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Nicholas K. Park

Wentworth Institute of Technology, parkn@wit.edu

Emily Kazyak

University of Nebraska-Lincoln, ekazyak2@unl.edu

Kathleen S. Slauson-Blevins

Old Dominion University, kslauson@odu.edu

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How Law Shapes Experiences of Parenthood for Same-Sex Couples

Nicholas K. Park,¹ Emily Kazyak,² and Kathleen Slauson-Blevins³

1 Department of Humanities & Social Sciences,
Wentworth Institute of Technology, Boston, Massachusetts

2 Department of Sociology and Program in Women's and Gender Studies,
University of Nebraska-Lincoln, Lincoln, Nebraska

3 Department of Sociology & Criminal Justice,
Old Dominion University, Norfolk, Virginia

Corresponding author — Nicholas Park, Department of Humanities and Social Sciences,
Wentworth Institute of Technology, 550 Huntington Avenue, Boston, MA, 02115;
email parkn@wit.edu

Abstract

Gay, lesbian, and bisexual (GLB) parents are increasingly common and visible, but they face a number of social and legal barriers in the United States. Using legal consciousness as a theoretical framework, we draw on data from 51 interviews with GLB parents in California and Nebraska to explore how laws impact experiences of parenthood. Specifically, we address how the legal context influences three domains: the methods used to become parents, decisions about where to live, and experiences of family recognition. Law and perception of the law make some pathways to parenthood difficult or unattainable depending on state of residence. Parents in Nebraska, where laws are less supportive, discussed having to “work within the system” available to secure their families while those in California described living in “a bubble” that gave same-sex parents legal protections less available in other parts of the country. Policy and clinical implications of these findings are discussed.

Keywords: family, gay, law, lesbian, parents, same-sex

Introduction

Gay men and lesbians are increasingly opting to become parents after coming out and within same-sex relationships (Biblarz & Savci, 2010). There are several different routes to parenthood that sexual minorities can take, including donor insemination (Bos, 2013; Chabot & Ames, 2004), adoption and fostering (Farr & Patterson, 2013), and surrogacy (Berkowitz, 2013). Scholars have explored how gay men and lesbians decide whether or not to become parents, how they become parents, and how they negotiate their sexual and parent identities (Chabot & Ames, 2004; Lewin, 2009; Mamo, 2007). Extending the existing literature, we ask how legal contexts impact the decision-making process about becoming parents for same-sex couples. We take advantage of the natural variation in legal contexts (Gates & Badgett, 2006) and compare same-sex parents in two states (California and Nebraska) with different laws to assess how the legal context shaped the method they used to become a parent. We also ask how the law impacts people's interpretations of their choice of residency and experiences of being recognized as a family.

It is important to examine both the "laws on the books" and how individuals experience and make sense of law in everyday life; therefore, we draw on a legal consciousness theoretical framework. This framework seeks to address not only how the law is understood by people in everyday life but also the *effects* of people's understandings of the law (Ewick & Silbey, 1998; Silbey, 2005). Rather than view the law and social life as separate entities, this theory understands them as mutually constitutive (Harrington & Yngvesson, 1990). In other words, social changes can force a shift in the legal landscape and the law and legal decisions can also impact how individuals think about themselves and the options they see as available to them (Richman, 2009). Here we focus on the impact of people's perceptions of the law on their route to parenting. Examining how legal context influences decisions is important given the vast inequities facing same-sex couples and the variance in state laws across the United States (Butterfield & Padavic, 2014; Shapiro, 2013). In addition, we expand the literature by including the experiences of gay men, a group that has been understudied in the family-building literature (Berkowitz, 2009) and explore routes to and experiences of parenthood in different geographic regions (the West and the Midwest), a comparison that has been missing in other work (Mezey, 2008, 2013). We highlight not only the different legal climates of these two states for sexual minorities, but the different social climates as well.

Legal Barriers

Scholars have documented the numerous legal barriers that lesbians and gay men face becoming parents (Hopkins, Sorensen, & Taylor, 2013). All of the pathways

to parenthood have varying degrees of legal obstacles associated with them, and laws regarding parenting and relationship recognition differ dramatically by state in the United States (Baulme & Compton, 2011; Oswald & Kuvalanka, 2008; Van Eeden-Moorefield, Pasley, Crosbie-Burnett, & King, 2011). State of residence can impact the legal right for gay and lesbian individuals to foster a child, adopt a child, or, adopt as a same-sex couple. When insemination is selected, state laws determine whether a second same-sex parent can be placed on the birth certificate, or, if that is not an option, whether a couple can pursue second-parent adoption (Richman, 2009). For same-sex couples becoming parents via surrogacy, the legal landscape is just as varied (Mitchell & Green, 2007), as some states allow a couple to be legally recognized prior to the birth as the intended parents and most states do not recognize surrogacy contracts (Markens, 2007). In terms of international adoption, some countries require intended parents be heterosexual and married and others have policies that make it difficult for openly gay men and lesbians to adopt (Briggs, 2012; Downing, Richardson, Kinkler, & Goldberg, 2009). In sum, a number of legal barriers exist for each route to becoming a parent and these barriers vary widely across state context.

It is likely that the law impacts the parenting decisions and pathways to parenthood that same-sex couples pursue, but there is a paucity of research in this area. Notable exceptions include a study done by Riskind, Patterson, and Nosek (2013), which found that sexual minorities living in unfavorable legal climates are more likely to express doubts that becoming a parent is possible. Likewise, Patterson and Riskind (2010) suggest that legal obstacles might impact which route to parenthood lesbians and gay men pursue. Other work shows that many sexual minority women report not being able to seek adoption because of legal barriers (Kazyak, Park, McQuillan, & Greil, 2014). Yet Baulme and Compton (2011) found that negative family laws that restrict fostering, adoption, and surrogacy for gay and lesbian individuals did not impact whether same-sex couples were raising children. An important limitation of this work, however, is that it is based on census data and therefore is unable to distinguish between same-sex couples who are raising children from prior heterosexual relationships from couples who pursued parenthood within the context of a same-sex relationship (Baulme & Compton, 2011, p. 109).

