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Gay and Lesbian Adoptions: A Theoretical Examination of Policy-Making and Organizational Decision Making

THOM REILLY

Most of the inquiry into gay and lesbian adoptions has focused on the rights of this population to adopt, the constitutional issues surrounding gay and lesbian parenting, and the outcomes of children raised by homosexual parents. There has been scant focus at the policy-making or organizational level on this issue. Why have public adoption agencies failed to provide either regulation or written policy on the topic of adoption of children by gays and lesbians?

This article pursues a theoretical examination of policy-making and organizational decision making to explore this issue. Additionally, a survey was distributed to adoption officials in each of the fifty (50) states requesting information about the placement of children in adoptive homes of lesbian and gay adults. This examination, coupled with a survey of the child welfare agencies, provides the framework for this analysis. The results of this survey and the policy implications are discussed.

Introduction

Whether a lesbian or gay individual is allowed to adopt a child depends on the laws, regulations and formal/informal policies of the state where she or he lives. Recent court cases across the United States have produced contradictory rulings on child custody and adoption cases concerning gays and lesbians (Martin, 1993; Rubenstein, 1993). These rulings have signaled a new stage in a national debate over the definition of family, the rights of lesbians and gays to adopt, and whether the adoption of children by gays or lesbians is in a "child's best interest."

As the visibility of gay and lesbian issues has increased, so have the issues about families created by them. While increased

tolerance for this population has gained momentum, according to several national polls, Americans still have difficulty approving of gays and lesbians becoming parents (Turque et al., 1992).

According to Ricketts & Achtenberg (1990), "Increasingly, lesbians and gay men are exploring an ingenious array of parenting options—including, to the extent they are permitted by law and policy, adoption and foster care" (p. 84). It is impossible to estimate the number of gays and lesbians who have adopted because gay adoptions are often classified as single-parent adoptions. In the absence of any complete and accurate national adoption data, estimates on the number of gay and lesbian parents range from 6 million to 14 million (Green & Bozett, 1991; Turner, Scadden & Harris, 1990).

Unfortunately, public adoption agencies have not provided the necessary guidance and written direction on this issue. In situations where state law and the courts have not clearly articulated policies about adoptions by gays and lesbians, the child welfare agencies have remained silent on the issue and developed informal policies which are inconsistently applied. In fact, many agencies seem to have employed a "don't ask; don't tell" policy similar to the one used to deal with gays and lesbians in the military.

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This article pursues a theoretical examination of policy-making and organizational decision making to explore this issue. Additionally, a survey was distributed to adoption officials in each of the fifty (50) states requesting information about the placement of children in adoptive homes of lesbian and gay adults. This examination, coupled with a survey of the child welfare agencies, provides the framework for this analysis. The results of this survey and the policy implications are discussed.

Adoption in the United States

In the United States, two overriding principles guide attempts to find homes for children whose biological parents cannot or will not provide for them. These are: (1) that decisions shall be made in the best interests of the child; and (2) the goal should be for permanency in a secure, stable and nurturing environment (Schulman & Behrman, 1993).

There are several ways children become eligible for adoption. First, biological parent(s) may consent to the adoption and transfer all parental rights and responsibilities to an adoptive parent. Second, the biological parent(s) rights may be terminated by the court due to a finding of abuse, neglect or abandonment. Finally, second parent adoptions have been approved in some states whereby the biological rights are not extinguished but an adoptive co-parent—a stepparent or same-sex partner—also becomes a legal parent of the child. This allows a nonlegal parent, with the consent of the legal parent, to adopt the same child and acquire all the rights of parenthood. In these types of adoptions, the legal parent retains all of his or her rights as well (Rubenstein, 1993).

Although regulations regarding adoptions vary from state to state, most states allow adoptions by public and private agencies and independent or private adoptions. In public agency adoptions, performed through a state, county or city sponsored adoption agency, the majority of children available for placement are those who have been abused or neglected. Most of the children placed by public agencies are called “special needs” children. The definition of children with special needs includes older children, culturally diverse children, children with physical, mental or emotional problems, and children who are part of a sibling group. Most private adoption agencies work with birth parents who come to them to place their children (usually infants).

