest, nameable, and describable” (Foucault 1972b: 41). As the subject position of the homosexual adoptive parent emerges, I compare this position and the statements about it with those produced about heterosexual adoptive parents, and the nuclear family structure. Specifically, this context allowing the newly formed subject to emerge is guarded by those with specific power to govern and arbitrate the establishment of an object (or subject as an object).
Certain individuals and public bodies hold the power to make influential statements about homosexual as adoptive parents and to present these ideas as fact. Given my focus on power, the archaeological focus on illuminating authorities of delimitation is logical. Certain agents possess "an authority recognized by public opinion" and have power which is thus legitimated (Foucault 1972b:42). Specific authorities of delimitation I analyze include Judge King from the Lofton case, Judge Fahringer from the Pima County case, and the judges of the Cox case who used their power to reify a limiting view of homosexuality. Others who exerted their situational power include a local activist who was instrumental in the removal of two boys from the Babets home, Michael Dukakis (also in association with the Babets case), and Anita Bryant who focused her energy on the promotion of right-wing rhetoric in the late seventies that directly influenced the institution of Florida's statute barring homosexuals from becoming adoptive parents. There are also authorities of delimitation who are supportive of gay adoption. Rosie O'Donnell used her position as a celebrity to speak about the Lofton case to Diane Sawyer, and contributed to the national discourse on gay adoption. Archeology "reveals the nature of constraints on thought and behavior" (Major-Poetzl 29). Internal controls are governed by the commentary of those with the power to speak.

In order to best answer my main research question about the emergence of the new position for homosexuals as adoptive parents, I seek to differentiate statements about the homosexuals as adoptive parents from previous codes attached to homosexuality. In analyzing the scope of an object, namely, the emergent homosexual adoptive parent, I look at the grids of specification that further specify types of homosexual subjects (Foucault 1972b:41-2). As this position intersects to form a certain subject, many
differences from other very similarly coded subjects are articulated. Specifically, I look at statements that refer to the differences between homosexuals as adoptive parents and other categories of homosexuals. Foucault argues that objects change as discourse shifts, and this transforming object becomes increasingly complex as new segments are differentiated as grids of specification. A notable transformation of the homosexual subject occurred as a new specified type emerged from the group. Thus, it is of great importance to mark the gap between the homosexual and the homosexual as an adoptive parent.

This shifting in the superficial statements and the deeper frame of reference is crucial and is specifically emphasized in the study of vectors, or the changes in statements. Foucault pays special attention to the shifting of statement. Statements are never stable; the shifting of statements and meanings is indicative of the shifting of the savior that, based on the historical context, allows certain meaningful utterances. The repetition of phrases in news articles is a prime example of the one-dimensional reification of statements, whereby they become naturalized as true. But these constructions are not without contradiction or beyond challenge. As such, this thesis analyzes the gaps and discontinuities that emerge and are apparent in textual performances with "repeatable materiality" (Foucault 1972b:107), and examines the mechanisms of social control behind the deployment of certain statements about the homosexual as an adoptive parent.

When describing gaps, I look at the spaces of dissension (Foucault 1972b:152). Foucault writes, "[...] one defines the locus in which it takes place; it reveals the place where the two branches of the alterative join; it localizes the divergence and the place where the two discourses are juxtaposed" (1972b:152). Archaeology, in its analysis of
discursive formations, seeks to “compare them, oppose them to one another in the simultaneity in which they are presented” (Foucault 1972b:157). In studying the spaces of dissension, I focus first on the distance between disparate notions. I then examine the following intersection in order to illuminate the formation of the subject. I must therefore:

Determine the possible points of diffraction of discourse. These points are characterized in the first instance as points of incompatibility: two objects, or two types of enunciation, or two concepts may appear, in the same discursive formation, without being able to enter - under pain of manifest contradiction or inconsequence - the same series of statements. They are then characterized as points of equivalence: the two incompatible elements are formed in the same way and on the basis of the same rules; the conditions of their appearance are identical. (Foucault 1972b:65)

For example, what texts reveal points of incompatibility where notions of homosexuality contradict notions of a safe caretaker of children? Do points of equivalence emerge to form a new subject after the collision of incompatible notions?

Conclusion

I have directed my analysis to the illumination of the surfaces of emergence upon which discursive statements are deployed in chapter four, the authorities of delimitation who have the power to speak in the Pima County and Lofton cases, and the grids of specification that differentiate a given object (or subject) in increasingly specified and complex ways. I emphasize the spaces of dissension revealing the points of convergence of contested discourse (speaking to the formation of a new identity based on this convergence). Specifically, in chapter four I focus on the current historical surface that
intersects notions about gender, sex, religion and the family. How do certain formations intersect in the Babets and Lofton cases? In chapter five I explore the construction of the homosexual adopter through the eyes of certain authorities of delimitation. An archaeological analysis of the spaces of dissension apparent in statements these authorities make then reveals the formation of the new subject on the grid of specification. Each of these focuses involves the asking of particular questions, and offers a unique insight into the formation of the subject. In order to clearly convey my four methodological focuses, I conclude this chapter by connecting archaeological concepts, their meanings, my research questions, and textual examples of application (Table One).
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<td>Surfaces of</td>
<td>Historical context that informs statements</td>
<td>What social movements are of influence? What ideal types inform statements about the family, sex, and gender? Which traditions are reified through the repetition of statements? How do current economic or religious practices influence the formation of this subject? What are the current laws governing this subject?</td>
<td>Chapter four: Sex and gender essentialism. Religious influences on the shifting postmodern family in relation to the nuclear ideal. The campaign to “Save the Children” in 1977 that influenced Florida’s statute 63.042(3). Chapter five: judiciary power.</td>
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<td>Authorities of</td>
<td>Have the power to discursively locate subjects</td>
<td>Who has the power to speak about this issue? As evident through particular statements and a particular gaze, in what way does this authority construct the homosexual adopter? Relatedly, when analyzing particular judges, I ask: Does this authority necessitate the subject to endure particular sanctions not required of others attempting to adopt? Are privileges granted to other denied to this subject?</td>
<td>Chapter four: The gaze of Judge King and Rosie O’Donnell in the Lofton case. Michael Dukakis, Randy Ball, journalists writing about the Babets case. Chapter five: The gaze of Judge Fahring in Pima County. I Judge Resnick in the Charles B case. The judges in Cox who locate a subject based on their constructions of normative and deviant sexuality.</td>
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<td>Grids of</td>
<td>Differentiate a given subject in increasingly complex ways</td>
<td>What codes previously located homosexuals? Are there new characterizations, as evident in particular statements? In what ways, and at what point, do particular statements differ so much from previous characterizations that they indicate a newly formed subject?</td>
<td>Chapter four: lethemstay.com gives new meaning to Steve and Roger as family oriented. The construction of Donald Jean and David Babets as ‘good gays.’ Chapter five: Mr. B as a professional who has bonded to Charles, and the bisexual in Pima County as not flamboyant or promiscuous.</td>
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<td>What concepts are completely oppositional? In what ways are oppositional notions re-framed by those speaking after the collision of disparate discourses?</td>
<td>Chapter four: Discord evident in specific texts between the “gay agenda” and the welfare of children. Chapter five: Statement in the Charles B. case that homosexuals are “hostile” to the “natural family.”</td>
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CHAPTER 4

THE CONFLUENCE OF SEX, GENDER, AND RELIGIOUS DISCOURSES ON FAMILY

This chapter looks at the Babets case and the Lofton case for evidence of the conflation of sex, gender and religious expectation on state policies that refuse to legitimate homosexuals as adoptive or foster parents.

First, I begin this chapter with a discussion of family, as informed by Judith Stacey, in order to provide a framework for analysis. I present Stacey’s discussion of the shift from the modern to postmodern family form, and then thread this discussion throughout the remainder of the chapter in my analysis of texts.

Second, I analyze the Babets Case and the portrayal of Donald and David in certain newspaper articles for spaces of dissension between rhetoric of the nuclear family and of homosexuals, and between the so-called “gay agenda” and the “best interests of children.” What rhetoric do those who oppose homosexuals as caretakers of children use? In comparison, how did a supportive journalist portray Babets and Jean, and how does this portrayal speak to the formation of a new subject position? What circumstances led a neighbor to claim a “breakdown of society” when two boys were placed with the Babets?

Third, I introduce and examine the Lofton Case and texts and individuals
associated with the case. Here I examine the *surfaces of emergence* from which Florida statute 63.042(3) arose. In the next section, I analyze lehimstay.com for the positioning (in the *grids of specification*) of a new subject, and analyze the contours of this subject through the newly associated codes. This section presents the rhetoric deployed by those who are supportive of the new role for homosexuals as adopters.

Fifth, I look at Judge King, who heard arguments in the Lofton case, as a central figure with power to speak as an *authority of delimitation*. Specifically, the discursive formations of proper caretakers promoted by Judge King in the Lofton case informs my analysis of gender expectations on the family. Here I analyze the usefulness of applying Judith Butler’s notion of sex and gender performativity to Judge King’s reliance on the state’s argument that homosexuals do not provide “proper gender identification” (157 F. Supp.2d 1372, *1383).

Sixth, in analyzing the Florida “Adoptive Home Application” and informed by the work of queer theorists Namaste, Fuss and Seidman, I argue the categories deployed are outdated and based on the now discredited inside/outside model. This material artifact allows no space for the transformation of the homosexual subject.

While the section on Florida’s application for adoption depicts texts constructed on the basis of sex categories, the next segment “For the Sake of the Children” illustrates the connection between these assumptions about sex with gender essentialism. Why is there such resistance to releasing the modern family form as ideal?

“That book says that He created, in the beginning, a man and a woman, [...] and that homosexuality is wrong.” Finally, informed by this statement made on the *Primetime* telecast, I examine the way religious discourse contours the homosexual adopter.
How do each of these texts, some opposing and some supporting the placement of children with homosexuals, intersect and conjoin to form the parameters of this new subject as both sexual and a family man? How does our current surface blend notions of gender, sexuality, religion and family? What are the sociological implications of these discursive constructions for our evolving understandings of the postmodern family?

Family Forms

We know that there are limited forms that will be recognized and legitimated as family, this limitation is articulated by Foucault who argues that discourse is always restrained by particular articulations, and the exclusion of “all the possible volume” that theoretically could be included (Foucault 1972b:67). Who has the power to articulate, thus narrowing, what a family is?

Family is associated with the private sphere. “By the 1920s among the white middle class, the ideology surrounding the family described it as the means through which men and women formed satisfying, mutually enhancing relationships and created an environment that nurtured children. The family became the setting for a “personal life,” sharply distinguished and disconnected from the public world of work and production” (D’Emilio 1993:469). With this separation of the private from the public, shifts in the private sphere have generated great controversy from those who are concerned with the

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Family law, including laws on fostering and adoption, is “generally governed by state rather than federal laws. This means that each state can develop its own definitions of family, as well as its own rules regulating family matters” (Robson 1995:63).
so-called “breakdown of the nuclear family”¹⁴ (Adam 1995:116). This concern speaks to the discursive formation of the ideal parents, that, if taken from the statements supported by Judge King in the Lofton case, must refer to only those who are married and provide an approved display of sex and gender. For example, as I present later in this chapter, Judge King supports the state of Florida’s assertion that homosexuals cannot provide “proper gender identification” (157 F. Supp.2d 1372, *1383) or stability; these beliefs reify the notion of family as proper only if it is heterosexual.

Judith Stacey (1990, 1996) articulates the myth commonly held of the traditional nuclear family (which she terms the modern family). In her book Brave New Families (1990), she articulates the canonical family form against which all else is measured. She charts its emergence in the late eighteenth century, its dominance in the nineteenth century, and its decline in the late twentieth century.

¹⁴ Unrelated to any of the particular cases analyzed here, Oklahoma’s Representative Steve Largent, in response to children being placed with gay and lesbians who seek joint adoption, argued against such placement stating, “But these are real kids we are talking about here ... Those kids have a right to a family” (Polikoff 2000:744). Largent is tolerant of single parent gay and lesbian adoption, “But on joint adoption of children, we have to draw the line.” His conception of family, then, may include one homosexual parent but never two homosexual parents. He has “ignored the benefit to the child from having two parents in order to make the ideological point that lesbian and gay couples are disfavored family units” (Polikoff 2000:745). His statement “Those kids have a right to a family” implies that alternative unions do not qualify as family.
This ideal form includes "an intact nuclear household unit composed of a male breadwinner, his full-time homemaker wife, and their dependent children. This is precisely the form of family life that many mistake for an ancient, essential, and now-endangered institution" (5). We are now in a new age, and the modern, nuclear family is in decline; Stacey does not lament its departure. She argues that it is more useful to think of families as postmodern in that today there exists a multiplicity of family forms. The modern pull toward a single form of expression is lessening. Homosexual families are seen as viable in her postmodern conception.

Stacey, who co-authored a much discussed overview of studies into the well-being of children growing up in gay and lesbian households, argues that the new, more open conception of family provides more possibilities of expression, and ultimately is beneficial to society. "Basically, children who are raised in a traditional family are now in the minority, and the child development literature must revamp itself to consider children's development within alternative models. Further, what is "normal" development, "typical" development, "optimal" development, or "modal" development will need redefinition, particularly with regard to the socialization of children" (Gottfried and Gottfried 1994:6). Judith Stacey's insights into the shifting family configurations informs my analysis of the emerging possibility for homosexuals to be legitimate caretakers of children.

\footnote{Stacey disrupts the modern, patriarchal narrative of family with her feminist critique that points to the modern family as contributing to economic inequality through instituted inheritance laws and gender inequality. In the modern ideal, women typically engage in childrearing and keeping house (activities not regarded as prestigious).}
The Babets Case

The story begins in 1985 in Massachusetts as David Jean, a gay man, kindly gave an acquaintance a ride home. During this ride he expressed to her his joy over receiving the new arrivals in his home. David Jean and Donald Babets, his partner, had just been awarded custody of two young foster boys who were bruised and needed to be placed in a safe home. The boys' mother knew of Babets's and Jean's homosexuality, and had, through The Department of Social Services, signed a consent form allowing the boys to be placed with them. The Department of Social Services (DSS), which had long scrutinized Babets and Jean, finally entrusted them with children. This happy story was soon disrupted (Benkov 1994:86-98). The woman David was giving a ride home just happened to be the wife of local activist, who vehemently disagreed with such a placement. News of the placement was out. Jean and Babets realized something was wrong as they read the morning paper (Benkov 1994:88).

Although on the surface it may seem that sexuality is not often discussed in polite society, Foucault argues that sexuality is in constant production (1978). Smith and Windes (2000) note the fascination of the media with deviant sexuality, "The media give regular, even dramatic, coverage to public policy questions concerning homosexuality" (3). This early (1985) case of a gay couple attempting to foster children spurred a media frenzy that can be compared to the current attention surrounding the Lofton v. Kearney case in Florida.

The first news story that can be viewed as a catalyst for the flood of subsequent media attention on homosexual fostering and adoption was written by Kenneth J. Cooper of The Boston Globe on May 8, 1985. Instead of viewing Kenneth J. Cooper's actions as
cracking a case and uncovering an important situation, it is more useful to view this article entitled “Some Oppose Foster Placement With Gay Couple” as giving birth to a new subject and a new debate through his juxtaposition of concepts and positioning of phrase.

This article, which shocked the Babets the morning of May 8th, states that the placement of two boys with a gay couple has “caused some of their neighbors [...] to express objections” (Cooper 1985:21). But the cause of this objection was actually the reporter knocking on their door to inquire about their opinions on such a matter. Neighbors were systematically “informed of the placement,” as Cooper states in his article. The most significant social action is not the placement of these children, rather, it is the group of people who took it upon themselves to go door to door eliciting responses from the community. There was no preexisting controversy a priori this social action.

It is interesting that Ben Haith, a man described as an “activist,” is quoted in the morning paper, “I see it ultimately as a breakdown of the society and its values and morals” (1985:21). Is he the one who called The Boston Globe to break the story? Is he the husband of the woman who Donald gave a ride home? In analyzing these statements, I find Haith’s concern over the “breakdown of society” as indicative of the uncertainty as we shift from a modern to a postmodern family form. This postmodern form, when viewed from a modern stance, is seen as existing below the line of what is appropriate.

Haith is said to be tolerant of Babets and Jean’s lifestyle, but simply cannot stomach the placement of children with them (1985:21). In 1985, the notions of the sexualized homosexual were diffracted from thoughts of children; while Haith did not mind Babets and Jean expressing their sexuality, the thought of them also raising children was intolerable. This is direct evidence of the sexualization of homosexuals.
A neighbor named Fletcher Wiley “informed of the placement” responded: “They did what? That’s crazy. You got to be kidding me” (1985:21). This sexualization of these potential foster parents is further evidenced by the statement “I would say this situation falls below what is normal and healthy, Wiley said. “And I am by no means disparaging the lifestyle of someone who has a sexual preference different from my own.” What “situation” is he referring to that is so disturbing? Fletcher H. Wiley, a “prominent lawyer who lives atop Fort Hill” according to the article is tolerant of homosexuals as long as they remain completely sexual, but believes it is abnormal and sick for homosexuals to want to foster children. Heterosexuality is then normal and healthy, while homosexuality is abnormal and sick. It is interesting to hear the hierarchical boundaries and delimitations evident in Wiley’s statements as he questions “Is there any place where a line can be drawn, below which it would not be considered healthy for the development of young children?” The article continues:

“I never heard of the state doing it before,” said Edna Langley, who has operated a day-care center in lower Roxbury for three decades. “They make such issues with me about minor things that make no difference - why would they do that? They pass these children around like they’re nothing.”

