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Social Science Research

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## When love meets hate: The relationship between state policies on gay and lesbian rights and hate crime incidence

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### ARTICLE INFO

#### Article history:

Received 14 March 2015

Received in revised form 7 April 2016

Accepted 6 June 2016

Available online xxx

#### Keywords:

Hate crimes

Same-sex rights

Marriage equality

Externalities

### ABSTRACT

Do public policies on gay and lesbian rights affect the incidence of hate crimes based on sexual orientation? We propose that legal inequalities increase hate crimes because they provide discursive opportunities for bias, discrimination, and violence. Legal equality, however, will reduce violence. Using annual panel data from 2000 to 2012, a period of substantial policy change, we analyze how three state policies affect reported hate crimes: same-sex partnerships, employment non-discrimination, and hate crime laws. Hate crime and employment non-discrimination laws that include sexual orientation reduce hate crime incidence. Partnership recognition increases reported hate crimes, though it may not increase actual crime incidence. Because incidence is spatially correlated, policy changes in one state yield spillover benefits in other states. These results provide some of the first quantitative evidence that public policies affect hate crimes based on sexual orientation. Findings confirm the roles of institutional heterosexism and discursive opportunities in producing hate crimes.

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American debates balancing individual liberty against majority will are as old as the formation of the country. What started as a slow march toward equal rights for several subjugated demographic groups during the nation's first 100 years became substantial progress toward equality in the twentieth century. Women and racial minorities won the right to vote, achieved greater economic empowerment, and successfully argued for integration of a host of social institutions. In stark contrast, rights for gay and lesbian individuals have lagged behind – in some ways becoming worse toward the end of the twentieth century. This lag has a far-reaching impact on the health and well-being on the gay and lesbian population. In fact, following political campaigns against same-sex marriage and other anti-equality initiatives, gay and lesbian individuals and their families report stress, anxiety, fear, and health changes (Arm et al., 2009; Rostosky et al., 2010) as well as risky sexual behaviors, mental illness, and suicide (Amadio, 2006; Baiocco et al., 2010; Hughes and Eliason, 2002; Meyer, 2003; Ryan et al., 2009; Substance Abuse and Mental Health Services Administration, 2012).

The twenty-first century, however, has seen rapid changes in gay and lesbian rights. The federal government rescinded the Don't Ask Don't Tell ban on being openly gay in the military, President Obama added sexual orientation to the federal hate crime law by signing the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, and the U.S. Supreme Court recently ruled bans on same-sex marriages unconstitutional. At the regional and state level, since the start of 2013 over thirty states had their bans on same-sex marriage overturned by district or circuit courts. The ability of legislatures and courts to produce

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sweeping social change is the subject of a long line of sociological inquiry (e.g., [Burstein, 1998](#); [Burstein and Monaghan, 1986](#); [Dobbin et al., 1993](#); [Korpi and Palme, 1998](#); [Rosenberg, 2008](#)). The practical consequences of these policies are clear, and gay and lesbian individuals who live in states with pro-equality policies report fewer psychiatric disorders and lower psychiatric comorbidity ([Hatzenbuehler et al., 2009](#)). In addition to these individual impacts, externalities have long accompanied policy changes and other types of organized social action ([Merton, 1936](#)). For example, pro-equality policies might not only promote equality in access to individual benefits, but they also could foster a more tolerant social climate.

One indicator of increased social tolerance would be a reduction in hate crimes. Scholarship on anti-gay and lesbian violence identifies heterosexist ideology ([Herek, 1992](#)) and cultural stereotypes ([Franklin, 1998](#)) as potential drivers of individual biases and, in extreme cases, violence. Among these societal drivers, the law stands out as a particularly salient institution ([Herek, 2009b](#)). As far as we are aware, however, extant sociological research has yet to investigate the effect of public policy – or broader sociocultural environment – on hate crimes based on sexual orientation. Research on racially-motivated hate crimes is comparatively well-developed. [Blalock \(1967\)](#) identifies power threat as a key driver of discrimination. Likewise, lynchings and racial hate crimes may be motivated by discursive opportunities ([Koopmans, 1996](#); [Koopmans and Olzak, 2004](#)) or defense of a neighborhood against in-migration of racial minorities ([Grattet, 2009](#); [Green et al., 1998](#); [Lyons, 2007](#)). We bridge the literature on cultural heterosexism and racially-motivated hate crimes to examine how changes in public policies related to sexual orientation create or restrict discursive opportunities for hate crimes, conditions for defended marriage, and crimes motivated by economic competition.

