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The Lost History of Gay Adult Adoption

By ELON GREEN OCT. 19, 2015

In 1977, 27-year-old Walter Naegle was planning to go to San Francisco. He was living in New York City, which he found awful, when, while waiting for a light to change in Times Square, he saw an unusually handsome reason to stay: Bayard Rustin. Rustin, who once said, “I believe in social dislocation and creative trouble,” organized the antisegregation Journey of Reconciliation protest, a sort of early Freedom Ride, in 1947. He was in charge of logistics for the Rev. Martin Luther King Jr.’s March on Washington for Jobs and Freedom and he worked to integrate New York City schools. “I’m not much dazzled by celebrity,” Naegle said recently, “but I had known who he was since I was in high school.”

Naegle and Rustin were attracted to each other immediately — they kissed for the first time that day — and became a couple thereafter. During their 10 years together, marriage was not discussed; it simply wasn’t imaginable. (The term “gay marriage” — where ‘gay’ doesn’t mean ‘lighthearted’ — would not appear in this paper until 1989.) Had Rustin lived long enough, however — he died in 1987 — he would have definitely been game. “Oh, yes,” Naegle said, “he was much older than I was, and his generation of people were into that kind of thing.”

In 1982, when Rustin wanted to ensure that Naegle — who, at 37 years his junior, would surely outlive him — would inherit his estate, he availed himself

of the least-bad option: adoption. There had been an article in *The Advocate* about a couple in the Midwest who unsuccessfully tried to adopt each other in order to forge a legal bond. “Maybe we should try that,” Rustin said he suggested.

Naegle recalled the adoption process: First, his biological mother had to legally disown him. Then a social worker was dispatched to the Rustin-Naegle home in Manhattan to determine if it was fit for a child. “She was apprised of the situation and knew exactly what was happening,” Naegle told me. “Her concern, of course, was that he wasn’t some dotty old man that I was trying to take advantage of, and that I wasn’t some naive young kid that was being preyed upon by an older man.”

The adoption proved a shrewd decision. Naegle, as next of kin, had visiting privileges when Rustin was hospitalized for a perforated appendix and peritonitis and was eventually executor of the will. Despite the oddness of the arrangement, it was, all things considered, legally seamless.

Now that marriage equality is an American right, partner adoptions are hard to fathom, an artifact of an earlier societal paradigm that, in a remarkably short period of time, has come to seem inconceivable. “People today really have a hard time remembering, let alone feeling, what it was like to be an outlaw — to be truly strangers to the law — shoved out of every legal system, and then persecuted,” said Evan Wolfson, founder of Freedom to Marry, an organization that, for more than a decade, has played a large role in the passage of same-sex marriage legislation. It is easy to forget that an American state would not decriminalize sodomy until 1961; that as late as 1966, gays and lesbians could not legally buy a drink in a New York City bar; that even after the Stonewall riots, in 1969, the American Psychiatric Association considered homosexuality a mental illness. As recently as 2000, civil unions were still not widely available and domestic partnerships didn’t offer federal protections.

Adult adoption by gays and lesbians has only been quietly discussed, both

in or outside the gay community, for fairly obvious reasons; there isn't an easy way to tell your friends and family that the man or woman with whom you share a bed is, legally, your son or father, or your daughter or mother. Consequently, there are no reliable data — or even flimsy data — as to the number of such adoptions, and experts in the field are unwilling to hazard a guess. The practice seems to have taken hold amid the tumult of the 1970s and 1980s, during rampant discrimination and the onset of the AIDS crisis.

For those couples who adopted in past decades, the years of piecemeal state-by-state legalization, and the Supreme Court's 5-4 ruling in *Obergefell v. Hodges*, which legalized same-sex marriage nationwide, ended a long period during which men and women, in exchange for medical, financial and legal benefits, pretended to be something they emphatically were not. But until such couples, most of whom are now elderly, unwind their adoptions, their relationships are either stranded in a kind of limbo or something worse: Courtney Joslin, a professor of law at University of California, Davis, said that couples who marry without voiding the adoption may in some states be subject to "a criminal incest statute." (As of 2012, 25 states and territories considered relationships between adoptive parents and their adult children within the definition of incest.)