An assumption is made by Langley that children who are placed in non-nuclear homes are somehow disserviced. For Langley, homosexuals attempting to care for children is the opposite of a “minor” thing with little significance and she wonders why the state bureaucracy would legitimate this. In other words, she wonders why certain authorities of delimitation, who should have a set gaze of homosexuals as sexually deviant, would allow such a privilege.

It is this “sudden irruption” (Foucault 1972b:25) that must be “treated as and when it occurs” (Foucault 1972b:25). Power, in this instance, can be seen in the situational reaction of the neighbors, the actions of Cooper, and later in the response of the Dukakis administration (which I discuss shortly). What surface allows for this social reaction? It is only when Jean and Babets are seen as distinct sexual perverts existing outside of what is proper that the action of taking two boys from their home is logical. This notion that homosexuals as outsiders, although critiqued now by queer theorists, was apparently at work.

The boys were quickly removed “as more reporters and television camera crews descended on the neighborhood, the state abruptly took the children back” (Clendinen 1985a:24). The Babets lost two young boys because certain persons in powerful positions (the initial reporter and then those associated with the Dukakis administration) judged them foremost by their homosexuality. This deviant status became their master status, and a particular gaze rendered them powerless to retain the children.

This view reduces an entire person to merely a facet of his multi-dimensional self. It is common for a minority status to define a particular group, and become a defining characteristic of an individual, as Munsey argues “it is only important because the ruling
class and the mob assert it to be so, and act upon it in ways deleterious to the scapegoated minority" (1998:12). He continues, "It is always a minority’s property that is considered essential, like a defect or a disease" (Munsey 1998:13). The instantaneous and overwhelming attention from local and national newspapers served an important function. Each statement, pressed and copied for mass consumption, carved out a new debate over the viability (or lack thereof) of homosexuals as state-approved parental figure.

Michael Dukakis helped promote the policy that emerged in response (in rationalization) to the removal of the boys. This policy favored married couples with parenting experience, and placed those without child rearing experience last in line for foster kids (in effect barring homosexuals). The foster issue emerged while Dukakis was campaigning for presidency against George Bush; this coincidental surface gave Dukakis and his administration the opportunity to speak (as an authority of delimitation) on the matter as he defended Massachusetts new policy favoring married couples with child rearing experience. The state of Massachusetts was very careful in the wording and promotion of this policy, and attempted to satiate the homosexual advocacy activists by not blatantly restricting homosexuals the possibility of fostering and adopting.

Jean and Babets eventually challenged (Babets v. Secretary, Suffolk County) the Department of Social Services (DSS) regulations governing the placement of children (codified at 110 Code Mass. Regs. 7.100 et seq. 1986), but the ruling focused on the release of internal documents and the actual suit was settled out of court. The boys were never returned to Jean and Babets. When a court ordered the release of the internal documents about the formation of this policy, it was revealed that the agency was operating with a construction of homosexuals as radical activists who, through their selfish
strides, may endanger children. The memos consisted of the “detailed attempts to balance the needs of foster children against the political imperatives of placating the homosexual community while assuring the general public that ‘nontraditional’ placements would be used only as a last resort” (Longcope 1990:1). We see here the “false dichotomy” (Benkov 1994:95) of the militant homosexual rights advocates versus the defenseless foster children caught in a public and controversial struggle.

In further applying an archaeological analysis, I see the Massachusetts policy as evidence of the spaces of dissension resulting from the intersection of the “gay agenda” (as conceptualized by DSS) and the ‘best interests of the children.’ As these seemingly contradictory formations collided, DSS produced a policy that did not ban gay fostering outright, but did assume that the traditional nuclear form served the interests of children, which reflects a particular historically situated view.

Defending his support of the Massachusetts policy, Dukakis stated, “Because I think the placement of a youngster in a home with a father and a mother and other children, or prior parenting experience, all things being equal, is the best placement” (Toner 1988:22). Former President Bush, who ran against Dukakis in 1988, echoed Dukakis’s sentiments, “I think a child should be placed in a home...with a mother and father, and this in my view is the way it ought to be. Much more love in a situation like that, lasting love” (Wire Reports 1988:6). The Bush family has done its part to prevent homosexual fostering and adoption. Jeb Bush, current Governor of Florida, dismissed over 300,000 letters from supporters of allowing Bert to stay with his family in the Lofton case. The notion that children need “a mother and father” assumes expected gender performances by a woman and a man, which speaks to the confluence of sex
(heterosexuality), gender (appropriate gender roles), and family (heterosexual nuclear family ideal). After the first headlines about homosexuals as foster parents grabbed national attention, Massachusetts began to rethink its controversial and discriminatory policy that, in effect, barred such placements. In 1990 the controversial Massachusetts foster care policy that Dukakis supported was reversed.

As state officials debated the issue, some seem to retain a flawed sense of history (in the notion that nuclear families are traditional) in their support of the nuclear, heterosexual family unit. Specifically, Rep. William Flynn (D-Weymouth) was vehemently against lifting this discriminatory policy. "But Flynn, who was "outraged" by the new policy, called it "a radical threat to the true family unit" (Lehigh 1990:19). Statements deployed about the nuclear family often rely upon notions that the nuclear family has always been the ideal form, and reflect the particular surface from which such "outrage" can emerge.

Foucault posits that tradition, such as the notion of the traditional family "is intended to give a special temporal status to a group of phenomenon that are both successive and identical (or at least similar); it makes it possible to rethink the dispersion of history in the form of the same; it allows a reduction of the difference proper to every beginning, in order to pursue without discontinuity the endless search for origin; tradition enables us to isolate the new against a background of permanence [...]" (Foucault 1972b:21). Rep. Flynn's comments are reflective of the superficial, surface level connaissance of the family unit. Those who have no deeper historical knowledge or reference assume that the nuclear family is the "true family unit." As we situate ourselves historically and look through an archaeological lens, we soon come to the realization that
this structure emerged in the modern era, as Stacey explains in her work (1990). The term "true" in "true family unit" is a reflection of Mr. Flynn's culturally bound and historically myopic norms and values, which he fears are slipping away.

Most of the discourse deployed about the Babets originated from the local media. One article first described this couple without initially referring to their minority status, and opened with, "Last spring a Boston couple in their 30's, responsibly employed, churchgoing people without children, applied to the Department of Social Services to become foster parents" (Clendinen 1985a:24). This tactic of deploying certain sentences and characterizations that indicate an entirely new connaissance of this couple is effective because it contradicts the connaissance journalists usually draw upon when discussing Jean and Babets. Sentences and phrases about church run contrary, in this complex network of knowledge, to the knowledge and classifications about homosexuality. Contradiction can be viewed in a Foucaultian way as illuminating the spaces of dissension between these conflicting notions. Later, the article states:

Mr. Babets is a senior investigator for the city's Fair Housing Commission. Mr. Jean is [a] business manager of a nursing home. They were active in community affairs and local political campaigns. Mr. Jean is the music director of his church. They had counseled with the clergy about the responsibility they sought, and they had letters of recommendation from Mr. Babets's priest and Mr. Jean's pastor.

(24)

Those in support of homosexual fostering and adoption construct this issue in particular fashions; not all statements are deployed by those in dissent of homosexual fostering. For example, the article "They Want a Chance to Care; Gay Couple Still Hurt
from Decision that Took Away their Foster Children" (Doten 1990:85) offers a sympathetic accounting, creating a new relationship and space between the discursive lines of the family and of sexuality. New codes are associated with the subjects as new discursive rhetoric is deployed (by those with the power to make statements, such as this journalist).

Journalist Patti Doten begins, "Disillusionment and hurt still color their voices when they talk about May 8, 1985. That was the day Donald Babets and David Jean's two foster children were removed from their home in Roxbury." Doten characterizes them as "Devastated by the abrupt breakup of their family [...]" The story is told from their subjective perspectives, with this couple as the conscientious and sensitive actors who heroically manage and deal with the villainous Department of Social Services and the Dukakis administration. Their ages are given after their names, making them human. Each of their minute actions and responses are depicted and rationalized in a positive light; for example, "finally consented to sit down with a reporter" and "They also spoke carefully and edited each other's remarks during the interview so that nothing they might say would be misconstrued and hurt their chances of again becoming foster parents" (Doten 1990:85). They are depicted as victims of a terrible moment in history, a moment of harsh and unfair social judgements.

As the article continues we are told that, like many everyday couples, they "spent time househunting and settled on a roomy, rustic house." They "built the animal pens" on their small farm (Doten 1990:85). They are said to be putting their "energy" into care taking for their many farm animals, which is then blatantly compared with their desire to care take for foster children. Babets said, "We have a well of bottled-up parental feelings
that go far deeper in our hearts and souls than the care we provide our animals.” He continued. “Those deeper feelings are just waiting to be released.” Babets is portrayed as hard working and responsible in the sentence, “Babets gets up at 5 each morning to milk the goats before taking a bus to Boston to his job as a fair housing specialist for The Boston Housing Authority.” I find the deliberate characterizations of Babets as a homemaker as evidence of the new branch of discourse sprouting from the collision of the disparate notions of family and homosexuality. Here we clearly see the new homosexual as a caretaker.

During the interview, the reporter wrote that Jean was “busy in the large, wood-paneled kitchen preparing a brunch of homemade breads, hash, and blackberries freshly picked from the side yard” and “spent the previous day making jelly with his visiting parents.” This conjures up images of mom baking a fresh apple pie, with home grown apples.

A personal account is offered from Babets, who believed he could give something to a child in crisis because he had been abandoned as a child and then adopted. “I know what it feels like to be abandoned,” said Babets. “I know there are a lot of kids out there who are suffering from abuse, neglect and abandonment. I want to help heal that hurt. A hurt I experienced.” Jean, who came from a large and close-knit family, said that through the years he had encountered generous and giving persons who had listened to him and helped him sort out his life. “Those experiences left me with wanting to be a special person for somebody someday,” said Jean. “I want to provide a safe haven for someone in need, someone who feels that their life is out of control. Don and I think that the situation we have created here, on the farm, would be a great experience for a child - learning about
animals, about putting up vegetables, about some peace away from the conflict of a
dysfunctional home.” As Jean discusses his desire to care for children, he produces a new
narrative in direct conflict with the narrative of the homosexual as a threatening; he also
commandeers the rhetoric of ‘the best interests of the children’ as an argument for the
placement of children with homosexual adopters.

Babets and Jean were active in their church, and formed bonds with community
members. Thomas Payne, a pastor who wrote a recommendation for one of the men to
DSS, describing the couple as “a stable family in the community” (Cooper 1985:21).
Payne does not believe there is “anything to fear.” Interestingly, here a pastor is
supportive of Babets and Jean. In fact, later in the article another Unitarian pastor believes
the issue is “being made more explosive than it really is” (Cooper 1985:21). Why did at
least two pastors support Babets and Jean?

Babets and his partner are portrayed as ‘good’ gays who are ‘like’ idealized
heterosexuals in their gender performances, class background, sense of religiousity, and
aspirations to reproduce an apparently monogamous and quiet nuclear family setting. They
were not radical activists or promiscuous bar-hopping ‘queens.’ Their ties to the church
gives them the backing of particular religious authorities. This new characterization of
these ‘good’ gays, as seen in this article, bridges the gap between the ideal family and the
homosexual, and reflects a new subject, new coding, and another level in the grids of
specification of the homosexual as a distinctive social species. This new portrayal helps
reduce the inside/outside model and challenge the codes of the overly sexualized and
feminized homosexual.
At the same time, the media focus produced and maintained certain myths and stereotypes about homosexuals, and perpetuated rationales regarding why this group should never have custody of children. In some places, people were resisting the commonly deployed statements, but in effect were deploying them even as they denied their validity. One observer states that Massachusetts is, in effect, “saying that gay people are legally defined as child molesters. It’s the most bigoted thing I’ve seen in my life” (Clendinen 1985b:24). In fact, the statement that homosexuals pose a threat of abuse is not merely a hidden assumption; statements are deployed that blatantly refer to this possibility, as seen in the article “Gays as Foster Parents: The Real Issues” (Turner 1985:A17): “Homosexual households are not normal, and such placements pose a threat to the children of unsavory influence or actual abuse, according to [one] view.” Here we see the active reconstruction of homosexuals as too sexual to be in close proximity to children because of unnatural and immoral behaviors that may corrupt the vulnerable innocence of children.

The *surface of emergence* for statements about homosexuals as possible molesters is informed by a specific point in time where people construct homosexuals as a distinct species and coded as sexual perverts. Again, before the nineteenth century notion of homosexuals as distinctive, the above statements about not placing children with them would not have been available for deployment. By the same token, the thought of placing children with homosexuals during the height of the sexual revolution and gay pride movements would also have seemed absurd; homosexuals were then primarily coded as sexual beings by American popular culture.
Have our codes shifted enough that homosexuals can now shed this overly sexualized identity and take on the role of legitimate caretakers of children? This section’s focus on the Babets case offered an analysis of the first breaking news story that spurred a controversy over gay fostering. As seen in Rep. William Flynn’s concerns over the “radical threat” to the nuclear family and Dukakis’s statements about the importance of having a mom and a dad, I find direct evidence of the influence of sex and gender expectations on legitimized family forms. Points of diffraction exist between deployments about the idealized, safe nuclear family and the codes attributed to homosexuals as primarily sexually dangerous. We also see the clashing of the so-called “gay agenda” with that of the ‘best interests of children.’ It is here, from the point of the intersection of these two disparate formations, that we begin to see the development of a new subject position for homosexuals as safe caretakers, as depicted in the sympathetic article “They Want a Chance to Care; Gay Couple Still Hurt from Decision that Took Away their Foster Children” (Doten 1990:85). As Babets and Jean are portrayed as ‘good’ gays, the spaces of dissension between conflicting narratives shift and lose ground. With this important insight, I turn now to a current case pending in Florida.

Introduction to the Lofton Case

With the help of celebrity Rosie O’Donnell, this current case in Florida (Lofton v. Kearney) has attracted national attention to the issues of gay adoption. Although Bert has been with Steven Lofton and Roger Croteau since he was nine weeks old, Florida is now fighting to remove this thriving sixth-grader from his home.
From the beginning of gay adoptions, gay and lesbian parents were offered children with AIDS and other ‘undesirable’ traits.\(^{16}\) When Bert no longer held the identity of an “undesirable” child with HIV, he also was then not seen by Florida’s Department of Children’s Services as inherently attached to his caretakers who retain their minority status. It is important to note that because the agency realized Bert was not HIV infected, he immediately surpasses Steven and Roger in a constructed hierarchy that then placed him as deserving and entitled to a “better” family.

Florida’s controversial statute 63.042(3) states that “No person eligible to adopt under this statute may adopt if that person is a homosexual.” This ban, which took effect in 1977, has been repeatedly challenged by the American Civil Liberties Union for unconstitutionality and violations of the “right of privacy, substantive due process, and equal protection” (Conte 1998:9). Such a policy, in light of the critical shortage\(^{17}\) of

\(^{16}\) The gay community often takes in hard-to-place children, however, “Noting that there is a large number of hard-to-place children, and that there are gays and lesbians willing to adopt such children, does not mean that gays and lesbians should be limited to adopting only unwanted children” (Adams 1996:602-3) In fact, the trend of placing these minority groups together is suggestive of an inherent stigmatization, “Nonetheless, it is the gay and lesbian community that has often stepped forward to care for these otherwise abandoned children. This has been particularly true with regard to HIV positive children” (Adams 1996:603).

\(^{17}\) Polikoff (2000) discusses the shortage, “In the United States there is a critical shortage of adoptive parents for a substantial number of children in the foster care system.
adoptive parents (especially in Florida) is so unreasonable that it places the state is a position to be sued by any one of thousands of children who are forced to remain in the system.

Spaces of dissension between the “gay agenda” and ‘the best interests of children’ can be seen in rhetoric in Florida currently and back into the seventies, and is reflective of the discursive clashes between sexuality and children. Anti-gay rhetoric of the time relied heavily on the construction of homosexuals as a threat to children and was instrumental in the formation of the statute that currently bars homosexuals from adopting in Florida. Rhetoric was deployed by right-wing religious conservatives like Anita Bryant, whose group Save Our Children collected 65,000 signatures in 1977 (Benkov 1993:83) to protest an anti-discrimination bill for homosexuals:

Referring to homosexuals as “human garbage,” she criticized the bill as an attempt to “legitimize homosexuals and their recruitment of our children.” Appealing

Federal legislation has taken several steps to facilitate adoption, and local government agencies often promote adoption through news stories, public announcements, and other outreach campaigns. In this context, to entirely exclude any group of people from adopting is undesirable. Mainstream child welfare organizations routinely oppose a ban on gay and lesbian adoption” (714-715).

