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Two Parents are Better Than None: Whether Two Single, African American Adults--Who Are Not in a Traditional Marriage or a Romantic or Sexual Relationship with Each Other--Should Be Allowed to Jointly Adopt and Co-Parent African American Children

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TWO PARENTS ARE BETTER THAN NONE: WHETHER TWO SINGLE, AFRICAN AMERICAN ADULTS—WHO ARE NOT IN A TRADITIONAL MARRIAGE OR A ROMANTIC OR SEXUAL RELATIONSHIP WITH EACH OTHER—SHOULD BE ALLOWED TO JOINTLY ADOPT AND CO- PARENT AFRICAN AMERICAN CHILDREN

Angela Mae Kupenda*

INTRODUCTION

This article proposes an additional adoption model to allow joint adoption and co-parenting by single African Americans¹ who are not in a traditional marriage relationship with each other and not in a romantic or sexual relationship with each other. Under this model, for example, two friends, two sisters, two brothers, a sister and a brother, etc., could jointly adopt and co-parent a child.

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¹ This article primarily addresses particular concerns related to the adoption of black children by black adults. Furthermore, this article is primarily written in the “voice” and from the perspective of a black, single woman desiring other adoption options to benefit herself and black children. The author writes, without apology, in the “voice” most familiar to her. She sincerely hopes, though, that what is said here relates especially well to black, single men as adopting parents, black people in general concerned about the “village,” other people of color, and people generally who are concerned that all children have healthy homes and parents. It is her hope that this article will be viewed as inclusive, and not as exclusive.

If some new model such as this one is not devised, many single blacks may hesitate to take on the entire adoption responsibility alone. As a result, many black children will continue to go without any parents.² Two parents are better than none.

I. PERSONAL NARRATIVE

She took a deep breath as she sat on the balcony of her apartment and took in the lovely and peaceful view of the lake. A now single, black woman in her thirties, she had a good job with a major law firm. She could afford the spacious apartment; she had control of her debts; she could travel every now and then.

After a long work week, her thoughts turned to the goals she had named a few years back. Things were coming together, but an empty space remained, demanding her thoughts. For as long as she could remember, she had wanted children . . . but none blessed her home . . . not when she was married, and not now. Could she now fill the empty place? Could she now adopt children and share herself and all that she had struggled and worked so very hard for with them?

Financially, right now, the answer was yes. Her paycheck was enough for a "new family." Even with her apartment and occasional travel, she lived well within her means. But she had to be realistic. To remain at that tenuous financial place, the work demands were dramatic. Attached to her paycheck was a job as an associate at a law firm that seemed to demand more of her each day as she approached partnership.

Keep the job, she thought, so that she can afford the children. But, that leaves no time for them. She could not intentionally choose to create and raise a family as a single parent and still work outside the home so many hours a week. If she slowed the pace, she would have the time to spend with a child, which she would love to do, but her finances would wane. How could she afford to adopt, especially the "hard to place" children she wanted so much to help? And what about being another single, black mother . . . some stigma . . . much struggle?

² The author uses "without any parents" to refer to children waiting for adoptive parents, in foster care, etc. She acknowledges and respects, however, the important role of the "biological parents": their existence, their struggles, and courage.

Marriage and traditional shared parenting was not a present option. It takes two willing and loving partners, she thought. She did not yet have that. (Maybe she never would, but that thought was for another day.)

Then the idea came to her. People from extended families and non-related people had always participated in the raising of children in her African American background. Many people other than her mother had helped raise her. Furthermore, people from other groups were now being allowed to adopt, although they were not in traditional marriage relationships. What about shared parenting, shared adoption with a close friend or relative? Could she jointly adopt with a close black male or female friend? Why not? They could share the joys and the responsibilities! Why not? If she didn't, maybe "their child" would end up with no parents Two parents are better than none.

II. THE PROPOSED ADDITIONAL MODEL DIFFERS FROM THE PRESENT TRADITIONAL SYSTEM

The purpose of this article is to propose an additional model for adoption in the black community. Under present adoption laws, generally a child may be adopted by a married couple or by a single person.³ The model proposed here allows a child to be adopted by two single, black people—people who are not married to each other and not romantically or sexually involved with each other.⁴ This model focuses on two single people who each individually qualify to adopt as a single parent, but choose to adopt together as co-parents.

The model is proposed as an *additional* model. It is not intended to displace the present system. Rather, it is intended to aid those children and adults the present system does not adequately serve because they do not "fit" within traditional adoption criteria. The whole focus of this additional model is on two single people who do not fit in a traditional parenting relationship, but who share a close committed bond that can provide a solid, though non-traditional, foundation for a co-parenting relationship. This bond can be a very strong bond, especially in the black community. Even assuming,

³ See Note, *Joint Adoption: A Queer Option?*, 15 VT. L. REV. 197, 200-01 (1990) [hereinafter *Joint Adoption*].