Moreover, even in the absence of explicit legal restrictions, sexual minorities might still face barriers that would impact their decision-making process. For instance, lesbians and gay men report experiencing discrimination based on their sexual orientation in adoption and fostering processes (Hicks, 2005; Shelly-Sireci & Ciano-Boyce, 2002), and as a result, some may feel like they have to hide their sexuality during an adoption process (Goldberg, Downing, & Sauck, 2007). This may be exacerbated by living in an area that does not have gay-friendly adoption agencies (Kinkler & Goldberg, 2011). One national study of adoption agencies indicated that although nearly 60% of agencies reported accepting applications from same-sex couples, only about 40% reported placing a child with a gay or lesbian

couple (Brodzinsky, 2003). Downing and colleagues (2009) found that gay men were often turned away from domestic and international adoption agencies and had to use adoption methods that they did not intend because of these legal restrictions. Likewise, Hicks (2005) found that gay men who pursued fostering or adoption were much more likely to be selected for short-term or non-permanent placements than heterosexuals.

Social Barriers

Despite the increase in gay men and lesbians having children, sexual minorities still face numerous social barriers to becoming parents. Culturally, GLB individuals confront a social landscape in which heterosexuality is privileged (Jackson, 2006) and in which the normative understanding of “family” entails a heterosexually married couple raising their biological children (Powell, Bolzendahl, Geist, & Steelman, 2010; Smith, 1993). There is little evidence of support from the dominant culture for sexual minorities to have children and gay and lesbian identity and parenthood have been understood as incompatible (Berkowitz & Marsiglio, 2007; Lewin, 2009; Weston, 1991). Due to the stigma and lack of social support for same-sex parents (Ryan & Whitlock, 2007), some may be deterred from pursuing parenthood (Riskind & Patterson, 2010). Furthermore, same-sex parents and their children face exceptional scrutiny because many question their ability to raise psychologically well-adjusted children (Biblarz & Savci, 2010). Despite such concerns, research continues to indicate that there are no significant differences in developmental or social outcomes of children of same-sex parents compared to those of different-sex parents (Crowl, Ahn, & Baker, 2008; Erich, Leung, & Kindle, 2005).

Same-sex couples raising children face economic barriers as well. These families have lower average household incomes than similarly aged heterosexual peers (Badgett, 2001) and same-sex-parent households have higher rates of poverty compared to different-sex-parent households (Movement Advancement Project, 2011). Of course, lesbians and gay men occupy all class strata, and the socioeconomic differences among sexual minorities have important implications for their pathway to parenthood. For instance, middle-/upper-class lesbians may pursue pregnancy in a medicalized way, relying on reproductive technology (Mamo, 2007), while poorer lesbians may be unable to afford such treatments and seek solutions outside of medical treatments (Reed, Miller, & Timm, 2011). Surrogacy is very expensive and is therefore often only available to the most economically advantaged couples (Beckman & Harvey, 2005). Domestic adoption is often more affordable than international adoption (Downing et al., 2009), and many same-sex couples opt for public adoptions because of financial considerations (Hansen & Hansen, 2006).

Methods

Our data come from semi-structured in-depth interviews with 51 gay and lesbian parents who had at least 1 child that was born or adopted when they were in a same-sex relationship. Participants were recruited from the greater San Francisco Bay Area in California and the Lincoln and Omaha metro areas in Nebraska, a decision driven by the fact that these two states have very different legal contexts for same-sex parents. In California, same-sex parents can adopt jointly, have access to second-parent adoptions, and can have both parents listed on the birth certificate when a child is born via surrogacy or donor insemination. In contrast, Nebraska does not allow joint adoptions for same-sex couples, does not grant second-parent adoptions, and allows only the biologically related parent to be on the birth certificate when using donor insemination or surrogacy. Participants in both states were recruited through a variety of venues, including gay-affirming churches, local gay and lesbian parenting groups, gay, lesbian, bisexual, and transgender (GLBT) community centers, GLBT organizations' electronic discussion lists, and GLBT publications. We also created a Facebook page detailing the study and linked it to other online parenting group pages. In addition, snowball sampling methods were utilized, though only six of the couples were recruited via snowball methods. The recruitment materials stated we were looking to interview gay and lesbian couples. However, three of the women in the sample mentioned that they identified more as bisexual during the course of the interview.

The principal author conducted all of the interviews, and almost all were conducted in person with two phone and two Skype interviews being conducted at the request of the participant. In most cases, couples were interviewed together, but in cases where the participant was no longer with his or her partner or when a partner did not want to participate, the interview was conducted individually. Interviews ranged from 45 minutes to 2 hours. The interviews were semi-structured and covered questions about how they decided which method they used to become parents, what obstacles they faced becoming parents, and how they navigated the legal contexts. All interviews were audio-recorded and transcribed verbatim by the principal author.

Once the data were transcribed, they were both hand coded and analyzed by the first author using the qualitative data software MAXQDA. Following qualitative data analysis strategies outlined by Creswell (2006), transcripts were first read using open coding techniques. Transcripts were then reread using focused coding and were then sorted into thematic categories. For example, codes used for interview portions dealing with why participants chose a certain pathway to parenthood included "legal," "security," and "importance of biology." During

the analysis process, we employed a grounded theory approach (Glaser & Strauss, 1967) and followed Strauss and Corbin's (1990) recommendation to focus analysis on a particular process or interaction and map out how it unfolds. Specifically, we were interested in analyzing the process same-sex couples went through in order to become parents. Themes identified in the coding process included how they learned about the different pathways and what factors made one method of becoming a parent more attractive than another. This analysis focuses on how the law was present in each of these overarching themes. In order to ensure confidentiality, pseudonyms are used. The quotes used have been edited for clarity and to protect confidentiality, but the meaning and words have not been otherwise changed.