Florida is now the only state to ban homosexual adoption outright, although Mississippi and Utah ban adoption by same sex partners and persons living in intimate relationships outside of marriage. Thus, because of the language of the law, single lesbians and gays (in Utah who are not living with their partners) could adopt children in both states.
especially to fundamentalists who carried out much of the work, her campaign propounded an image of lesbians and gay men not only as sinners but as a corrosive force in society that would inevitably destroy the family. (1994:83)

We see here the influence of one religious discourse of gay “sinners” out to recruit children (which runs parallel to the belief that Satan’s demons are constantly attempting to sway the faithful); this is a powerful and politically motivating sentiment. Here the heterosexual norm, in all of its glory, is being threatened by sinners out to “destroy the family.” Again, this is indicative of the discomfort in the shift from modern family structures to postmodern families. The reliance on religious imagery thus serves as a moral reference point in anomic times as gender, sexual, and family norms shift from the modern to the postmodern. The notion of homosexuals in 1977 as a threat to children continues to weight in contemporary dialogue and reflects a particular historical surface of emergence.

The debate continues in Florida, which purportedly is very worried about homosexuals with children yet frequently allows homosexuals to foster children. I point this out specifically to illustrate Foucault’s point about the arbitrary nature of the scope of particular discourses; here the rule is set against homosexuals adopting although it is deemed appropriate for homosexuals to foster.19

19 While adoption involves a legally sanctioned permanent placement, fostering is temporary, “Adoption is defined by the Child Welfare League of America [1978] as a legal and social process that gives full family membership to children not born to the adoptive parent(s)” (Sullivan and Baques 1999:84), while “Foster care, by contrast, is intended to supply a temporary home until the child can be either returned to his or her
This indicates homosexuals can legally only ‘temporarily mimic’ the idealized family, but Florida will not sanction or validate homosexuals as permanent adopters. Their mimicking will never reach the level to which it would be appropriate to place children with them permanently. Thus, this group is denied the right to legitimately mimic the nuclear family ideal, although this ideal is never truly be realized by anyone.

The following four sections of this chapter present particular texts associated with the Lofton case and apply the four elements of an archaeological analysis of the formation of subjects. Realizing Steve and Roger are primarily judged on the master status of being homosexual, I turn to an analysis of the website actively producing new codes in association with their homosexuality.

Lethimstay.com

I chose to analyze this particular website due to its novel construction of homosexuals as adoptive parents and the prominent role it has come to play in the debate surrounding the Lofton case. This particular website is directly associated with a contested legal case, and serves as a response to the notion that a homosexual cannot adopt children. The website is dedicated to informing the public about the battle in Florida to keep Bert with his family (lethimstay.com), and offers a complex network of links aimed at describing different aspects of the Lofton case.

The website offers pictures of the Lofton family smiling at a picnic table, and Bert looking healthy and active in a sporting helmet and gloves each tell a new story of family,

natural parents or adopted” (The Editors of the Harvard Law Review 1990:133).
and increasingly specific the homosexual subject as new codes are deployed. I analyze one specific segment of this website for my purposes of studying the constructed subject positions of this couple who wish to adopt their foster child Bert. This segment can be found from the home page through the link “The Lofton Family.” From here, a link to “Steve and Roger” displays a personal story about this couple. Here it states that “Steve Lofton and Roger Croteau met and fell in love while they were both in college in California, nearly 20 years ago, and they've been together ever since.” This emphasis on the fact that they have remained together is made as a direct assault on notions of homosexuals as engaging in unstable, promiscuous relationships. The fact that they “fell in love” indicates their relationship is not completely sexual in nature.

Specifically, I see these statements as the result of converging dialogues colliding on a particular plane, and then continuing from this intersection to form new subject spaces for those who are homosexual. For example, the following excerpt directly challenges the spaces of dissension between the ‘best interest of the child’ and the so-called “gay agenda.” Here we see Steve, a pediatric nurse who took in many children with HIV, placing the needs of these children above his own. “Because the kids' medical needs were so intense, the state asked Steve to quit his job and care for the kids full time, which he did without hesitation.” This couple is also portrayed as social servants in the following passage:

Their broader commitment to children has continued over the years - in their own home with the family they're raising, in their community through the work they've done to establish day care centers for kids with AIDS, and at the policy level in their involvement in the ACLU's class-action federal lawsuit on behalf of gay adults who cannot adopt in Florida and kids who need homes. (Accessed on May 1, 2003 http://lethimstay.com/loftons_steveroger.html)
Most importantly for my analysis, a statement is made directly about their assumed identity, "While Steve and Roger joke that they completely lost their identities that day in 1988 when the first baby came home - forever becoming known as the kids' dads, and forever focused on the kids before all else - they wouldn't trade it for the world." It is interesting that, in a lighthearted manner, Steve and Roger "joke that they completely lost their identities [...]". What identities, specifically, could they have "lost?"

The most significant master status each previously held, because it is considered a minority status which defines those who hold it, was of being a particularly constructed homosexual. What defined Steve and Roger, before the wave of children entered their home, was their sexual orientation. Each discursive statement about homosexuality inextricably refers to a deviant sexuality while producing a species of subjects who may enter and internalize this identity. In the grids of specification of the homosexual subject, the picture of Steve and Roger smiling at the picnic table with their children is indicative of a newly contoured, more family-oriented space. This new space bridges the gap between notions of the diagnosably sick homosexual and the idealized nuclear family form.

In the spaces of dissension, before our eyes, conflicting discourses intersect to form a new subject coded as primarily concerned with the welfare of children. As Steve and Roger battle what is seen as the unjust Florida statute, they are said to be fighting for all of the children in the foster care system. Thus, the spaces of dissension between 'the best interests of the children' (as seen in the Bryant’s 1977 rhetoric) and the so-called "gay agenda" collapse as Steve and Roger fight for 'the best interests of the children' in Florida. This rhetoric is now commandeered and deployed in a novel way.

Therefore, as Steve and Roger "joke" that they have "completely lost their identities" it can be surmised that their internalized codes have shifted and a newly constructed space as homosexuals and as parents is emerging. Humor, in this sense, serves a function of addressing a real concern (of some) while not fully giving in to the inherent
battle over the appropriateness (around children) of being homosexual. This statement of
“lost identities” echoes the sentiment shared in the Primetime special in which Roger, in an
extremely important statement, says “I lost my identity years ago. I’m somebody’s dad,
and I’m just happy to be their dad.” Of course, heterosexual parents can be heard
expressing similar statements about how children become the focal point of a life once
filled with other kinds of pleasure. But heterosexuals were never defined primarily by
sexuality, and the shift into parenthood does not mark as significant a convergence of
disparate identity formations.

Pro-gay rhetoric serves to contour this new subject in a particular fashion. “I don’t
think America knows what a gay parent looks like. I am the gay parent” (O’Donnell). This
statement refers to the juxtaposition of the discursive lines of “gay” and “parent” in such a
way that it is a newly forming connaissance of both what and who a gay parent is. Rosie
O’Donnell embraces this juxtaposed position, and offers herself as a conceptual mold.
Later in the interview, she, like Steven and Roger, distances herself from being fully
definably by her sexual orientation. She states, “Part of the reason why I’ve never said that
I was gay until now was because I didn’t want that adjective assigned to my name for all of
eternity” (O’Donnell). In her statement we can clearly visualize the shedding of an old
identity solely based on the right to sexually express with members of the same sex, and
see the transformation of this totally sexed position into a new discursive molding in which
subjects can be both parental figures and also (in a juxtaposition) attracted to members of
the same sex. As these individuals each deploy common statements about their shifting
identities, they each also shape the newly specified homosexual. In an analysis of the grids
of specification of the species of homosexuals, we now see a newly formed discursive
trend. Of course, not all agree with the notion of homosexuals as parental caretakers,
which brings me to my next section.
Judge King

This section focuses on the Judge presiding over the Lofton case. From a Foucaultian perspective, it is vital to uncover localized sites of power and those authorities of delimitation who are able to speak in given public forums. Within the walls of The James Lawrence King courthouse, this building's namesake made a judgement about the future of the Lofton-Croteau family. Foucault writes, “We must also describe the institutional sites from which the [judge] makes his discourse, and from which this discourse derives its legitimate source and point of application (its specific objects and instruments of verification)” (Foucault 1972b: 51).

The characterizations of homosexuals who are attempting to adopt do not exist in a vacuum, but are juxtaposed alongside and in contrast to the positions of the other players involved. For example, an article was deployed at the time of the Lofton ruling that spoke only of U.S. District Judge King (the Judge who upheld the ban on homosexual adoption). What is the relevance of certain characterizations (and identity constructs) of this Judge? It is my argument that this reporter (Carlson) is deploying discursive statements that have no relevance or purpose except as edification of his ruling and his ultimate right to deploy legitimized statements.

Coralie Carlson, in her article “Judge udio ruled against gay adopAons is a respected veteran” writes, “U.S. District Judge James Lawrence King, who upheld a state ban on homosexual adoption Thursday, made the ruling from a 12-story building in downtown Miami named in his honor” (Carlson 2001). To describe the number of floors in this federal structure serves the tactical purpose of affirming his judgement. Each choice of words reveals the reporters position, “In his career, the 73-year-old Miami native [...]

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has won several national awards [...]" and he is said to have "ended several hunger strikes" as a result of a (non-related to this thesis) ruling in 1997. Jeb Bush supported Kings ruling, according to his spokeswoman. This, of course, comes as no surprise given the Bush family stance on alternative family forms and common decency, generally.²⁰

The Equal Protection Clause was subjected to a rational basis scrutiny, and King found that it was not violated because "married heterosexual families provide children with a more stable home environment, proper gender identification, and less social stigmatization than homosexual homes."²¹

Before analyzing more carefully these assumptions about gender, sexuality, and family, I wish to connect the arguments about The Equal Protection Clause of the Fourteenth Amendment to the Constitution to queer reconstructions of identity. This clause protects those classified as a suspect class, therefore it is beneficial for homosexuals attempting to adopt to argue they should be categorized as a suspect class. This is a set identity position guaranteeing that certain fundamental rights will not be violated. District Court Judge King found that Florida’s ban on homosexual adoption did not violate the Equal Protection Clause, and that homosexuals could not occupy the position of a suspect

²⁰ Recall the statements I presented earlier made by George W. Bush in 1988 that “lasting love” was possible only when a child has a mother and a father (Wire Reports 1988:6).

²¹ Of course, Judge King should not rationalize his decision based on possible stigmatization; this only reaffirms public prejudice and was found not to be a valid rationalization in a previous case that dealt with possible racial stigmatization (Palmore v. Sidoti, 466 U.S. 429 (1984)).
class (157 F.Supp.2d 1372). This immediately can be seen as indicative of the political usefulness of accepting a generalized identity position, such that homosexuals may one day qualify as a suspect class. From a queer theoretical stance, it is less useful to hold such fixed classifications but possibly necessary politically.

Judge King chose not to challenge Florida’s assertion that married couples provide children with more stability; how can Florida hold being unmarried against a couple who is not legally allowed to marry? “Homosexuals are not permitted to marry and therefore cannot meet this standard heterosexual measure of ‘stability’” (Arnup 1999:6-7).

Here, we see the intersection of discrimination from two merging issues, as arguments are deployed that homosexuals cannot adopt because they are not married, statements are also deployed that homosexuals cannot marry because this would increase the likelihood that children would be placed with them, as explained by Chambers and Polikoff (2000:528). As homosexuals are viewed through a particularly informed gaze, they are denied privileges.

This discourse juxtaposes conceptions of stability with that of a nuclear form of marriage and family. In order to be normal, safe, and stable one must also be heterosexual. As heterosexual couples marry they are seen as maintaining social order by

22 The Defense of Marriage Act became law in 1996, “Under DOMA, no state would have to recognize a same-sex marriage from another state. The statute also defined marriage, for purposes of all federal statutes, as the union of a man and a woman. In the wake of DOMA, 32 states passed laws stating that they would not recognize a same-sex marriage legally performed in another state” (Polikoff 2000:736).
their assumed desires to hold consistent connections in the community and raise and
properly socialize children all the while performing specified gender roles. Marriage brings
not only social support, but also economic and bureaucratically instituted privileges (such
as insurance inclusions and benefits and the authority to make critical health decisions)
denied to those who cannot legitimately marry. Further, we blatantly see spaces of
dissension between notions of stability and constructions of homosexuality.

This places the Lofton-Croteau family in an impossible situation; they cannot
legally marry, thus are considered unstable, unsafe and abnormal. Judge King also chose
not to challenge Florida’s concern that homosexuals cannot provide “proper gender
identification” (157 F. Supp.2d 1372, *1383) and that the children may face
stigmatization. King’s verdict “was receptive to the concern expressed that married
parents afford superior gender identification and greater stability” (Crowley 2002:262).
Judge King’s statements about “proper gender identification” and the stability of marriage
are rehearsals of Florida’s purported reasons for the ban. The court did not explicitly
affirm or deny the validity of these concerns, but instead, under basic equal protection
analysis, viewed these concerns as providing a rational basis for its finding. Preferring
heterosexual homes was an arguable basis for the prohibition.

The judgement was based on the notion of homosexuals as distinctive social
species, in Foucaultian terms, and on the constructions and codes associated with this
species, namely that homosexuals are (based on what they are not, i.e stable and proper)
unstable and engage in unproper gender performances.

While King uses the term gender identification, Butler’s notion of gender
performativity may lend a deeper analysis. Here, a judgement was made against the
plaintiffs because neither displayed the proper performance of gender according to this particular authority figure. Here we see a situational relationship of power whereby an authority (Judge King) is able to name another deviant and deny certain privileges (the eligibility to adopt) based on this label (homosexual). While actively denouncing certain performances, the Judge also reifies proper gender performances and the associated proper sexuality (and is, in this way, productive and not repressive). This reification of particularly situated gendered subjects can also be seen in the formatting of Florida’s application for adoption, to which I now turn.

Florida’s “Adoptive Home Application”

This section analyzes, from a queer perspective, the application so many prospective adoptive parents have faced in Florida (including Steven Lofton). Florida’s “Adoptive Home Application” (Appendix) form is best viewed as a material artifact revealing specific embedded cultural assumptions about the subject positions of those attempting to adopt. One must be either a man or woman, with a space initially given for both to fill out their names and social security numbers. Instead of stating “Applicant’s Name,” this form rigidly forces one into a predefined category, which is juxtaposed beside the opposite and complementary sexed category. “Legal culture expects and requires conformity to its own constructs of sexual and gender identity” (Beresford 1998:63). These are also arranged in a hierarchical fashion, for as one reads from left to right, the position for the male applicant to write appears before the woman’s space. In section D, a space is given for “Man’s Religious _______ Woman’s Religious _______,” which evidences the influence and intersection of religious discourse.
Most interestingly, on the second page, section E, a table is placed with the
heading “Husband’s (Man’s)” and the “Wife’s (Woman’s),” that (of course) juxtaposes the
sexed position with the appropriate marital role. This serves to compound the limiting
nature of the family form while excluding all others. These categories reflect the canonized
model of the properly gendered sexual subjects and the properly related subjects (as
husband and wife). One can imagine the confusion of a homosexual couple attempting to
fill out this form (like Steve and Roger).

This form, current as of October 10, 1997 (when Steven Lofton and fellow
plaintiff Douglas E. Houghton were subjected to it), was constructed after the
controversial 1977 Florida ordinance\(^2\) banning homosexuals from adopting children.
There is hardly any justification, other than a pure and direct negation of alternative family
forms, for certain authorities in the Department of Social Services to construct an
application forcing the applicant to be either a husband or a wife with, of course, the

\(^2\) A number of earlier cases have challenged this statute: “The Florida statute was declared
unconstitutional by a Florida’s trial court [Seebol v. Farie, 17 Fam. L. Rep. (BNA) 1331
(16th Cir. Ct. Fla. 1991), reprint in State Dep’t of Health & Rehabilitative Servs. v.
Cox, 627 So. 2d 1210, 1221-29, (Fla. Dist. Ct. App. 1993)], but the Florida Supreme
court upheld the statute pending a remand on the equal protection claim [Cox v. Florida
Dep’t of Health & Rehabilitative Servs., 656 So. 2d 902, 903 (Fla. 1995)]” (Adams
properly associated sex attached to each sanctioned status. Positioned in the section after
questions about one’s arrest record, segment G, in full states:

Section 63.042(3), F.S., states that “no person eligible to adopt under this statute
may adopt if that person is a homosexual.”