⁴ The focus of the model is not on two people who may one day "fit" into the traditional family model. Although this article should not be read as prohibiting the co-parents from later appropriately entering a traditional relationship, a non-sexual or non-romantic relationship is stated for reasons discussed in Part III-C of this article and also to avoid the suggestion that the two just marry and then adopt.

arguendo, that the bond of two married people is stronger,⁵ such an assumption does not defeat this proposal. The question is not whether two single people should displace adoption by two married people. Rather, the question is whether two single co-parents are better than none.

This article supports the answer that adoption by two single, black co-parents is certainly better than no parents. As discussed in Part III, the additional model has support in the black and homosexual communities, which already embrace the concept of shared parenting by unmarried individuals. Part IV discusses the model's problem areas.

III. SUPPORT FOR THE PROPOSED ADDITIONAL MODEL

A. *The Present Traditional Model Does Not Adequately Fit the Black Community*

A number of authors, addressing the particular needs and concerns related to the adoption of black children, have suggested that the present adoption model does not work for blacks.⁶ A disproportionate number of black children are still poor, in foster care, living with neither biological parent, supervised by a child welfare agency, or living with a single parent.⁷ The present adoption system was developed long ago to accommodate the needs

⁵ See, e.g., Judy D. Simmons, *Abortion: A Matter of Choice*, in THE BLACK WOMEN'S HEALTH BOOK: SPEAKING FOR OURSELVES 120, 126 (Evelyn C. White ed., 1994).

Furthermore, I was a child of divorce who had longed to have my father around, or to have my mother replace him with a stepfather. I thought—probably still think—that being wanted and loved by both a woman and a man is advantageous for a child's balanced development. (Maybe this idea is just my last romantic notion—certainly other parenting arrangements have worked well for many.) . . . I did not and do not want the sole responsibility of rearing children. For me, it's just too much.

Id.

⁶ See, e.g., Zanita E. Fenton, *In a World Not Their Own: The Adoption of Black Children*, 10 HARV. BLACKLETTER J. 39 (1993); Gilbert A. Holmes, *The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy*, 68 TEMP. L. REV. 1649 (1995).

⁷ See, e.g., Marian Wright Edelman, *The Black Family in America*, in THE BLACK WOMEN'S HEALTH BOOK: SPEAKING FOR OURSELVES 128, 129-30 (Evelyn C. White ed., 1994) (Compared to white children, black children are three times as likely to be poor and in foster care, and four times as likely to live with neither parent and be supervised by a child welfare agency. In addition, four out of every ten black children live in families with two parents, compared to eight out of every ten white children); Fenton, *supra* note 6, at 39.

of white couples who wished to imitate nature.⁸ Although blacks now participate in the system, it has never worked effectively for them.⁹ Further, the system has never been redesigned to accommodate the needs of the black community.¹⁰ The present model, which is based on a preference for the traditional nuclear family, does not adequately fit the realities and traditions of many black adults and children.¹¹

The traditional nuclear family is not the reality for many in the black community. For example, in *Moore v. City of East Cleveland*,¹² the Court halted a city's attempt to dramatically preference nuclear families in its zoning laws. The Court stated that a city cannot prohibit a grandmother from living with her son, grandson, and a second grandson who was the cousin of the first grandson.¹³ The Court recognized that the nuclear family is not the only type of family deserving respect, stating, "[o]urs is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of [the extended family] has roots equally venerable and equally deserving of constitutional recognition."¹⁴ Concurring, Justice Brennan went further and acknowledged that for many black people the realities of family life are different from the confines of the traditional nuclear family model.¹⁵ He added: "[i]n today's America, the 'nuclear family' is the pattern so often found in much of white suburbia. The Constitution cannot be interpreted, however, to tolerate the imposition by government upon the rest of us of white suburbia's preference in patterns of family living."¹⁶

Even if a single, black woman desired a traditional nuclear family relationship, where she would bear or adopt children with a male mate, her

⁸ Fenton, *supra* note 6, at 39, 42.

⁹ *Id.* at 43.

¹⁰ *Id.* at 40.

¹¹ Holmes, *supra* note 6, at 1651, 1674-75.

¹² 431 U.S. 494 (1977).

¹³ *Id.* at 496.

¹⁴ *Id.* at 504.

¹⁵ *Id.* at 508 (Brennan, J., concurring; Marshall, J., joining). See also *Village of Belle Terre v. Boraas*, 416 U.S. 1, 16 (1974) (Marshall, J., dissenting) ("The choice of household companions—of whether a person's 'intellectual and emotional needs' are best met by living with family, friends, professional associates, or others . . . surely falls within the ambit of the right of privacy."); *Missionaries of Our Lady of La Salette v. Village of Whitefish Bay*, 66 N.W.2d 627, 632 (1954) (holding a group of priests and brothers are a family and quoting the Bible: "the letter killeth but the spirit giveth life"), cited with approval in *Moore*, 431 U.S. at 517 n.13 (Brennan, J., concurring; Marshall, J., joining).