Despite the much publicized shortage of adoptable white healthy newborns, there are tens of thousands of children in need of permanent adoptive homes. Of the 428,000 children in foster care today (Tatara, 1993), it is estimated 85,000 of them need adoption planning and services (McKenzie, 1993). As the number of

children in foster care grows, child welfare agencies are reporting a shortage of adoptive parents.

The "best interest of the child" —
Research on Gay and Lesbian Adoptions

The standard "best interest of the child" qualifier is highly subjective and the one most frequently cited by courts in the denial of adoptions to gays and lesbians. According to Rivera (1987), "When a judge decides what the facts are in a particular case, he or she must then decide, as a matter of law, what is in the best interest of the child . . . one such criteria is that a judge should consider the moral environment of the home. As is easily seen by any practitioner of family law, such a criteria allows much room for the judge to impose his or her own moral standard" (p. 202).

Despite the increased number of adoptions by gay and lesbians, there is no specific research that deals exclusively with this population (Patterson, 1992). However, there is a considerable body of research about gay and lesbian families in general. Research has consistently found there is no evidence of any kind, psychologically or socially, that children growing up in gay and lesbian homes suffer any negative effects. Additionally, there is no documentation suggesting gay and lesbian parents are in any way deficient when compared to their heterosexual counterparts.

Numerous studies have been done comparing lesbian mothers to heterosexual mothers concerning parenting effectiveness and varying aspects of psychosocial and psychosexual development of children raised by these women (Golombok, Spencer, & Rutter, 1983; Green & Bozett, 1991; Green, 1978; Hoeffler, 1981; Kirkpatrick, Smith & Roy, 1981; Flaks et al., 1995; Mandel & Hotvedt, 1980; Patterson, 1994; Rees, 1979; Mucklow & Phelan, 1979; Miller, 1979; Steckel, 1987). No research has identified significant differences between lesbian mothers and their heterosexual counterparts or the children raised by these groups. Children of lesbian mothers are as intelligent, have equal self-esteem and suffer no more psychopathology or behavioral problems than children of heterosexual parents.

Additional studies of gay men and their children have been conducted. Although the studies were not broad in scope, no

negative consequences of parental homosexuality could be ascertained (Scallen, 1981; Turner, Scadder & Harris, 1965; Bigner & Jacobsen, 1989; Harris & Turner 1986; Riddle, 1978; Bozett, 1989; Miller, 1979).

Furthermore, the social science literature has consistently found gay and lesbian parents are no more likely to have homosexual children than heterosexual parents (Bozett 1981; 1987; Green, 1978; McGuire & Alexander, 1985; Miller, 1979; Rees, 1979; Robinson, Skeen, & Walters, 1989; Turner, Scadden & Harris, 1990).

Finally, research indicates sexual exploitation of children by their gay parents is virtually nonexistent (Herek, 1991; Miller 1979; Geiser, 1979;). Groth & Birnbaum (1978) concluded that "the adult heterosexual male constitutes a greater risk to underage children than does the adult homosexual" (p.181). Every authoritative study on arrests for all sex crimes involving children indicates 90% of such incidents involve female children and adult males (Voeller & Walters, 1978).

Many courts believe a parent's homosexuality may harm a child's development. None of the above studies confirm this prediction nor have any other valid studies supported this assumption. Children of lesbian and gay parents appear to develop the same as children raised in heterosexual homes in terms of gender identity, gender role, sexual orientation and various aspects of psychological health, psychosexual development and social adjustment.

Survey Methods

In early 1994, the Nevada Division of Child and Family Services distributed a questionnaire to adoption specialists in each of the fifty states. Follow-up phone contact was made to the states failing to respond. Information was obtained from all fifty states. Adoption officials were asked if their state had specific legislation or regulations on the placement of children with gays and lesbians and if the agency has written policy governing these placements. In the absence of any written policy, officials were then asked if they had informal policy governing the practice. Finally, state officials were asked under what circumstances, and who was

responsible for deciding whether or not, placement of children in a gay or lesbian home was allowed or prohibited.