I am a homosexual. Yes No I am a bisexual. Yes No

Husband (Man) □□ Husband (Man) □□

Wife (Woman) □□ Wife (Woman) □□

Nowhere else is statutory language employed in such a fashion; if there are statutes
against felons adopting, they are not stated in section F which asks about one’s arrest
record. It is, on some ironic level, amusing to note that in Florida “the only persons
categorically excluded are homosexuals” (Adams 1996:604-5). The astute quickly realize
that this means that felons, not to mention a plenitude of other unfavorables (who may
pose a significant risk to children), are not immediately screened out. Based on the
formation of this document and the language employed, it would seem Florida’s primary
concern is in excluding homosexuals from adoption. The two questions about sexual
orientation are the only questions that would immediately disqualify someone if he or she
answered incorrectly (there is an obvious right and wrong answer). All other questions are
open, as if simply collecting specific information with no inherent judgements attached.
This form’s answer categories assume that one’s sexual orientation is fixed and essential,
and conforms to the very limited and historically based classification system.

Most intriguingly, there are direct questions about homosexuality and bisexuality,
but none about heterosexuality. Why is this final category altogether missing? The statute
does not require that adoptive parents are heterosexual, only that they are not homosexual. Hypothetically, if one who considered him or herself as heterosexual, he or she would be forced to answer “no” twice, but never to actually claim a distinctive sexual identity. The construction of this form in the complete lack of mention of heterosexuality, thus defines the unstated normative classification by what it is not! This discursive default captures all that is not abnormal, thus creating a privileged and reified space for normal people to occupy (with no need to ever question or reveal their sexual orientation as heterosexual).

How does this application give space to homosexual adopters? Simply put, it does not. By denying the opportunity to adopt, The Department of Social Services continues to relegate homosexuals to completely sexualized and deviant roles in Florida. The limited and myopic answer categories offer no opportunity for this subject to transform.

Florida’s adoption application was produced explicitly to deny certain privileges to particularly labeled subjects who are assumed to share some essential component rendering them harmful to children. The limited answer categories are based on the inside/outside model that assumes heterosexuality as a well-defined and proper center that no one actually ever has to explicitly claim, as in the hypothetical heterosexual applicant who merely denies deviant sexuality. This provides evidence for queer insights emphasizing that categorizations are better defined by what they are not than by what they are. Holding onto this insight, the next section looks more deeply at the binary gender categories and their associated expectations.
"For the Sake of the Children"

On March 14, 2002 the nation was introduced, via a special ABC broadcast of *Primetime* with Diane Sawyer, to a story of a potential splitting of a family. Diane Sawyer opened, “For most of the children awaiting adoption tonight, the 100,000 children awaiting adoption in America’s foster care system, it isn’t a choice between heterosexual parenting or gay parenting, it’s really about whether they’ll ever have a permanent parent at all. And these are often the most fragile children, moved from home to home until they lose hope.” Here again, in these opening statements, I find the new construction of homosexuals as attempting to help children, which is a complete reversal of previous discourse about the threat they pose. The *spaces of dissension* are shifting.

This special entitled “Rosie’s Story: For the Sake of the Children,” was promoted to the public as the forum through which Rosie O’Donnell would come out to the world in her attempt to shed light on the travesty in Florida, namely, the possible removal of a young boy from his perfectly safe home. Rosie O’Donnell’s viewpoint is emphatically stated:

The state of Florida should *thank* the Lofton’s. They took in four black, HIV positive children, one of whom died. They’ve cared for them relentlessly, to a great extent, to the detriment of their own personal lives. They’ve been unbelievably giving. They should be held up and heralded as the perfect family, not as one that needs to be pulled apart because of hatred. (Rosie O’Donnell on *Primetime*)

O’Donnell, as an *authority of delimitation*, claims Steve and Roger cared for children “to the detriment of their own personal lives.” This is another direct example of the merging of discourses to form the new homosexual family man, who is completely...
devoted to his children. She also argues that they represent “the perfect family” which speaks to the shift of family models from the modern to the postmodern.

There is a wealth of information and possible tracks of focus offered in this national broadcast; in this section, I analyze only statements deployed in the *Primetime* special that directly refer to, thus construct, Lofton and his partner. The focus of this thesis is on the construction of individuals, and the shifting of codes used to describe subject positions. This broadcast actively responds to the contested position of homosexuals as adoptive parents, and in doing so, constructs a new position for homosexuals.

Of course, the subject positions carved out for Lofton and Croteau result not only from the statements directly referring to them, but also from the deployments about those elements (such as the construction of children, the state of Florida, and the childcare system) intersecting their positions.

For example, in this broadcast the state of Florida (in its reified whole) is characterized by the officials who would not speak of the issue; Diane Sawyer said that *Primetime* attempted to contact state officials for comments but were unable to do so. Florida is thus a distant, unhuman, unyielding bureaucracy defending a discriminatory statute.

The childcare system in Florida is deemed to be, by a social worker interviewed on *Primetime*, the worst system in the United States according to the numbers of children in the system and the length of time they are left in limbo. Diane Sawyer characterizes the children in the system as “lost” and “struggling.” An expert deems them “troubled, difficult, damaged” and then describes a scene in which a young boy experienced “sheer
terror” as he was separated from his sister. The actual social workers are described as “good people” in an “overwhelmed” system. The broadcast initially paints a picture of the displaced and abused children that desperately need good homes, and then introduces the audience to a politician who still believes Bert should be taken from his home.

Wearing a suit and tie, state legislature Randy Ball was given a forum to speak Ball, as the Representative of District 29 of Cape Canaveral Florida, serves as an authority of delimitation so far as he uses his position to speak in order to characterize Roger and Steve through a particular gaze:

“So, [long pause] heterosexual parents are better parents?” – Diane Sawyer

“I would say yes. Absolutely.” - Randy Ball

“Because?” - Diane Sawyer

“A child is greatly benefitted in his social and in his, ah, emotional development if he can understand and experience the relationship of a man and a woman. If you’re in a relationship of...let’s say you are lesbian couple. You don’t get to see men and women, in general, working together. And for instance, where a dad he might tend to be, you know, bold and daring, mom is a little more reserved. He doesn’t get to see that. He doesn’t get to see the relationships of, um, mothers and fathers with their children. Which, if you go to kind of any playground you can see dad urging the child on to great exploits, mom saying “well be a little more careful there.” And then there’s the relationship of husbands and wives. How a man treats a woman; how a woman treats a man. How they tenderly love each other. When you take away those three relationships from a child, it greatly stunts his development emotionally and psychologically.” - Randy Ball
“So, no homosexual parent is good? Or, good enough to be allowed to be a parent?” - Diane Sawyer

“[An exception to the rule may exist in an example]. The rule is that homosexual couples do not provide the kind of stable, wholesome environment that would justify the state having a law that allows them to adopt children.” - Randy Ball

“Do you know that Steven Lofton and Roger Croteau have had five sick kids that they have nursed to health in the foster care system?” - Diane Sawyer

“I’ve heard that they did, indeed. I would say what they have done has been commendable. But they are not going to be adoptive parents.” - Randy Ball

Ball, informed by a particular 21st century surface from which his statements about men and women can emerge, actually ring a bit outdated due to their embedded essentialist and reductionist assumptions. We see modernist ideals of “man” and “woman” in Ball’s conceptions. How often are these traditionalized gendered assumptions influential over our laws and in our court-rooms?

Each statement about “woman” and mother as the one who engages in begging the child to be careful, and the father as the “bold and daring” is indicative of not only Ball’s reliance on particularly essentializing and limiting discursive lines, but the generalized discursive formation of man and woman in this particular historical moment. Beresford critiques this form of judgement when categorizing probable behavior in term of sex or sexual orientation classifications, and states “thinking in terms of universal, narrow, binary opposites does not allow for much diversity, and again leads to essentialism” (1998:65).

Ball contests this new homosexual adopter, this new subject produced from an ever complex grid of specification, even though Steve and Roger should be “commended”
for their effort to help children. Therefore, I find that although the notions of family and of homosexuality merged in the *spaces of dissension* for some, Randy Ball will not accept homosexuals as adopters. He does not, in any form (even the most family oriented form) accept this particular derivation from his set notions of the homosexual, and will not create space, through his discourse, for an increasingly complex *grid of specification* of the homosexual subject. For Ball, homosexual families are unstable and unwholesome.

Can men take on the entire role of caretaker for children? Essentialist gender assumptions continue to pervade our discourse on caretaking, with woman constructed as more able to engage in caretaking behavior effectively, as clearly seen in Randy Ball’s statements about “mom” and her gentle nature. This can severely hinder a gay man from successfully managing a new identity as a family man, and furthers the Foucaultian *diffraction* between discourses of the safe family and discourses of the sexually dangerous male.

We see this limited construction of sexed possibilities in the two boxes available in Florida’s application for adoption, in Dukakis’s and Bush’s deployments of the necessity of combination of particularly a “mother and father,” and in Randy Ball’s construction of the family as sexed oppositions. Beresford (1998) challenges the notion of some fundamental nature reflected in our systems of gender, “The presumption of a binary gender system implicitly retains the ideological belief in gender ‘mimicking’ or being defined by sex” (65). So, women are feminine and men are masculine; they each naturally carry out certain performances. Statements are made by these politicians (Ball, Dukakis, Bush) that are informed by biological determinism and essentialist rationalizations. The only problem is that this myth is always being unraveled, and thus constantly sewn.
together again by hurried lines of discourse. Although we may see the limitations in Ball's view, he, through a national broadcast, reproduced the dominant heteronormative discourse on the properly formed family. Discourse is always productive, even, and maybe mostly, as it is denunciative. Ball puts forth a public censure of particular expressions of sexuality, thereby retracing normative sexuality.

Why is it so important for Florida to draw legal borders around sexual expression? What if children really are influenced and persuaded to involve themselves in same-sex sexual relationships later in life? What would happen if everyone stopped engaging in proper gender performances? What is the underlying fear?

Social cohesion is inextricably associated with a set of compelling norms agreed upon by social actors; is there a fear that is we begin to break sexual sanctions that no other boundary will be respected? If we did not have frenzied displays of manhood and womanhood would the social inequalities and stratification between the sexes fail to look as necessary and inevitable? Would the divisions of labor cease to be motivated by essentialist notions of man and woman? Would the modern family form, with its functional uses in our patriarchal, capitalist society crumble to its foundation along with inheritance privileges? Why are essentialist discourses so compelling at this historical moment?

"A strong masculine presence in the home together with a contrasting female one is necessary for sound maturation" (Thomas & Levin 1999:172). This statement was made by Levin, an academic, who is completely convinced of his position arguing against alternative families, and goes as far as to question whether or not "two effeminate males or feminized females can substitute for one normal male" (Thomas & Levin 1999:172). The statements mark a particular historically-bound construction of gender roles. This
sentiment reflects the entire discursive body from which it is able to be spoken, and reveals a *surface* informed by numerous current notions about religion, law, the family, sex and gender addressed in this chapter. Gender essentialism translates to discrimination based on sexual preferences, thus limiting acceptable family forms to almost exclusively the nuclear (modern) form. While this and the previous section focused on the essentialism attached to sex and gender expectations, the next section, using the *Primetime* telecast as text, focuses on the influence of religion as a fundamental aspect of the current *surface*.

The Intersection of Religious Discourse

Why is homosexuality coded as unnatural, immoral, and plainly wrong? This section discusses a statement made on the *Primetime* telecast that speaks volumes to the influence of religious doctrine on the contemporary, historically-bound *surface* that gives rise to certain statements about homosexuality.

The United States was founded by extremist (by Great Britain’s standards then, and ours now) religious sects; this foundation can still be felt and detected in current deployments. “Contemporary sex statutes are generally traced through Anglo-European history to early Christian religious law. In this tradition, sexuality that was not directly related to producing legitimate children was punishable as a “crime against nature” or a “crime against God’” (Robson 1995:18). Gayle Rubin, also noting this important influence on our current mores, argues that Christianity deems sex as sinful and tolerable only for procreative purposes “if the pleasurable aspects are not enjoyed too much” (Rubin 1993:11).
When analyzing subject positions, it is important to realize that those who shape certain discursive subjects (certain authorities of delimitation) do so by wielding culturally powerful images. "A key aspect of identity maintenance by fundamentalist groups is to endow boundaries with sacred power" (Smith and Windes 2000:23). Adams offers an historical connection to the current intersection, "Symbolic of the once dominant rural white Protestant class in the history of the United States, evangelicals have been fighting a century-long campaign to retain moral and political influence in an increasingly diverse and secular society" (1995:119). While this statement correctly depicts the historical influences on current discourse, I find the term "secular" problematic to the extent that it remains reliant upon the sacred/secular dichotomy.

The impact of the "gay agenda" is often critiqued, especially when it is constructed as overrunning the best interests of children, yet other influential discursive lines are often overlooked. Gender essentialism is only one element influencing discourse on the homosexual, postmodern family. Religious references to so-called original (as in inspired by pure knowledge) texts are also very apparent, as seen in this statement deployed during the national broadcast of the Primetime special: "That book says that He created, in the beginning, a man and a woman, [...] and that homosexuality is wrong."

A Foucaultian view dismisses the weight given to the always elusive origins of discourse, and instead focuses on the statements deployed here and now that reify a particular hierarchy and structure of localized power. Here again, in this religious reference to a "He," there is a distancing of the speaker from the truth value of the statement; it is true because something or someone else, in a separated space, deems it to be so.
This kind of thinking is prevalent in religious indoctrination and supports the view of some sacred or secular essences. Believing that some (with normative, God blessed sexuality) are closer to some sacred essence serves to further delimitate people based on abstract linguistic frames. The differentiation between the sacred and the secular can also place the faithful in a subservient position (as they look to the sky).

With the influence of Judeo-Christian religious discourse, objects are placed in a field that is skewed toward patriarchal and hierarchical forms of domination. Embedded and intersecting assumptions are reliant upon the dichotomy of the sacred versus the profane (which further separates the self from the symbolic God and also widens the gap between the self and the symbolic self), and most importantly for this discussion, are skewed toward a heterosexual norm. Religious discourse includes not only a conception of the homosexual subject, located in a particular plane, but also the constructions of God, and even the heterosexual self defined by what it is not.

Discourse begins with the central, idealized, and canonized projection of the heterosexual man. One may picture the image of a heterosexual man literally projected onto a great screen in the sky, along with vast other magisterial images such as that of God. Thus, we hear arguments that homosexual relationships are against God’s will, unnatural, and even disgusting. One must realize that the foundation of much of the discrimination against homosexuals is based in religious dogma, that, most importantly, is itself a social construction serving specific functions. The Judeo-Christian conception of the God up in the sky can be critiqued on the basis of the ways this dogma influences our society in patriarchal ways that favor a heterosexual norm. Church and state are purportedly separated, but discursive lines continue to intersect.
Conclusion

This new subject is inextricably tied to the postmodern shift in family structure, and is partially formed in broader debates over the idealized family. Those holding tightly to modernistic notions of the family also rely upon essentialized gender expectations, and view homosexuals as existing below the borders of appropriateness. As families fail to fit the nuclear mold and clashes appear in news articles, a new space emerges for the homosexual adopter. As legislators release myopic notions of the modern family, the new postmodern family gains social recognition.

In this chapter I addressed my main research question about the formation of a new discursive and social space for gays as adoptive parents. Using the Babets case in Massachusetts and the current Lofton case in Florida to demonstrate the discourses produced when homosexuals petition to foster or adopt children, I employ the methodological tools of archaeology (*surfaces of emergence, authorities of delimitation, grids of specification, and spaces of dissension*) to analyze discursive assertions about the ideal American family and about homosexuals role within it. I apply a Foucaultian, poststructural perspective to the Babets and Lofton cases and look for indications of the production of discourses about the emerging sexual subject.

The discursive line that opposes that of the homosexual as an adoptive parent posits the ideal heterosexual parent, which is based on the notion of homosexuals as sexual perverts existing on the outskirts of society. Queer theorist denounce this inside/outside model as overly simplistic and for its complete lack of attention to the significance of definitions based on difference. Queer theorists challenge not only the notion of homosexuals as outsiders (as if there is an inside) but also the categorization of
homosexual itself (which can be difficult legally and politically in attempts to commandeer the status of a subject class). Denying certain subjects privileges based on these classifications makes little sense.

Through the analysis of the Babets case, the Florida “Adoptive Home Application” and its limited and heteronormative answer categories, and the statements made by Randy Ball about gender and religion on the Primetime telecast, I find a common construction of the gay rights agenda as oppositional to the welfare of children. Seen in the essentialized gender expectations placed upon idealized caretakers and the outright denial of certain privileges, I find the current connaissance to be based on homosexuals as a distinctive, sexualized species. For example, in the Babets case some neighbors expressed their tolerance for Babets alternative lifestyle (read sexual practices) but that the placement of children with Babets and Jean was below some boundary line. Therefore, there is an acceptance for Babets and Jean to express themselves sexually, but outrage when children are inserted into the picture. In this chapter I have identified and analyzed constructions of homosexuals by those who oppose placing children with them as: primarily sexualized; incapable of taking on the role of caretaker in a family; engaging in unnatural and immoral acts that may corrupt children; and as failing to display gender identification properly.