¹⁶ *Moore*, 431 U.S. at 508 (Brennan, J., concurring; Marshall, J., joining) (citation omitted).

desired household may not be a viable option. The number of single, black women desiring traditional nuclear families may far outnumber the number of like-minded single, black males.¹⁷ Moreover, a single person may legitimately prefer to remain single. Surely the Constitution should protect the right not to marry as highly as the right to marry.¹⁸ The choice not to marry, however, is less protected if it results in the denial of an adoptive family.

Admittedly, the traditional adoption model does allow for an unmarried person to adopt alone. Single parenting, however, even as an adoptive parent, may be problematic for African Americans, especially for African American women. Even though single parent families are more common,¹⁹ the "stigma"

¹⁷ As stated so well, but perhaps dismally, in a recent article in a magazine written primarily for black women:

We African-Americans have many assumptions and perceptions about ourselves that aren't necessarily so. . . . Based upon the most recent available data from journals, the U.S. Department of Commerce's statistical reports, newspaper and magazine articles and interviews with some of the nation's leading demographers, here are the facts.

....

Among African-Americans 40 years and older, there are five men for every ten women. A study of 926 single people ages 19 to 25 in the *Journal of Marriage and the Family* found 23 percent of Black men surveyed never want to marry.

....

Interracial marriages between Blacks and Whites have, indeed, grown 7 percent per year during the past decade. The most popular interracial mix among African-Americans [though] is Black men with White wives.

George E. Jordan, *It Ain't Necessarily So*, ESSENCE, March 1995, at 79, 82, 126.

¹⁸ See Jennifer Jaff, *Wedding Bell Blues: The Position of Unmarried People in American Law*, 30 ARIZ. L. REV. 207, 223-25 (1988).

¹⁹ Jordan, *supra* note 17, at 82, 126:

Nearly three out of five Black children (62 percent) live with only one parent. African-Americans are the only ethnic group in which a majority of children live with single mothers.

....

The crisis of single-parent households is more than just a Black thing, though. The American family has changed. . . . In 1991, according to the latest Census reports, only 26 percent of Black children, 38 percent of Latino children and 56 percent of White children lived with both their parents. . . . If the current trend continues, for the first time in history the majority of American children will spend at least several years in single-mother households.

Id. at 82, 126.

that some place on households headed solely by single parents, and especially those headed by single, black women, cannot be ignored.²⁰ This stigma, which is the result of a largely inaccurate stereotype,²¹ might create reluctance on the part of some single blacks to take on the entire adoption responsibility alone.²² Single, black males also face hurdles in the present adoption system. As predominantly white social workers apply white, middle-class standards and stereotypes, a single, black male may be discouraged from even seeking to adopt a child alone.²³

Financial realities may also create reluctance on the part of single blacks to adopt alone. African Americans continue in their attempt to recover financially from years of slavery and continuing discrimination.²⁴ A single, black person, even one with a decent income, might not be assured of financial advancement and security sufficient to alone make a long term commitment to a child. Because much of the problem with single parenting rests with economics,²⁵ the pooling of limited resources by single individuals could provide greater stability and security. “[C]ompelled pooling of scant resources requires compelled sharing”²⁶ of parenting.

²⁰ JULIA A. BOYD, *IN THE COMPANY OF MY SISTERS: BLACK WOMEN AND SELF ESTEEM* 7 (1993) (“Even worse, I envisioned myself as contributing to the often-cited statistic of the growing numbers of unmarried Black females. I could just see the headlines: NEWS FLASH: ANOTHER SINGLE BLACK FEMALE PARENT ADDS TO NATIONAL CRISIS.”)

²¹ Edelman, *supra* note 7, at 133 (“[I]t is important to remind ourselves that the stereotype is just that—a stereotype—true in too many cases but not others Many single mothers are doing a valiant job which we should affirm and learn from.”).

²² The author is personally familiar with the story of another black woman who never biologically had children but participated in the raising of many children. Recently, she valiantly assumed guardianship of two young relatives. Although she is greatly enjoying her “parenting” role, she was dismayed when she received a letter from the government chastising her as a single mother and stating that if she “has” one more child she will not receive more government aid. Though confident she is doing the right thing by assuming the single parent role, she still must face the stereotypes.

²³ *Cf.* Fenton, *supra* note 6, at 45-46.

²⁴ *Cf. Texaco Revelation Not Surprising to Black Professionals*, CLARION-LEDGER, Nov. 17, 1996, at 14A.

²⁵ JOHNNETTA B. COLE, *CONVERSATIONS: STRAIGHT TALK WITH AMERICA’S SISTER PRESIDENT* 139-40 (1993); *cf.* Fenton, *supra* note 6, at 45-48 (“[W]hen socio-economic class is controlled, Black families adopt through agencies at a higher rate than white families.”).