Findings

Six states (Florida, Nevada, New Hampshire, New Mexico, New York, and Rhode Island) reported having specific legislation or regulations which address the placement of children with gay and lesbian adults for the purposes of adoption. New Hampshire and Florida are the only two jurisdictions with statutory bans on lesbian and gay adoptions. Legislation in Rhode Island allows for the placement of children with gays and lesbians. Regulations in New York and New Mexico allow for the adoption by gay and lesbian individuals and couples. Nevada's regulation allows for the placement of children in the homes of gays and lesbian individuals, but state law does not allow adoption by unmarried couples.

The only states reporting any written policy regarding gay and lesbian adoptions were Florida, New Hampshire and Rhode Island. Twenty-two (22) states reported that unwritten, informal policy allows the placement of children with gay or lesbian adults, while seventeen (17) states have informal policy that leaves such a decision to the case worker, supervisor, and/or adoption team. Two states (Colorado and North Dakota) reported practices differ throughout the state. Arizona stated that, due to consistent rulings by the Arizona Court which prohibit gay and lesbian adoptions, the agency leaves the decisions about placement in gay and lesbian households up to the courts. Forty-five (45) of the states reported that regardless of whether or not they had informal policy allowing the practice, or whether such decisions were made by an individual social worker or adoption team, agency practice was guided by what was in the best interest of the child. Of these, five states (Maine, Wisconsin, Delaware, Kansas and Montana) stated decisions were made only on the basis of what was in the child's best interest.

When asked under what circumstances the placement of children in gay or lesbian homes for the purpose of adoption occurs, four states (Maine, New Jersey, Hawaii and Michigan) responded such adoptions are approved only if there is a shortage of eligible

heterosexual individuals or couples; nineteen states stated gay or lesbian individuals or couples were granted equal consideration as potential adoptive parents; and, eight states responded that the sexual orientation of an individual or couple is not of concern to them nor is it specifically requested.

According to this survey, most states' policies on gay adoptions are ambiguous. Written policy guiding this practice was only in existence in three of the responding states. Informal policy seems to govern the practice of gay and lesbian adoptions in the United States. The majority of states informally allow for the placement of children in gay and lesbian homes and/or leave it up to an adoptive team, supervisor or social worker for a case-by-case decision.

Many of the states' adoption officials acknowledged it is impossible to determine how many gay and lesbians adoptions occur. Social workers supportive of gay and lesbian adoptions can omit information about the sexual orientation of the applicant or bury it in a report because the court may rule unfavorably. Many are simply classified as single parent adoptions. Conversely, a social worker opposed to the practice can place roadblocks for the adoption or support other reasons not to recommend the placement.

In spite of data confirming the absence of any negative effect of gays' and lesbians' parenting and the large number of children in need of adoption services, the question arises: Why have adoption agencies failed to provide written direction to their social workers? Some states privately stated that developing a policy prohibiting the placement of children in gay and lesbian homes would leave their agency vulnerable to a lawsuit. Other states were reluctant to discuss their policy because it is deemed too controversial and politically troublesome.

The Massachusetts Experience

The absence of written policy, either pro or con, led to the 1985 controversy over the placement of two children in the home of a gay couple in Boston, Massachusetts. In an explosive decision, the first of its kind nationally, Massachusetts established a new policy which made it unlikely that gay and lesbians could become foster

parents. The policy was formed after the *Boston Globe* publicized the placement of two young boys in the home of a gay couple. Since rumors of the forthcoming article had been discussed for days, the Department of Social Services (DSS), anticipated the controversy and contacted the children's mother and asked her to sign an agreement for her sons' placement in the gay couple's home. After visiting the home, she signed the statement (Benkov, 1994; Martin, 1993; Ricketts and Achtenberg, 1990).