Yet, a new, more complexly woven subject is apparent in statements made by a sympathetic journalists in the Babets case (Doten) and the website that serve to form a less sexualized, more family-oriented homosexual subject position. Specifically, in the argument presented in court in the Lofton case (157 F.Supp.2d 1372, *1383) that children are actually better served by being permanently adopted by homosexuals indicates a new discursive line in which the homosexual as an adoptive parent is coded as safe for children.
As Foucault argues, once an object is found within a discursive framework, _grids of specification_ further delineate the object into increasingly smaller parts; here the homosexual as a generalized species is now specified into the sexualized homosexual of the gay rights movement, and the newer specification as an adoptive parent. Most importantly, I find an active resistance to this seen in the new coding of homosexuals as fathers who are “just happy to be their dad” (Roger Croteau). The lethimstay.com website codes Steve and Roger as primarily family oriented, thus constructing another _grid of specification_ for homosexual subjects. I find rhetoric in support of homosexuals as adoptive parents (as produced by Rosie O’Donnell and lethimstay.com) constructing homosexuals as those who put children’s needs before their own.

Building on these findings, chapter five analyzes the power held by certain authorities to define homosexuality in particular ways (as seen in Cox) and to request additional and standardized testing (to determine specified deviants likelihood of molesting children) for those who do not claim the proper sexual orientation (as in the Pima County case).
CHAPTER 5

THROUGH THE GAZE OF POWER

We have seen the discord between the discourse of the nuclear family (with the embedded sex and gender expectations) and the newly emerging postmodern family structures. Now I will turn to the mechanisms of power and control exerted within specific cases to further explore the surface of emergence existing for particularly framed subjects. Specifically, I focus on the structurally reinforced gaze through which certain authorities view homosexuals attempting to adopt. This chapter explores Foucault’s conception of power and mechanisms of control by specifically analyzing statements made by the court in the Pima County case and the Charles B case. The Pima County case I analyze in this chapter depicts the battle of the state and the specifically constructed bisexual applicant, while the case of Charles B explicitly illustrates the disharmony between the discourse on adoptions and the discourse on homosexuality.

I first look at justifications offered by those who denied the bisexual applicant’s petition to adopt in Pima County, which explicitly placed his sexuality as the foremost matter of concern. Denial was further justified through rhetoric about ‘the best interests of the child.’ I present the arguments of trial court Judge Philip Fahringer and the opposing interpretations and construction of the bisexual applicant as offered by Presiding Judge

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Howard. Careful archaeological analysis illustrates the very situational and even misguided logic leading to what become reified rulings, as seen in the following case. How is this judge framing the applicant as he converses with him?

In the Charles B case I analyze the opposition of the “gay agenda” and the welfare of children and the concerns that arise when a homosexual is granted the ability to adopt. In this case, Mr. B is accepted as an adopter and is characterized in particular ways that inform my discussion of the ever complex grids of specification for homosexuals.

I then move into a discussion of the production of sexuality by the detailed and explicit dialogue of the justices in the Cox case in order to further the Foucaultian anti-repressive thesis (The History of Sexuality). I analyze the construction of normative and deviant sexuality and the desire to properly socialize children to become heterosexual adults. I analyze the judges in Cox as authorities of delimitation over legislated sexuality.

In line with Foucault’s insight into the situational nature of power, this chapter analyzes the social mechanisms of control by which certain subjects are able to promote statements that then significantly alter the outcome of given cases. The general justification for court room legal debate is the promotion of a rational, well-informed ruling. However, rationality is also a strategic deployment that reifies whatever localized, highly moralistic and ethically-based judicial decision is made. Foucault challenges logic and reason as he promotes a transgression from common linguistic frames. For Foucault it is this rational compartmentalization of subjects within discursive formations (produced by authorities of delimitation) that must be illuminated in order to transgress such categorizations. To view debates as the actual clashing of discursive formations allows us to then disengage from the lure of pure reason and rationality, and to see the edification of
statements made by particularly powerful people. Once a ruling is given, it becomes then a potential reference for all related future cases. A judge's ruling, then, becomes edified as an original text.

Pima County Meets the Bisexual Adoptive Parent

The Arizona Daily Star covered a case in which a bisexual petitioner was found “unacceptable” to adopt in an article titled “Court Upholds Denial of Adoption by Bisexual,” (Turner 1986) that did not receive national coverage. This article addresses the debate over whether sexual orientation was the major reason for the rejection of this bisexual man's petition to adopt.24

Judge Fahringer, who heard arguments in this case, argues that “the man lived alone, had held at least eight jobs in 11 years, had sought counseling for personal problems repeatedly and had a “limited” family support system” (Turner 1986). The first bolded subheading of the news article reads “All evidence was in favor” and implies that the bisexual applicant probably should have been accepted as an adoptive parent. Under this subheading, the response is given to the previous demographic characterizations, “[...] he is financially secure with a $32,240 annual salary, has substantial experience as a counselor, is a big brother in Big Brothers of Tucson and regularly baby-sat the sons of a couple who knew of his bisexuality but who still designated him as their sons' guardian in case of their deaths” (Turner 1986).

24 In the Matter of the Appeal in Pima County Juvenile Action B-10489 (727 P.R. 2d 830
Arizona Supreme Court, Aug. 30, 1985)
Here we see this petitioner first characterized in a disparaging manner by Judge Fahringer, Judge Hathaway, and Judge Fernandez (who held the majority opinion) and then held up by Judge Howard as a responsible member of the community. An analysis of this 1986 Pima County case offers insight into particular statements deployed on each side, which I then connect to my larger project of understanding the construction of the homosexual adoptive subject.

Turner, the journalist, continues by explaining that Judge Philip Fahringer was very concerned about the lack of discussion regarding “whether the man had a sexual interest in boys” (1986). Directly underneath this statement about the concerns over sexual interest in children, a bolded and enlarged subheading reads “Concerns called appropriate,” that, if a casual reader did not read on, could be seen as an affirmation of the above concerns about sexual molestation (Turner 1986).

If one continues, he or she will soon read that the court “was appropriately concerned about a child’s reaction on learning of his adoptive parent’s bisexuality, the lack of specifics about the man’s employment history, and the cause and degree of depression he suffered in 1973 and 1974” (Turner 1986). A caseworker also “expressed concerns” about the lack of a support network, but that the petitioner could “resolve future problems through counseling” (Turner 1986). Is there discussion of this “depression” possibly as a response to his disempowered position, and lack of family support? Was this petitioner expected to attend counseling sessions (which assumes the problem originates from him) because of his bisexuality? I will address these questions in a moment.

How concerned was the court about the petitioners bisexuality? After trial court Judge Philip Fahringer, in the original hearing, “certified applicant as being unacceptable”
to adopt, the applicant appealed his ruling. Despite supportive testimony given by the
caseworker and the initial report by the Arizona Department of Economic Security that
recommended certification for adoption, in 1986 the Arizona Court of Appeals court
found him (again) “nonacceptable.” The Court of Appeals of Arizona also found, among
other things, the “applicant was bisexual” (727 P.2d. 830). The appellate courts’
affirmation of the lower courts ruling rested upon the applicants sexuality, as seen in this
excerpt:

   However, we believe appellant’s ambivalence in his sexual preference was very
appropriately a concern of the court. As we have stated previously, the primary
concern of the court, to the exclusion of all else, is the best interest and welfare of
any child. Certainly the sexual orientation of one who petitions to be certified as
acceptable to adopt a child is a factor to be reviewed and evaluated by the court.
Certifications of acceptability for adoption should not be lightly undertaken. (834)

Before I further analyze statements about the generalized best interests of “any
child,” I offer specific textual evidence of the courts preoccupation with the applicants
sexuality. The lower and appellate courts’ concerns with his bisexuality are consistently
placed as the first statement in a grouping of concerns over his personal life. “That
applicant is bisexual, that he lives alone and is employed […]” (833). His bisexuality is not
buried between the sentences about his employment and family support system, rather, it is
blatantly placed above all other statements about his personal life:

   Petitioner is a bisexual individual who has had, and may have in the future, sexual
relationships with members of both sexes; he presently lives alone and is employed
with [applicant’s employer]. (832)
The wording “Petitioner is a bisexual” is also very interesting in its apparent assumption of an essential state of being based on sexual orientation. The word “a” in front of “bisexual” emphasizes bisexuality as a distinctive and useful category. This constructs him as foremost and fundamentally a sexual being, which I argue runs counter to the mythical and Puritan notion that parental figures are (or should be as close as possible to being) asexual.

As also evidenced in the language of the Florida’s application for adoption, heterosexuality becomes a default to which normal people fall; this category is naturalized and not coded as explicitly sexualized in comparison to homosexuality and bisexuality. Heterosexuals attempting to adopt posses a socially non-threatening sexual orientation that is not viewed as an all-defining characteristic of the person; this default category (arguably perceived by adoption agencies as almost asexual in comparison with the sexualized homosexual) raises no concerns over the possible molestation of children who may be placed in homes with “active” heterosexuals who “may have in the future” certain sexual relations.

In response to concerns over prejudice, the majority opinion illustrates the attempt to distance the ruling from any bias against a particular subject class, and instead states that the applicant was denied because of his “conduct.”

The fact that appellant is bisexual is not unlawful nor, standing alone, does it render him unfit to be a parent. It is homosexual conduct which is proscribed [...]. Appellant testified that it was possible that he at some future time would have some type of homosexual relationship with another man even with the placement of a child in his home. He also testified that he did not believe the possibility of
continued homosexual activity would have an adverse effect on a child that he may adopt. It would be anomalous for the state on the one hand to declare homosexual conduct unlawful and on the other create a parent after that proscribed model, in effect approving that standard, inimical to the natural family, as head of a state-created family. (835)

Here I find concern with “future” sexual activity “even with” a child in the home. Again, this concern does not carry over to heterosexual sex “even with” children residing in the same house. This indicates a bias in gaze that renders homosexuals deviant, then justifying certain denials of legitimacy.

Presiding Judge Howard dissented, and argued that the applicant’s bisexuality was the reason for his unacceptability, and that the applicant’s sexual orientation should not have carried such significance. He discredited the sentiment that the applicant’s bisexuality was not a primary consideration given it is blatantly stated that “the state may not “create” a family with a homosexual parent” (835).

Certain authorities of delimitation explicitly and bluntly express the majority opinion and argue that the state will not do anything that may be construed as “approving that standard” of homosexual adoption because it is not only in conflict with Arizona’s statutes against sodomy, but also that homosexual adoption is hostile to the “natural family.” The discourse of the natural family refers, in reality, to a very limited form that Judith Stacey argues is in decline. As these authorities dismiss the new form as “hostile,” they in effect characterize the postmodern family as hostile to the modern family form. This debate is larger than a debate over a single petitioners denial of the right to adopt, it speaks to the generalized surface that would not legitimate the postmodern family.
So far I have shown this unacceptable subject is formed by a *surface* that favors the nuclear family and notions of bisexuAls as both overly sexual and deviant. The notion that the state should not purposefully mold a family with homosexual parental figures lends to the argument that the discourse of the state, as promoting an idealized and legitimated form, clashes with the discourse of the homosexual who is deviant.

Again, we see the deployment of the modern nuclear family as the ideal type, this is not surprising given that this particular family form is normalized in this current historical moment in American society. But, as Stacey points out, this modern family structure can be critiqued for gender essentialism (in the division of labor), contributing to economic inequalities (through inheritance laws) and ultimately for the underlying assumption that it is the only viable form (1990). Can a family based on an alternative structure bond as well as the children and parents within a nuclear family?

Judge Philip Fahringer is unsure, according to his statements. At one point during the review hearing, the judge stated: “I’m more concerned with the bonding or whatever you want to call it, relationship that might ultimately exist or not exist because of the sexual situation” (837). The notion that “bonding” only occurs between particularly molded families (based on sexual ties) explicitly speaks to the intersection of sex and gender as critical indicators of a legitimated family. Is being a member of a particularly molded (heterosexual) family always best for children? Through his gaze, this applicant is not only a sexual threat to children but also lacks the ability to bond. Are his concerns with “bonding” reliant upon some essentialized notion of gender by which women are better able to bond with children? Would he have the same concerns if a lesbian petitioned to adopt?
I now turn to a discussion on the often cited ‘best interests of the child’ criterion in order to analyze its deployment. This criterion has been critiqued for its value-laden assumptions. “The largely vacuous and value-laden best interests of the child standard enables courts to deny adoptions by lesbians and gays based solely on grounds of sexual orientation” (Appell 2001:77). This very subjective criterion has been critiqued as being deployed as a rationale when in fact, hidden bias may be at work. “Because the best-interest argument clearly lacks applicable standards, the choice is left to social workers and the judiciary—with potentially homophobic attitudes, not necessarily the child’s best interest, guiding the placement decision” (Ryan 2000:519).

“Gay agenda” is set as opposing the welfare of the child, as described by dissenting Judge Howard. “The judge expressed concern with three main topics: whether appellant would “proselytize” homosexuality to a child and whether he is involved in gay rights organizations; whether an appropriate parent child bond could be created with a bisexual or homosexual adoptive parent; and whether appellant’s interest in children includes an unnatural or abnormal sexual interest or intent” (Howard 1986:837).

The Nexus test is a more egalitarian tool for evaluation: “The nexus test, used in the best interests of the child analysis, requires the establishment of a clear connection or ‘nexus’ between a parent’s or prospective parent’s actions and harm to the child. Thus, the parent’s sexual orientation per se, should assume no relevance in a custody, visitation, or adoption application determination” (www.lambdalegal.org). This assumes the best interest of the child is not directly related to a caretakers sexuality, which depicts a merging of these once oppositional notions.
As Judge Howard points out, Judge Fahringer interacted with the petitioner in such a way as to indicate his construction of this man as a sexual pervert. Through Fahringer’s gaze, the petitioner became overly sexualized. Would a heterosexual man attempting to adopt a daughter be subjected to such scrutiny? Because bisexuality is associated with overt sexuality, Fahringer’s contemptuous gaze indicates the spaces of dissension between notions of sexuality and of children. Heterosexuals can be sexual without ever conjuring such imagery.

In order to deny that the applicant engaged in activities commonly associated with ‘deviant sexuality,’ testimony was offered directly addressing such concerns. This testimony also served to carve out a new subject position of one who is different from the flamboyant homosexual; there now exists one who is not the sexualized homosexual, which, from a Foucaultian perspective, depicts the ever growing complexity of the grids of specification of the homosexual species.

I find it very significant that the witness testified the appellant was not overtly sexual, was not promiscuously or flamboyantly homosexual, did not frequent any bars, and was not active in gay rights groups. Would the similar statements need to be uttered if a heterosexual was attempting to adopt?

Appellant testified that he believed it inappropriate to display sexual activities in front of children or to influence the child’s sexual orientation in the manner suggested by the court. […] The court’s concerns regarding activism or proselytizing were not borne out of the evidence in this case, rather, may serve to hold the flood walls regarding normative sexuality. “The stereotype of gays as sex-crazed maniacs functions socially to keep individuals’ sexuality contained” (Mohr 1988:25).
The increasingly specialized mechanisms of social control, in a way Foucault would find revealing, can be seen in the stated need to continue to monitor the applicant and subject him to specified testing. "The court noted that although the appellant was willing to seek professional "guidance" if it were necessary to help an adopted child "deal with" appellant’s sexual orientation, there would be "no method by which the court or any state agency could require that such guidance be sought" once the adoption had been finalized (Mishra 1996:117-8). Extremely unusual actions were taken by the court, illustrative of specific and increasing structural obstacles the applicant deemed a deviant was forced to survive, as noted by Ricketts and Achtenberg:

Upon discovering that the department had recommended an admitted bisexual, the judge took the unusual step of appointing independent counsel to represent both the court and the class of children that could potentially be adopted by the applicant. The judge’s actions appeared to be premised on the threat to children which he believed was posed by the applicant because of his sexual orientation. During the hearing, the judge asked the applicant whether he would molest a child placed in his custody or would attempt to “convert” a child to homosexuality. [...] He also asked [the agency worker] to find out if there was a test that could be given to the applicant to determine whether he would molest a child. This line of inquiry seemed to have been prompted solely by the judge’s antipathy toward

26 The Court of Appeals of Arizona found that in the original case private counsel should not have been hired by the juvenile court, but that this error was “harmless” and should not discount the finding of unacceptability.
homosexuals as a group, by his obvious dislike of the applicant, and by his total ignorance of issues of sexual orientation as they relate to one's qualifications to be a parent (or, in this case, an adoptive parent). (1987:94-5)

As quoted by dissenting Judge Howard (who pointed out the inherent bias in the Court's line of questioning) the Court also inquired "Do you feel that you have any unusual urge or any unusual sexual attraction to younger boys? Do you feel the absence of any urge toward younger boys?" The court was highly interested in administering tests, if they existed, to see if he had a sexual interest in children. This desire for some standardized, legitimated sequence of questions that would somehow pinpoint the devil in the midst, needed only because the applicant is bisexual, shows the discomfort with the newly formed mold of the bisexual adoptive parent and the mechanized and increasingly bureaucratic response to what is perceived as deviant.