²⁶ *Moore v. City of East Cleveland*, 431 U.S. 494, 508 (1977) (Brennan, J., concurring; Marshall, J., joining).

One response is that if black people do not "fit" the present traditional adoption model, then just let others who do "fit" adopt the black children. The alleged "shortage" of black families for children needing homes has resulted in the placement of black children with white families. Many reject that response, however, as inappropriate. At least one author, an interracial adoptee, has written that as long as black parents are available, black children ought to be placed with black families.²⁷ Interestingly, the author urges that black parents are available, contrary to myth.²⁸ He suggests the traditional adoption model miscalculates the many black children "informally adopted" and raised by extended family members and friends, and that the present traditional adoption system's institutional racism and cultural misunderstanding of black families are some of the reasons many black children continue to go without parents.²⁹

Problems persist and magnify as we continue to attempt to fit black realities into the traditional adoption model when these realities do not consistently and sufficiently fit. Some scholars have suggested the law's insistence on the traditional model is racist and oppressive.

The traditional family is not just obsolete; it is also a bastion of male dominance, hierarchy, racism and sexual oppression. . . . [S]ince this theory of the family is overwhelmingly white and heterosexual, racism and sexual orientation discrimination will also persist as long as the law continues to favor traditional families. . . . The preference of marriage is also legal racism. . . . [F]amily living arrangements among people who are poor and who are members of racial and ethnic minorities depart significantly from the traditional model of the white-middle-class nuclear family. . . . [T]he law encourages disrespect for non-traditional family arrangements. Because . . . minorities often choose those non-traditional family arrangements, the bias against those arrangements is racist.³⁰

The present traditional adoption model has been the only model for quite some time, but its longevity cannot continue its exclusivity because it does not

²⁷ Asher D. Isaacs, *Interracial Adoption: Permanent Placement and Racial Identity—An Adoptee's Perspective*, 14 NAT'L BLACK L.J. 126, 131 (1995). Isaacs does not contend black parents are better able to love and care for a black child than white parents. *Id.* He does, however, contend that given our race-conscious world, "love is not enough." *Id.*

²⁸ *Id.* at 147.

²⁹ *Id.*; see Fenton, *supra* note 6, at 45.

³⁰ Jaff, *supra* note 18, at 236-37 (quotation marks and footnotes omitted); see Hubert J. Barnhardt, III, Note, *Let the Legislatures Define the Family: Why Default Statutes Should Be Used to Eliminate Potential Confusion*, 40 EMORY L.J. 571, 585 (1991).

meet critical needs. It is time to stop suggesting how the present model fails and time to propose additional models, such as this one, that meet the present realities. As one author has suggested: "There will be no more prizes for predicting rain. It's time to build some arks!"³¹

Possibly the answer is to halt the process of trying to "fit" black potential parents and children without parents into the current model, and to create an additional model more reflective of present realities.³² We should base the type of parenting relationships and family relationships in which black children without any parents should be placed *more* on whether the co-parents will provide the child with happiness, growth, identity, and security and *less* on stereotypical norms of parenting and family.³³ As one court has suggested, the concept of family "should not rest on fictitious [present] legal distinctions or genetic history, but instead should find its foundation in the reality of family life."³⁴

B. The Proposed Additional Model May Actually Be the Natural and the Traditional Model for African Americans

Adoption in the black community has a different history and tradition than adoption in the white community.³⁵ Informal adoptions and the extended family developed as African Americans tried to survive in America.³⁶ The

³¹ Cole, *supra* note 25, at 145 (quoting a brother).

³² An additional model need not be feared because it is applied to a subject that really matters: parenting and children. "[Freedom] to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *Bowers v. Hardwick*, 478 U.S. 186, 210 (1986) (Blackmun, J., dissenting; Brennan, Marshall, and Stevens, J.J., joining) (quoting Justice Jackson in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641-42 (1943)).

³³ *Cf. id.* at 205 (Blackmun, J., dissenting; Brennan, Marshall, and Stevens, J.J., joining).

³⁴ *Braschi v. Stahl Assocs.*, 543 N.E.2d 49, 53 (N.Y. 1989); Barnhardt, *supra* note 30 (discussing *Braschi*); *cf.* Fenton, *supra* note 6, at 41 ("To improve and accelerate the placement of Black children in good homes, administrators must be willing to explore alternatives."); Joan H. Hollinger, *Adoption and Aspiration: The Uniform Adoption Act, the DeBoer-Schmidt Case, and the American Quest for the Ideal Family*, 2 DUKE J. GENDER L. & POL'Y 15, 17 (1995) ("[T]he Act is premised on the belief that children's ties to the individuals who actually parent them—or who are committed to parenting them—deserve legal protection even if those ties are psychologically and socially constructed.").

³⁵ Fenton, *supra* note 6, at 42.

