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Abstract
Supporters of hate crime legislation argue the laws are a positive development designed to promote social equality and encourage political participation. Critics claim the laws are patronizing and disempowering. Existing research addresses neither the impact of hate crime laws on designated social groups nor attempts to verify assumptions about legislation and the social and political status of protected minorities. Sexual orientation, one of the most controversial categories, resulted in considerable social and political debate. This research explores the addition of sexual orientation to state hate crime law and how inclusion of this target group affects the social construction of gays and lesbians. Data are drawn from a sample of 12 daily newspapers in six states. Content and time-series analyses were used to explore social construction. The results indicate that inclusion in hate crime protections fails to have a positive impact on the construction of the group, and the discussion offers important policy implications.

Keywords
hate crime, policy implications, sexual orientation, social construction

Hate crime is a recent development in criminal law and public policy (Chakrabarti & Garland, 2009; Grattet & Jenness, 2001), having existed as a distinct

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category of criminal law for 37 years. Subsequently, the subject represents a new field for academic study (Green, McFalls, & Smith, 2001) and little is known about the impacts of the laws on potential victims and offenders, as well as possible residual effects on society (Meyer, 2014). Hate crime law was developed with the intention of increasing positive attention to minority groups who were historically harassed, discriminated against, and abused by the criminal justice system and society at large (Chakraborti & Garland, 2009). In the 1970s, civil rights and victim rights groups combined their efforts and convinced states to implement hate crime laws that provide stronger punishments for offenses motivated by bias or prejudice (Grattet & Jenness, 2001). The first state hate crime statute was passed in California in 1978 (Grattet, Jenness, & Curry, 1998). Today, 45 states have some version of a hate or bias-motivated crime statute, but the form and content of each varies and little is known about the direct impacts of the laws (Gillis, 2013; Meyer, 2014). This research takes the first step toward examining the social and political impact of hate crime laws on a target group—a topic of concern that remains unaddressed.

**Literature Review**

The need for hate crime laws and their purpose in the United States is still a matter of debate among scholars, commentators, and members of the criminal justice system. The original intent of hate crime laws was to increase attention to the problems of vulnerable and marginalized minority groups and to send a message that bias-motivated violence would not be tolerated (Chakraborti & Garland, 2009). This symbolic intent may be the most common argument in favor of hate crime statutes (Gerstenfeld, 2013). The laws were assumed to have a positive effect on minority groups and to decrease negative treatment by the criminal legal system, but their efficacy remains unknown (Meyer, 2014). Hate crime laws promote a more tolerant society by sending a clear message that bigotry and prejudice are unacceptable, and by placing minority groups on the same plane as majority groups (Franklin, 2002; Grattet & Jenness, 2001, see also Gerstenfeld, 2013). Mason (2007) further contended that hate crime laws allow for social justice. Proponents also argued that the unique damage caused by hate crimes could be properly addressed with criminal sanctions and that minority groups need additional protection (Cogan, 2002; Maroney, 1998).

Early critics argued, however, that criminalizing bias would only exacerbate social problems, increase resentment of minorities, and draw attention to intergroup conflicts (e.g., Gerstenfeld, 1992; Jacobs & Potter, 1998). Some scholars stated that criminal laws cannot solve social ills and the prejudice that leads to hate crimes cannot be resolved with a prison sentence (Franklin, 2002; Jacobs & Potter, 1998; Maroney, 1998). Critics also contend that hate crime laws are being institutionalized in a legal system that has ongoing issues with bias toward, and harassment of, minority groups (Jacobs & Potter, 1998; Jenness & Grattet, 2001; Maroney, 1998), so they may disempower, rather than embolden, minorities (Gerstenfeld, 1992). Hate crime laws may even inspire complacency because policy makers can point to the laws and feel satisfied that nothing more needs to be done to combat bigotry (Gellman, 1991).
Development of the Hate Crime Policy Domain

At the state level, hate crime law underwent a process of homogenization and domain expansion at the end of the 20th century during which legislatures increasingly adopted laws that followed the same model, while also adding new or unique bias categories that distinguished each state’s law (Grattet et al., 1998). Race, ethnicity, and religion were already institutionalized in federal discrimination law when state hate crime laws were introduced in the legislative arena. Consequently, those three categories were the first to be included and continue to be the only protected statuses present in all existing state laws (Grattet & Jenness, 2001; Jacobs & Potter, 1998). The inclusion of less established bias categories (e.g., sexual orientation, gender, and disability) has required the influence of policy advocates and the power of interest groups to initiate change (Jacobs & Potter, 1998; Jenness, 1999; Jenness & Grattet, 2001).

The timing of policy adoption was identified as a key factor in determining the form and content of a state hate crime law. In most cases, the longer a state waited to adopt a hate crime policy, the more pressure it received and the more likely it was to pass a statute that included not only the readily accepted categories of race, ethnicity, and religion but also the debated categories of sexual orientation, gender identity, and/or disability (Grattet et al., 1998). Many states that passed their original hate crime statutes without much external pressure later updated or amended their laws to include previously unconsidered or contested categories (Jenness & Grattet, 2001). But heterogeneity persists, especially when considering the most contested category, sexual orientation. Only 30 of the 45 states who otherwise see the need to criminalize bias-motivated violence include sexual orientation as a protected status in their hate crime law (Human Rights Campaign, 2015).

