

Reducing “Acceptable” Stigmatization Through Legislation

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Substantial research has focused on stigmatized groups who are widely protected from discrimination under national legislation. In the current article, however, we focus our attention on those stigmatized groups who are relatively early in their quest for civil rights. In particular, we consider gay and lesbian individuals, and heavy individuals, for whom existing research is considerable enough to allow for a review. We summarize the discrimination these individuals face on a daily basis and how this discrimination, on some level, is socially supported. One way to reduce this discrimination is to enact legislation. We discuss the importance of such legislation and provide preliminary empirical evidence showing that such laws can serve as a symbolic and instrumental mechanism for remediating formal and interpersonal discrimination.

Undoubtedly, in the United States and across the world, racism continues to exist (for a review, see Dovidio & Gaertner, 2000). Yet, when White Americans are asked whether it is acceptable to hold prejudices toward Black Americans, their answer tends to be a resounding “no.” Even when surveyed privately and anonymously, respondents indicate that it is considered more acceptable to hold prejudices toward doctors, spelling bee champions, and even White Americans than toward Black Americans (Crandall, Eshleman, & O’Brien, 2002). Similarly, despite the ongoing prevalence of anti-Semitism (see King & Wiener, 2007) and prejudice toward individuals with physical disabilities (for a review, see Stone & Colella, 1996), nearly identical consensus is found for norms of prejudice

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unacceptability toward Jews and individuals with physical disabilities (Crandall et al., 2002).

In the United States and across much of the world, discrimination on such bases as race, religion, and physical disability is illegal. For “protected” groups, legislation has defined discrimination to be societally unacceptable, and society has dictated some set procedures for enforcement and specified punishment for violators. As we expand upon this in the current article, we will argue that the relationship between policies and social norms of group acceptance is not coincidental. Rather, we discuss how anti-discrimination policies serve as both a marker of already more favorable social norms toward a given group, as well as a symbolic and instrumental mechanism for further remediation of prejudice and discrimination.

We acknowledge the limitations of policy, and the need for continued efforts to remediate prejudice and discrimination toward groups who are already legally protected from discrimination, and toward those for whom it is already widely considered socially unacceptable to hold attitudes of prejudice. Yet in this article, we focus on groups that are relatively early in their quest for civil rights, are still in the process of trying to achieve widespread legal protection, and, in many contexts, are still considered “acceptable” targets of prejudice and discrimination. We focus on two groups specifically, for whom existing research is considerable enough to allow us to adequately consider: gay and lesbian individuals, and heavy individuals.

In this article, then, we first begin by discussing the active discrimination that members of “acceptably” stigmatized groups receive, and how this discrimination is socially supported on some level. Second, we review legislation (or the lack thereof) that protects such stigmatized groups. Third, we describe why legal protection is a worthy pursuit, not only at the individual level but also at the organizational and societal level. Fourth, we discuss what is necessary for legal protection to be effective. And fifth and finally, we describe how legislation against such groups can be (and in some cases, has already been shown to be) effective at reducing discrimination, which may be formal and/or interpersonal in nature.

“Acceptable” Stigmatization

In defining “acceptable” stigmatization, we acknowledge that stigma is dynamic, and that what is considered “acceptable” toward certain groups in some contexts, would be “unacceptable” in others. Hence, what is deemed to be an “acceptable” basis of prejudice and discrimination in one context may not be viewed as such at a different time, or in another place. At this point in time, however, we argue that stigmatization against gay men/lesbians and overweight individuals is relatively acceptable. We will consider both in more detail shortly.

Documenting existing discrimination toward those stigmatized groups who are relatively early in their quest for civil rights is crucial because research shows that stigmatized and non-stigmatized group members often drastically disagree on the extent to which discrimination is present. Without a sound, unbiased review of empirical research that identifies discrimination, societal attempts to remediate discrimination are all but impossible. We distinguish here between formal and interpersonal discrimination, and then review the empirical evidence of discrimination toward gay men/lesbians, and toward overweight and obese individuals separately.

Differentiation Between Formal and Interpersonal Discrimination

To a large extent, even for those stigmatized groups who are relatively early in their quest for equal civil rights, the ways in which people currently express discrimination dramatically differ (e.g., less overt and explicit) from past ways that individuals have expressed discrimination (Hebl & Dovidio, 2005). That is, discrimination has been conceptualized as taking two forms: formal discrimination and interpersonal discrimination (Hebl, Foster, Mannix, & Dovidio, 2002). Formal discrimination involves behaviors that are overt and obvious, and in the existence of anti-discrimination legislation, could be readily interpreted as clear violations. Examples include refusing to hire members of a given group for sought-after positions, or refusing access or service in public accommodations or housing. Formal discrimination is similar to what other researchers have referred to as explicit forms of discrimination (Dovidio, Kawakami, & Gaertner, 2002), which often involve conscious or overt intentions to discriminate.