For the time being, a lot rests in the hands of the judges, who have the power to vacate adoptions. Elizabeth Schwartz, who practices L.G.B.T. family law in Miami, hopes they will "embrace the opportunity to bring justice. That's their job, to do the right thing and to use their equitable powers to right past wrongs."

Here are a few stories of couples who, like Rustin and Naegle, went through adoptions, but lived long enough to marry.

Sergio Cervetti, 74, and Kenneth Rinker, 70

When Rinker first saw Cervetti, in 1965, he kept his mouth shut; Cervetti was with a date. They were in college: Cervetti was studying composition at

Baltimore's Peabody Conservatory, while Rinker studied modern dance and English at the University of Maryland College Park. "We made eye contact, and I think there was chemistry, but I was mature," Rinker recalled. "I didn't want to interlope."

A week later, on Halloween night at a Dupont Circle townhouse, the men — both adorably dimpled, according to old photos — met again. "The minute we saw each other, everyone else in the room melted away," Rinker said. "For me, that was the beginning."

During the 1970s, Rinker was Twyla Tharp's first permanent male dancer. He later became a choreographer and worked on two romantic comedies, "Places in the Heart" and "Murphy's Romance." The Uruguay-born Cervetti, with whom he often collaborated, had his works performed the world over. (One composition appeared on the soundtrack of the film "Natural Born Killers.") After a lifetime together, they've retired to Bucks County, Pa.

Cervetti and Rinker first discussed adoption with each other when they moved to Pennsylvania from New York, in 1997. Cervetti had a professorship at New York University and was keen to put Rinker on his health insurance. Of course, because the two were in it for the long haul, the inheritance tax was a concern, too. So in 2000, Cervetti, as the elder, adopted Rinker. It was the only choice, their lawyer said; Pennsylvania, they assumed, would never recognize same-sex marriage. "Hell is going to stay frozen," Rinker thought, "so what are our options?"

It was all surprisingly straightforward; there wasn't even much paperwork. And as the couple waited in Doylestown's Orphans' Court, they realized how odd it must have looked: "You're sitting there waiting for the adoption proceedings, and everyone's wondering, Where's the little kid?" Rinker said.

Rinker and Cervetti never had to test the validity of the adoption; both remained healthy, so neither inheritance nor hospital visitation policies were

an issue. The father-son dynamic never bothered them. “I never got any gifts for Father’s Day,” Cervetti joked.

The arrangement lasted 15 years. It was vacated on July 7, 2015, less than a month after the Supreme Court ruling. Three days later, Cervetti and Rinker married.

Bill Novak, 78, and Norman MacArthur, 76

Among the witnesses to Cervetti and Rinker’s vows were a couple of old friends. Novak and MacArthur met in 1963, at a wedding in Kearny, N.J. MacArthur thought Novak was handsome, but “what really struck me is he was very smart. He knew a lot about the cultural life of the area.” They lived together on the Upper West Side for five years, then moved to Park Slope in Brooklyn. Novak was the registrar at Pratt Institute and MacArthur the building manager at the Brooklyn Academy of Music.

“As the years rolled by, and we got closer to retirement, Bill wanted to look for a country house for the weekends,” MacArthur said. The couple chose Pennsylvania. “Bill is the Francophile, so to him Bucks County looked like the French countryside. I’m the Anglophile, so to me Bucks County looked like the English countryside. So we were both happy.” They settled there in 1997.

“With the retirement and so forth, your ideas of mortality get stronger,” Novak said. “So we thought we should start firming up the relationship.” Their lawyer nudged them towards adoption. The biggest factors for them were the impact on the inheritance tax and “mundane things, like hospital visits.”