Sexual Orientation as a Bias Category

Resistance to hate crime laws often develops from specific opposition to the inclusion of sexual orientation as a bias category (Gerstenfeld, 2013), and attitudes about sexual orientation can significantly affect public support for state hate crime laws (Johnson & Byers, 2003). Deciding which bias categories to include in a hate crime statute can be a contentious political process (Jacobs & Potter, 1998). Although people tend to agree with hate crime laws in general, they are less likely to do so when sexual orientation is suggested for inclusion (Johnson & Byers, 2003).

There are several reasons for social and political opposition to the inclusion of sexual orientation as a bias category. Anti-gay sentiment and anti-gay ideology is still accepted and promoted in several religious, social, and political institutions in the United States (Whitlock, 2012). Those who maintain heteronormative and anti-gay beliefs think that including sexual orientation in state laws sends a message that the government supports the same-sex relationships to which they are opposed. Some opponents argue that sexual orientation is a choice and not an immutable characteristic such as race or ethnicity and, therefore, is not worthy of inclusion (Gerstenfeld, 2013). Lyons (2008) found that survey respondents were sensitive to the racial status of crime
victims, but the research revealed no evident sympathy for gay and lesbian victims. Mason (2007) noted that images of deep moral failure can preclude an emotional response to a victim’s plight, which may explain why the queer community has had to convince society and the criminal justice system that they are undeserving of prejudice or violence based on sexual orientation and gender identity.

In 1988, only 11% of state hate crime statutes included sexual orientation as a bias category. As anti-violence groups and pro-gay and lesbian social movements gained political influence, the number of states including or adding sexual orientation increased. By 1998, 50% of state hate crime statutes included sexual orientation (Grattet et al., 1998). The percentage has since plateaued at 66%, or 30 of 45 states. In 2005, Colorado was the last state to amend or pass a new hate crime law to include sexual orientation (Human Rights Campaign, 2015).

**Impact of Hate Crime Laws**

Extant research has failed to verify the effects of hate crime laws upon bias-motivated violence, intergroup relations, or social groups. Gerstenfeld (2013) acknowledged that measuring potential positive impacts, such as the symbolic importance of the laws for included social groups, or increased public attention to the issue, would be extremely difficult. In fact, scholars have only speculated about the potential impacts of hate laws on social groups. One concern was groups that are not easily identifiable or readily accepted as bias categories, for example, the elderly or the homeless, would be upset about their exclusion (Jacobs & Potter, 1998).

A primary question of interest is whether or not hate crime laws increase negative opinions of gays and lesbians as a social group by drawing attention to their difference, as predicted by Jacobs and Potter (1998). No research exists to verify the anticipated impacts of hate crime laws, and in fact, data exist which indicate the laws may be having negative effects on minorities (Gerstenfeld, 2013). Because hate crime laws are institutionalized within a criminal legal system with recognized biases, it is easy to understand how racial minorities, specifically African Americans, are overrepresented as offenders of hate crimes, just as they are of non-hate crimes (Franklin, 2002; Maroney, 1998). According to Franklin (2002) and Maroney (1998), when hate crime laws were written and implemented, it was done without concern for the social group dynamics that initially prompted their development.

Hate crime laws have been passed and implemented with good intention. Scholars and policy makers argued the laws allow government to address and remedy bias-motivated violence and to stand with minorities by sending the message that violence against them based solely on their minority status is unacceptable. The notion was that minority groups would feel empowered to report their victimization, that their interactions with the criminal justice system would improve, and that their social status would improve as incidences of hate and bias were prevented and punished. However, critics argue that the laws, although well-meaning, would fail to have a positive impact. Neither argument has been verified through empirical research.
Current Study

No research to date has examined the impact of hate crime laws specifically upon the status or construction of the social groups included. It remains uncertain whether the effects are positive, negative, or neutral because there is no research that addresses the feed-forward effects of hate crime statutes upon the social construction of target groups. This research represents the first endeavor to fill the existing gap in the literature and assist in understanding whether or not hate crime laws are fulfilling their acclaimed symbolic purpose by examining changes in the social and political status of gays and lesbians in relation to state hate crime laws and the inclusion or exclusion of sexual orientation as a bias category.

Theoretical Framework

A popular theory of the public policy process, The Social Construction Framework (SCF), provides a clear lens for examining the interplay of social construction and public policy. The SCF is unique because it attempts to explain more than the design of a public policy, as many theories do, by examining the entire cyclical process of how a policy comes to be, who it targets and why, and how the design of the policy affects both future policy making and the status of the targeted group (Schneider & Sidney, 2009). The framework focuses on the social construction of target groups and the feed-forward effects of public policy upon those groups, their political participation, and larger consequences for democratic society.

Social constructions are “stereotypes about particular groups of people that have been created by politics, culture, socialization, history, the media, literature, religion, and the like” (Schneider & Ingram, 1993, p. 335). Constructions are utilized by policy makers to influence policy designs, and are in turn, affected by policy design. Numerous forces influence the social construction of different groups; the media, moral entrepreneurs, policy makers, historical events, and the courts are identified as sources of influence in the construction of social groups throughout the course of U.S. history (Schneider & Ingram, 2005).