Quite differently, interpersonal discrimination involves the display of behaviors that are subtler, and often non-verbal in nature. For example, individuals might choose to maintain increased social distance from, offer less voluntarily assistance, reduce interaction times with, or smile less often at stigmatized targets. Even in the existence of anti-discrimination legislation, there is typically no legal remedy to pursue for a victim facing interpersonal discrimination because the behaviors are often ambiguous, and interactional in nature. That is, there are multiple reasons why in a given situation, an individual may be met with less smiling and less social interaction (e.g., they are speaking with someone who is generally unfriendly to everyone, they are speaking with someone who is hurried and pressed for time, etc.). Hence it is typically not possible to classify a single act toward a member of stigmatized group as interpersonal discrimination (see also Sue et al., 2007). Rather, documenting interpersonal discrimination only becomes possible in the aggregate, across multiple similar situations, such that, for example, if heavier individuals are consistently met with less smiling and less social interaction across situations than thinner individuals, we can attribute this to interpersonal discrimination. Interpersonal discrimination is similar to what other researchers

have referred to as implicit forms of discrimination (Dovidio et al., 2002), which sometimes involve unconscious intentions to discriminate.

Even though interpersonal discrimination is more subtly extant, even this type of discrimination is still perversely influential in the impressions people form and the decisions people make. It may seem that interpersonal discrimination is of less importance, but substantial studies show that the consequences of interpersonal discrimination are far from trivial. From the perspective of organizations' bottom-line profits, interpersonal discrimination ought to be a source of concern because stigmatized individuals pay substantial attention to such subtle forms of discrimination, and respond to it (Valian, 1998). Notably, it is the non-verbal behaviors of interaction partners—rather than direct verbal behaviors—that stigmatized group members have been shown to most base their perceptions of whether bias has occurred (Dovidio et al., 2002). As such, interpersonal discrimination toward stigmatized customers has been linked to decreases in purchases, return visits, and referrals (King et al., 2006), decreases in organizational helping behaviors and increased intentions to leave (King, Hebl, George, & Matusik, 2005), and decreases in job performance (Singletary & Hebl, 2010).

Given that discrimination is often being manifest in more subtle ways, adequately documenting discrimination necessitates research spanning several different laboratory and field paradigms, and channels of measurement across multiple disciplines. We review evidence of sexual orientation and weight-based discrimination, and place these two stigmas in the larger context of other stigmatized groups who are relatively early in their quest for civil rights using research on social norms for prejudice acceptability (Crandall et al., 2002).

Stigmatization Against Gay Men/Lesbians

Converging results from surveys and research studies suggest that it is relatively acceptable to stigmatize gay men/lesbians. We summarize these results by separately considering the results of attitudinal studies, wage studies, and field studies that document formal and interpersonal discrimination.

Negative attitudes toward gay men/lesbians. At present, in much of the United States and many other countries, it is relatively “acceptable” to stigmatize individuals on the basis of their non-heterosexual orientation, although this acceptability varies by context, culture, and subculture. While considered an “acceptable” stigma in a Southern Baptist church, there would likely be strong norms against stigmatization in a San Francisco bookstore.

In general, however, when people are asked whether it is acceptable to hold prejudices toward gay men/lesbians, the answer seems, at least tentatively, to be “yes.” Civil rights for gay men/lesbians remain a controversial issue, with over 40% of the U.S. population still of the opinion that homosexuality should not

be accepted by society (Pew Global Attitudes, 2007). Similarly, approximately 50% of respondents of a large-scale survey conducted by Crandall et al. (2002) acknowledged that it “may be OK to feel negatively toward” gay men/lesbians who raise children or serve in the military.

Globally, there remain sharp differences in the acceptability of homosexuality. On the one hand, across Canada and Western Europe, the vast majority of respondents agree that homosexuality should be accepted by society (with endorsement ranging from 65% of Italians to 86% of Swedes). On the other hand, across Africa, Asia (with the exception of Japan), and parts of Eastern Europe and the Middle East, the vast majority of respondents remain of the opinion that homosexuality should be opposed by society (with opposition ranging from 98% in Mali to 64% in Russia) (Pew Global Attitudes, 2007).