It is unclear exactly what transpired between the DSS and the administration of Governor Dukakis but, a day after the article appeared, social workers arrived to take the children to another foster home. The next day, Governor Dukakis ordered a review of the foster care policies. The new policy created a foster care hierarchy to determine foster care placements in the following order: 1) married heterosexual couples experienced in raising children; 2) married heterosexual couples without parenting experience; 3) single parents or unmarried couples; and 4) gay or lesbian singles or couples. Any gay or lesbian applicant had to be approved by the Commissioner of DSS (Benkov, 1994). Although Massachusetts' position on foster care did not apply to adoption, the Massachusetts Legislature in 1989 enacted an amendment to the state budget that banned the DSS from placing a child for adoption with a homosexual person other than the biological parents (Adamec & Pierce, 1992).

Controversy over the policy simmered for years in the state, with the Governor defending it and the Attorney General's Office leading a fight to overturn the action based on its discriminatory nature. In 1990, the policy was rescinded. Currently, there is no mention as to how sexual orientation is to be treated in the assessment of prospective adoptive or foster parents (Mary Gamblan, personal communication, December 29, 1994).

Theoretical Examination of Policy-Making and Organizational Change

In searching for hypotheses about a complex issue such as the failure of public agencies to develop policies on gay and lesbian adoptions, it is important to employ various cognitive and theoretical frameworks. The ability to view an issue through

different conceptual lenses provides more meaningful insight and possible solutions to a complex problem such as this. With this in mind, several theoretical frameworks are presented.

Rational Theory

A rational theory of policy-making is based mainly on logic and scientific reasoning. Bureaucratic rationality refers to the ordering of social affairs by government agencies. According to bureaucratic rationality, government civil servants can objectively define social problems, develop strategies to address them, and deploy programs in an equitable manner (Karger & Stoesz, 1990). The basic principle of rationality is that the actor has a clear idea of what he or she wants and pursues it in the most efficient way possible by relating consequences systematically to objectives. Allison (1971) contends that rationality refers to "consistent, value-maximizing choice within specified constraints" (p. 30).

Applying a theory of rationality to the central question of why adoption agencies fail to develop formal policy on gay and lesbian adoption, provokes the following plausible explanation: Public adoption agencies recognize that gay and lesbian individuals have been effectively adopting and foster parenting for many years. Given the large number of children awaiting adoptive homes and the shortage of adoptive placements, gays and lesbians provide an important resource for these agencies. Realizing that gay and lesbian parenting is a political, religious and emotionally charged issue, adoption agencies choose not to formally develop policies on the subject. Instead they develop informal policies permitting the practice, or leave the decision making to the individual social worker on a case-by-case basis. Agencies fear bringing attention to the practice would result in considerable controversy because of probable public opinion disapproving the practice. This explanation seems to support the findings of the national survey which showed the majority of states either informally allow the practice or leave it to the social worker to decide on a case-by-case basis.

Informed Elites

Another fundamental theory derived from the social philosopher, Carl Friedrich (1958), especially applicable in jurisprudence,

suggests individuals in authority (such as a public administrator) carry out reasonable policies that would create unreasonable controversy if they became widely known by the general public. Individuals in the agency, or informed elites (i.e., social workers, judges) help to keep the silence because failing to do so would jeopardize the practice if the public were made aware of it. The challenge in these cases is to make sure the practice remains reasonable in virtually all cases and keep the practice invisible to the larger public, even though it is well known to the various actors involved in implementing the practice.

Problems may arise when information about the practice becomes publicized. This theory is plausible and explains why a state such as Massachusetts, that previously allowed adoptions and foster parenting by gays and lesbians, changed policy direction after the informal practice was discovered by the media, which in turn defined it to the public.

Street Level Bureaucrats

Another conceptual angle contributing to an understanding of public adoption agency practice on this topic is Michael Lipsky's (1980) theory on street level bureaucrats. According to this author, goal expectations in public agencies tend to be ambiguous and vague. He contends social service systems are really not created to solve clients' problems. Their purpose rather, is to offer the appearance of a service response, but not the necessary resources to effect a comprehensive solution. The objective is to maintain a minimal amount of order in a system that would otherwise become inoperative if operated strictly in accordance with official intent. Given agency ambiguity, street level bureaucrats (social workers) have considerable discretion in working with clients and relative autonomy from organizational authority.