Target groups are constructed by the media, policy makers, interest groups, and others as being either more or less deserving of government assistance and beneficence in comparison with others. The construction of a target group can range from negative to positive. Target groups also vary in their level of political power, ranging from low to high. These two characteristics of target groups result in a matrix, or four-fold classification scheme, in which target groups fall (Schneider, Ingram, & deLeon, 2014). Figure 1 illustrates the theoretical placement of certain target groups in the framework.

The feed-forward effects of policy design refer to the consequences of the content and intent of a given policy (Schneider & Sidney, 2009). Policy designs send messages to target groups about how they are viewed and should expect to be treated by the government; these feed-forward effects can alter the social status and political participation of target populations, and can be either instrumental or symbolic in their impact.
Punitive policy designs, for example, restrict benefits and/or allocate burdens to the target group, which sends a signal to that group that they are undeserving of government resources and are unlikely to benefit from participation in the political process. Deviant groups, such as criminal offenders, often are the target of punitive policies because they lack political power and a positive construction. In contrast, advantaged groups, such as married people, benefit from positive policies because they possess both political power and a positive construction. Positive policy designs will increase the participation, opportunity, and status of the target group,

Figure 1. Social construction framework.
whereas negative policy designs will likely result in less political participation and power within the target group (Schneider et al., 2014).

Historically, sexual minorities held a deviant construction, portrayed in the media and treated by the criminal justice system as inherently criminal, depraved, or less than (Mogul, Ritchie, & Whitlock, 2011). Studies applying the SCF to gays and lesbians are few. Three studies concluded that gay men with AIDS and gay inmates were negatively constructed, denoting them as deviants or contenders (Donovan, 1993, 1997; Hogan, 1997), whereas Ingram and Schneider (2005) described gays/lesbians as emerging contenders. Since the late 20th century, though, social movements and advocacy groups have successfully improved the social construction of gays and lesbians (Ingram & Schneider, 2005). More recently, SCF theorists have posited that the lesbian, gay, bisexual, and transgender (LGBT) target group is one in transition; exact placement in the matrix remains undetermined (Schneider et al., 2014).

Government can either change or reinforce social constructions through policy choices. Policies are not the most important determination of target group construction, but “policy is the dynamic element through which governments anchor, legitimize, or change social constructions” (Ingram & Schneider, 2005, p. 5), so the potential impact of inclusion in hate crime laws on gays and lesbians needs assessment. Following the affirmative representative intent of hate crime statutes, this study assumes that the addition of sexual orientation to a state hate crime is a positive policy design aimed at improving the status of a historically deviantly constructed group, gays and lesbians. Therefore, the target group should benefit from the symbolic force of the law by seeing an improvement in their construction and by feeling empowered to engage in the political process and thereby, increase their political influence. Two hypotheses are proposed regarding the key variables of social construction, construction, and political power:

**Hypothesis 1:** The construction of gays and lesbians will be more positive after the passage of a state hate crime law, which includes sexual orientation as a bias category compared with their construction before the law was passed.

**Hypothesis 2:** The political power of gays and lesbians will increase after the passage of a state hate crime law, which includes sexual orientation as a bias category.

**Method**

This study utilized a multiple time-series design with mixed methods. Content analysis was employed to determine the social construction of gays and lesbians in each state, and quantitative data analyses were used to test the hypotheses. A quasi-experimental design allowed for comparison between states that have sexual orientation as a bias category and states without. The control states help account for the national trend toward more positive views of gays and lesbians that has occurred since the late 20th century.
Criminal Justice Policy Review

Table 1. Newspaper Sample.

<table>
<thead>
<tr>
<th>State</th>
<th>Original year of passage/updated</th>
<th>Sexual orientation</th>
<th>Liberal leaning paper</th>
<th>Conservative leaning paper</th>
<th>Frequency (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennessee</td>
<td>1989/2000</td>
<td>Yes</td>
<td>Chattanooga Times</td>
<td>Knoxville News-Sentinel</td>
<td>6.2</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1991</td>
<td>No</td>
<td>Charlotte Observer</td>
<td>Winston-Salem Journal</td>
<td>19</td>
</tr>
<tr>
<td>Texas</td>
<td>1993/2001</td>
<td>Yes</td>
<td>San Antonio Express-News</td>
<td>Dallas Morning News</td>
<td>28.8</td>
</tr>
<tr>
<td>Alabama</td>
<td>1994</td>
<td>No</td>
<td>Anniston Star</td>
<td>Mobile Press-Register</td>
<td>13.9</td>
</tr>
<tr>
<td>Colorado</td>
<td>1988/2005</td>
<td>Yes</td>
<td>The Daily Camera</td>
<td>The Denver Post</td>
<td>12</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1987</td>
<td>No</td>
<td>Tulsa World</td>
<td>The Oklahoman</td>
<td>20.1</td>
</tr>
</tbody>
</table>

*Paper listed as one of Top 100 papers in the United States (BurrellesLuce, 2007).