Sample Characteristics

A total of 30 interviews were completed. Of these 30 interviews, 21 were couple interviews with both partners present and 9 were conducted with only 1 of the partners present. The total sample consisted of 51 participants including 24 self-identified gay men, 24 lesbians, and 3 bisexual women. Of the 30 total interviews, 20 were with couples or individuals recruited from California and 10 were from Nebraska. Sample characteristics are presented in Table 1.

The age of participants ranged from 31 to 60 with the average age being 41 years old. The sample was predominately White (90%); two participants identified as Hispanic, two as Jewish, and one as Asian-American. Overall, the sample was highly educated, with 40% having a college degree and 47% having a graduate or professional degree. The reported annual household income (AHI) was also highly skewed to upper-middle class. In both states, the average income of participants was above the median household income. No participants in California reported being below the median income where they lived, and only two participants in Nebraska reported being below the median income. The majority of the participants worked full time and reported at least 30 or more hours per week. Five participants were not employed and were stay-at-home parents and 2 worked 19 or less hours per week.

There were four main methods the participants used to achieve parenthood. Table 2 reports the breakdown of the methods used by gender and state. The most common method for women was donor insemination. Of the 16 lesbian couples, 11 (69%) used donor insemination. The remaining lesbian couples used foster adoption ($N = 4$) and private adoption ($N = 1$) to achieve parenthood. For the men, private adoption was the most common method. Of the male couples in our sample, 6 couples (43%) adopted, 5 (36%) used surrogacy, 2 (14%) adopted from the foster care system, and 1 man was the sperm donor and co-parent for one of the lesbian couples from Nebraska. One of the male couples in California was co-parenting and living with the child's biological mother.

Table 1. Sample Characteristics

Name	Age	Race / Ethnicity	Number of Children	Method	Household Income	State
Becky & Susan	31/32	W/W	1	I	\$50,000	NE
Leslie	47/33	W/W	1	FA	\$40,000	NE
Peter & Dean	38/39	W/W	1	S	\$250,000	NE
Allan ^a	50	W	1	I	\$60,000	NE
Linda	33	W	1	I	\$50,000	NE
Karen & Jennifer	37/39	W/W	2	IVF	> \$100,000	NE
Ashley ^b	44	W/W	1	I	\$60,000	NE
Katie ^b	40	W/W	1	I	\$40,000	NE
Shelly & Natalie	39/38	W/W	1	I	\$80,000	NE
Megan & Judy	36/46	W/W	2/3	I	\$90,000	NE
Samantha & Charlotte	34/33	W/H	1	FA	\$70,000	NE
Ellen	41	W	2	I	> \$100,000	CA
Andrew & Michael	46/42	W/W	1	FA	\$80,000	CA
Bruce	35	W	1	A	> \$100,000	CA
Mark & Carl	37/36	J/W	1	S	> \$100,000	CA
Jason & Malcolm	45/51	W/W	1	S	\$500,000	CA
Amber & Miranda	43/46	W/W	2	FA	> \$100,000	CA
Luke	45	W	1	A	> \$100,000	CA
Nathan & Richard	40/47	W/W	1	S	> \$100,000	CA
Paul	48	W	1	A	> \$100,000	CA
William & Keith	60/44	W/As	3/1	S	> \$100,000	CA
Zach & Jeremy	32/36	W/W	1	A	> \$100,000	CA
Kevin & Dylan	46/46	W/W	1	A	> \$100,000	CA
Cheryl	36	H	2	FA	> \$100,000	CA
Melanie & Nora	54/53	W/W	2	I	> \$100,000	CA
Sean & Eric	46/45	W/W	1	FA	> \$100,000	CA
Oliver & Steve	33/34	W/W	1	A	\$250,000	CA
Kathy	48	W	2	I	> \$100,000	CA
Nicole & Teresa	53/56	W/W	1	A	\$200,000	CA
Jackie & Amy	31/32	W/W	1	I	\$50,000	CA
Betty & Cassie	43/48	W/J	1	I	\$150,000	CA

W = White, H = Hispanic, J = Jewish, As = Asian

A = Adoption, I = Donor Insemination, FA = Foster Adoption, S = Surrogacy, IVF = In Vitro Fertilization

a. Allan was a donor and co-parent with Shelly and Natalie.

b. Ashley and Katie have separate rows because they were separated at time of interview.

Findings

We find that the law impacts the method gay men and lesbians use to become parents and their subsequent experiences as a family. There are many factors that

Table 2. Method of Becoming Parents by State and Sex

Method	California		Nebraska	
	Female	Male	Female	Male
Insemination/IVF	5	–	6	1 ^a
Surrogacy	–	4	–	1
Private Adoption	1	6	–	–
Foster Adoption	2	2	2	–
<i>N</i>	8	12	8	2

Only one lesbian couple used IVF.

a. Participant was a donor/co-parent with a NE lesbian couple.

influence this process, including relationship dynamics and economic concerns (Park, 2012), but in this article we focus specifically on the influence of law.

Selecting a method was often contingent on legal obstacles and possible benefits of the method. In this way, the legal landscape influenced the method parents selected and shaped how they approached their decisions. In addition, the legal contexts influenced where they decided to live and how they thought about where they lived. Finally, the law also impacted how they experienced their family being recognized. We identify two separate paths that emerged. For those living in Nebraska who faced legal barriers to forming and maintaining their families, they described having to “work within the system” available to them. Those who lived in California, where legal protections were secure, described themselves as living within “a bubble” that shielded them from unfavorable laws and negative social views held in other parts of the nation.

Routes to Parenthood and the Law

Participants described evaluating and choosing between a number of paths to parenthood, including adoption (international, private, and through the foster care system) and donor insemination for the lesbian couples and surrogacy for the gay couples. The law and perceptions of the legal context influenced which pathway they used to achieve parenthood.

