Understanding LGBTQ Unions and Divorces

Essays provide valuable insight into how today’s families travel through transitions

Reviewed by Maria Federica Moscati

LGBTQ Divorce and Relationship Dissolution: Psychological and Legal Perspectives and Implications for Practice
Abbie E. Goldberg and Adam P. Romero, editors
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As many attorneys and mediators have learned, helping LGBTQ partners and parents end their intimate relationships requires specific knowledge and preparation concerning language, children, and power imbalances. LGBTQ relationships today usually do not conform to the models of heteronormative families, with partners and children often connected in new, diverse ways. Navigating the different legal cultures — and the differences between state and federal law — adds additional challenges.

The editors of this collection of essays bring an interdisciplinary approach to the topic. Abbie E. Goldberg is a Professor of psychology at Clark University in Worcester, Massachusetts, and Adam P. Romero is a Lecturer in law at the UCLA School of Law and the Arnold D. Kassoy Scholar of Law and Director of Legal Scholarship at the Williams Institute, a public-policy research organization based at UCLA’s law school that focuses on sexual orientation and gender identity issues.

LGBTQ Divorce and Relationship Dissolution offers a collection of twenty-two insightful essays by researchers and practitioners with various expertise in social sciences. The collection aims, among other things, to untangle the legal, social, and personal issues concerning the divorce (defined in the book as a legal process) and dissolution (conceptualized in the book as the “process of ending a relationship,” not necessarily involving a legal process) of relationships of LGBTQ people. The chapters thoroughly engage the reader with key themes in legal and psychological discourse concerning LGBTQ people and the end of their relationships, including the impact of dissolution on children, the role of gender and gender dynamics in same-sex divorce, and implications for the legal practice.

In so doing, the collection reaches various audiences. It speaks to practitioners, researchers, and LGBTQ people. The interdisciplinary analyses of relationship dynamics provide a background, history, and understanding of issues that attorney mediators are likely to see in their practice. Enriched by discussion questions, each chapter represents a compelling source for further research and teaching at undergraduate and postgraduate levels.

The collection is divided into four substantive parts. After the editors set out the aim, methodology, and structure of the collection, Nancy Knauer, a Professor of law at Temple University’s James E. Beasley School of Law, convincingly explores the implications of Obergefell v. Hodges, the landmark civil rights case in which the US Supreme Court ruled
that the fundamental right to marry is guaranteed to same-sex couples. She shows the extent to which important dimensions of family life still remain unprotected after the judgment. In particular, parenting rights and religious exemptions still include significant differences between same-sex couples (and their children) and different-sex couples (and their offspring). Indeed, although the judgment points out that the children of same-sex parents should enjoy the same rights as those of opposite-sex parents, many jurisdictions still adopt laws that limit second-parent adoption, assisted reproduction, and joint adoption.

Following Knauer’s essay, Part I is dedicated to same-sex couples and relationship well-being. Wendy D. Manning and Kara Joyner, Professors of sociology at Bowling Green State University, review current demographic research concerning prevalence rates of dissolution and divorce of same-sex and different-sex relationships in Europe and United States. The essay by Sharon Rostosky and Ellen Riggle, Professors at the University of Kentucky, addresses the question “What makes same-sex relationships endure?” While their answer shows that (among other factors) legal recognition of same-sex relationships, social support, and legal recognition of parenting contribute to increase stability between same-sex partners, their chapter also calls for more in-depth research on the role that minority-stress factors — such as social stigma — have on stability and how stability is operationalized. In another chapter, David M. Frost, an Associate Professor in social psychology at University College in London, and Allen J. Leblanc, Professor of Sociology at San Francisco State University, discuss how minority stress caused by societal stigma against homosexuality and same-sex relationships can contribute to the dissolution of same-sex partners’ relationships.

Daniela Domingues, an Assistant Professor at the University of San Francisco, Jacqueline Coppock, postdoctoral resident at Kaiser Permanente in Vallejo, California, and Marcela Polanco, an Assistant Professor at Our Lady of the Lake University in San Antonio, Texas, find more examples of stress in relationships involving binational couples, in which one partner is a US citizen or lawful permanent resident and the other is a foreign national. These authors show that cultural, migration, and environmental factors contribute to ending same-sex relationships.