This theory would suggest some organizations are structured so as not to make decisions about problems. Therefore, the reason the majority of states allow the practice of placing children in the homes of gays and lesbians is that a majority of street level bureaucrats (i.e., social workers) are schooled in rationality and social welfare theory. Some social workers may utilize gay and lesbian homes for adoption because a large body of research has demonstrated their effectiveness in parenting and there is

a shortage of adoptive homes willing to take special needs children (rationality). Social welfare policy has strong roots in social justice, equality and equity and attempts to rectify discriminatory practices. Although not all social workers in public agencies are licensed or have degrees in social work, social welfare policy and social work practice continue to dominate the field of child welfare. In fact, according to Benkov (1994), "the National Association of Social Workers (NASW), insisted that the Massachusetts policy entailed a breach of ethics for social workers, whose professional oath included refraining from discriminatory practices" (p.96).

Garbage Can Theory

March & Olsen's (1976) garbage can theory also provides insight into predicting and understanding organizational decision making. In a garbage can theory, a decision is an outcome or an interpretation of several independent streams within an organization. The authors describe a choice opportunity as a garbage can in which participants dump various problems and solutions. The mix in the can depends on what is being produced, the number of cans available, the labels on the cans, and the speed the garbage is collected. There are four common organizational streams which pour into the garbage can: problems, solutions, participants, and choice opportunities. The authors suggest decision making is dependent upon constraints of time, resources and other organizational limitations.

Contrary to classical organizational theory, this model suggests organizations are not always rational and that environmental forces do not always affect agency knowledge and preferences. This theory embraces ambiguity without expecting to find a link between cause and effect. Decisions can be made in this model in three different ways: oversight, flight, or resolution.

Several factors may determine if and when an issue will be resolved. These include the amount of problems needing to be resolved by the organization, the timing with which an issue is brought to the attention of decision makers, the values of the decision makers, the environmental responses occurring at the time an issue is identified, the organization's understanding of the environment and the ability of the organization to interpret its own history.

Applying the garbage can theory to the question of why public adoption agencies fail to develop policies on gay and lesbian adoptions, a plausible explanation would be as follows: Placement of children in the homes of gays and lesbians for the purpose of adoption is one of many issues/problems facing a public child welfare organization, and it is usually not the most important or pressing issue. These agencies, like most public agencies, are faced with shifting goals, priorities and problem situations (i.e., large caseloads, budget constraints, class action lawsuits, child fatalities, etc.). The turnover of public administrators and line workers is fairly constant. Decision makers are constrained by time and resources. When the issue of gay and lesbian adoptions arises (dumped in the garbage can by a social worker or another participant), several things may occur.

The issue can be attached to a larger problem such as the overall shortage of families wishing to adopt special needs children or the inability to free children for adoption due to large caseloads. Resolving the issue of gay and lesbian adoptions becomes dependent upon resolving the shortage of adoptive homes or the issue of large caseloads. Since these issues require substantial resources, they are rarely resolved. This is an example of how a decision is handled by oversight.

Another possible scenario is the decision to develop written policy on the topic of gay and lesbian adoptions is not activated because a key policy maker in the organization opposes it or, the process to adopt new regulations would require holding open meetings to elicit public comment. The agency does not address the issue because it is associated with troublesome problems (i.e., internal or external opposition). If the problems leave the issue, for example, if the opposing key decision maker is replaced by someone supportive of gay and lesbian adoptions, or the process to adopt regulations is able to circumvent or limit public involvement, then the issue becomes more attractive for resolution. Minimal involvement of the public could occur by the issue being attached to other larger issues being adopted by the agency, thereby drawing minimal scrutiny, or the adoption of temporary regulations which may not require public input. The problem (i.e., internal or external opposition) leaves the issue and thereby

makes it possible to develop policies or regulations. This is an example of how a decision is made by flight.