Donor Insemination and Surrogacy

Donor insemination and surrogacy were viewed as the most legally secure routes to parenthood. Megan and Judy provide an exemplar. They described their decision to pursue insemination in the following way:

MEGAN: In Nebraska you can't adopt as a gay couple or even a single person.

JUDY: We would have had to have gone to another state and adopt.

MEGAN: [Insemination] was just the easier route, as odd as it sounds.

Their quote illustrates how salient the law was in their decision-making process insofar as Megan and Judy's perceptions of adoption laws in Nebraska led to selecting insemination as a pathway. Contrary to what Megan and Judy assumed, Nebraska state law does allow for single-parent adoptions, though it does not allow for same-sex couples to adopt together. Nonetheless, insemination was selected because they perceived insemination as being "a lot easier" because of lack of legal restrictions.

Although insemination was a less legally complicated route to starting a family than other available options, our participants still discussed having legal concerns. For instance, they had to select a donor, and, for some, the idea of having a known donor posed legal issues they were unwilling to risk. Amy, a 31-year-old woman from California, wanted an anonymous donor because she was concerned a donor might seek legal rights to her child: "I was very, very nervous about what happens if a biological father has a change of heart and tries to seek out the child.... I was so terrified about that and wanted to make sure that it was going to be unknown identity." For Amy, like many of the women in our sample, having an anonymous donor eliminated the risk that another person could have a legal claim to her child.

The gay men in our sample viewed surrogacy as the pathway that provided the most secure legal protection. Peter and Dean, a couple in Nebraska, were unsure if it was legal for them to adopt as a gay couple, so they pursued surrogacy through an agency in California specifically because they would both be the legal parents from birth. In addition, Nathan and Richard, who live in California, also chose surrogacy and reflected on that decision in the following way:

RICHARD: Surrogacy guaranteed more legal rights as well, and that was part of the surrogacy angle. To me the important thing was the legal aspect of it. I was really happy that by doing it this way we were able to be the two parents on the birth certificate. There's no adoption. There's no crazy right-wing lunatics that can come into power and say, "We are going to nullify adoptions by gay people."

Richard and Nathan took comfort in the fact that surrogacy allowed them to both be listed on the birth certificate and thus be immediately legally recognized as parents. Like the other gay men in our sample, they perceived it as being the most legally secure method.

Private and Foster Adoption

Unlike insemination and surrogacy, adoption (international, private, or foster) was perceived as illegal and difficult. With regard to international adoption, individuals reported seeing this pathway as nearly impossible and no one in our sample had sought to adopt internationally. Steve and Oliver recalled looking into international adoption but realized it would not be possible and was “pretty much a no-go” without serious deception. They explained:

STEVE: As far as international adoption, from what we were told it was pretty much a no-go anywhere else in the world for being two guys. There are a handful of countries that would do a single-parent adoption, but you have to lie.

OLIVER: I am not a liar. I just don't like the idea. Deception is just not a good thing. That's just not the way I do things.

STEVE: And a woman might have a chance of single adopting in another country, but forget about a single guy trying to adopt [from] another country. So it just narrows and narrows us down to the point where this isn't even feasible.

Their quote underscores that they did not pursue an international adoption because not only would they have to lie about being a couple, but they also thought the chances of being able to adopt as a single man were slim. Oliver and Steve ultimately pursued private adoption, the option that they perceived to have fewer restrictions and shorter delays. With regard to adoption via a private agency, only those in California perceived this route as legally possible. Although these participants noted other concerns that arose with pursuing an adoption (including long wait times and the fear that the birth mother might change her mind and not place the child for adoption), none of them discussed concerns that it would be legally challenging or impossible for them to adopt through a private agency. Some California couples, however, noted that they did seek out an agency that they knew would work with same-sex couples. Luke, for instance, used the agency that other gay families in his social network had used and felt it best to “just follow like sheep.” Others who lacked social networks with information about agencies looked for signs that an agency placed with gay couples. As Jeremy recalled about his experience finding an agency,

One thing that was definitely important to us was that there were other lesbian and gay couples on the parent profiles list, so that we knew we weren't the only ones. There was definitely one agency

where it just looked creepy. It was all straight couples and they all looked like they were in their early twenties... the one we ultimately went with gave us the impression that they were very personable [and] they really had lesbian and gay clientele.

In contrast, several participants living in Nebraska thought gay couples were legally barred from adoption and felt that there were no adoption agencies that would be willing to work with same-sex couples. Recall, Megan and Judy pursued donor insemination because they thought it was illegal for them to adopt in Nebraska. Furthermore, Leslie, another Nebraska resident, first considered adoption when she was unable to get pregnant via insemination; however, she assumed adoption would be impossible in Nebraska: "Because I'm a lesbian I didn't feel like I could go to Christian [agencies]. I went to some of the other ones, and I just didn't feel like you could go and be up front about who you were and still be successful." Leslie's quote exemplifies the fact that respondents in Nebraska, unlike those in California, viewed adoption through a private agency as legally impossible.

A similar theme emerged as people discussed adopting through the foster care system: those in Nebraska viewed this pathway as legally impossible and those in California viewed it as legally possible, but only in certain counties. Serving as an exemplar for Nebraska participants, Becky said, "We can't be foster parents in Nebraska. To be a foster parent in Nebraska, you cannot live with an adult that you are not married to." Though two of the couples in Nebraska did adopt foster children, there were important loopholes that allowed them to bypass the legal barriers. Leslie adopted her foster son as a single woman after she and her partner split up over her desire to have a child. She met her current partner after the adoption was finalized, so the county could not deny her application based on her sexual orientation at that point. Charlotte and Samantha were able to get a "child-specific" placement because of Charlotte's preexisting tie to the child. Charlotte, who had experience working within the foster care system, explained that although gay and lesbian couples could technically apply to be foster parents, the state would have placed them "on hold" and "never allowed [them] to adopt" because they are a same-sex couple. As she noted, children could not be placed in households where there was a nonrelated adult present. Nebraska neither grants nor recognizes same-sex relationships: therefore, same-sex couples are considered legal strangers and prohibited from becoming foster parents when living together. Charlotte felt she and Samantha were only "able to get around [that law] because we were child-specific." Both Charlotte's connection to the child and her knowledge of the Nebraska system were important in successfully adopting.