Rachel Donnelly, a doctoral student at the University of Texas at Austin, Corinne Reczek, an Associate Professor of sociology and women’s, gender, and sexualities studies at Ohio State University, and Debra Umberson, a Professor of sociology at the University of Texas at Austin, reflect on a supplementary cause of dissolution, such as the death of a spouse.

An interesting essay on the use of consensual dispute resolution — namely mediation and collaborative law — for the resolution of disputes of LGBTQ partners closes Part I. Diane Goodman, a California lawyer, and mediator and lawyer Mariette Geldenhuys of New York, who specializes in mediation and collaborative law, suggest that practitioners should be ready to show compassion for the history of oppression that LGBTQ people have experienced and be proactive in helping the parties navigate the differences between what they think their relationship is about and what the law provides. Because the lack of legal recognition of same-sex couples is a source of conflict and a limit to legal protection, mediation can be a suitable environment to give voice to all the parties involved in the dispute.

Part II combines insights from social science research, law, and personal experience to highlight how children of LGBTQ people navigate their parents’ dissolution and divorce. Rachel H. Farr, an Assistant Professor of psychology at the University of Kentucky, and Abbie E. Goldberg, one of the book’s editors, open Part II by drawing upon original data collected through their own longitudinal studies on same-sex adoptive parent couples experiencing post-dissolution adjustment and custody arrangements to determine what happens to children following the end of their mothers’ or fathers’ romantic relationship. The two authors show that a child-centered approach to parenting is likely to frame post-separation parenting arrangements aiming at preserving long-term relationships. This approach, the authors suggest, includes sharing custody arrangements or deciding to live close to each other after the separation. This chapter is enriched by an insightful analysis of both the gaps and challenges that future research will need to address.
Dispute Resolution Bookshelf

Two more legally-focused chapters follow. Fiona Tasker, a reader in psychology at Birkbeck-University of London, and Katy Rensten, a barrister at Coram Chambers in London, explore current research and case law concerning divorce characterized by LGB people who became parents during heterosexual relationships. The authors appreciate recent improvements but at the same time contend that LGB parents who came out during heterosexual relationships do not have equal enjoyment of parenting rights because courts appear to be still biased against such parents who claim parenting rights after the separation. Kim Pearson, Associate Professor of law at Gonzaga University School of Law, then offers a compelling critical analysis of case law concerning child custody when relationships involving LGBTQ partners come to an end, showing that both courts and LGBTQ parents themselves sometimes engage in a dangerous process of assimilation to heterosexual parents. LGBTQ parents who do not conform to a two-parents, middle-class, monogamous model, she notes, can face discrimination and severe limitation to access to justice.

The following two chapters present vivid accounts of personal narratives of LGBTQ parenting. Joyce Kauffman, an attorney and mediator based in Boston, shares her experience as lesbian mother, lawyer, and activist. Her chapter powerfully depicts her experience of co-parenting and legal recognition of a three-parent arrangement, framing it within a broader account of the struggles of lesbian women in the United States. The auto-ethnographic account by Aaron Dickinson Sachs, an associate professor at Saint Mary’s College of California, helps explain how lack of legal recognition of same-sex parenting, homophobia, and lack of systemic support for LGBTQ people contribute to create emotional, relational, and psychological challenges for children of LGBTQ parents. Part II ends with a chapter concerning the psychotherapeutic needs of separating same-sex parents. Mark Gianino, a Clinical Associate Professor at Boston University, and Elisabeth Sackton, a clinical social worker and therapist based in Belmont, Massachusetts, propose a therapeutic framework of intervention that takes into consideration the unique characteristics and dynamics that LGBTQ families present.