Sexual orientation wage discrimination. Formal discrimination on the basis of sexual orientation has been documented in economic studies of wage disparities between heterosexual and (different definitions) of homosexual individuals. We review the findings for gay men and lesbians separately, as the results diverge substantially based on gender. The average wages of gay men tend to be lower than those of heterosexual men despite the fact that gay men (a) tend to be more highly educated (i.e., nationally representative surveys find that 23.7% of gay men to have college degrees, compared to 17% of married men) and (b) live disproportionately in urban areas (e.g., New York City, Los Angeles, San Francisco) in which average wages are higher than in other parts of the country (Black, Gates, Sanders, & Taylor, 2000; Klawitter & Flatt, 1998).

Economic studies that aim to compare the wages of gay men to similarly situated heterosexual men control for qualifications such as experience, and education, within specific occupations and regions. Such studies have approximated that gay/bisexual men typically earn 11% to 27% less than their heterosexual male counterparts. Notably, studies that use stricter definitions of gay (e.g., more male sexual partners than female partners) find larger wage disparities relative to heterosexual men than studies using looser definitions of gay (e.g., at least one male sexual partner) (Badgett, 1995; Berg & Lien, 2002; Clain & Leppel, 2001).

Wage discrimination toward lesbian women relative to heterosexual women is less clear, and wage gaps are not always found. In fact, nationally representative surveys have found that lesbian women earn more than heterosexual women, with partnered lesbians earning more than both single and heterosexually partnered women. These effects are robust to various definitions of sexual orientation (Black et al., 2000). However, even more so than gay men, lesbian women tend to be more likely than their heterosexual counterparts to be highly educated. Nationally representative data show that 25% of same-sex partnered women have college degrees (13.9% have post-college education), while only 16% of married women have college degrees (6.1% have post-college education). Also, like gay men, if to

a somewhat lesser extent, lesbian women are more likely than their heterosexual counterparts to live in major urban areas in which average wages are higher than in other parts of the country (Black et al., 2000). Research that has controlled for covariates such as age, race, education, marital status, region, and occupation (e.g., Badgett, 1995) has generally not found evidence of either a wage advantage or wage disadvantage for lesbian women relative to heterosexual women.

Field experiments documenting formal discrimination against gay men/lesbians. At this point, it is important to distinguish between correlational wage studies and more rigorous experimental methodologies conducted in the field. Although the economic wage-based studies seem to suggest that lesbians may not be subject to formal discrimination, substantial experimental evidence appears to show that both gay men and lesbians are treated with discrimination.

In one of the strongest paradigms to date, Weichselbaumer (2003) conducted a résumé correspondence field study, in which a female applicant's *curriculum vitae* (CV) and other application materials were sent out to real clerical job openings in Vienna, Austria. The thorough, multiple pages of the CV listed education and experience that was counterbalanced to achieve equivalency in all aspects except for a single activity manipulated across conditions so as to presumably identify the applicant's sexual orientation. Specifically, in one condition, the applicant listed volunteer experience with a gay rights advocacy group, while in the control (presumably non-lesbian) conditions volunteer experience with alternate non-profit organizations (a school for learning disabilities or a cultural center) was listed. The presumed lesbian applicants were over 12% less likely to be contacted by prospective employers relative to the control applicants who were unaffiliated with the gay rights organization (control applicants were contacted by 49–61% of employers, while presumed lesbian applicants were contacted by 36–48% of employers). Resume studies matching applicants in all respects except for one activity presumably indicative of sexual orientation are scarce, but, when conducted in a realistic field setting are consistent in their findings. The findings of Weichselbaumer (2003) are in line with a smaller sample resume correspondence field study conducted in Toronto, Canada, prior to the addition of sexual orientation to the Ontario Human Rights Code as a prohibited ground of discrimination in 1986 (Adams, 1981). In that study, lesbian applicants were shown to be 11% less likely than presumed non-lesbian applicants to be contacted by employers in response to applications for legal jobs.

While there do exist two published studies in which sexual orientation discrimination was not found (Van Hooye & Lievens, 2003; conducted in Flanders, Belgium prior to national legislation introduced in 2003), or discrimination relative to heterosexual applicants of the same gender was found for gay men but not lesbians (Horvath & Ryan, 2003), these findings may very likely have been

due to high demand characteristics (i.e., candidate profiles overtly indicated that the applicant was living with a man, woman, or alone) in application situations that were only hypothetical (undergraduate students or human resource managers rated fictitious applicants knowing that no real job was at stake). Correspondence studies conducted in the field under realistic conditions do document formal discrimination, and confidence in the existence of employment discrimination toward both gay men and lesbians is further strengthened by experimental field studies of more subtle interpersonal discrimination.