California is perceived by many to be more favorable to foster adoptions by gay and lesbian couples, but this was considered to be county specific. For example, Sean and Eric adopted their child from the foster care system in San Francisco and

noted that it was easy for them because of where they lived but believed it would have been far more difficult if they had tried to adopt elsewhere:

ERIC: It depends where you're at. If you're in the right side of California, you can go through the process, but if you're out in Fresno, you could be waiting a lot longer.

SEAN: And [it] also [depends on] the child's social worker. It is totally up to them to decide who to pick... it is totally at the mercy of the kid's social worker.

Amber and Miranda had a similar view of the foster care system. They lived in a more conservative coastal community where it seemed more difficult for gay and lesbian couples to get placements. Although it was legally possible for same-sex couples to adopt via the foster care system, Miranda explained that a lesbian friend of theirs "was waiting for three years for her son." She believed this wait time was due to homophobic agency workers, saying that "social workers have way too much power [in deciding which families are chosen for adoption]." They also noted that same-sex couples who were chosen for adoption, including themselves, were often placed with special-needs children. As Amber put it, "The worst-shape children would go to the gay people. I mean, gay people are fine with it, but to be treated that way deliberately is really messed up." Thus, even those in California who were not legally barred from adopting from the foster care system nonetheless experienced barriers with this pathway.

Choice of Residency and the Law

People's interpretations of the law also mattered in their decisions about where to raise their children and how they felt about their current residence. Parents reported wanting an environment they perceived as safe and supportive for their children. Often, these perceptions were made by balancing the legal climate with other factors such as job security, connection to family and friends, and a desire to create social change.

When asked whether or not they had considered relocating to another state, 6 of the 10 couples (60%) from Nebraska reported that they had not. As Ashley noted, "My family is here. I enjoy being around my family and I am happy that [my son] gets to grow up around his uncles and cousins, so I would never consider moving." Others in Nebraska said they had not considered relocating because they saw their presence in the state as a way to make social change. As Becky and Susan put it, "Nebraskans [needed] to see gay parents." In addition, Samantha and Charlotte

felt that gay and lesbian couples needed to stay and fight for their rights if change was to be accomplished. Charlotte explained:

If you don't stay and fight for something that you want and make yourself present, how are you supposed to change something? So I don't really want to leave. I'm not saying Nebraska is probably as wonderful as some other states, but this is home.

For Charlotte and others, even though Nebraska has an unfavorable legal climate, other considerations play a role in their decision to stay "home."

There were, however, some Nebraska participants that had considered moving to a state or region with more legal protections, including Iowa (Judy and Megan; Karen and Jennifer) and the West Coast (Peter and Dean). Nonetheless, they did not relocate. These couples did not think that the trade-off of leaving their families or jobs would be worth having the additional legal protections. As Karen said, "We've talked about it [moving to Iowa], but we both have really good jobs now." Job security and a connection to family were also a consideration for Dean and Peter, who ideally wanted to move to the West Coast. Speaking about such a move, Dean explained, "It's an ongoing topic. We would really like to do so. It's just that it's a challenge because our families are here. I have a successful career that is here." Peter agreed, noting that "the two greatest factors are your job and our families. If we felt like our relationship with our families could be maintained long distance and we thought you could drop into another real estate market and be up and running in six months, then we would have already moved." For Peter and Dean, like other parents, even though they wanted to relocate to a more favorable state, other factors, including job security and connection to family, made that difficult to realize.

Three couples in the California sample purposefully moved to the Bay Area because the laws were more supportive of same-sex families. Ellen, who previously lived in the Midwest, relocated to pursue second-parent adoption and a more socially supportive environment. She said, "One of the biggest reasons [we moved] was that the state was not supportive of our family. Not just unsupportive, but we just didn't exist as a family in that state, and that's unacceptable." Likewise, when Kevin and Dylan were beginning their careers and thinking about starting a family they planned their relocation to California carefully. Dylan explained that since he and Kevin "wanted to have a family" they "had done a significant amount of research in terms of where could gay couples facilitate that legally with the least number of hoops to jump through." Even though Dylan was offered a job in Florida at a firm that he loved, he turned it down because of the laws in Florida. As Dylan put it, "I loved the firm and they loved me. But I just said that this is a deal breaker because at the time, we wouldn't even be allowed to adopt." Finally, Luke

and his husband moved from the South to California precisely because they wanted to adopt and, as he put it, “the laws are so favorable. We chose California specifically because [joint adoptions for gay couples] was easy.”

There were also California residents who contemplated moving away from California to be closer to family, but worried about the legal and social climate and the support that they would receive for their family if they did relocate. For instance, Zach and Jeremy had considered moving to be closer to their extended families, but commented that “California makes everything super easy for being a gay adoptive parent. I think that everything is just easier [in California].” Like other participants, they weighed the legal context with other factors; in this case, the benefit they thought would come from being close to extended family. For couples like Zach and Jeremy, being able to live in a supportive legal environment means sacrificing other things that could benefit their family. In other words, if there were not legal inequities facing same-sex couples, the law would not have to be part of their decision-making process about where to raise a family.

Experiences of Family Recognition and the Law

Finally, in addition to being a part of how parents decided what route to take to parenthood and how they thought about where they were raising a family, the law also impacted participants’ experiences of being recognized as a family. Specifically, those who experienced a lack of legal recognition for the families reported “working within the system,” using powers of attorney and wills, to provide some semblance of recognition. In contrast, we find that those living in California reported “living in a bubble” that legally made it easy for same-sex couples to gain recognition for their families.