³⁶ *Id.*

history of these traditions goes back even further, however, than the importation of blacks to America. In Africa, children were raised with "multiple adult involvement."³⁷ Parenting was shared by the extended family and friends, with multiple adults filling the parental role.³⁸ After Africans were imported to America, they continued to share parenting responsibilities.³⁹ The co-parenting tradition became even more critical during slavery as biological parents were sold away from their children and were no longer available to care for their offspring.⁴⁰ The extended family became the "parent," with the children referring to these early co-parents by relationship titles even where there was no blood relationship.⁴¹ Even after slavery, extended family and friends continued to share the parenting role for children in the black community.⁴²

The reality of black parenthood and family life has, therefore, consistently involved shared parenting as a natural and a necessary structure. Sociologists have recently suggested that, whereas the traditional nuclear family based solely on marriage is a European phenomenon, the extended family or shared parenting, is *the* traditional family in the black community.⁴³ Shared parenting also often offers additional services and support not always found in traditional nuclear families.⁴⁴ Support from others has been deemed critical and is respected in many black families, especially those headed by a single parent. The concept of shared parenting, as urged in this article, is, therefore, not new to the black community.

³⁷ Holmes, *supra* note 6, at 1655.

³⁸ *Id.* at 1659-60, 1665.

³⁹ *Id.* at 1661.

⁴⁰ *Id.* at 1663.

⁴¹ *Id.* at 1662.

⁴² *Id.* at 1664.

⁴³ *Id.* at 1660 n.41.

⁴⁴ See Moore, 431 U.S. at 510 n.7 (Brennan, J., concurring; Marshall, J., joining).

Moreover, shared parenting and the village concept are still urged,⁴⁵ and used, as realistic and healthy ways for African Americans to live in the present environment.⁴⁶ The proposed additional model is, therefore, a natural and a black-child-centered approach, as it appropriately recognizes the realities and traditions of the black community.⁴⁷

C. *Co-parenting by Unmarried Individuals Has Been Accepted in the Homosexual Community*

Joint adoption and co-parenting by unmarried couples have found validity in another community. Several courts have expressly allowed unmarried, homosexual couples to jointly adopt and legally co-parent children.⁴⁸ The adoptions have been allowed primarily where one of the partners is the biological parent of the child and the other also desires to be a fully legal parent.⁴⁹ These couples have urged the allowance of the adoptions, claiming their situations are very similar to those of step-parents who are allowed to adopt the biological parent's child.⁵⁰

⁴⁵ GWENDOLYN GOLDSBY GRANT, *THE BEST KIND OF LOVING: A BLACK WOMAN'S GUIDE TO FINDING INTIMACY* 271-72 (1995).

Consider the ways that sharing a life with another single woman might make yours easier or more satisfying. Growing up, most sisters expected they would end up with men and families. As life is turning out, it isn't always happening that way. . . . Some sisters have already discovered the benefits of [sharing households] and child care. . . . Communal living is just a way of creating stability and reducing overhead.

Id.

⁴⁶ Some psychologists urge that village type relationships are, and should be regarded as, "traditional" relationships for African Americans. *Id.* at 280-81.

This is Dr. Nathan Hare's suggestion *Kupenda* is the Swahili word for love. What Dr. Hare suggests is forming nonsexual, nonrelationship-related groups for men and women to support each others' lives and nourish each others' spirits and cultural connections. A *Kupenda* group ideally would mirror the African village in giving us an extended human system on which to depend.

Id. See also Fenton, *supra* note 6, at 43 ("extended Black family still has a primary role"); Cole, *supra* note 25, at 9 (extended family considered as "just being family"); Holmes, *supra* note 6, at 1651 ("view of family . . . always multi-adult/multi-parent").

⁴⁷ Cf. Holmes, *supra* note 6, at 1670-71 (urging child-centered approach).

⁴⁸ See Julie F. Davies, *Two Moms and a Baby: Protecting the Nontraditional Family Through Second Parent Adoptions*, 29 NEW ENG. L. REV. 1055 (1995).

⁴⁹ *Id.* at 1055-56.

⁵⁰ *Id.* at 1056-57; William E. Adams, Jr., *Whose Family Is It Anyway? The Continuing Struggle for Lesbians and Gay Men Seeking to Adopt Children*, 30 NEW ENG. L. REV. 579, 590-

In some cases, though, homosexual couples have been allowed to jointly adopt where neither partner is biologically related to the child.⁵¹ One writer tells the story of two unmarried women who were allowed to jointly foster parent a child, although the women were in a lesbian relationship.⁵² When the child was placed with the women, the child was very ill and was expected to die soon. As the child became healthier, the women attempted to jointly adopt the child. The Department of Social Services objected, based on the women's unmarried status. The court, however, allowed the adoption.⁵³ Other lesbian and gay couples have also been allowed to jointly adopt, especially where the child was hard to place.⁵⁴

Courts and commentators have proposed a number of reasons for allowing such adoptions, including the co-parents' level of commitment; the longevity of their relationship; the joint equal participation by both partners as parents; the child's emotional security in the home; the extended family support available; the "maturity," "seriousness," and "community status" of the co-parents; the need for more adoptive parents; and the welfare of the child.⁵⁵

This urging by some scholars for the acceptance of joint adoptions by unmarried, homosexual couples is instructive for the additional model proposed in this article. All of the reasons to allow homosexual couples to adopt may be offered as reasons to allow the additional proposed model. In

91 (1996).