Part III focuses on relationship dissolution and divorce involving transgender and gender variant people. In the first chapter, Carla A. Pfeffer, Associate Professor, and Natalie Castaneda, a doctoral candidate at the University of South Carolina, review literature on trans people and partnerships across a variety of disciplines. The aim of their analysis is to explain factors contributing to a relationship’s stability and instability. Among the factors that speculatively might be associated with conflict, dissolution, and divorce, the authors include the transition process, sexual identity, limited sexual intimacy, and lack of family and community support. However, as also suggested in Shannon Minter’s chapter, legal and other professionals should not assume that transition will inevitably lead to the end of a relationship. Minter, a civil rights attorney and the legal director of the National Center for Lesbian Rights in San Francisco, explores how lack of information about what transition is, who trans people are, and how their history of oppression and discrimination might cause judges to see trans people as culpable during divorce proceeding, putting them at risk of receiving unfair outcomes. Therefore, Minter says, attorneys should show some empathy toward their trans clients, starting with questioning their own assumptions about gender identity, using correct names and pronouns when addressing their trans clients, and suggesting dispute resolution processes.

The last two accounts of Part III complement the previous two chapters by presenting personal narratives of a trans woman and her child. Denise Brogan-Kator, chief policy officer of the Family Equity Council in New York, and her daughter Amanda Veldorale-Griffin, assistant professor at Northcentral University in Minneapolis, delve into the emotional, legal, and practical issues that transitioning and divorce present to parents and children. Although from two different perspectives, the two chapters show that transition does not occur in a vacuum — the context, the absence of solidarity, bias, and stereotypes wrench the process.

Part IV challenges the heteronormative dimension that has characterized family law in the United States. These chapters also suggest creative practical ways to find appropriate solutions to dissolution and divorce of non-heteronormative relationships that
because of their uniqueness require some changes from the traditional roots, models, and meanings of family law. In particular Suzanne Kim, a Professor of law at Rutgers University, and Edward Stein, a Professor of law at Cardozo School of Law, question the role of gender and gender dynamics in same-sex divorce and dissolution. Unambiguously, the two authors highlight the manner in which gender impacts the causes for the end of a relationship and the financial and child custody arrangements. On the last point, the authors pose a notable argument concerning the manner in which gender-based conceptions affect the interpretation of the “best interests of the child” principle.

Frederick Hertz, a California-based attorney and mediator who is also a member of this magazine’s editorial board, shares five different real-life scenarios concerning the divorce and dissolution of same-sex couples and shows both the couple dynamics and the challenges posed to attorneys and mediators. In particular, Hertz contends that four dynamics might be considered common to same-sex couples: animosity for the imposition of marital law; a rejection of the heteronormative flavor of marital law; the complexities deriving from discrepancies between the law and the family arrangements couples have created; and embarrassment for ending a relationship.

Gust Yep, a Professor of communication studies, lecturer Briana Avila, and former lecturer Rebecca Gigi, all of San Francisco State University, examine “voices” and “silence” about same-sex divorce in the United States. Their chapter starts with an analysis of the voice of Evan Wolfson, a lawyer who was one of the first national proponents of legalizing same-sex marriage, about same-sex divorce. The chapter then looks at the silence about same-sex divorce that characterizes LGBT literature and debates. The authors surmise that reasons for this silence include hierarchy within the LGBT communities privileging those legally married, the relative newness of same-sex divorce, and the limited relevance that divorce has for partners in unconventional relationships.

In the final essay of Part IV, lawyers Jodi Argentino and Celeste Fiore explore the dissolution of polyamorous relationships, multiple-parent families, and multiple-partner relationships. Although acknowledging progressive legal developments in California and Maine, the authors point out how the ideal of the traditional heterosexual nuclear model of family, which has shaped family law, creates disadvantages for more complex form of families. Nanette Gartrell, a psychiatrist who is a visiting distinguished scholar at UCLA’s Williams Institute, and Esther Rothblum, a Professor at San Diego State University, offer concluding reflections by presenting seven scenarios on sources of conflict for LGBTQ couples.

The book does not answer all questions, including whether lesbian women, gay men, trans persons, and queer people have different experiences during divorce and dissolution, what children have to say about their parents ending their relationships, and how legal cultures outside the United States deal with these matters. But this is a fascinating read that fills a big gap in the literature and lays the groundwork for further theoretical, empirical, and professional inquiries.