Working within the System: Experiencing Legal Barriers

In the state of Nebraska, there are limited legal protections for same-sex-parent families. Only one parent can be legally related because, according to Nebraska law, a child can have only one mother and one father. If same-sex couples are able to find an agency that will allow them to adopt, only one of them can be the legal adopter. Most of the women we interviewed in Nebraska used insemination as their pathway to parenthood, and, in all cases, only the parent who gave birth to the child had any legal rights. To secure any form of legal rights, participants had to seek out legal advice and draft wills and power of attorney documents to ensure there would be some form of legal protection for their family. These documents, however, are not always upheld and recognized. Becky, a 31-year-old woman from Nebraska, carried her papers everywhere she went; she kept copies stashed around her house, and had them notarized every six months to ensure that her family would

be protected. During her interview, she pulled a copy of this document out of her purse to prove that she indeed carried it with her at all times. Becky and her partner were faced with the constant burden of proving that they were a family. As she noted, "It's a pain that we can't do second-parent adoption or that we can't do something that's more permanent. We're working in the system that's available to us." Her quote illustrates the strategy of "working with the system" in order to try to make their family legitimate in light of the lack of legal recognition of her partner's parenting role. Her quote also shows that such work requires constant vigilance on their part.

This strategy requires an enormous amount of trust and puts families in potential jeopardy should something happen to the legal parent. To address this concern, participants reported having conversations with their families to ensure that the non-legal parent would be the one to care for their child in the event of a death. In Nebraska, having only one legally recognized parent left partners feeling vulnerable because they would have no legal rights in the event of a breakup. Shelly, who was the non-legal mother in a co-parenting relationship with her wife and close friend, sometimes felt insecure about her legal status in their family arrangement. Although she trusted both her wife and their co-parent, lack of a legal tie was always in the back of her mind: "I won't be on any paperwork or anything, so then what? What happens if he does decide [to take the child] or if we do break up or something like that?" For Shelly, the lack of being recognized as a family translated to a concern about her place in the family.

The stories of these families highlight how the legal climates shaped their ability to form a secure and legally recognized family. Left with no permanent solution in Nebraska, some couples piece together legal protections through wills and powers of attorney hoping that it will keep their family safe. When second-parent adoptions do become available because of relocation, parents are faced with fees and intrusive scrutiny in order to gain legal security. It is important to note that although lesbian couples reported being able to "work within the system" in Nebraska, no gay male couples did. Importantly, the only gay couple raising a child in Nebraska in our sample had pursued surrogacy in California. Also, the lesbian couples in our sample knew many gay men, but none who were parenting, which they attributed to the legal difficulty gay men faced in Nebraska becoming parents.

"The Bubble": Experiencing a Lack of Legal Barriers

Participants who became parents in California did not face the same legal obstacles just described. Individuals in these couples were typically both considered the legal parents of their children from birth or when an adoption was finalized. One exception to this was the parents who used insemination or surrogacy before the law had changed to allow two parents to be on the birth certificate at

birth. In these instances, couples had to pursue a second-parent adoption to have both parents be legally recognized as such. California parents were aware and thankful that they lived in a state that afforded them legal protections and discussed their experience as being the product of living in the “bubble of the Bay Area,” as Luke put it: “We live in a liberal bubble. We are very aware of that and we live in this liberal bubble for a reason... I’m sure it is a very different experience in Nebraska.” Similarly, Jason considered himself fortunate to live in a state that allowed his family to have legal recognition and where being a gay family was not viewed negatively: “We happen to live very charmed lives and we live in this one area where we don’t have to deal with that.” As these men indicate, the common sentiment was that life for gay parents was much easier in California because they were afforded more legal protections than those living in other regions of the country.

Yet importantly, the process for parents in California was not without complications. If couples used surrogacy, contracts with donors and surrogates were still needed. Those who adopted through the foster care system or a private agency still had to undergo paperwork that all adoptive parents, regardless of sexual orientation, must complete to finalize the adoption. Second-parent adopters had to undergo a lengthy process involving a home study and adoption fees, which may be cost-prohibitive. Ellen, for instance, was angered by the cost and the hoops that she had to jump through to make her family legal. Reflecting on the process, she said the following:

The cost is seven hundred dollars and it includes a home visit to “approve” the adoption. We are a bit incensed by it—putting it mildly. What other family has to pay seven hundred dollars to make their family “legal” and have a court officer come in to validate that you are legitimate parents? Ahh, prejudice.

Ellen’s quote underscores that even though second-parent adoption was available to her family, unlike the couples in Nebraska, it nonetheless reflected a “prejudice” that they both were not automatically legally recognized as parents from birth.

The key difference between the parents in California and those in Nebraska who had to “work within the system” was that after all of the requirements were satisfied, they were both the legal parents. There was no need to periodically update and notarize wills and powers of attorney or carry these documents everywhere out of fear that their parenthood would not be recognized or would be challenged. This gave parents a sense of security and a sense that their family was recognized as such. As Richard noted, “There is nothing that they can do to undo [it]. They can’t undo the fact that we are both legal parents to this child. We were on the birth certificate.” As his quote shows, the legal recognition of their family is an important

aspect of living in “the bubble.” This is also a very different experience from the one the families in Nebraska faced.

Discussion

Over the past several decades, the number of same-sex-parent families has increased (Biblarz & Savci, 2010); however, researchers have only begun to explore the decision-making process that same-sex couples go through to become parents (Chabot & Ames, 2004; Goldberg, 2012; Lewin, 2009; Mamo, 2007). Existing research has focused predominantly on lesbians and has paid less attention to how gay men decide to become fathers and pursue parenthood (Berkowitz, 2009), a gap we fill with the current study. We further expand on the current literature by examining how legal contexts influenced the processes that gay and lesbian couples went through to achieve parenthood. Importantly, we found that the laws themselves, and sometimes just the *perception* of a legal barrier, were extremely influential in shaping the pathways used to start a family. Our interviews with couples from two different states, California and Nebraska, highlight how pathways to parenthood were influenced by the legal contexts of where people lived during the process. In addition, we show the law also mattered to people’s interpretations of their choice of residency and their experience of being recognized as a family. These findings are consistent with theories of legal consciousness insofar as people’s interpretations of the laws had a very clear effect on their actions and on how they experienced family life.