⁵¹ There may be numerous instances in many states where such adoptions have occurred. Many states do not inquire into a parent's sexual orientation. Cf. *Department of Health and Rehab. Servs. v. Cox*, 627 So. 2d 1210, 1213 (Fla. Dist. Ct. App. 1993) (finding proof that states permit homosexual adoption is difficult).

⁵² *Joint Adoption*, *supra* note 3, at 197. Many states have no express prohibition against homosexual couples becoming foster parents. *Id.* at 216-17.

⁵³ *Joint Adoption*, *supra* note 3, at 197.

⁵⁴ *Joint Adoption*, *supra* note 3, at 214 n.129 (citing instances); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and other Nontraditional Families*, 78 GEO. L.J. 459, 466 nn.16-20 (1990) (citing instances); cf. Adams, *supra* note 50, at 589, 602-03 ("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.").

⁵⁵ See, e.g., *Adoption of Tammy*, 619 N.E.2d 315, 316-18, 320-21 (Mass. 1993); *Adoptions of B.L.V.B. and E.L.V.B.*, 628 A.2d 1271, 1275-76 (Vt. 1993); Adams, *supra* note 50, at 602-03.

many ways the two models are the same,⁵⁶ and some authors who have addressed co-parenting for homosexual couples have hinted at, but have not explored, the proposed model.⁵⁷

In one important way, however, the two models differ: the reasons articulated for not allowing homosexual couples to adopt are not present and therefore do not defeat the proposed model. Courts' reasons for denying joint adoption by homosexual couples fall into two categories: (1) those based on the sexual orientation of the two potential co-parents, and (2) other reasons.

Reasons to deny joint adoptions based on the sexual orientation of the potential co-parents are myriad: fear that a homosexual parent will molest the

⁵⁶ GLORIA NAYLOR, *THE WOMEN OF BREWSTER PLACE* 140-41 (1982). In this fictional work, the following dialogue occurs between two heterosexual women (who at times lived together and supported one another) as they discuss a lesbian couple they know:

"Etta, I'd never mention it in front of Sophie 'cause I hate the way she loves to drag other people's business in the street, but I can't help feelin' that what they're doing ain't quite right. How do you get that way? Is it from birth?"

"I couldn't tell you, Mattie. But I seen a lot of it in my time and the places I've been. They say they just love each other—who knows?"

Mattie was thinking deeply. "Well, I've loved women too. . . . [A]nd even as ornery as you can get, I've loved you practically all my life."

"Yeah, but it's different with them."

"Different how?"

"Well . . ." Etta was beginning to feel uncomfortable. "They love each other like you'd love a man or a man would love you—I guess."

"But, I've loved some women deeper than I ever loved any man," Mattie was pondering. "And there been some women who loved me more and did more for me than any man ever did."

. . . .

"Maybe it's not so different," Mattie said, almost to herself. "Maybe that's why some women get so riled up about it, 'cause they know deep down it's not so different after all."

Id.

⁵⁷ See, e.g., *Joint Adoption*, *supra* note 3, at 198 (stating, "[j]oint adoption would allow unmarried heterosexual couples, lesbian and gay couples, two sisters, or other combinations of two people to adopt," but focusing on adoption by homosexual couples); Recent Case, *Family Law—Adoption—Massachusetts Allows Biological Mother and Her Lesbian Partner Jointly to Adopt Child*, 107 HARV. L. REV. 751, 756 (1994) (case should influence not only adoption by homosexual couples but also adoption by other unmarried nontraditional couples).

child; fear that the child will become homosexual from the co-parents' influence; fear that other children will harass the child because of the co-parents' relationship; fear that the co-parents will harm the child morally; realization that the co-parents' relationship violates state sodomy laws; fear that the child will be exposed to AIDS; belief that homosexuality in and of itself makes the potential parents unfit; moral and constitutional disapproval of homosexuality; and belief that the developmental needs of a child require a stable heterosexual household.⁵⁸

The reasons for denying joint adoptions by homosexuals based on their sexual orientation are not concerns for the additional proposed model. The proposed co-parenting model states that the basis for the underlying relationship between the potential co-parents is not sexual or romantic. The two co-parents could be two relatives or two friends. This proposed model should then be readily accepted, even where joint adoption by homosexual couples is not.