Sample

From the population of 45 states with a hate crime statute, there are 30 with sexual orientation as a bias category. Three sets of paired states were selected, representing 13% of the population, based on the timing of hate crime law adoption that previous research indicated to be a key factor in the determination of the form and content of the legislation (Grattet & Jenness, 2001). The states chosen in each pair passed their original hate crime statutes within 1 or 2 years of each other. One state in each pair later amended its hate crime statute to include sexual orientation and the other did not, which makes the sample purposive and non-random.

For practical purposes and ideological concerns, two newspapers were chosen from each state to determine social construction and political influence (see Table 1). To account for prestige, only local or regional daily papers were included. To account for circulation, the study attempted to utilize the largest daily newspapers in each state, based on circulation provided by NewsBank, as well as a list of the Top 100 Newspapers in the United States compiled by media relations firm, BurrellesLuce (2007).

To account for ideology, both liberal and conservative papers from each state were included to ensure that the social construction of gays and lesbians was informed and determined by opinions along the political spectrum, and not just from one end or the other.¹ The ideological bent of each newspaper was determined based on the paper’s endorsement of either the Republican (conservative) or Democratic (liberal) presidential candidate in the national election closest to the passage of the state amendments that added sexual orientation as a protected category.

All relevant articles from each paper were drawn from the NewsBank database of local, regional, and national news sources in the United States by searching both headlines and first paragraphs.² Keywords searched included gay, lesbian, sexual orientation,
same-sex, Pride, and LGBT. Temporal scope of the article search included those published between 5 years pre- and post-implementation of the amended state hate crime statutes, for a total of 10 years of data for each state. Only news articles, not editorials or columns, were included for analysis, because editorials and columns are substantially different from news articles (Hynds, 1990).

**Operationalization**

The dependent variables, construction and political power, were measured through content analysis of newspaper articles. The independent variable is whether or not a state has a hate crime statute that includes sexual orientation as a bias category. The determination of a state criminal statute and verification of the date of legal adoption was based on a study conducted by Grattet et al. (1998), a 2010 report by the Congressional Research Service (Smith & Foley, 2010), and data compiled by the Human Rights Campaign (2015).

**Construction.** Newspaper articles about gay and lesbian individuals, events, issues, and policies provide a measure of the construction of gays and lesbians in each state. News articles reflect the political opinions and ideologies of both the journalist and the intended reader (Bennett, 1996) and can, thus, be used as a measure of the social construction of a political target group. Social constructions are intimately tied to the mass media and the media’s influence on political discourse. Constructions regarding which groups deserve what kind of government treatment are supported by rationale that is provided primarily by the news media. The news media often influence public opinions by placing certain constructions into public discourse and thereby help shape people’s beliefs about the world and existing groups, and future research may explore this particular topic. Policy makers often embrace the constructions and beliefs perpetuated by the media and embed them in policy design, institutionalizing them and giving them added credibility and legitimacy (DiAlto, 2005; S. Nicholson-Crotty & Meier, 2005).

**Political power.** In this study, the political power of gays and lesbians as a target group is determined by the frequency of front-page news articles in each state each month. There is no consistent method for measuring political power in applications of the SCF, and none to date have attempted to quantitatively measure the power of sexual minorities as a target group. Power can be operationalized in many ways, depending on which “face” or type of political power is being measured (Pierce et al., 2014).

Front-page news coverage is a strong indicator of political influence because it reflects a target group’s ability to gain media attention and inform social debates. Sociologists tend to infer that power or status exists wherever resources exist. When a social problem dominates the newspapers, the assumption is that it has powerful sponsors (Gibson, 2011). Journalism research reveals that these assumptions tend to be accurate. Political power and influence are unequally distributed, so advocacy and
interest groups must work to build relationships with journalists to gain legitimacy and access to credible publicity (Bennett, 1996; Motion & Weaver, 2005). Government actors and interest groups both utilize the media to gain support for their positions because news coverage influences policy debates (Yoon & Boydstun, 2014). Interest groups get their issues in the news by gaining the respect of journalists. Organizations that are judged by the media to be credible and knowledgeable gain epistemic authority and are able to not only provide their viewpoints on a developing story but also bring stories to the journalists for publication (Motion & Weaver, 2005). Editorial decisions influence which stories are featured, and journalistic norms determine that only players with power or credibility are allowed to inform those stories (Bennett, 1996; Motion & Weaver, 2005).

**Coding.** Each sentence of every article was coded for construction as positive (+1), neutral (0), or negative (−1) based on a pre-determined coding framework regarding representation and coverage of gay and lesbian policies and social issues. Indicators were determined by reading a regional newspaper, *The Oregonian*, not included in the sample (see the appendix). Published studies analyzing newspaper articles were referenced for guidance (e.g., Lima & Siegel, 1999; Welch, Fenwick, & Roberts, 1998). Codes were summed to determine whether the article overall was positive, negative, or neutral. To ensure coding reliability, 15% of the articles were coded by another researcher and the results were checked for at least 85% consistency. Power was coded as “1” for a front-page article (e.g., A1, 1A) and “0” for all other pages, regardless of construction. Whether or not the state had sexual orientation in its hate crime law was also coded as a dummy variable (0 = no, 1 = yes).