Our findings show that the law was an important influence on deciding what method to use to achieve parenthood. For instance, no one in our sample pursued international adoption. Recent shifts in international adoption policy that require adoptive parents to be married or heterosexual have made it difficult or near impossible for same-sex couples, especially male couples, to adopt children from outside the United States (Goldberg, 2012). Some research has found that couples may circumvent legal barriers through the use of deception, such as pretending to be single or entering into marriages of convenience in order to adopt from countries and agencies that bar same-sex parent adoption (Brown, Smalling, Groza, & Ryan, 2009). Although some couples in our sample contemplated using these sorts of techniques to gain access to adoption, or knew other couples who had done this, none ultimately decided to use such means. Domestic adoption (both through private agencies and the foster care system) was also seen as legally impossible or difficult for participants residing in Nebraska. These barriers prevented many of the Nebraskan couples from ever considering private or foster adoption as a viable pathway to parenthood. Indeed, none of the participants in Nebraska chose adoption through a domestic agency as a pathway to parenthood. The two who had adopted

through the foster care system were able to do so only because of loopholes in the system and only one parent was legally recognized. In contrast, domestic adoption was much more common among the participants living in California. Since California laws allow joint adoptions by same-sex couples, the couples in our sample saw this as a legally viable pathway to becoming parents. Despite its legality, our findings suggest that adoption in California, particularly adoption through the foster care system, is not without its challenges. Corroborating prior research, we found that couples experienced long wait times for placements (Goldberg et al., 2007) and perceived potential discrimination from social workers (Ryan & Whitlock, 2007; Shelly-Sireci & Ciano-Boyce, 2002; Spivey, 2006). In addition, several participants discussed the propensity that gay and lesbian couples were more likely to be placed with special-needs children who exhibited either physical or emotional/behavioral problems. In fact, four out of the six couples who adopted through the foster care system had special-needs children.

Like adoption, surrogacy was a pathway generally only pursued by participants living in California. Participants often felt surrogacy was the most legally secure option. Importantly, the one couple living in Nebraska who had pursued surrogacy did so in California, underscoring how Nebraska's legal restrictions regarding surrogacy contracts and having two legal parents of the same sex limits the ability for couples to pursue this pathway. Lesbian participants in both California and Nebraska did not experience legal restrictions on pursuing donor insemination. As this was the only pathway in Nebraska that was not legally restricted or prohibited, nearly all of the participants in Nebraska became parents via this route; however, it is important to note that Nebraskans were still unable to have both parents be legal parents when using donor insemination.

We also find that the importance and influence of law extends beyond same-sex couples' decision-making process about how to become parents. Specifically, the legal context was a part of how participants made sense of whether they were living in an environment that was supportive of their family and was best for their children. Some of those living in Nebraska had considered moving to a place more supportive of gay and lesbian families; yet none of those in California had done so. Oftentimes, the consideration of whether or not to move was dictated not only by the law but also by consideration of jobs and connections to family. Familial support was strong among our sample. The majority of couples in both states felt that their families were generally supportive, although a small portion reported family members who did not approve of them having children and cut ties with them. The support from family became an important reason why many of the Nebraska couples did not want to relocate to other states with more favorable legal climates for gay and lesbian families. Interestingly, for some of the couples in California, being in a supportive legal context meant sacrificing being close to families of origin.

Finally, respondents in the different legal contexts reported two divergent pathways in terms of their families and their parenting roles being recognized. Nebraska residents experienced legal barriers and had to “work within the system” to piece together legal protections for their families. Second-parent adoptions were not legally available, and this lack of legal recognition for both parents left the families vulnerable. Without the legal tie, non-biological parents have no rights to the child in the event of the death of the legal parent, and moreover, if something happened to the non-legal parent, the child would not receive support such as social security death benefits. These issues became a worry to families, especially as they traveled or sought medical attention. In an attempt to ensure some form of legal protection, the Nebraska couples drafted wills and powers of attorney documents to protect their family, corroborating prior research (Riggle, Rostosky, Prather, & Hamrin, 2005). Some also considered moving to Iowa in order to obtain a second-parent adoption, which would be recognized by Nebraska. The only way the one gay male couple living in Nebraska were able to become parents and both be legally recognized as such was to do surrogacy in California.

In contrast, couples in California talked about “living in a bubble” or in a context where they experienced a lack of legal barriers to becoming parents and where they were both recognized as parents. In fact, legally speaking, couples who pursued adoption were “on par” with different-sex-parent families because they were neither required to complete additional paperwork nor viewed differently by the state. The results do highlight the importance of temporal factors in California; couples who started families after laws were modified to allow two parents of the same sex to be placed on the birth certificate reported experiencing no legal obstacles. Those who became parents prior to this law, however, had to pursue a second-parent adoption to secure legal recognition of the non-biological parent. This process was lengthy and expensive; however, after the process was completed, additional paperwork to keep their families secure was not needed as it was for Nebraska couples.

Taken together, the interviews highlight the important ways in which state laws influence same-sex couples’ abilities to form legally secure, recognized family structures. When laws do not accommodate legal recognition, families piece together a number of strategies to try to protect themselves and hope that these documents will be upheld in the event that their familial relationships are challenged. The lack of acknowledgment sends a clear message that these families are not considered ideal by their government; the great lengths that couples have to go through to gain the same rights afforded to different-sex couples further implies that their families are not considered ideal.

Our findings highlight several implications for advocates and practitioners. First, agencies should be explicit in their willingness to work with lesbian and gay couples and provide accurate and visible information about same-sex-parent adoption.

This is especially true if they want to attract them as potential parents given the large numbers of children waiting for permanent homes in the foster care system. Seeing other gay and lesbian parent profiles on agency websites indicates that it is possible for same-sex couples to adopt.