Field studies documenting interpersonal discrimination against gay men/lesbians. Experimental field studies conducted by our research team have shown that even more so than for formal hiring discrimination, interpersonal discrimination is clearly present toward both gay men and lesbians (Hebl et al., 2002; Singletary & Hebl, 2009). That is, when the same job applicants present themselves as openly gay or lesbian, they are treated more negatively in interactions with store managers than when their sexual orientation is not presented. Other research using similar controlled designs in which the same confederates portray themselves as heterosexual in some trials and homosexual in others shows the pervasiveness of sexual orientation interpersonal discrimination across different life spheres, including differences in general helping behavior (request for phone call: Ellis & Fox, 2001; Gabriel et al., 2001; Gabriel & Banse, 2006; Gore, Tobiasen, & Kayson, 1997; Shaw, Borough, & Fink, 1994; request for change: Gray, Russell, & Blockley, 1991; Tsang, 1994), and public accommodation treatment in retail establishments (Walters & Curran, 1996) and in making hotel reservations (Jones, 1996).

Stigmatization Against Heavy Individuals

Converging results from studies suggest that it is also acceptable to stigmatize heavy individuals. We summarize these results by separately considering the results of attitudinal studies, wage studies, laboratory research, and field studies that document interpersonal discrimination. We note that the majority of evidence results in more negative outcomes associated with overweight women than overweight men (for a review see Roehling, 1999).

Negative attitudes toward heavy individuals. It is relatively “acceptable” in the United States and many other countries to stigmatize heavy individuals, although there is variation in this degree of acceptability, too. For instance, White men and women generally and consistently stigmatize obesity whereas Black women do not (Hebl & Heatherton, 1998; Ruggs, Williams, & Hebl, 2010). However, even for Black women, there are contexts in which they, too, stigmatize obesity (Hebl, King, & Perkins, 2009). When they are led to believe that they

may be thinner, on average, than their White counterparts, Black women (just like White women) begin to denigrate heavy female targets.

In general, though, there is negative sentiment in the U.S. population toward heavy individuals. For instance, over 40% of the U.S. population remains of the opinion that obese individuals should not be afforded the same equal protections granted to individuals with other physical disabilities (Oliver & Lee, 2005). For example, in Crandall et al.'s (2002) research, U.S. college students were nearly twice as likely to acknowledge that it "may be OK to feel negatively toward" overweight people relative to Black Americans, Jews, and individuals with physical disabilities.

While evidence of global differences in the social acceptability of obesity is limited, research suggests that the United States and Britain strongly stigmatize obesity (e.g., Brochu & Esses, 2009). In fact, in a recent large-scale survey across 13 countries, when asked the main cause of obesity, people in the United States (20%) and United Kingdom (21%) were more likely to blame the individual and cite "lack of self-discipline" relative to people in all other countries (11%) (Synovate, 2007). Obesity is more positively regarded in developing than in already developed countries. In some developing African and South Pacific countries, for instance, obesity is seen as an indication of fertility and wealth (see Kumanyika, Wilson, & Guilford-Davenport, 1993). However, such stigmatization may be increasing as the obesity prevalence also increases (particularly in urban areas), even in regions (e.g., Africa) where obesity was once uncommon.

Wage discrimination on the basis of weight. Studies using large-scale nationally representative samples (i.e., from the National Longitudinal Survey of Youth) have consistently shown a negative correlation between weight and wages and/or wage growth for women (for a review see Finkelstein, Ruhm, & Kosa, 2005; Roehling, 1999). Estimates suggest that obese women earn approximately 10–15% less than normal weight women, with larger wage gaps found for White than for Black and Hispanic women (Averett & Kornenman, 1999; Cawley, 2000), and larger wage gaps found for women in professional and managerial career fields relative to other fields (Mitra, 2001). Further, even women who are overweight (BMI of 25–29), but not obese (BMI of 30 or greater), typically receive lower wages, earning approximately 5% less than normal weight women (see Averett & Kornenman, 1996). In contrast, overweight men do not seem to earn less than normal weight men, and there is even some evidence that men who are overweight or even slightly obese actually earn slightly more than normal weight men (Loh, 1993; Maranto & Stenoien, 1998), with lower wages for men occurring only at the very highest levels of obesity (Maranto & Stenoien, 1998).

Although research simply documenting wage differentials based on weight leaves open the possibility that heavy individuals, particularly women, earn less than normal weight individuals for reasons other than weight discrimination,

researchers have not been able to explain away the weight discrepancy in wages based on human capital characteristics such as educational attainment or intelligence (see Roehling, 1999). Further, although heavy individuals are often stereotyped as being less conscientious, less agreeable, less extraverted, and less emotionally stable than their normal weight counterparts, large-scale studies generally refute such notions (Roehling, Roehling, & Odland, 2008).