From an archaeological stance, this desire to require certain 'deviants' to pass tests not administered to the 'normal' is evidence of particular authorities who have the power to locate subjects according to a structural hierarchy; this specialized treatment of sexual deviants is based on deep founded constructions of the danger they pose to societal order (in that they do not abide proper sexual regulations) and to children in particular. Mechanisms of control are wielded by the Judge; he calls for a standardized test to determine the levels of deviance. This insistence for increasingly rigorous testing can be seen in a Foucaultian light (1977 Discipline and Punish).

Interestingly enough, in the next case (In The Matter of the Adoption of Charles B) the judges also wished to incorporate specialized mechanisms of control to handle the melange of possible problems that may arise if, in the hypothetical, a homosexual was to
adopt a child. The judges even refer to the Pima County case as evidence that it would be
difficult to standardize follow-up evaluations of the situation once the adoption was
finalized to make sure the participants engage in counseling (if necessary). Again we see
the mechanisms of social control Foucault emphasizes in his work in the constant attempt
to monitor, for extended periods of time, those deemed deviant.

Adoption and Homosexuality as Clashing Formations:
The Case of Charles B

The only national coverage of the Charles B case was a few short sentences in
USA Today on September 22, 1988, under the general Ohio news section:

NEWARK - State Appeals Court next week will hear Licking County
agency's objections to homosexual's adoption of boy, 7. Court records
identify child as Charles B, homosexual as Mr. B....

This case involves one man's struggle to adopt a young boy with leukemia and
learning disabilities. After being approved in trial court, on appeal Mr. B was denied the
right to adopt Charles based on arguments given by The Licking County Department of
Human Services.

In the Fifth District Court of Appeals of Ohio, the Department argued, "As a
matter of law, it is not in the best interest of a seven (7) year old male child to be placed
for adoption into the home of a pair of adult male homosexual lovers" (1988 WL 119937).

27 In the Matter of the Adoption of Charles B. (1988 WL 119937 (Ohio App. 5 Dist.); In
re Adoption of Charles B (50 Ohio St.3d 88, 552 N.E.2d 884).
The same sentence could also sound disturbing if it was written: As a matter of law, it is not in the best interest of a seven (7) year old male child to be placed for adoption into the home of a pair of adult male and female sexual lovers. This also strikes one initially as breaking the wall of intergenerational sex (Rubin 1993), and seems that the child will be a part of or at least exposed to some form of sexual acts. We see the emphasis placed on sexuality in the original sentence about the “male homosexual lovers.” The repeated (and unnecessary) use of the word “male” in first describing the “male child” and then the “male homosexual lovers” draws a connection between the child’s sex as the same as that of the homosexuals, that then implies concerns about sexual molestation. Again, as in the Pima County case (when the appellant was questioned about his interest in children), I find concerns raised about homosexuals that would not be raised about, for example, a heterosexual (who is actively sexual) attempting to adopt a child of the opposite sex. Heterosexuals, as belonging to the normative group, are immune to sexual stigma while homosexuals are feminized and sexualized.

One cannot place the word “sexual” in the same sentence that so bluntly emphasizes the child’s age without generating worry over inappropriate cross-generational sex. This indicates a cultural anxiety about sex in general, and specifically about sex in relation to children. Sex must be regulated by the family unit, and must be perceived as properly controlled. Homosexual caretakers are seen as breaking sexual boundaries. Those who do not engage in proper sex and gender performance, then, are not seen as legitimated gatekeepers of children’s sexuality. Questions emerge regarding how children’s sexuality will be managed in homosexual homes, while in heterosexual (normative) homes this process often remains unarticulated, and concerns do not arise.
During the appeal, the Department also argued that Mr. B did not fit the mold created by the agency; he could not meet their individualized and highly stringent requirements that Charles be placed with “a family of two parents with older siblings, at least one of which would be male; a family with a child-centered life style; a couple with definite parenting experience, preferably with adoption experience; parents with proven ability with dealing with behavior disorder issues; a family that is open to counseling; and a family that demonstrates an ability to deal with learning disabilities, speech problems, and medical problems” (887). The appellee offered only one witness, and she argued that Mr. B did not meet the above requirements. These requirements are obviously indicative of our current ideal of the modern nuclear family. This list of requirements are also value-laden with assumptions about gender, as seen in the statement requiring Charlie to have an older sibling that is “preferable male.” Is this really the best, and only, family structure for Charles, or is it possible that he could thrive with Mr. B? If we agree that alternate (to modern) family forms can inspire rewarding relationships and foster the development of children, this favors a postmodern view of family as able to be expressed in many ways (through numerous non-nuclear forms). A shift in modernist notions of gender, sexuality, and family is then in order.

In the *spaces of dissension*, are the discursive statements about homosexuality (that focus on overt and deviant sexuality) actually “hostile” and “inherently mutually exclusive” to the discursively constructed conceptions of adoption (that strive for idealized family structures for the best interest of the child)? Apparently, according to the appellate court’s estimation of the issues involved in the Charles B case, “In our opinion, the concept of homosexuality and adoption are so inherently mutually exclusive and
inconsistent, if not hostile, that the legislature never considered it necessary to enact an express ineligibility provision” (1988 WL 119937). This splitting of homosexuality from the natural family indicates a sharp point of diffraction that must be addressed if a new space is to develop after this collision.

How will the court balance the converging yet desperate discourses of the homosexual and of the proper adoptive parent? An indication is offered, “The polestar that must guide this court is what is best for the child, not what is best for the petitioner. In this context, so-called “gay rights” are irrelevant. Our focus must be upon what is best for the child” (1988 WL 119937 (Ohio App. 5 Dist.) This indicates a construction of the “gay agenda” as oppositional to the best interests of the child. Later, along a similar line, it is stated “The so-called “gay lifestyle” is patently incompatible with the manifest spirit, purpose and goals of adoption. [...] Announced homosexuality defeats the goals of adoption.” This construction of homosexuality as completely antithetical to the goals of adoption is depicted as so common-sensical that it was too incredible a scenario to even have explicitly stated statutes against it. It was unthinkable; this scenario warranted no debate.

In this sentiment there exists an image of the gay rights activist who is so consumed with self-realization and self-expression that he or she becomes detrimental to society (which must control sexuality through sublimation). This gay rights activist, as a sexual deviant, cannot logically provide proper and controlled sexual role-modeling. Therefore, we see the emergence in later cases, like the case currently in Florida (Lofton v. Kearney), of texts that actively produce the gay potential adopters as less sexual and as concerned primarily with caretaking. The rhetoric of the ‘best interests of the child’ is now
(as evidenced on the website lethimstay.com) used in an argument that a child should stay with homosexual caretakers, while historically this rhetoric was used to oppose these arrangements.

In 1989 the case of Charles B came before the Supreme Court of Ohio. This agency, as paraphrased in the judgement, stated (50 Ohio St.3d 88, 552 N.E.2d 884) “it could never be in a child’s best interest to be adopted by a person such as Mr. B” (886). The “such as” could only be in reference to his sexual orientation, for Mr. B was an affluent professional in a stable relationship who had a personal bond established with Charles. The “such as” must reference his only minority status, which his entire existence is then reduced to.

After debating the issue, “The Supreme court held that proposed adoption was in the best interest of the child, even though the adoptive parent was a homosexual” (884). Of course, the choice of the words “even though” obviously denotes that whatever follows is a detriment. Here again we see the statement was “a homosexual” that assumes an essential subject position based solely on sexual orientation. The court “implicitly admitted that it would be in the seven-year-old leukemia victim’s best interest to be adopted by his gay psychologist” (The Editors of the Harvard Law Review 135).

The assumption that a homosexual parent could not provide an ideal home was realized to be faulty in the case of Charles B. Overwhelming evidence was presented about the strong bond between Mr. B and Charles, and of the child’s own wish to be placed with the only consistent and supportive figure in his very difficult life. Although Mr. B and Charles B were finally permitted to become a legal family, the path leading to this resolution was tumultuous. In this resolution I find the formation of a new space for Mr. B
as a supportive figure with a strong “bond” with a child, which emphasizes his ability to care for Charles and downplays his sexuality; discourse has merged to produce a new subject in the grid of specification of homosexuals.

Of course, not all were pleased with this outcome. In her biting dissent of the approval by the Supreme Court of Ohio, Judge Alice Robie Resnick stated “When a homosexual seeks to adopt a minor, a trial court must have before it sufficient evidence to show that the prospective parent’s homosexuality will not have an adverse effect on the minor. The prospective parent must present evidence demonstrating that his or her homosexuality will not harm the child. Likewise, the party opposing the adoption by a homosexual must also submit evidence establishing not only that the homosexuality of the adopting parent had or will have an effect on the child, but also that the effect is or will be harmful” (890).

Judge Resnick’s focus on homosexuality as what should be at the core of all legal arguments runs counter to the deconstruction of the category of homosexual offered by queer theorists. This adoption case should not be about the elaboration of sexual orientation debates, but the suitability of the match between Mr. B and Charles. To argue that Mr. B should defend his homosexuality is to pinpoint his minority status as all-definitive (as if being on the outside is part of his essential nature), as if it is his most important characteristic. As alluded, this reasoning is also based on the inside/outside model currently challenged by some in academia. This kind of identity reduction is precisely what motivates queer theorists. Instead of allowing the transformation of this subject, Resnick wishes Mr. B to defend himself from the position of previous codes associated with the generalized homosexual.
Judge Resnick then argued that certain evidence pointed to a specific harm Mr. B's homosexuality would inflict upon Charles. She stated, "To place Charlie in an environment with a homosexual who is engaged in a homosexual relationship is not in the best interest of the child" due to an increased probability that Charlie could be exposed to HIV. The fact that HIV is not spread through casual contact was completely ignored, as was the fact that Mr. B tested negative. Despite this, Resnick argued that Mr. B falls within "a high-risk population for AIDS," when in fact, he does not. Her dissent ignores his affluence, education, relationship status and findings that professional, monogamous homosexual men actually have far less incidence of HIV infection than other segments of the population. Again, as the grids of specification denote a new type (and the feminization and stigma of promiscuity attached to the sexualized homosexual loses ground) there must be a shift in coding to recognize the homosexual as a safe family man. Regardless, it is ridiculous to argue that Charles has a higher chance of being infected with a virus that Mr. B does not even have. She wrote "Why place a child whose immune system has already been altered in such an environment?" (891). It is as if she worries that the deviance that characterized Mr B will infect Charles. She also argues that Charles "Mental and physical problems [...] could be exacerbated by this type of a lifestyle" (891). What type of lifestyle? Mr. B and his partner are research scholars. And in what ways could Charlie's problems be exacerbated? She offers no further elaboration.

The Guardian Ad Litem, in arguing that Charlie be placed with Mr. B, addressed the issue of the convergence of sexuality and child-rearing, and stated, "Granted that a so-called "gay-lifestyle" is patently incompatible with manifest spirit, purpose, and goals of adoption, all adult male homosexuals do not pursue a "gay-lifestyle" anymore than all
adult male heterosexuals pursue a “swingers-lifestyle” (9). In other words, Mr. B and Mr.
K., his partner, did not fit the mold, and marked the beginning of a new discourse on the
homosexual who is not characterized by sexuality. Mr. B occupied a new subject position,
a contested stance never before seen in history that merges disparate notions in a unique
way. In the following case28, I further analyze the power of discourse in the framing of the
sexual subject.

Against the Repressive Hypothesis:

The Cox Cases

Prior to the widely publicized Lofton case, others have challenged the Florida
statute (on the grounds of equal protection, due process, and the right to privacy) created
in 1977 that blatantly bars homosexuals from adopting (but does not forbid fostering).

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28 The ACLU first challenged the statute in 1990 in Seebol v Farie, 16 Fla. L. Weekly C52
Florida Department of Health and Rehabilitative Services (627 So.2d at 1215 n.6.)
which found the statute unconstitutional. This was appealed and overturned in Florida
Dep’t of Health & Rehabilitative Servs. v. Cox (627 So. 2d 1210). The ACLU
appealed the Supreme Court of Florida in 1995 with Cox v. Dept of Health &
Rehabilitative Services (656 So. 2d 902), which favored the ruling of the District
Court but sent certain issues back to be discussed by the circuit court (and became
Cox 656 So. 2d at 903). In late 1995 the case was voluntarily dismissed by Cox (Terl
After the Circuit Court of Sarasota County ruled in favor of James W. Cox's petition to adopt, the state of Florida appealed. At issue was the term "homosexual," and who exactly fit this classification. The District Court of Appeal of Florida, Second District held that the statute in question was "reasonably construed by state agency to apply only to applicants who were known to engage in current, voluntary homosexual activity, was not unconstitutionally vague with respect to term "homosexual" (1210). The District Court reversed the Circuit Courts decision, and in 1995 the Supreme Court of Florida favored the decision of the District Court, and denied that the trial court had the authority to challenge the controversial statute. Because Cox voluntarily disclosed his homosexuality, his argument that his right to privacy was violated by statute 63.042(3) was argued to be not compelling. As queer theorist Eve Kosofsky Sedgwick (1993:47)

29 According to Terl (2000:825), Florida first granted a license to foster to a lesbian named Sharon McCracken without a court battle. This never resulted in a contested court case, and involved the granting of the care taking role to a woman, which may involve an entirely different discursive formation than which affect gay males. It is interesting to note her heavily gendered deployments, which warrant a study in itself. McCracken states to a reporter when speaking of her ability to "mother" a HIV infected child, "And I am very proud to be a female. I never wanted to be anything else. And I'm a lady" (Bounds 1992:1BR). Could it be that Florida granted a licence to foster to a non- heterosexual because she happened to be "a lady"? As the discourse on homosexuality intersected the ideal family, did her gender performance as a "lady" (already associated with care taking) influence the outcome?
effectively argues, the law creates a “double-bind” that leaves subjects constantly questioning whether or not to disclose their sexual orientation. It is interesting to view this debate as informed by the current queer challenge to fixed identity positions given “the Florida statute does not define the term “homosexual,” and there was a dispute as to whether the legislature intended it to mean same-sex “sexual desire” or “sexual activity” (Mishra1996:114).

Beginning with the perceived necessity to force all subjects into one of three arbitrary categories (hetero/bi/homo) based on sexual orientation, legislators then take up the task of adequately defining the category that is given the least approval. Authorities must carefully describe each generalized characteristic of the deviant, thus creating a binary distinction between them and us (the possessors of the privileged orientations). This structural split, enhanced and reified through a system of language providing definable terms, also reinforces the hierarchical ordering of certain privileged positions (heterosexuality) over other deviant positions (bisexuality, homosexuality). As the District Court of Appeal of Florida focuses on the specific definition of the deviant subject position of being a homosexual, it inherently assumes, in an essentialist and foundational move, that subjects possess fixed and base states able to be ordered and judged.

Drawing from yet another insight from queer theorists, we realize that normative sexuality is nonexistent without the ever-more detailed description of what it is not. Of course, in Cox the judges would not precisely define homosexuality for citizens because they “did not need a definition to know the nature of the conduct that was being regulated in the best interests of children” (1214 fn6). These authorities of delimitation do specify that homosexuals “engage in current, voluntary homosexual activity” (1215).
An alternate reading, based on Foucaultian insight, offers insight into the Court's discussion of how to define "homosexual." Instead of focusing on how adequate their working definition is (although one can, too easily, offer instances that confuse their set boundaries) it is more interesting to realize that this panel of judges, as they sat and pondered the term "homosexual," were actively constructing normative and deviant sexuality. For example, Lehr's articulation of situational power can be applied to the power to define as exercised by the judges in Cox:

The power to define normality and to control people is exerted in multiple ways and within multiple institutional structures, including those that encourage people to enter into a specific form of family by constructing other alternatives as abnormal or deviant. What is most critical about this power is that people rarely feel it as the exercise of power. Often, the exertion of power takes place through professionals, that is through the power of "experts" who define and enforce that which is natural and normal. (1999:22)

The power of language to simultaneously reify and constrain certain sexed positions is a concern for poststructuralist and queer theorists. Butler focuses on the dynamics of legal legitimations of very rigidly constructed space for the sexed individual:

Specifically, how does the capacity of the law to produce and constrain at once play itself out in the securing for every body a sex, a sexed position within language, a sexed position which is in some sense presumed by any body who comes to speak as a subject, an "I," one who is constituted through the act of taking its sexed place within a language that insistently forces the question of sex? (Butler 1993:95)
Language insists on placing a given subject into a limited array of sexed positions, that then also limit and construct certain legal subjects. Butler’s discussion of the production and constrains, the actual carving out of a specific sexed position, indicates the influence of Foucault as an intellectual influence. Rather than a repressive structure, the legal system guarantees the continual supply of specifically sexed subjects. “In particular, how do we pursue the question of sexuality and the law, where the law is not only that which represses sexuality, but a prohibition that generates sexuality or, at least, compels its directionality?” (Butler 1993:95). Many systems of discourse, including the legal and linguistic, come together to form very specific sexual subjects; interestingly, this discourse is then internalized by the subjects themselves, and others who treat them based on discursive constructions.