Participants discussed social worker biases as both barriers to placement and as contributing to being matched with special-needs children. In addition, social workers are not always informed of the laws and issues regarding placements with lesbian and gay couples (Goldberg, 2012). Adoption agencies working with same-sex couples should provide training so that social workers are knowledgeable about adoption law for all clients regardless of sexuality, and moreover, agency workers should be provided with sensitivity training to enhance competency of meeting diverse client needs.

Community centers and local advocacy organizations catering to GLBT populations should also provide information and programs about various options and the legality of each option in their state of residence. Although national organizations compile such information (e.g., Human Rights Campaign), it may be more beneficial if local organizations do the same. Family counseling specialists can also provide services to parents dealing with family situations where only one parent is able to obtain legal status. Providing more resources for how to obtain legal protection in absence of permanent legal status and counseling on how to best negotiate family relationships in the absence of legal recognition is important for maintaining family stability and continuity.

Limitations

There are some important limitations in this study. The sample consists of mostly White and upper-middle-class families, a limitation of much of the research on gay and lesbian families (Moore, 2011). Given the expenses associated with achieving parenthood and obtaining legal security, it is likely more difficult for lower-income couples. For instance, research with heterosexual women seeking reproductive treatment finds that lower-income women and women of color find that these procedures are out of their reach (Bell, 2009). It is likely that the intersection of sexual orientation makes this even more difficult because of social and legal restrictions. In their study on lower-income Black lesbian parents, Reed and her colleagues (2011) found that they primarily used known donors because doing insemination with an anonymous donor was too expensive. Future work should continue to explore how the intersections of race, class, and sexuality impact the method that GLB individuals use to become parents. Our sample consists mostly of people who are in a couple, leaving unanswered how single GLB individuals who want to be parents decide on which method to take. Future work should continue to compare the experiences of gay men and lesbians in more legal and social contexts.

Other limitations include that we compare parents in only two states and our sample size from each state is small and non-random. For these reasons, the experiences of our participants cannot be generalized to all same-sex-parent families. Second, we used three different interview modes (in person, telephone, and Skype). Although there were no discernable differences in the narratives by mode of data collection, one limitation of the two telephone interviews was that the interviewer was unable to observe body language and facial expressions during the course of the interview; he was, however, able to read for tone and noted instances where the participant was laughing or sounded sad while discussing her or his experiences.

Furthermore, the interviews differed in that some participants were interviewed together as a couple and some separately. It does not appear that the format of the interview affected the quality of the information. Couple interviews were characterized by banter between partners as they filled in different parts of their stories. On a couple of occasions, one partner would forget some of the details and the other partner would fill in the information. Typically when this happened, the person who had missed some details would agree in a surprised manner, often remarking something to the effect of, "Oh yeah, I forgot about that" and then proceed to further explain her experience. This was not possible for participants who did not have a partner present during the interview. For this reason, there are details that a participant may have forgotten to include. We do not think that having the couples do their interviews together necessarily affected the quality of information due to fear of disagreeing. Each couple seemed fine discussing their disagreements that they had over their process that was sometimes evidenced by playful jokes during the interviews. Overall, we feel having a partner present strengthened the recall of the family-building process.

A final limitation of this research is that the sample contains few bisexual-identified individuals. Researchers have highlighted how bisexual men and women are stigmatized and made invisible in popular culture and scholarly research (Hackl, Boyer, & Galupo, 2013; Lannutti, 2008; Scherrer, Kazyak, & Schmitz, forthcoming). Future work should also address whether there are differences in experiences among sexual minority individuals based on sexual orientation. Although they may be read as gay or lesbian couples and experience the same legal barriers as other same-sex couples, having a bisexual sexual orientation may shape their experiences and approaches to becoming parents in different ways. It is important to examine the possible differences for lesbian-bisexual, bisexual-bisexual, and gay-bisexual relationships in terms of access to and experiences of becoming parents. There were no differences in our sample based on sexual orientation in the results presented here. However, the sample included a small number of bisexual-identified women. Despite these limitations, our study includes the experiences of both male and female same-sex couples, an important contribution to previous literature. Also, even though we only compare two legal contexts, our study nonetheless

begins to address the question of how these vastly different state legal landscapes matter for the experiences of gay and lesbian families.

Our study raises several important questions for future research in addition to the ones mentioned earlier. Some of these include the following:

- Given that people were aware of the legal context and at times that awareness was inaccurate, how and where do they get their information?
- How does the lack of legal protection impact family dynamics?
- In the event of a divorce or dissolution, how does the lack of legal recognition put these families at risk (Goldberg & Allen, 2013)?
- How are interactions with families of origin shaped by the legal status of GLB parents?

The question of how gender matters is also an important one that can be addressed in future research. The fact that we could not recruit any gay men who had children in Nebraska could indicate that it is more difficult for men to achieve parenthood when legal and social contexts of men as less suited to be primary caregivers intersect. Future work should also assess how family processes may be different in different types of gay and lesbian families. Research has begun to successfully incorporate the experiences of gay and lesbian parents who became parents prior to coming out alongside those who become parents after coming out (Moore, 2011). Yet as Stacey (2006) notes, there is no one-size-fits-all family form, and future work should explore, for instance, how stepparent or co-parent gay and lesbian families might face different experiences from both of these family forms. Indeed, the law might matter in unique ways for co-parent and stepfamilies. Moore (2008) finds that parents without legal ties in lesbian-headed stepparent families contribute less to the household chores and child rearing. GLB stepparent families who are not legally recognized might also face a more pronounced lack of institutional support. Some of the couples in our sample reported establishing their own custody and child support agreements that were not legally binding when separations occurred. Future work should further explore these processes and the implications of these arrangements for family well-being. Likewise, the dynamics and implications of co-parenting families where only one or two of the parents are legally recognized should be further researched. Two of the families in our study were comprised of three parents. How do these families negotiate their unique legal situation? Addressing the diverse types of families among gay men and lesbians will better capture the expansive understandings of families and the way that law matters in all families.

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