**Analyses**

A time-series design allowed for a pre–post-policy comparison of social construction, as well as analysis of the intervening policy variable—the addition of sexual orientation to a state hate crime law. Social construction and political power scores for each state were calculated monthly so that changes over time could be statistically and visually verified. Regression analysis determined the impact of the policy intervention and *t* tests were calculated to determine statistically significant differences in the slopes of the time series both before and after the policy intervention. The model for the time series was an autoregressive (AR) order 1, or AR(1), to account for the influence of each previous month on the next month in the series (McDowall, McCleary, Meidinger, & Hay, 1980). A time variable was calculated with the earliest date in the sample, January 1995, as the zero point, using the following formula:

\[
\frac{(Year - First\ year\ of\ the\ series) + (Month - 1)}{12}
\]

The resulting continuous variable was used to run regression analyses for the entire sample with social construction and political power as dependent variables.
Results

The final sample included 5,023 articles; 2,639 (49.9%) were from conservative sources and 2,651 (50.1%) were from liberal sources, providing a strong representation across the political spectrum. Similarly, the final sample included 2,671 (53.2%) articles from states without the bias category and 2,353 (46.8%) from states with sexual orientation in their law, providing a fairly balanced sample. Frequencies of articles from each state are presented in Table 1.

Regression results fail to support the assumption that the policy intervention would have a positive impact upon the social construction and political power of the target group (see Table 2). Model fit statistics show that the model has good explanatory power. \( F \) values specifically indicate that the null hypothesis must be rejected. The alternative hypotheses offered, however, are not supported. The inclusion or addition of sexual orientation as a bias category to the hate crime laws in Colorado, Texas, and Tennessee did not result in a significant improvement in the status of gays and lesbians. In fact, the policy intervention had a negative, though just barely non-significant, impact on both social construction \( (p = .06) \) and political influence \( (p = .07) \) in the sample states.

The dependent variables were included in the regressions as independent variables, as well, because of the known association between the two predicated in the SCF. Results show that power has a negative impact on social construction in the sample states, and likewise, social construction has a negative impact on political power. The negative relationship is indicative of either a contender or dependent status for the target group, which is what extant literature suggests the actual construction of gays and lesbians might be (Donovan, 1997; Hogan, 1997; Ingram, Schneider, & deLeon, 2007). In this study, the relationship also may have been caused by high numbers of negatively coded front-page news articles and indicates that the media portrayal of gays and lesbians plays an important role in their social construction.

To gain further details and specifically test the hypotheses regarding the impact of the policy intervention, \( t \) scores were calculated to compare the pre-policy and post-policy slopes of the series. Again, a continuous time variable was calculated that would allow for analyses. Data were scored and plotted monthly so that changes over time for each state could be clearly viewed. Each series had more than the minimum 50 data points recommended for modeling a time series (Chatfield, 1980). The figures presented represent the

Table 2. ARIMA (1,0,0) Regression.

<table>
<thead>
<tr>
<th>Dependent variable</th>
<th>Policy intervention</th>
<th>Social construction</th>
<th>Political power</th>
<th>Model fit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coefficient</td>
<td>( t )</td>
<td>Coefficient</td>
<td>( t )</td>
</tr>
<tr>
<td>Social construction</td>
<td>-.469</td>
<td>-1.89</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Political power</td>
<td>-.0197</td>
<td>-1.78</td>
<td>-.054</td>
<td>-3.44*</td>
</tr>
</tbody>
</table>

\*\( p \leq .01 \).
actual monthly scores for each variable and state. When analysis was conducted in SPSS, each variable and state was modeled separately and exponentially smoothed. The figures presented here, however, represent the observed scores for each state, show series data by sample group and not by individual state, and were modeled in Excel.

The Colorado and Oklahoma time series show data from January 2001 through December 2010. In June 2005, a new hate crime law that included sexual orientation as a bias category for the first time was implemented in Colorado. The Texas and Alabama time series ran from January 1996 through December 2006. In September 2001, a new hate crime law that included sexual orientation as a bias category was implemented in Texas. The Tennessee and North Carolina time series ran from January 1995 through December 2005. In July 2000, a new hate crime law that included sexual orientation as a bias category for the first time was implemented in Tennessee. For the intervention states, the vertical axis in each figure represents the month in which the amended hate crime law with sexual orientation included was implemented. For the control states, the axis is included at the same point for comparison purposes.

**Construction**

Visual examination of the construction series in the intervention and control states reveals wide variation (see Figures 2 and 3). In the intervention states, monthly construction scores ranged from a low of −18 in Texas to a high of 13, also in Texas. In the control states, monthly construction scores showed a smaller range of scores from a low of −13 in Oklahoma to a high of 8 that occurred at least once in each state.
The statistically significant results when comparing pre- and post-policy slopes for the construction of the target group occurred in Colorado. Prior to the policy intervention in Colorado in June 2005, the construction of gays and lesbians was on a downward trend. The target group’s construction improved after the policy intervention ($b_1 = .215$), though, when compared with the slope before the hate crime law was amended ($b_0 = -.373$), and the difference was statistically significant, $t(118) = 2.497$, $p \leq .05$. Only in Colorado was the hypothesis supported in regard to construction.