In applying Foucault’s repressive hypothesis (History of Sexuality), we then see that each detailed clarification, each sentence positioning certain sex acts as homosexual, is not, as commonly thought, the mere repression of such deviant acts. By sitting around vividly describing actions of “the sex organs of one person and the mouth or anus of another person of the same gender,” (in their discussion of the now repealed New Hampshire statue barring homosexual adoption) these judges involved in the Cox case engaged in active reconstruction of normative sexuality.

For example, if two persons of the same sex routinely stimulate each others genitals, through genital to genital contact, or hand to genital contact, or by means of a sexual toy, they would not, under this definition, be considered to be engaging in homosexual actively. Regardless, the fact that these legislators are fixing their legitimated and legally enforced gazes on specifically denounced sexual acts is of most intrigue.
Not only is proper gender identification of concern for courts in Florida, but also that children have proper socialization "in the transition to heterosexual adulthood" (1220). The judges in Cox argue that children will benefit from hearing stories from their parents about the parents "embarrassing" sexual stories with the "opposite sex." (1219). The same statement, if altered a bit, is not available for deployment about homosexuals. If one imagines, for a moment, the same judges arguing that children will benefit from homosexuals telling "embarrassing" sexual stories of their exploits with the same-sex, this brings forth vivid imagery with would be considered inappropriate for the innocent ears of children. Here again I find judges producing normative sexuality.

Poststructuralists, in their focus on the systems of language, study the ways those with power structure and deploy language in a way that defines and delineates certain others into fixed subject positions. As Foucault argues, a certain gaze develops once a group is objectified, those in the social position of legitimated power then deem those who are unfortunate enough to be judged as the authentic deviants, the manifestation of the ideal deviant form, and thus the appropriate bureaucratic sanctions are then legitimately applied. The District Court denied Cox petition to adopt due precisely to the reification of a particular subject type based on sexuality. Cox, as a subject produced and intertwined within a complex network of discourses, thus became a manifestation of the term homosexual. How can he, then, argue he should not be treated as a homosexual (and have privileges akin to those who are properly sexualized)? Given that he is a homosexual, he may not adopt. The Court stated "In statute prohibiting adoptions by homosexuals, the term "homosexual" was not unconstitutionally vague" (1210).

In a discussion of statutes, the Court states "Legislature need not define every
word in statute to survive constitutional vagueness challenge; it is merely necessary for legislature to give adequate notice of what conduct is prohibited by statute and to provide clarity sufficient to avoid arbitrary and discriminatory enforcement" (627 2d. 1210).

Vague terms that seemingly are objectively and fairly deployed can in actuality be manipulated based on the whims of certain powerful individuals. Here reason, rationale, and legislative “clarity” seem to fend off the otherwise arbitrary nature of their uses of power. Authorities of delimitation defend their right to legislate sexuality in many ways. In Cox, I find reference (1217) to the 1986 Bowers case in which it was determined that engaging in homosexual sex is not a protected right (478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140).

It is assumed by the judges in Cox that the more definable something is, the more discourse that is produced around it, the more it is then located in space and time as a real object. Foucault’s epistemological stance critiques the notion that discourse can ever reveal or finally uncover some elusive object or subject position, rather, it is this very discourse that produces the objects and subjects. This is not to say that objects do not exist before discourse is produced about them, but that the cultural constructions surrounding our every understanding of phenomenon serve to first locate the phenomenon embedded within certain knowledges, and then to deem it meaningful. If the homosexual does not exist prior to being linguistically distinguished, how can the judges in the Cox case argue they “need not define” homosexuality?

Conclusion

It is the codes and meanings given to the classification “homosexual” that are of
most interest in that the discursive framework surrounding particular subjects speaks to their treatment. After reviewing pertinent legal cases involving potential homosexual “stranger” adoptions and fostering, I find that each case can be viewed as depicting particular discursive collisions serving to inform and challenge an interesting new subject position not previously existent.

We see the formation of this new subject in the Pima County case as a witness testifies that the bisexual applicant is not promiscuous or flamboyant, and is not a gay activist. Instead, there is an attempt to locate this applicant with new codes, indicative of a shift in the grids of specification. This applicant is also constructed through Judge Fahringer’s concerns over the ability for a child to “bond” with him, and through the mechanisms of power apparent in Judge Fahringer’s desire to institute additional testing of this bisexual applicant. This new subject is contoured by a surface that favors the nuclear family and notions of bisexuals as both overly sexual and deviant.

As in the texts analyzed in chapter four, again in the Charles B case I find the construction of the welfare of the child as positioned opposing the “gay agenda.” In a resolution, Mr. B is characterized as supportive of Charles and as having a pre-existent bond with this child, which evidences a transformation in the grid of specification from being coded as completely sexualized to being a caretaker of children. Not all accept this new subject, as depicted in Judge Resnick’s dissent of his approval and her associated concerns with him transmitting HIV to the child (a virus neither parties have).

Sexuality was not repressed but produced as judged debated the details of sodomy in the Cox cases. Judges encouraged heterosexuals to tell children stories about their own coming-of-age, in order to ensure proper “transition” into a heterosexual adulthood.
Most importantly, this chapter pinpointed certain authorities of delimitation who, through their particularly constructed gaze, denied basic privileges (in the Pima County and Cox cases) to those attempting to adopt children. After a long battle, Mr. B was able to take on the new role as a legitimated caretaker. In this case, certain authorities were willing to allow the adoption due to Mr. B’s professional standing and previous bond with Charles. Could it be that Mr. B’s position as a professional helped to break him from the mold of the deviant? His previous bond with Charles also put to rest any concerns over his ability to “bond,” as were expressed by Judge Fahringer in the Pima County case. He was able to overcome the clashing of discourses and successfully take on a newly formed subject position. The next chapter synthesizes my findings here and in chapter four in order to soundly articulate the contours of this new subject and his formation.
CHAPTER 6

CONCLUSION

Realistically, I think the question becomes one of determining what collective identity is either assigned to, or expressed by, gay and lesbian individuals in the United States. It is ultimately impossible for the courts, or anyone else, to wholly determine the identity of any person or group of people because the human experience is simply too shifting, complex, and ineffably multifaceted; however, within these sorts of bounded possibilities, I do think it important to determine how the courts have attempted to collectively identify gay and lesbian subjects (Carleton 1999:37).

I have examined five legal cases, newspaper articles about these cases, a website, Florida’s adoption application, and a Primetime special. This chapter first synthesizes my findings into a cohesive argument about the contours of the new homosexual subject using the archaeological focus on spaces of dissension and grids of specification. But before I fully articulate the discursive formation of this subject, I must further clarify the subjectivity of particular authorities of delimitation. I then discuss the current surface, informed by a modern ideal of family, and the connection between the new space for homosexuals as adopters and the rise of the postmodern family.

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This thesis expands on Foucault's notion of homosexuals as a distinctive social species by introducing contemporary queer insights. I present the main debates within queer theory about the usefulness of critiquing the inside/outside model, fixed identity positions, and how the notion of sex and gender performativity informs Foucaultian poststructuralism. An archaeological analysis revealed specific surfaces of emergence upon which discursive statements were deployed and the authorities of delimitation who had the power to speak. I emphasize the spaces of dissension that reveal the points of convergence of contested discourse (which speaks to the formation of a new identity based on this convergence). The grids of specification differentiated a given object (here, the homosexual subject) in increasingly specified and complex ways.

In chapter four I examine the intersection of discourses of gender, sex and religion on the family in order to illuminate the surface, or context, currently framing notions of the idealized family form. Based on my analysis of the Babets and Lofton cases, I find constructions of homosexuals (by those who oppose placing children with them) as: primarily sexualized; incapable of taking on the role of caretaker in a family; engaging in unnatural and immoral acts that may corrupt children; and as failing to display gender identification properly.

In the mid-eighties the controversy over the Babets case evidences the points of diffraction between overt sexuality and the idealized caretaker of children, as evidenced in statements made by neighbors at the time. For example, in the Babets case, some neighbors stated their allowance for Babets right to be homosexual, but found the placement of children with him intolerable. I find this indicative of the 'right' for minorities to express their deviance, but never to attempt to cross into polite society.
The Lofton case evidences current rhetoric and forms the homosexual adopter, in part, through the gaze of Judge King. But even certain authorities of delimitation are not producing autonomous statements, rather, they engage in the constant reification of original texts. For example, Judge King did not create the idea that only heterosexual households properly gender their children, rather, this is an argument the state of Florida makes in order to support statute 63.042(3) based on rational scrutiny.

Judge King’s will is not entirely his own, although he chose not to challenge the state on this particular issue. From a poststructural position, we see that there is hypostatization of so-called original texts as each authority of delimitation rehearses well-framed scripts and edified statutes. Power increases as a social network justifies particular deployments by particular persons. Legitimacy is achieved in a referential process of citing certain original texts. Judith Butler notes this trend:

Hence, the judge who authorizes and installs the situation he names invariably cites the law that he applies, and it is the power of this citation that gives the performative its binding or conferring power. And though it may appear that the binding power of his words is derived from the force of his will or from a prior authority, the opposite is more true: it is through the citation of the law that the figure of the judge’s “will” is produced and that the “priority” of textual authority is established. Indeed, it is through the invocation of convention that the speech act of the judge derives its binding power; that binding power is to be found neither in the subject of the judge nor his will, but in the citational legacy by which a contemporary “act” emerges in the context of a chain of binding conventions.

(Butler 1993:225)
Her poststructural view de-emphasizes the will of the individual judge, deeming it inconsequential (and thus cutting off the head of the local king). The act of reciting, in a preset fashion, certain linguistic frames of reference is the most significant aspect of this common social scene. Each statement necessarily is also a reflection of the wielding of a wider socio-historical discourse. “In this sense, no term or statement can function performatively without the accumulating and dissimulating historicity of force” (Butler 1993:227). Therefore, we must focus our attention on the legitimation of historically-bound conventions of speech and the constructions embedded within these citations in order to best articulate systems of power. Power is seen through multiple levels of legitimation, is evidenced through material practices and reified institutions, and is more than merely the result of linguistics. Discourse legitimates on multiple levels.

It is this very process of legitimation that so intrigued Foucault, and he reveled in this new-found understanding of power. We must focus on the micropolitical network of local power relations to analyze the discourses on the homosexual subject. For example, Judge King has situational power in deciding whether or not a young boy will be taken from his home, and on a larger scale, whether or not Florida can sustain the statute barring homosexuals from adopting. Does Bert, the young boy involved in the Lofton case, have any power in deciding whether or not to stay in his home? As Foucault argues, “Statements cannot come from anybody” (Foucault 1972b:51).

The regulation of sex by certain authorities of delimitation must then be viewed as serving the interests of the state. Judith Stacey argues that the legitimated modern family form ensures the continuation of our particular economic structure through ensuring such things as inheritance and the unequal division of labor. It benefits the status quo to ensure
proper gender identification so that little girls, for example, naturalize their later
exploitation. Social ills are attributed to the breakdown of this modern family, and often
are not seen as reflective of the larger social policies. Therefore, certain authorities of
delimitation focus on the regulation of particular subjects’ sexuality, and sanction them by
withholding their privilege to adopt.

In chapter five I focused on other authorities of delimitation and their reified
judgements that, in the Pima County and Cox cases, served to regulate sexuality to the
point of discrimination. This concern stems from the characterization of the applicant as
primarily sexual, and the boundary between sex and children. Their gaze also actively
produce normative and deviant sexuality (which speaks to Foucault’s repressive
hypothesis). In fact, judges encouraged heterosexuals to tell children stories about their
own coming-of-age, in order to ensure proper “transition” into a heterosexual adulthood. I
found, as in other cases, a construction of the “gay agenda” as oppositional to children in
the Charles B. case. I paid special attention to the debate over the term “homosexual” in
the Cox case, and to the craving of Judge Fahringer in the Pima County case to impose a
test on the bisexual applicant to measure his propensity for molesting children. This
informed my research question about the influence of power on the formation of identity
positions.

The New Homosexual Adoptive Subject

How do contemporary struggles over gay stranger adoption and fostering
contribute to the discursive construction of the new gay male parenting subject? It is
important to note that homosexual subjects occupy various and shifting positions, each of
which results from a juxtaposition of discourses produced about religion, gender, the family, sexuality, and identity. We are left with, as far as identity is concerned, the fragmentation inherent in our emerging postmodern reality.

In this chapter I discuss a subject who represents a new grid of specification for the homosexual subject who first became a distinct social species in the nineteenth century (Foucault 1978:43). This new subject is partially shaped by the current surface, which interlocks anti-gay constructions of the homosexual as a depraved sex-maniac (according to a 1949 Newsweek article discussed in my introduction), an activist for gay rights (as seen after Stonewall), one who cannot bond with children (stated by Judge Fahringer), one who exists below the boundary of acceptability (according to Babets neighbors), one who is promiscuous, flamboyant, and HIV infected (according to Judge Resnick), one who we must “save our children” from (Anita Bryant), one who will not engage children in proper gender or sex socialization (according to rehearsals of Florida’s rationale), one who requires additional testing to determine his propensity to molest children (according to Judge Fahringer), one who requires counseling (as stated in the Pima County and Charles B cases), one who cannot mimic the idealized versions of mommy and daddy (according to Randy Ball), one who represents the “breakdown” of society (as stated of the Babets), one whose existence is hostile to the “natural family” (as argued in the Charles B. case), one who is defined by sin (Anita Bryant), one who is not stable or safe (in relation to married heterosexuals), and one who may invoke social ostracism (a concern of Judge King). While these codes influence his formation, the new subject could not relocate himself on the grids of specification with only unfavorable coding.

There exists a new discourse that forms the homosexual adopter by
reappropriating rhetoric used by those opposing him. This new subject is characterized as primarily concerned with the well-being of children, is bonded to particular children (as with Bert and Charles B.), one who selflessly serves the community (as with the Loftons), one who maintains stable and long-term relationships (as with Mr. B and his partner, Babets and Jean, and Steve and Roger), one who is professional (Babets, Mr. B, the Loftons), one who is religious (Babets), and one willing to take on a new identity.

For example, Donald Jean and David Babets are described by the sympathetic journalist as baking apple pies in the kitchen. This imagery remains one of the nuclear family, with the smell of fresh homemade pie in the oven. Babets and Jean represent a new space for the postmodern family; this new form, like the new subject, must retain some tradition in order to merge, instead of collide, with previous codes of the nuclear family. Gender essentialism intersected with discourses on family, and played a part of the formation of the new subject as this couple is described as raising farm animals and having a hole in their hearts as they wait for children. Babets and Jean are both also seen as hard workers who contribute to society, helping to reduce the postmodern threat of disrupting social order.

Just as I find spaces of dissension between the notions of homosexuality and children, I also find discord between postmodern family forms that threaten the "breakdown" of society and notions of the "natural" nuclear form that fosters proper sex and gender socialization. As postmodern family forms begin to legitimately co-exist with the "natural" family, this new subject gains ground. Shifts in family form influence notions of gender; the postmodern family form offers a bit of hope, a glimmer of light, as a catalyst for the reduction of gender essentialism. As the edified molds of mommy and daddy are
critiqued, the homosexual as an adopter is relocated in a new, more legitimate space. Certain *authorities of delimitation* use their position to speak on behalf of this new subject. I find rhetoric in support of homosexuals as adoptive parents (as produced by Rosie O’Donnell and lehimstay.com) constructing homosexuals as putting children’s needs before their own.

Most importantly, I find homosexuals as fathers who are “just happy to be their dad” (Roger Croteau). As stated by Roger Croteau on *Primetime*, “I lost my identity years ago. I’m somebody’s dad, and I’m just happy to be their dad.” This statement epitomizes the new homosexual subject position. The revolution depicts a shift from a declaration about sexuality to a declaration of parental love. As seen especially in the current depictions of Steven and Roger, these new subjects have commandeered statements about serving the best interests of children. I find Roger’s statement indicative of a larger shift in meanings attached to homosexuality.

In chapter five I see the formation of this new subject in the Pima County case as a witness testifies that the bisexual applicant is not promiscuous or flamboyant, and is not a gay activist. Instead, there is an attempt to locate this applicant with new codes, indicative of a shift in the *grid of specification*.

In the Charles B. case, certain authorities were willing to allow the adoption due to Mr. B’s professional standing and previous bond with Charles. Mr. B is characterized as supportive of Charles and as having a pre-existent bond with this child, which evidences a transformation in the *grid of specification* from being coded as completely sexualized to a caretaker of children. Mr. B was the only successful applicant (in terms of being granted acceptable) out of all five cases analyzed in this thesis; the Lofton case is pending.
I have focused on numerous clashing discourses, including the dialogue about the properly gendered and sexed family and the dialogue about gay men as sexually dangerous, in order to show that as these overarching systems of knowledge collide, they create a new historical position for the gay adoptive parent. I have identified the *spaces of dissension* between the agenda of the active gay rights movement and the rights of the children, which can be seen as an ultimate point of convergence whereby two discursive lines meet and merge to form a new discourse of the homosexual. This new line de-emphasizes sexuality, and focuses on the children’s best interests. Here we have, for the first time in history, a new subject who is both homosexual and a family man.