Additionally, to the extent that body mass (weight scaled for height) has been shown to be a primary determinant of physical attractiveness (explaining as much as 70% of the variance in ratings of female physical attractiveness; see Tovee, Maisey, Emery, & Cornelissen, 1999), a recent nationally representative study that most comprehensively controls for demographic and human capital variables further suggests the profound effect of heaviness on wage discrimination (Judge, Hurst, & Simon, 2009). In this study physical attractiveness ratings (made by adult men and women based on front and profile photographs which obscured clothing and were posed with neutral facial expressions), as well as intelligence test scores, self-reported confidence, educational attainment, and other demographic characteristics were used to predict household income. Results from this representative sample of non-institutionalized English-speaking U.S. adults showed that, even after controlling for other personal characteristics, physical attractiveness had a greater effect on income than educational attainment, and that the effect of physical attractiveness on income far exceeded the effects of other more commonly studied workplace demographics (e.g., race, gender, age).

Finally, perhaps the most disheartening evident of formal weight discrimination comes from a pair of studies documenting financial discrimination on the basis of weight within one’s own family. Research shows that with the passage of time, a college degree has increasingly become a necessity for entry into many career fields, with college graduates being paid substantially more over the course of their lifetime (Pascarella & Terenzini, 2005). Early research suggested that obese students, particularly obese women, were under-represented at elite colleges (Canning & Mayer, 1966). Research by Crandall (1991, 1995) finds that one reason for this may lie in who pays for the higher education of heavy-weight adolescents. Unlike normal weight individuals, who rely primarily on their family for financial support in funding college, overweight individuals rely more on their own jobs, savings, and financial aid. This disparity in parental funding remains even after controlling for socio-economic status, race, and family size, and exists despite the fact that weight is unrelated to predictors of college attendance such as grade point average, self-rated intelligence, college aspirations, and health. Further support for the existence of parental bias in college funding comes from the fact that this funding bias against overweight daughters is strongest among political conservatives, a group previously found to hold the strongest attitudes of prejudice against the overweight and obese. Overall, the fact that parents are stigmatizing their own children illustrates the difficulties in addressing such an “acceptable” stigmatization.

Laboratory research focusing on weight. In laboratory research, participants are typically asked to make a hypothetical hiring or promotion decision after reviewing resumes or job interviews of multiple candidates that vary in weight, but which across participants have been matched on substantive qualifications. Although it is difficult to aggregate these findings numerically because weight manipulations have varied substantially in their measurement (e.g., visually through photographs or videos, or verbally in indirect written narrative comments such as “Kim is heavy” or “Kim will require accommodations because of her weight”), formal discrimination is consistently found. A comprehensive literature review by Roehling (1999) found that across all 15 published lab studies investigating the effect of weight on employment decisions, participants were found to formally discriminate against heavy applicants or employees. In lab studies that included both male and female targets, weight discrimination was generally found for both genders, although in some studies overweight and obese women were discriminated against to a greater extent. These lab studies included samples of both college students and working professionals, with applicant and employee decisions made for job fields as diverse as systems analysts, nurses, and phone sales. Documented employee decisions showing formal weight discrimination included: hiring preferences, decisions regarding employee discipline and discharge, managerial or supervisory potential, prospects for promotion, and the assignment of desirable sales territories. Perhaps even more alarming, research from our lab has found that the stigmatization of weight in employment is so strong that even normal weight male job applicants seen in the mere proximity of an overweight woman were rated more harshly in employment decisions (Hebl & Mannix, 2003).

Field experiments documenting interpersonal discrimination against heavy individuals. Recognizing that even the most tightly controlled wage and financial discrimination studies may never be able to perfectly control for all differences that may exist between heavy and normal weight individuals, and that even the most realistic of lab studies may never capture the complexity of real-world interactions, additional field experimental data from our research team further demonstrate the existence of weight-based interpersonal discrimination. Specifically, our research sidesteps the need to control for average differences in the personal characteristics of heavy and normal weight individuals, by comparing the real-world interpersonal treatment of individuals who modify their appearance to alternate between normal and heavy weight appearance in public accommodations (King et al., 2006). That is, when women interact with sales associates in retail stores as normal weight (size six to ten) customers, they are treated more positively (based on both rated non-verbal behavior such as eye contact and smiling, and transcript analysis of words spoken), and attended to for longer durations than when the exact same women don realistic obesity prostheses and appear obese (size 22).