There were several positive national events that occurred during the post-policy time period; however, that may account for the increase. During the 2008 presidential campaign, Barack Obama was the first presidential candidate in history to endorse civil unions. In 2009, the federal Hate Crimes Prevention Act was passed that included the name of a gay victim in its title, Matthew Shepard, and added gender identity to the list of federal bias categories. And finally, in 2010 “Don’t Ask, Don’t Tell,” the military’s anti-gay policy, was ruled unconstitutional by federal courts and repealed by Congress.

Visual examination of the social construction series in Texas shows a slight upward trend prior to the policy intervention. After the policy intervention, though, the social construction of gays and lesbians was overwhelmingly negative. The social construction of gays and lesbians in Texas actually decreased after the policy intervention ($b_1 = -.99$) compared with their construction before the policy change ($b_0 = .241$). But, the difference was not statistically significant, $t(130) = -1.205$. In Tennessee, the status of gays and lesbians remained fairly consistent throughout the time period included in the analysis. The social construction of the target group failed to show a positive increase.

Figure 3. Construction time series by month—Control states.
after the policy intervention ($b_1 = -0.301$) when compared with the construction prior to the policy intervention ($b_0 = 0.176$). In fact, the status of gays and lesbians in Tennessee was fairly negative throughout the time series; the pre- and post-policy slopes were not significantly different, $t(130) = -3.184$.

In two of the three control states, similar trends were observed. The scores in Oklahoma show that there was a negative dip in construction early on, and then a primarily positive trend leading up to and following the policy intervention in the neighboring state of Colorado. In Alabama, the construction time series showed a steady level that hovered around a zero mean during the pre-policy period. Similar to Texas, though, the post-policy period was primarily negative. An important and unexpected finding occurred in North Carolina. The social construction of gays and lesbians was much more dynamic and more positive in the control state of North Carolina than the construction of gays and lesbians in the neighboring intervention state of Tennessee. Differences in political power may explain this anomaly.

**Political Power**

Visual examination of the power series data shows a higher frequency of spikes in monthly scores in the intervention states than in the control states (see Figures 4 and 5). Power significantly increased following the policy intervention in both Texas and Tennessee, indicating that increased political influence may be a positive impact of hate crime laws. The political power of gays and lesbians in Texas after the policy intervention ($b_1 = 0.152$) was higher than before the policy intervention ($b_0 = -0.174$), and the difference was statistically significant, $t(130) = 3.822, p \leq 0.01$. The power time series for the control state of Alabama also showed an increase, indicating that there are other factors besides the policy change influencing the status of the target group.
In Texas and Alabama, there was a noticeable spike in political influence that occurred a full 2 years after the policy change. This finding is likely not a result of the change in hate crime law, but may be associated with the 2004 presidential campaigns and the national debate over a constitutional amendment to ban same-sex marriage that was occurring during the same time.

The political power of the target group in Tennessee remained fairly stable throughout the time series, until a series of positive spikes occurred between May 2003 and May 2005. The power of gays and lesbians did increase after the policy intervention, though the impact was delayed by 3 years. The post-policy coefficient ($b_1 = .280$) is more positive than the pre-policy coefficient ($b_0 = .072$), and the difference is statistically significant, $t(130) = 3.118, p \leq .01$. Again, the increase in political influence occurred in both states, was far from immediate, and could be attributed to the 2004 presidential campaigns and the corresponding debate about same-sex marriage.

Political power in Colorado was fairly high throughout the time series with points exceeding the upper confidence level both prior to and after the policy intervention. Comparison of the pre- and post-policy slopes for power in Colorado failed to show any change. The political power of gays and lesbians in Colorado after the policy intervention ($b_1 = -.363$) was not higher than before the policy intervention ($b_0 = .213$). The difference was not statistically significant, $t(118) = -3.8272$. In the comparison state of Oklahoma, the time series for power was similar, but scores were much lower.

**Summary**

Regression results for the entire sample show that the policy intervention had a negative, rather than the hypothesized positive, impact upon the social construction of gays
and lesbians in the sample states. The negative impact was not statistically significant, but still warrants concern. There was a negative relationship between the two dependent variables, as well, and state-level analysis further explained this finding. In two of the three intervention states, Texas and Tennessee, the social construction of the target group decreased whereas political power increased in the years following the policy intervention. In the third state, Colorado, social construction increased whereas political power slightly decreased in the post-policy intervention time period.

Only three significant changes occurred to either the construction or the political influence of the target group in the intervention. Given the results of regression analyses, though, this was not surprising. In Colorado, there was a significant increase in social construction following the policy change. In Texas and Tennessee, there was a significant increase in political influence in the years following the policy change. These findings indicate that changes in the social construction of gays and lesbians in the states vary, and that there are likely factors other than hate crime policy change influencing how and to what degree that construction changes. In Tennessee, for example, the state sodomy law was repealed in 1996. Although this was a significant policy change for the gay community, the time series shows no corresponding increase in political influence during that time. Furthermore, the increase in front-page news coverage that did occur in Tennessee was fully 3 years after the change to the state hate crime law and was likely due to the 2004 national election and corresponding political discourse surrounding a possible constitutional amendment to ban same-sex marriage. Unfortunately, this study cannot explain why front-page news coverage, and thus political influence, increased during the national gay marriage debate, but not when the state sodomy law was repealed, or when sexual orientation was added to the state hate crime law. Possibly the later laws that indicate gays and lesbians were moving out of deviant status were not perceived to be politically or socially threatening, whereas same-sex marriage which indicates a move into advantaged status would be a more contentious issue for those in power.