Courts base other reasons for refusing to allow joint adoption by homosexual couples on a presumption that a child may have only one mother or father⁵⁹ or on the couple's unmarried status.⁶⁰ As discussed elsewhere in this article, the black experience is of extended families where many children already have several "mother" or "father" figures.⁶¹ Even if an exclusive acceptance of married adopting parents were acceptable in the white community where the number of traditional nuclear families desiring white babies may far outnumber available white babies, marital status alone provides no justification for allowing black children to disproportionately continue without any parents at all. Two unmarried, black parents are better than none.

⁵⁸ See, e.g., *Department of Health and Rehab. Servs. v. Cox*, 627 So. 2d 1210, 1220 (Fla. Dist. Ct. App. 1993); Adams, *supra* note 50, at 583-84, 592-94; Davies, *supra* note 48, at 1057-59; *Joint Adoption*, *supra* note 3, at 207-10.

⁵⁹ See Davies, *supra* note 48, at 1057.

⁶⁰ See *Joint Adoption*, *supra* note 3, at 214 n.129 (citing instances where adoption allowed in spite of nonmarried status).

⁶¹ See *supra* Part III-B; *infra* Part IV.

IV. PROBLEMS WITH THE MODEL

The purpose of this article is to propose the model and urge its acceptance.⁶² Some problem questions and brief preliminary responses follow.

Will it matter to whom the child belongs? No. We need to move toward child-centered policies that protect more the child and less the idea that the child is someone's property.⁶³ The adopted child will be the child of both co-parents, just as under the traditional, nuclear family model the child is the child of both married parents. The single co-parents will resolve parenting differences, just like married parents resolve theirs.

What happens if the underlying relationship between the co-parents deteriorates? Given the present high divorce rates, a relative/relative or friend/friend relationship might indeed be more lasting and more stable than many marriages.⁶⁴ Should the co-parenting relationship falter, however, both co-parents would be expected to work out custodial arrangements the way divorced parents do.⁶⁵ Some potential co-parents might prefer to prepare in advance of the adoption a co-parenting agreement to address such concerns.⁶⁶

Should the co-parents be required to reside in the same household, in the same city or state? Not necessarily. *If they do not reside in the same household, the child might be constantly shuffled from house to house.* Currently, a disproportionate number of black children are in foster care,

⁶² In this author's home state at least one case is reported where two people not married to each other were, probably inadvertently, allowed to jointly adopt. See *In re Adoption of R.M.P.C.*, 512 So. 2d 702, 704 (Miss. 1987) ("What makes this unusual proceeding bizarre is that on . . . the date of the adoption decree, [the adopting co-parents] were each married to someone else.").

⁶³ See, e.g., Barbara B. Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747 (1993); Barbara B. Woodhouse, "Out of Children's Needs, Children's Rights": *The Child's Voice in Defining the Family*, 8 B.Y.U. J. PUB. L. 321 (1994); Holmes, *supra* note 6, at 1672 (need to "tame the adult 'rights talk'").

⁶⁴ Cf. Fenton, *supra* note 6, at 63 ("Especially with the currently high divorce rate, children have been successfully reared by [many different types of family] arrangements. These options are consistent with the [black tradition]."); *Joint Adoption*, *supra* note 3, at 225-26.

⁶⁵ See, e.g., JUDITH N. STIMSON, KEY PRINCIPLES OF CO-PARENTING (1995) (a client handout); Ronald K. Henry, *The District of Columbia's New Joint Custody of Children Act*, WASH. LAW., July-Aug. 1996, at 50; Judi Light, *Co-parenting With Your Ex*, ESSENCE, March 1995, at 118.

⁶⁶ Randye F. Bernfeld, *Legal Issues Facing the Nontraditional Family: Brief Guide Regarding Donor and Co-Partnering Agreements*, 232 PLI/Est 279 (1994).

which means they may be shuffled from temporary household to temporary household, with no permanence.⁶⁷ The co-parents in the proposed model would be permanent parents who could give the child permanent homes. If the co-parents do not reside in the same household, admittedly, the child would have two permanent homes. Two permanent homes, however, are better than no permanent home. Moreover, given the current divorce rates in our country, the adopted child's situation would be similar to many of the child's peers. The marked difference would be that the two households would reflect the initial choice of the co-parents, and would not be the unplanned result from discord in a marital relationship.

What if the child is confused if, for example, two females adopt and the child has two mothers, or if two males adopt and the child has two fathers? The African American tradition is an extended family tradition. Black children have commonly had a host of other relatives and family friends all having parental roles. As for school applications and other forms that allow space for the name of only one mother, it is time to change the forms and to save the children.⁶⁸

*What would be the requirements for the underlying co-parent relationship?*⁶⁹ The relationship should be evaluated for elements of longevity, commitment, interdependence, cohesiveness, connectedness, and mutual respect.⁷⁰ Not every two single, black people individually qualified to adopt should necessarily be allowed to adopt together. Scrutiny of the co-parents' underlying relationship may mean, though, that government could

⁶⁷ See Fenton, *supra* note 6, at 44 ("While most children in foster care are white, the proportion of minority children in foster care is approximately forty-six percent, more than twice the proportion of minority children in the nation's child population. Thirty-nine percent of the children stay in foster care for more than two years. The median stay for Black children in foster care is one-third longer than the national median for all children. Black children are less likely to exit foster care to a permanent placement than white children." (footnotes omitted)).