Summary

To summarize, relative to racial, religious, and physically disabled groups, then, sexual orientation and weight are still considered “acceptable” bases for stigmatization across a large number of contexts. The absence of national anti-discrimination legislation in the United States and other developed countries may be one of the main reasons that such high rates of prejudice and discrimination toward gay men/lesbians and heavy individuals exist. We next consider this assumption by reviewing anti-discrimination legislation and the ways such legislation links to reduction of discriminatory displays.

Anti-Discrimination Legislation

In the United States, national legislation in the form of the Civil Rights Act of 1964 made discrimination against individuals on the basis of race, color, national origin, religion, and gender illegal across public accommodations and workplace domains. Additional U.S. national legislation has extended similar disparate treatment protections to individuals with disabilities (Americans with Disabilities Act of 1990), pregnant women (Pregnancy Discrimination Act of 1978), and workers aged 40 years and older (Age Discrimination in Employment Act of 1967). Across the European Union, after years of gender anti-discrimination laws, the Racial Equality Directive and Employment Equality Directives of 2000 established similar anti-discrimination protections on the basis of racial or ethnic origin, religion, disability, and age. Notably, the European Union diverged from the United States by including in the Employment Equality Directive protection from discrimination on the basis of sexual orientation.

Legislation may be critically important not only because it prohibits behaviors but also because of the psychological impact such laws have. That is, the force of law is not simply a fear of punishment, but laws also serve to authoritatively describe moral rules of conduct (Robinson & Darley, 1995). Thus, anti-discrimination legislation may create a clear social norm that discrimination is societally unacceptable and psychological pressures to conform accordingly.

Existing Sexual Orientation Anti-Discrimination Legislation

Sexual orientation in the United States remains both a protected and unprotected class. Legislative efforts have sought to extend workplace protection in the form of the proposed Employment Non-Discrimination Act (ENDA), which would protect gay/lesbian/bisexual individuals from employment discrimination with disparate treatment provisions similar to those found in Title VII of the Civil Rights Act. Yet, currently no U.S. national sexual orientation anti-discrimination

legislation exists, and even if ENDA were to pass, national legal protection across housing and public accommodations would remain absent.

However, despite the absence of U.S. national-level protection, to date 21 of the 50 states have outlawed sexual orientation employment discrimination, and some local jurisdictions offer legal protection within 15 of the 29 states without state-wide protection (The Task Force, 2009). Many of these state and local laws have additionally outlawed such discrimination in non-work spheres such as housing, and public accommodations. Legal recognition of same-sex marriage now exists in six states, with broad recognition for civil unions or domestic partnerships in an additional five states. In contrast, within much of the United States, same-sex partner recognition (i.e., recognition of same-sex civil unions or domestic partnerships) is specifically banned by statute or constitutional amendment in 21 states. Additionally, in six states adoption by same-sex couples is still prohibited (The Task Force, 2009).

Internationally, there is wide variability. In some countries, there is not legislation *for* gay men/lesbians but, rather, against *them*. For instance, 76 countries deem same-sex relationships as punishable crimes (Ottosson, 2009). However, there are some countries that protect gay men/lesbians; in fact, ten countries (i.e., Portugal, South Africa, Argentina, Sweden) recognize same-sex marriages. Moreover, the European Union Employment Equality Directive prohibits employment discrimination on the basis of sexual orientation.

Existing Weight-Based Anti-Discrimination Legislation

Overweight and obese individuals are even earlier in their quest for civil rights. In the United States, only a small proportion of overweight individuals are protected from discrimination. Individuals with “severe obesity,” which legal guidelines have defined as “more than 100% over the norm” are covered under the Americans with Disabilities Act (see <http://www.eeoc.gov/policy/docs/902cm.html>). However, this leaves the vast majority of heavy individuals without needed legal protection. Controlled research clearly shows that heavy individuals, particularly women, who are not “severely” obese nonetheless face substantial bias and discrimination relative to average weight individuals (see Belizzi & Norvell, 1991; Klesges et al., 1990; Lennon, 1992; Pingitore, Dugoni, Tindale, & Spring, 1994).

To date only one U.S. state, Michigan, has outlawed weight-based discrimination, although Massachusetts has recently considered similar legislation (e.g., Massachusetts House Bill 1844). A handful of local laws additionally prohibit discrimination on the basis of weight (San Francisco, CA) or on the basis of “physical appearance” and “physical characteristics” (Washington, DC; Santa Cruz, CA; Madison, WI). Even the limited legal protection from weight discrimination in the United States is more than that found in other nations. For instance, in London, protesters recently unsuccessfully demonstrated outside the

mayor’s offices seeking for London to follow San Francisco, in enacting a local weight discrimination law (<http://news.bbc.co.uk/2/hi/8314125.stm>). Moreover, disability anti-discrimination laws outside of the United States have generally not interpreted obesity as a disability eligible for protection even to the limited extent that the Americans with Disabilities Act has (Nowell-Smith & O’Reilly, 2003).