The issue could be resolved because the timing is right, the organization's decision makers have the time and resources to address the problem, there is minimal public reaction and/or media involvement, and the political atmosphere is favorable.

This may explain why a liberal state such as Massachusetts initially developed written policy prohibiting gay and lesbian adoptions, while other relatively conservative states such as Nevada and New Mexico adopted regulations allowing the process. In Massachusetts, the media defined the issue for the public, creating a crisis situation, and the sitting Governor had strong personal feelings opposing the adoptive placement of children in homes of gays and lesbians (Benkov, 1994; Ricketts & Achtenberg, 1990). In Nevada and New Mexico, the issue of gay and lesbian adoptions was only one of numerous amendments to the state's adoption regulations. There was no media attention and therefore no adverse public reaction (Linda McGee, personal communication, December 29, 1994). This may also explain why the state of California rescinded its policy on adoptions by gay and lesbian couples. While adoption by single gay and lesbian individuals is permitted on a case-by-case basis, unmarried couples are not permitted to adopt. It has been speculated that California Governor Wilson was interested in cultivating his conservative credentials for his presidential run. He reversed a new state policy enacted by his own Social Services Director allowing unmarried couples to adopt and making it easier for a lesbian couple to effect a limited consent adoption of a child borne by one of the two after it was to be published in the *Sacramento Bee* newspaper (Las Vegas Review Journal, March 13, 1995).

Using the garbage can theory, the outcomes of organizational decision making are dependent on numerous interrelated factors. This theory allows for involvement of multiple actors, goals, values and action options. In addition, it includes a component of chance as to which combination may take effect, and how the process is changed (in its composition of elements) with the passage of time.

Conclusion

None of the four theoretical frameworks completely answer the question as to why public adoption agencies fail to develop written policy or regulation on the placement of children in the homes of gays and lesbians. However, they do provide a variety of hypotheses as to why some agencies have developed formal regulations and/or policy, why the outcomes on this issue differ, and why the majority of agencies have not sought resolution of this issue.

Each of the four models seem to complement each other and are plausible accounts when applied to the issue of gay and lesbian adoptions. Incorporating all or part of the models into an explanation may make some decision making more understandable and possibly assist in predicting outcomes.

On a practical basis, the failure of public agencies to provide written direction or regulation on the placement of children in gay and lesbian homes is a disservice to children. Hundreds of children languishing in foster care could have safe and permanent homes. Social workers and other practitioners providing adoption services need uniform written direction and guidance on this subject because current practice on the issue is inconsistent. Many social workers, in need of finding homes for children, are manipulating the home study process and omitting important information so children can be placed. The home study process, used to determine if a prospective applicant is capable of meeting the needs of a child, must be a vehicle wherein the home environment is honestly addressed. Failure to address the whole environment, including support systems, relationships and partners of adoptive applicants, seriously undermines the basis and intent of the home study process.

Gay and lesbian adoptive applicants should be assessed using the same criteria as any other applicant. There is no basis supported by research for holding gay and lesbian applicants to a higher or different standard. The main concern for child welfare agencies should be the best interest of the foster and/or adoptive child. Given the large number of children awaiting permanent homes, and the disastrous consequences of children adrift in the foster care system, gay and lesbian adults can be, and continue

to be, an important community resource. Until there is additional research suggesting anything different from research conducted thus far, it would appear the practice of evaluating all adoptive applicants (regardless of sexual orientation) on their ability to meet the needs of a specific child is the best way to proceed.

Although gay and lesbian adoptions are an emotionally and politically charged issue, it is imperative decisions governing the lives of children be made on the basis of empirical research rather than myth and/or assumptions. It is also critical for individuals involved in policy-making and decision making for children to understand the various factors which can come into play when organizations attempt to make decisions, resolve problems and develop policies. Achieving a balance between what is "right" and what is "possible" under a current social and political environment is a continuing challenge for social workers and their organizations. Maintaining that balance in the absence of explicit written policy requires constant vigilance and reevaluation of what is truly in a child's best interest.

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