⁶⁸ Cf. Susan L. Crockin, *Beyond Tammy: Co-Parent Adoptions in Massachusetts*, 38 B.B.J. 7, 18 (1994) (after lesbian couple allowed to adopt, court forms changed to replace "mother" and "father" with "co-parent").

⁶⁹ When this writer contemplated her own potential co-parenting partners, she asked two questions: is the underlying relationship secure, trusting, respectful, spiritually-based, committed, fun, and happy? Most importantly: is the potential co-parent someone she would fully trust to raise the child if something happened to her?

⁷⁰ Cf. Barnhardt, *supra* note 30, at 572, 586; Jaff, *supra* note 18, at 230, 239. See also Stacey Lynne Boyle, Note, *Marital Status Classifications: Protecting Homosexual and Heterosexual Cohabitants*, 14 HASTINGS CONST. L.Q. 111, 137 (1986).

intrude into the relationship and into their private lives or lifestyles.⁷¹ Perhaps the intrusion should be limited to the same type of investigation that is made into the stability of a marriage for an adoption by marital partners.

Why change the law when the same effect can be realized by allowing just one single person to adopt and then the other person could just informally "help" without entering a legal relationship? A formal, legally sanctioned co-parent relationship would provide many benefits⁷² in areas such as: employment,⁷³ insurance, housing,⁷⁴ taxes, inheritance, possible tuition benefits, and social security.⁷⁵ These families would have the same security enjoyed by traditional families.⁷⁶ Further, without a legally recognized relationship, the "helper" might not have enforceable rights to a continuing relationship with the child if the parent dies⁷⁷ or if the relationship between the parent and the "helper" falters.⁷⁸ The only reason to deny a child and co-parents the benefit of a legally sanctioned relationship is to maintain the present traditional adoption system. Why not create an additional model that provides a better fit for the realities of many?

Why not go even further, then, and allow ten people to adopt one child? Obviously a line must be drawn somewhere.⁷⁹ The line is currently drawn too narrowly, as it ignores the black reality. Although some are concerned that

⁷¹ Cf. Barnhardt, *supra* note 30, at 594.

⁷² Cf. N. SHELTON HAND, JR., MISSISSIPPI DIVORCE AND CHILD CUSTODY §§ 28-1, -5 (1996) (discussing legal benefits of traditional adoption).

⁷³ If one person were just "helping," one wonders how many employers would allow the "helper" to take time off from work to care for the child if the child were ill. If both co-parents are legally recognized as parents, then they both should qualify for employment benefits such as those provided by the Family and Medical Leave Act of 1993. See 29 U.S.C. § 2601-2654 (1996).

⁷⁴ Compare Moore v. City of E. Cleveland 431 U.S. 494 (1977) (ordinance prohibiting the living arrangement of "related" individuals held unconstitutional) with Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (ordinance prohibiting living arrangement of "unrelated" individuals held constitutional).

⁷⁵ Adams, *supra* note 50, at 588 n.69.

⁷⁶ Barnhardt, *supra* note 30, at 575, 579-81, 589-91.

⁷⁷ Adoption of Tammy, 619 N.E.2d 315, 320 (Mass. 1993).

⁷⁸ Davies, *supra* note 48, at 1069-72; Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 881, 958-59 (1984).

⁷⁹ Village of Belle Terre v. Boraas, 416 U.S. 1, 8 (1974) ("It is said, however, that if two unmarried people can constitute a 'family,' there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included.")

as the concept of "family" is broadened it may become meaningless,⁸⁰ there is no problem with too much love. Finally, the healing of black America may ultimately "require a kind of wholesale adoption: people adopting people."⁸¹

V. CONCLUSION—THE QUESTION ANSWERED

The question presented in this article is not whether two black, single co-parents are better than two married, black parents. Rather the question is: Are two black, single co-parents better than none? We face a shortage of black, married, traditional nuclear households, the rich history and reality of the extended family tradition and shared parenting in the black community, and too many black children without any parents. As we consider the lessons learned from other co-parenting communities and the lessons learned from the family history of the black community, it becomes clear that the answer to the presented question is a resounding "yes!" Yes, two parents are better than none.

⁸⁰ See Barnhardt, *supra* note 30, at 573 ("Some who disagree with [an expanded concept of family] contend that 'the problem is that it becomes very difficult to determine what is and what is not a family,' and that this reasoning will raise 'all kinds of really ridiculous situations if you attempt to unravel the traditional meaning of marriage and family by so broadening its definition that it becomes meaningless.'" (footnote omitted)).

⁸¹ Cole, *supra* note 25, at 145.