In 2000, Novak adopted MacArthur. The papers were sent to the local hospital, to ensure visitation rights and that, in the event that one of the men was hospitalized, the other would be informed. This turned out to be prudent, because both later had health issues, including heart surgery. The Doylestown Hospital, they are pleased to report, treated them with respect, as has Bucks County generally, which they attribute to its substantial Quaker population.

As with Cervetti and Rinker, the adoption was a means to an end. “It was the only outlet for a recognition that we were indeed related to each other,” MacArthur said. “But psychologically it never affected me. It was a piece of paper.”

Pennsylvania did away with its gay marriage ban in May 2014. Novak and MacArthur wanted to marry, but their lawyer told them the adoption was permanent, so they could not be issued a marriage license. The bleak news was a momentary setback. “We started looking around and found that the judges in Bucks County were already beginning to talk about this because they knew that cases like this would eventually come before them,” MacArthur said. They were advised to file a petition to vacate the adoption. “The marriage law does not specifically prohibit a marriage between father and son,” their lawyer wrote to the Orphans’ Court division of the Court of Common Pleas of Bucks County. “However, petitioners believe that other legal complications could result if they were to marry without having the adoption vacated.”

A court hearing was scheduled for May 14. Thirty friends and neighbors attended, “to show the judge this was not your ordinary hearing,” MacArthur said. When, after 25 minutes, the adoption was vacated, he wept.

They married 10 days later. After 52 years, marriage is “anti-climactic,” Novak said. But, he added, “psychologically, it makes you feel better. Like you’re a part of the human race.”

Lillian Faderman, 75, and Phyllis Irwin, 86

In 1971, Faderman and Irwin were on the faculty at California State University, Fresno. Faderman was the chairwoman of the English department, Irwin the assistant vice president for academic affairs. The administration asked the two women to collaborate on a program for women’s studies, a field that had come into existence only the year before, at San Diego State College. Irwin said: “I leapt at the chance, because I had seen Lillian four years earlier in the coffee shop and my heart just went, boom! What a beautiful woman! I

practically jumped up and did a dance.”

For a while, theirs was a platonic relationship. But after a few months, Irwin invited Faderman to dinner. After finishing, she asked if Faderman might like to walk Muffie, her schnauzer, together. When they went to Irwin’s house to fetch the dog, Irwin kissed her. “I had to try something,” she said.

They’ve been together ever since. In 1975, when Faderman gave birth to a son, Avrom, she and Irwin began to consider adult adoption. But it wasn’t until 1983, when Faderman’s book, “Surpassing the Love of Men,” made her increasingly well known — and she, in turn, was often on the road — that they went through with it. “We got worried that if something happened to me, Phyllis would really have no claim on him,” Faderman said of Avrom. Irwin, they feared, would have been unable to even take their son to a doctor. With the adoption, at least, Irwin could say she was Avrom’s grandmother.

In May 2008, the California Supreme Court gave gay couples the right to marry. This was reversed in a matter of months, when voters adopted a constitutional amendment. But in the interim, on June 18 at 9:30 a.m., Faderman and Irwin got hitched. What they didn’t do, however, was vacate the adoption. In California, they were told that if there was no blood connection between two people, undoing the adoption was unnecessary. “So,” Faderman said, “Phyllis is my mama and my spouse.” (Adoption law varies widely by state, but lawyers I spoke to believe Irwin and Faderman were given erroneous advice. They continue to look into the matter.)

Like Cervetti and Rinker, and Novak and MacArthur, Faderman and Irwin scoff at the idea that adoption colored how they felt about each other. When I asked about it, they laughed. “We just needed legal protection, particularly for our son,” Faderman said. Irwin added, “It was just a formality.” To them, wife and wife doesn’t feel much different than mother and daughter. “We’ve always felt married,” Faderman said. “We’ve been married in our hearts for 44 years.”

Correction: October 26, 2015

Because of an editing error, a quotation about Bayard Rustin and Walter Naegle misidentified which one of them suggested adult adoption. It was Rustin's suggestion, relayed by Naegle.

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