In the comparison states that failed to experience a policy intervention, only one exhibited a status change for gays and lesbians. In Oklahoma, the target group had a substantial increase in their social construction over the course of the time series. The increased social construction in Oklahoma obviously cannot be attributed to a change in state hate crime law, which leaves room for speculation about its origins. The state of Oklahoma did not pass any pro-gay laws during the time period under examination and has not done so since. Oklahoma does not provide hate crime protections, anti-discrimination guarantees, or any other positive state policy design aimed at gays and lesbians.

**Discussion**

This research explored the impact of including sexual orientation in a state hate crime law on the social construction of gays and lesbians. The results raise questions about the symbolic intent and actual impact of hate crime laws. Although there were specific and significant changes to either the social or political status of gays and lesbians in
the intervention states, addition of sexual orientation to the state hate crime laws actually had an overall negative impact on the construction of gays and lesbians in the intervention states. The observed decreases in construction and political power cannot be solely attributed to the change in hate crime law protections, but provide support to assertions that hate crime laws alone fail to solve issues of prejudice and may actually exacerbate social conflict and hostile treatment of minorities (Jacobs, 1993; Jacobs & Potter, 1998; Maroney, 1998). Scholars contend that the deep social divisions that lead to bias-motivated crimes cannot be solved with prison sentences, and the results of this study indicate they may be correct (Bronski, Pellegrini, & Amico, 2013; Franklin, 2002; Gerstenfeld, 1992; Mogul et al., 2011; Whitlock, 2012).

The symbolic nature and purpose of hate crime laws has been widely discussed by hate crime scholars (e.g., Gerstenfeld, 1992; Grattet & Jenness, 2008; Jacobs & Potter, 1998; Jenness & Grattet, 2005; Mason, 2014). Critics suggested that hate crime laws are merely symbolic and serve no instrumental purpose, although at least one study has confirmed that hate crime laws have more than symbolic effects when fully implemented (Grattet & Jenness, 2008). Although this study was not explicitly testing the assumption that hate crime laws have a positive symbolic purpose, the results can inform the debate. Many argued that hate crime laws send a positive message from government to minority groups that can encourage their democratic participation, but fail to actually prevent or deter violence against them (Ingram & Schneider, 2005; Jacobs & Potter, 1998; Meyer, 2014). The laws are powerful because they are a symbol for minority groups representing the government’s stance against bigotry and prejudice. The laws indicate to minority groups that they will be protected and treated as equal citizens. Theoretically, positive policies that provide benefits to target groups should result in an increase in their political participation and influence because government benefits send the message that the target group is welcome in the democratic process and valued in society. Hate crime laws, however, may fail to provide direct benefits to minority groups. Providing criminal redress for bias-motivated violence is a worthy goal, but fails to offer the type of direct benefit to target groups that, for example, tax breaks for married couples do. In this sense, the laws are purely symbolic and the results of this study indicate gaining inclusion in a state hate crime law fails to have a clear or consistent positive impact upon the target group, and may actually have negative results. This study did not examine exact changes in the political participation of the target group or changes in victimizations based on sexual orientation, so it cannot be determined whether those exact intended positive impacts have occurred.

An early criticism by Gellman (1991) that hate crime laws would allow legislators to be complacent about additional measures to combat bigotry may also have been correct. Only in Colorado was the change in hate crime law followed by an increase in social construction and additional positive policy changes regarding gays and lesbians. Colorado is the only state in the sample in which same-sex couples were afforded legal recognition (prior to the decision in Obergefell v. Hodges, 2015), second-parent adoption is guaranteed, and discrimination in employment based on sexual orientation is illegal (Human Rights Campaign, 2015). The increase in social construction that occurred in the state after the policy change has evidently been sustained and the target
group may even be approaching advantaged status. Although Colorado was the last state in the sample to amend its hate crime law to include sexual orientation, gays and lesbians in that state are the only ones that seem to have benefited from a sustained, positive social construction. The change in hate crime policy cannot be described as the sole cause for the continued improvements that followed it, because several other national political events regarding sexual orientation occurring during the same time period.

**Limitations**

This study spanned no more than 11 years, based on the understanding among policy scholars that at least 10 years is needed to adequately examine policy change (Sabatier & Weible, 2007). A decade may not be long enough to sufficiently understand changes in the constructions of target groups. Japanese Americans, for example, shifted from public enemies to “model minority” in 20 years, and the combination of policy, the media, and the courts is credited with what was viewed as a quick and dramatic shift (DiAlto, 2005). Gays and lesbians have been trying to change their status for more than 40 years, suggesting that the prejudices and negative stereotypes connected to sexual orientation are more deeply entrenched in U.S. politics and culture than those previously attached to Asian ethnic minorities. So although the time span of 10 years was originally thought to be more than sufficient because it provided a large amount of data and met or exceeded suggested temporal scopes for both the study of policy change and the use of time-series analysis, it may be a limitation of the study.