As discourse further attempts to locate this subject, we see increasing complexity in the *grids of specification* of the homosexual. It was only in the eighties that we first began to nationally debate this topic; it was here that certain discursive formations first met and clashed, thus informing the current subject. As a response to the clashing of codes of the family versus sexuality, the new subject, in a sophisticated transformation, is depicted primarily as family-oriented.

**Social Policy Suggestions**

Informed by Foucault’s articulations of discourse as not simply speech or communicated language but specific utterances by powerful individuals that directly inform material practices and institutions, I offer this work as a challenge to the commonsense notions of homosexuals. Ultimately, by disrupting the reification of this subject I hope to influence those with the situational power to alter discriminatory practices and laws. This deconstruction is arguably best accomplished by explicitly pointing to the
moments in time when homosexuals were identified, and offering an archaeological analysis of the meanings attributed to homosexuals after this identification. Once our common-sense shifts, the gaze through which homosexuals are seen will shift, thus influencing all levels of society from our judicial institutions to statements made by neighbors (or more precisely, this will not be a topic of interview).

Where do we go from here? In 1996, before the infamous Lofton case (Lofton v. Kearney 157 F.Supp.2d 1372), Adams optimistically wrote, “Perhaps when the next case proceeds to the Florida Supreme court, the court will determine who should be an adoptive parent on a case-by-case bases, and will put an end to the categorical exclusions based upon stereotypes and myths” (Adams 1996:621). Therefore, I first suggest that cases be judged on an individualistic basis, and that no law or statute outright deny certain applicants based on their sexual orientation (as with the Nexus test I referenced earlier). Relatedly, those concerned with the issues presented here, including sociologists, must work to raise awareness and inspire political change. Babets and Jean, while they did not retain the two boys, managed to spur the institution of a new foster policy in Massachusetts that does not disfavor members of the g/l/b/t community. And, while I do not know what will come of the Lofton case at this time, their fight has brought national attention to Florida’s discriminatory policy.

Heterosexuality, as a default category, must be illuminated as part of a faulty dichotomy. I advocate the critique of not only the linguistic binary of hetero or homo, but also of the distinction between sacred and mundane. As great meaning is attributed to all that is sacred, and the “natural” family is said to be sanctioned by God. This attribution creates a hierarchy that marginalizes the postmodern family form, and justifies legal
sanctions against it. Our current Judeo-Christian *surface* reifies a patriarchal family form with its associated gender essentialism. I also suggest we make room for postmodern families through changes in our laws and in our discourses. This necessitates the release of the modern form as ideal. A shift in modernist notions of gender, sexuality, and family is then in order. This shift will occur as traditional notions of family, gender and sexuality intersect with notions spurred by our postmodern moment.

Finally, while debates wage on about identity politics, I suggest a transgression of the rules governing the necessity to be defined as either heterosexual, bisexual, transsexual, or homosexual. Transgression speaks to interrupting the rules of formation on a particular plane, such as challenging the generalized trend toward classifying sexual orientation in a limiting way. This larger challenge to the rules of formation thus transgresses and goes beyond what I have accomplished here (a mere discussion of the codes associated with homosexuality).

In summarizing my contributions and position to queer theory, I must emphasize that my thesis offers a post-structural articulation of meaning associated with homosexuals. The overtly sexualized codes have shifted to tangible codes about family; I find concrete examples of discursive coding. This does not lead, then, to a logical challenge to identity politics. It would seem I have only articulated a new space for homosexuals as adoptive parents, and evidenced very particular new codes. However, a discursively located subject is only evidenced through the everyday common-sense language, practices, and institutions informed by this discourse. Herein lies my suggestion for future research on the everyday ways certain people interpret, on a local level, these formations and thus make them a social reality. An inductive ethnography may be in order.
It is here, after finding the homosexual as now a family man, that I pull from a new, queer discourse of the subject as undefinable. Of course, saying that one will always exceed linguistic frames does not make these frames inauthentic, or less real. In fact, this new undefinable subject is now located in queer appropriations of undefinability, which remains a discursive construction.

We, as a society, must critically examine our historically bound conceptions in order that we not lose sight of the connection between power and the ability to subjugate. To lose sight of the emergence of discourse would most certainly result in the common perpetuation and reification of certain subjects as deviant, and justify their continued marginalization. Once we understand the discursive marginalization of particular subject positions, what is the next step? Gayle Rubin writes, “We have learned to cherish different cultures as unique expressions of human inventiveness rather than as the inferior or disgusting habits of savages. We need a similarly anthropological understanding of different sexual cultures” (1993:15). How can we learn to value diverse expressions?

The disjunction between the discourse of the family man versus the discourse of homosexual male (as primarily a sexual being) evidences the idea that no categories or roles can ever capture and fully define our fragmented and constantly shifting identities. This evidences the gap between the subject and the discursive production of the subject; Foucault terms this gap *correlative space*, and Deleuze explains that the actual subject positions are formed as a result, and after the deployment of statements about certain subjects (1986:9). This discourse fundamentally forms the subjects it endeavors to focus on, thus creating a defined and regulated subject position through an interplay of power relations.
Ultimately, as I attempt to pinpoint the essence of the discursively formed subject, here a homosexual as an adoptive parent, I engage in a fruitless activity; Foucault argues that there is no essential nature to this subject position. The homosexual subject position, which results from the convergence of intersecting discursive statements, is constantly shifting as the statements produced about it are altered over time. Most importantly, this position is not stable. If we accept that the statements made about homosexuals have drastically shifted over time, we also must concede that the homosexual subject position has no essential component. One could study any topic, I venture, and discover that all the discourse aimed at clarifying some phenomenon, in reality, more truthfully serves to construct our perceptions of the phenomenon, rather than exposing its ‘true’ nature.

There is no essential thing to be realized, rather, in the explicit detail describing and ever reaching for the elusive nucleus of the subject, the subject is thus formed. If this is inevitable, it leads to two actions. First, I strive to locate the homosexual subject in a new frame. Second, I hope to emphasize that the term “homosexual” does not explain much about the subject. Therefore, we must work to overturn Florida’s statute as well as other discriminatory social policies that disempower particular people.

I view the current controversy over homosexual adoption as a reflection of the gaps between specific discursive formations with flawed, essentializing components. Constraining categories (such as homosexual) exist which collapse identities into specified linguistic binaries (such as in either homo or hetero). We realize the incoherence of linguistic binaries, and hence the dependency of certain identities on such incoherent
binaries evidences an essentailizing, flawed component of discourse. These sexual binaries then clash with the dichotomy of family, which categorizes families as either ideally nuclear or not. Postmodern families are thus seen as “hostile” to the natural family. This problem is compounded as discourses, each informed by some essential reduction, clash. Again, Foucaultian transgression can be applied here in an argument that no categories can ever capture and fully define our fragmented and constantly shifting identities. The limiting nature of language to express everyday reality is fundamental within contemporary dialogues within queer theory (Butler, 1993; Halperin, 1990; Namaste, 1994; Rubin, 1993; Seidman, 1996; Vance, 1987; Weeks, 1987).

With the idea that we cannot be defined, that our consciousness will always exceed linguistic identity boundaries, we are no closer to anything; we have only constructed a more convincing dialogue of the self. Even the notion that identity categories and politics are limiting may be seen as a template for a new discursive subject position that stands on the deconstruction of all previous classifications. So, even if we deny the usefulness of identity politics on the micro scale, are we then freeing ourselves of the traps and collapses of language? Or, are we immersed in a new discursive construction of ourselves as non-definable? When the discourses clash, and the collapsed language categories fail to adequately express the subject, what is left? We begin to rebuild, to elaborate upon a new notion of the slippery nature of identity, thus creating a complex and interconnected web of discourse on our elusive selves. Now we are free! Or, are we?

We cannot get closer or farther from some essential self, but by realizing the limits

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30 Even this work is reliant upon the common terms.
and the boundaries of identity politics, we then may feel more free in rejecting normative
dualities and binary distinctions. We cannot escape discursive constructions of identity.
Some discursive constructions may prove more useful, however, in particular local social
realities. "Ultimately, the depth of our conscious sense of balance between autonomy and
relatedness, as well as our appreciation for spiritual connectedness, will be inversely
related to the narrowness and rigidity of our self-definitions" (Pardie 1999:93). From a
Foucaultian perspective, identities are always bound by discourses. Once we see this, we
more clearly perceive the institutions and situational power relations influencing certain
discursive constructions of identity, thus enabling critique and resistance through
transgression. As these discursive lines meet, intersect, and then continue to accrue new
codes and meanings, I present this thesis as an archaeology of the present moment.
APPENDIX

ADOPTIVE HOME APPLICATION

October 10, 1997

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<thead>
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<th>Name's Name (First, middle, last)</th>
<th>Woman's Name (first and maiden)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Name's Social Security Number</td>
<td>Woman's Social Security Number</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A. RESIDENCE: Address: ____________________________ (Number and Street) (City) (County) (State) (Zip Code)
Telephone Number: __________________________________________
How long at this address: ____________________________ Number of Rooms: __________

Check One: ☐ House   ☐ Apartment
Check One: ☐ Own   ☐ Rent
Monthly Payment: __________
Mortgage Balance: __________

If less than 3 years at above address, list former addresses for 5 years.

B. PRESENT MARRIAGE: Date of Present Marriage: ________________ Attached copy of marriage certificate.

Describe briefly any separations, including dates and duration. ☐ Copy attached

List children of Present Marriage

<table>
<thead>
<tr>
<th>Child's Name</th>
<th>Child's Date of Birth</th>
<th>Natural or Adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

C. Name of Others in Home

<table>
<thead>
<tr>
<th>Date of Birth</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

D. Man's Religious Affiliation ____________________________ Woman's Religious Affiliation ____________________________

Appendix J to CFOP 175-54

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**E. INTERESTS:**

<table>
<thead>
<tr>
<th>Community (clubs, lodges, etc.)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>hobbies or special interests</td>
<td></td>
</tr>
</tbody>
</table>

**F. HEALTH:** Attach completed physician’s report for husband (man) and wife (woman).

**G. EMPLOYMENT:** If current employment is less than 3 years, list former employment for 10 years.

<table>
<thead>
<tr>
<th>Current Employment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior Employment</td>
<td></td>
</tr>
<tr>
<td>(If applicable)</td>
<td></td>
</tr>
</tbody>
</table>

**H. FINANCIAL STATUS - ASSETS:**

<table>
<thead>
<tr>
<th>Husband’s (Man’s)</th>
<th>Wife’s (Woman’s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Yearly Salary</td>
<td></td>
</tr>
<tr>
<td>Interest or Dividends</td>
<td></td>
</tr>
<tr>
<td>Rental Income</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
</tr>
<tr>
<td>Real Estate at Market Value</td>
<td></td>
</tr>
<tr>
<td>PI</td>
<td></td>
</tr>
<tr>
<td>Savings</td>
<td></td>
</tr>
<tr>
<td>TAL</td>
<td></td>
</tr>
<tr>
<td>Other Investments</td>
<td></td>
</tr>
<tr>
<td>(List on separate sheet and attach to this application)</td>
<td></td>
</tr>
<tr>
<td>Life</td>
<td></td>
</tr>
<tr>
<td>INS</td>
<td></td>
</tr>
<tr>
<td>UIR</td>
<td></td>
</tr>
<tr>
<td>AN</td>
<td></td>
</tr>
<tr>
<td>CE</td>
<td></td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
</tr>
</tbody>
</table>

**FINANCIAL STATUS - LIABILITIES:** Fill out on separate sheet and mortgage plan. Attach sheet to this application.

<table>
<thead>
<tr>
<th>Husband’s (Man’s)</th>
<th>Wife’s (Woman’s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debts Totalled</td>
<td></td>
</tr>
<tr>
<td>Other Obligations</td>
<td></td>
</tr>
</tbody>
</table>
A. Husband's (Man's) Birthday:  
Husband's (Man's) Birthplace:  
Wife's (Woman's) Birthday:  
Wife's (Woman's) Birthplace:  

B. RACE/ETHNICITY:  
Husband (Man):  
- White  
- Black  
- Spanish  
- Native Hawaiian  
- Other  
Wife (Woman):  
- White  
- Black  
- Spanish  
- Native Hawaiian  
- Other  

C. EDUCATION:  
<table>
<thead>
<tr>
<th>Last Grade Completed or Degree</th>
<th>Special Training, If any</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband (Man)</td>
<td></td>
</tr>
<tr>
<td>Wife (Woman)</td>
<td></td>
</tr>
</tbody>
</table>

D. MEDICAL HISTORY — PHYSICAL and PSYCHIATRIC — MAJOR MEDICAL CONDITIONS:  
<table>
<thead>
<tr>
<th>Condition Treated for</th>
<th>Date Treated</th>
<th>Outpatient</th>
<th>Place Treated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband (Man)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wife (Woman)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

E. PREVIOUS MARRIAGES: Attach documentation of death or divorce.  
<table>
<thead>
<tr>
<th>Previous Spouse's Name</th>
<th>Date and Place Married</th>
<th>Date and Place Marriage Terminated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband's (Man's)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wife's (Woman's)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Children of Previous Marriage:  
<table>
<thead>
<tr>
<th>Child's Name</th>
<th>Age</th>
<th>Who Maintains</th>
<th>Support</th>
<th>Describe continuing contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband's (Man's)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wife's (Woman's)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F. ARREST RECORD: (violations of law other than minor traffic violations)  
<table>
<thead>
<tr>
<th>Husband (Man):</th>
<th>Yes</th>
<th>No</th>
<th>Civil Rights Restored?</th>
<th>Husband (Man):</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband (Man):</td>
<td></td>
<td></td>
<td>Civil Rights Restored?</td>
<td>Husband (Man):</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

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CFOP 175-54

P. ARREST RECORD — Continued: If husband (men) or wife (woman) has arrest record, provide details below:

<table>
<thead>
<tr>
<th>Husband (Man)</th>
<th>Where Arrested</th>
<th>Date Arrested</th>
<th>Nature of Charge</th>
<th>Disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

G. Section 63.042(3), F.S., states that

"no person eligible to adopt under this statute may adopt if that person is a homosexual."

I am a homosexual. Yes No

<table>
<thead>
<tr>
<th>Husband (Man)</th>
<th>Wife (Woman)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes No</td>
<td>Yes No</td>
</tr>
</tbody>
</table>

Name

Address

Telephone Number

Wife's (Women's) Employer

Wife's (Women's) Address

Do you know anyone well who is adopted? __________ Who? __________ Have you ever applied to adopt a child from another source? __________ When? __________ What source? __________ What children would you like us to consider for your family (age, sex, siblings, handicapped, etc.)?

What children would you not like us to consider for your family (age, sex, siblings, handicapped, etc.)?

Husband's (Man's) Signature

Wife's (Women's) Signature

Notarized: State of ________________ County ________________

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__________________________ and ____________________________ (Witnesses).

Please only swear, say that you are the person named in the foregoing statement, and that everything contained therein is true to the best of their knowledge and belief. Subscribed and sworn to before me this __________ day of __________________, 19______.

______________

Notary Public in and for State of Florida, residing in ________________, County ________________, on ________________.

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REFERENCES


Babets v. Secretary, Suffolk County (526 N.E.2d 1261).


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*Cox v. Dept of Health & Rehabilitative Services* (656 So.2d 902).


Halperin, David M. 1990. One Hundred Years of Homosexuality: And Other Essays on


Harris, Scott. 1996. "‘Married With Children,’ but Wholesome.” The Los Angeles Times, Jul 11.


In re Adoption of Charles B. (50 Ohio St.3d 88, 552 N.E.2d 884).

In the Matter of the Adoption of Charles B. (1988 WL 119937 (Ohio App. 5 Dist.).

In the Matter of the Appeal in Pima County Juvenile Action (727 P.R. 2d 830).


James W. COX, Petitioner v. Florida Department of Health and Rehabilitative Services (627 So.2d 1215 n.6.).


J. Hum. Rts. 711.


-------. 1996. *In the Name of the Family: Rethinking Family Values in the Postmodern Age*. Boston: Beacon Press.


www.lambdalegal.org

www.lemhimstay.org
VITA

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Megan Hartzell

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The C. Wright Mills Award for Outstanding Senior in Sociology, 2001
Graduated Magna Cum Laude, 2001
The Mitzi Hughes Scholarship for the Sociology Department, 2000

Conference Presentations:

“Emerging Identities: New Subjects Within Gay Adoption.” Presented at the Graduate Student Research Forum on April 5, 2003 at the University of Nevada, Las Vegas.

“The Confluence of Sex and Gender Discourses on Gay Parent Identity Formation.” Scheduled for presentation at the Society for the Study of Symbolic Interaction on August 17, 2003 in Atlanta, Georgia.

Thesis Title: Emerging Identities: New Subjects Within Gay Adoption

Thesis Examination Committee:
Chairperson, Dr. Kate Hausbeck, Ph. D.
Committee Member, Dr. Jennifer Keene, Ph. D.
Committee Member, Dr. Simon Gottschalk, Ph. D.
Graduate Faculty Representative, Annette Appell, J. D.