Legal Protection for “Acceptable Stigmas” Should Be a Goal

There are several reasons that we believe legal protection should be extended to cover gay men/lesbians and heavy individuals. First, we argue that discrimination against gay men/lesbians and heavy individuals violates the American core values of equality and fairness for all. This social imperative is one of the main arguments for promoting ENDA and has been outlined in law reviews that address why heavy people deserve legal protection (Kristen, 2002). Additionally, it has also been discussed in a timely article written by King and Cortina (2010). While their article mostly focuses on why *organizations* should provide supportive policies and programs, King and Cortina’s logic could be extended to understand why *society* as a whole should be interested in providing equal opportunity and protection for all. In particular, they state that “organizations have an obligation to attend to and meet the needs of the society in which they are incorporated” (p. 73). They describe the importance of considering the needs of stakeholders, of whom gay men/lesbians are included. Indeed, U.S. adults who are gay/lesbian comprise a substantial portion of our society, with estimates suggesting that approximately 8.8 million people, or somewhere between 4% and 10% of the population, are gay/lesbian (see Gates, 2006). Even more dramatic is that two-thirds of adults in the United States are overweight and/or obese (Flegal, Carroll, Ogden, & Curtin, 2010). These sheer numbers suggest, ironically, that the majority of people in our society face discrimination and may experience feelings of disenfranchisement, rejection, and isolation. We believe it is critical to dismantle status hierarchies (see Kristen, 2002) and allow all members of our society to live openly and without fear for their safety. We believe that members of our society should not lose jobs (or even fear losing them) based on characteristics that are irrelevant to their job performance and are more relevant to who, in society, holds power. In short, it is simply critical and an ethical obligation, we argue, to enact policies and procedures that prevent discrimination on the basis of sexual orientation and weight.

Second, it is costly to organizations and society as a whole to discriminate against people on the basis of their sexual orientation and/or weight. There is no evidence that suggests gay men/lesbians perform their jobs less well than do heterosexual individuals (for a review, see King & Cortina, 2010). Similarly, Kristen argues “there is rarely a correlation between a person’s weight and ability to perform a job” (p. 76). Yet, such groups continue to be the target of workplace discrimination, which has been linked to negative job-related outcomes (e.g., job

satisfaction, organizational commitment, turnover intentions) and negative health-related outcomes (e.g., greater depression, psychological distress) (for reviews, see King & Cortina, 2010; Kristen, 2002). These consequences of discrimination can be costly to organizations who want to reduce turnover and increase job commitment and productivity. The organizational costs of discrimination also result from having a limited hiring pool, having limited internal competition, having decreased morale, setting poor ethical precedents, and sending the wrong signals to potential clients (see Wadhwa, 2006). All of these factors may lead to loss of revenue and loss of opportunities to hire the best people for the job. Discrimination is also costly to society. There is some evidence that suggests weight discrimination may actually lead to costly medical expenditures that result with weight loss attempts (most of which fail) and eating disorders. Researchers have also found a relationship between the presence of discrimination against social groups and national homicide rates (Messner, 1989). In sum, discrimination is clearly damaging to individuals and we argue that there are both social and financial reasons to pass protective legislation.

Prerequisites of Anti-Discrimination Law Efficacy

Now that we have made the moral and legal case for why we believe legislation should be passed, we consider conditions, or prerequisites, that must be met in order for sexual orientation anti-discrimination legislation to have an impact. We discuss three such prerequisites: (a) disclosure or other indirect cues leading to inference of one's stigma, (b) discrimination in the absence of legislation, and (c) knowledge among the public of the existence of anti-discrimination legislation.

Disclosure and/or Indirect Cues of Sexual Orientation

First, and simply put, employers cannot discriminate on group membership that they do not know. Thus, unlike the visible stigmas of race and gender, for which anti-discrimination legislation has generally been accepted as having had a causal effect on discrimination reduction (Burstein, 1985; Donohue & Heckman, 1991; Gunderson, 1989), "gay men/lesbians have had the option to hide their sexual orientation from employers and coworkers" (Klawitter & Flatt, 1998, p. 677). Indeed, the majority of gay and lesbian individuals are not "out" at work (Griffith & Hebl, 2002; Ragins, Singh, & Cornwell, 2007).