This article examines the relationship between laws and hate crimes by analyzing the impact of changes in a particularly salient social policy issue: public policies related to sexual orientation. Specifically, we ask whether policy changes affect the incidence of reported hate crimes based on sexual orientation.<sup>1</sup> We begin by discussing the literature on anti-gay and lesbian attitudes, the impact of attitudes and policies on hate crimes, and prominent theories of hate crimes. Next, we present the data and our method of analysis. We leverage the recent, rapid changes in policies regarding gay and lesbian rights by using a Prais-Winsten panel regression model with state fixed effects to analyze the impact of policies on annual reported hate crimes over a period of 13 years. This research also includes a spatially lagged dependent variable to capture the artificial nature of state borders and diffusion of hate crime production across space. Then, we present and discuss our results, which generally find positive externalities (reductions in reported hate crimes) from pro-equality policies. These findings, which are consistent with theories of institutional heterosexism and the law as a driver of discursive opportunities for bias crimes, provide some of the first quantitative evidence regarding the impact of public policies on hate crimes based on sexual orientation and demonstrate that social externalities like hate crimes should be included in pro-equality arguments.

## 1. Background and literature

### 1.1. Policy changes

Passed in 1996, the Defense of Marriage Act is just one prominent example of a recent spate of federal and state policy-making limiting same-sex partnerships during the late 1990s and 2000s. Over the past fifteen years, twenty-eight states have implemented constitutional amendments restricting marriage to one man and one woman ([Human Rights Campaign, 2014](#)). Eleven of these amendments were passed in the 2004 general election, when activists and state legislators may have placed them on the ballots to increase conservative turnout ([Smith et al., 2006](#)). Earlier bans arose, in part, as a backlash against progressive policy gains ([Soule, 2004](#)). Recently, however, state and federal appellate courts have overturned state bans on same sex marriage. Before the Supreme Court ruled state bans unconstitutional, nearly forty states plus the District of Columbia issued same-sex marriage licenses, and several others provided recognition or rights to same-sex couples ([Human Rights Campaign, 2014](#)). Moreover, in the 2012 general election, Maine, Maryland, and Washington became the first states to pass (or affirm) same-sex marriage at the ballot box, and Minnesota became the first state to reject a marriage ban by popular vote.

As same-sex marriage policies have changed over time, so have policies on hate crimes based on sexual orientation. Sexual orientation was only recently added to the federal hate crime law with the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, but states have addressed the issue for over twenty years with some passing their own laws prior to 2009. Although the federal law allows for the provision of resources to state and local authorities, 20 states do not cover sexual orientation as part of their hate crime laws ([Anti-Defamation League, 2011](#)). Conversely, a number of states took action before the federal policy change in 2009, with the District of Columbia passing its law in 1989, a handful of states passing laws in the 1990s, and many states passing laws in the early 2000s ([Human Rights Campaign, 2014](#)).

Nondiscrimination policies have received less public attention recently despite some significant policy actions. A 1998 executive order signed by President Clinton prohibits federal employment discrimination based on sexual orientation in the executive branch ([Office of Personnel Management, n.d.](#)). In addition, 21 states plus the District of Columbia prohibit employment discrimination based on sexual orientation, with 10 states enacting their first nondiscrimination policies in the past 10 years and an additional 5 states in the past 20 years ([Human Rights Campaign, 2014](#)).

<sup>1</sup> Although this article focuses on gay and lesbian individuals, other populations, such as bisexual, transgender and queer individuals, are often impacted by same-sex partnership, employment nondiscrimination, and hate crime policies. Scholars may wish to expand this research to include these additional populations in the future.

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