National news events and policy changes that occurred during the time period under study undoubtedly influenced and affected the results. Several national events were identified that threaten the validity of the observed positive increases in social construction and political influence that occurred in the intervention states; although control states were included in an attempt to account for those external factors. Also, there was a significant decline in newspaper readership nationwide during the time period under study, and it is feasible that those declines affected editorial decisions regarding content and coverage in ways that influenced the results of this study. And finally, there is no way to determine how many news articles are missing, so estimating their social and political scores is equally indeterminable. Whether or not the missing data would change the results of the study is an unanswerable question.

**Policy Implications**

There are two possible implications for policy and target groups that can be derived from this study. First, the findings confirm theoretical assertions that public policy, often fails to create or sustain social change (Ingram et al., 2007). The media, the courts, policy makers, and moral entrepreneurs also play a critical role perpetuating social stereotypes and influencing policy change, especially ones grounded in history and reinforced through past policies (DiAlto, 2005; S. Nicholson-Crotty & Meier, 2005). The policy
response to bias-motivated violence is based on centuries of harassment, discrimination, and violence toward minority groups that cannot be quickly alleviated through criminal laws and the resulting expansion of police powers. Social constructions can be altered, but it will take more than one type of policy change and several decades to accomplish. The results of this study indicate that hate crime laws, which include sexual orientation, at best, reinforce existing constructions, and at worst, have a negative impact on the target group. Policy makers and political activists may want to consider these findings before advocating for more laws or more bias categories because hate crime laws appear to have little to no influence upon the social construction of some target groups. Those who wield the most direct power and influence, after all, decide definitions of crime and the results often have “more to do with preservation of existing social orders than with the safety of the larger populace” (Mogul et al., 2011, p. xvi).

Second, if a target group hopes to improve their social construction through policy change, the results indicate that it will likely take many policies and possibly decades to accomplish that goal. Deviantly constructed groups may want to consider avenues other than public policy for achieving social change. Scholars suggested some alternative methods for dealing with bias and prejudice, including implementing restorative justice practices (Whitlock, 2012), increasing reporting of hate crimes (Rouse, 2012), shaming offenders (Glaeser, 2005), increasing education on civil rights, training, and reviewing the effectiveness of existing statutes (Boeckmann & Turpin-Petrosino, 2002). Future research should examine whether any of these alternative methods can more definitively improve the social construction of minority groups than positive, or perceived positive, policy change.

This research utilized the news media as an indicator of social construction—not a direct measure related to changes in public opinion. Future research which directly examines public attitudes about the target group could inform and possibly confirm the results of this study.

Appendix

Coding Framework

**Negative indicators (-1)**

- Discusses or states a religious view against homosexuality or homosexual relationships, for example, “homosexual acts are sinful,” or equates same-sex behavior to sins/crimes such as pedophilia.
- Describes opponents negatively, for example, “radical leftists” or decries “activist judges.”
- Criticizes supporters of gay and lesbian rights or their tactics, for example, “activists have misused AIDS funding to promote homosexuality.”
- Asserts that homosexuals can “change” or homosexuality can be “cured.”
- States that marriage, adoption, and so forth are for man and woman or husband and wife only, or minimizes/delegitimizes same-sex relationships.
- Provides support for any law or policy aimed at removing or denying civil rights of homosexuals, or criticizes attempts to expand rights/protector for gays and lesbians.
- Testimony or actions by legislators, experts, or citizens against the rights of homosexuals.
- Requests action, policy, or lawsuit that will remove or prevent rights for homosexuals.
- Describes acts of discrimination, prejudice, or violence against gays and lesbians.

**Positive indicators (+1)**

- Calls for support and love of gays or condemns violence and discrimination against gays.
- Dissent against “curing” or “healing” homosexuality.
- Assertion of equal rights and protections for homosexuals or supports expanding civil rights.
- Supports pro-gay groups and organizations such as PFLAG (Parents, Families, Friends, and Allies United with LGBTQ) or pro-gay events such as Pride.
- Criticizes any law or policy that denies or removes civil rights from homosexuals.
- Criticizes anti-homosexual remarks or stances or depicts anti-gay groups as prejudiced.
- Testimony or actions by legislators, experts, or citizens in support of rights for homosexuals.
- Promotes visibility and/or acceptance of same-sex relationships.

**Neutral indicators (0)**

- Factual statement, that is “more than 65,000 gay men and women are serving in the military.”
- Places both homosexual and heterosexual behavior in negative terms.
- Discusses views not specific to gays and lesbians or their rights.
- Discusses issues beyond sexuality, such as First Amendment rights.
- Describes procedural issues or implementation issues of a vote or policy.
- Speculation about what the effects of a policy might be.
- Any statement not directly related to pro- or anti-gay issues or sentiments.

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Notes

1. This prevented use of only the highest circulating papers in each state.

2. For a few papers, there were months of missing newspaper coverage, denoted as “selected” in the NewsBank database, or simply unavailable. Several attempts to fill those gaps by utilizing Lexis Nexis, Google News, and newspaper websites to find articles during the missing time periods were unsuccessful.

3. Homosexual and homosexuality were not used as key terms because initial searches using those terms failed to produce unique results. Despite assumptions, those were not widely used terms by journalists.

References


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