While one "solution" to workplace discrimination might be to discourage gay men from disclosing their orientation, substantial evidence shows that not disclosing one's identity is related to a number of negative outcomes, both for the individual (diminished personal well-being) and the organization (diminished cognitive processing) (review: Ragins, 2008). Furthermore, at least in some cases,

the decision to disclose may be moot. Even if sexual orientation is never directly indicated, individuals are often able to accurately infer sexual orientation on the basis of cues that may not be easily altered. For instance, heterosexual individuals’ accuracy in inferring sexual orientation on the basis on brief exposure to cues such as body shape, motion and other non-verbal behavior has shown to be above-chance levels (Ambady, Hallahan, & Conner, 1999; Johnson, Gill, Reichman, & Tassinary, 2007; Rule, Ambady, Adams, & Macrae, 2008). Thus, the efficacy of anti-discrimination laws might be most clearly observed in a sample of gay and lesbian employees who are “out” but it is also possible to test the efficacy of laws on treatment of employees who are suspected to be gay.

Discrimination in the Absence of Legislation

Second, for laws to be effective, there must be discrimination in the absence of legislation. We have discussed this extensively already but reiterate that both gay men/lesbians and heavy individuals face pernicious amounts of discrimination that may be particularly heightened because both stigmas are readily perceived by others to be controllable (Weiner et al., 1988).

Legal Awareness

Third and finally, for legislation to have an impact, at minimum, the public needs to be aware of the existence of such legislation. Yet, particularly at the state and local levels, much of the public may be unaware of the laws in their jurisdiction. To our knowledge, no large-scale study to date has documented awareness of sexual orientation anti-discrimination legislation in the United States. Yet, a large-scale study of working age people in the United Kingdom has been conducted (Meager, Tyers, Perryman, Rick, & Willison, 2002), and we suspect the same basic findings would hold true in the United States as well. These results showed that people are not well aware of which groups are protected from discrimination, but there is substantial variability in this knowledge across different segments of the working population. More specifically, people were unaware of which groups were or were not protected from employment discrimination. Though British law protected individuals from discrimination on the basis of marital status, but not on the basis of age, people were below chance levels in identifying which of the two was protected. Additionally, however, the study revealed substantial variability in knowledge of anti-discrimination legislation. Those in managerial, professional, and administrative occupations were more than twice as likely to know which groups were or were not protected from discrimination relative to those blue-collar occupations. That said, even among those in white-collar occupations, individuals were only just above chance levels in identifying which groups were or not covered by anti-discrimination law.

Hence, to a large extent the efficacy of sexual orientation anti-discrimination laws will likely hinge on the success of public campaigns and media coverage in creating awareness of such laws among the public. The efficacy of state and local laws may underestimate the efficacy of national laws, for which media coverage and corresponding public awareness is apt to be greater. One such example involves the “don’t ask don’t tell” (DADT) policy, which has garnered a great deal of media attention in the last decade. Its presence is linked with strong changes in public opinion about gay men and lesbians openly serving in the military. In 1992, 54% favored members openly serving whereas in 2009, 69% favor members openly serving, and the greatest amount of change has come from conservatives (Gallup Poll, 2009).

It is wrong to assume, however, that all, or even nearly all, of the public needs to be aware of anti-discrimination legislation in order for legislation to have a substantial impact. In terms of obesity legislation, there is only one state (although there are several cities) that provides protection for people on the basis of weight: Michigan (Michigan Compiled Laws Sect. 37.2102, 1977). In a recent study conducted by Roehling and Roehling (2009), when asked whether or not it is against the law to discriminate against an applicant or employee based on weight, 34.4% of Michigan respondents were not aware such legislation existed. The proportion of Michigan residents who are unaware of such legislation was likely underestimated by the yes or no question format, as well as the use of the somewhat leading context in which the question was asked (“It is against the law in Michigan for employers to discriminate against applicants and employees based on a number of personal characteristics. For example, it is against the law to discriminate based on a person’s race or gender. Based on what you know about hiring and employment practices in Michigan, is it against the law to discriminate against an applicant or employee because of his or her weight?”).

Yet despite the fact that the public far from universally knew the law, Michigan respondents were less likely to report experiencing weight discrimination than individuals in other states (3.6% vs. 4.0%). More specifically, it is instructive to consider heavy individuals who are unprotected by national legislation. Recall that obese respondents whose weight does not rise to “more than 100% over the norm” lack national protection under the Americans with Disabilities Act. When focusing on heavy individuals unprotected by national legislation, 6.6% of obese respondents (BMI of 30 to 34.9) in a national survey reported experiencing weight discrimination; in contrast, only 2.5% of obese respondents reported experiencing weight discrimination in Michigan. Unlike efforts to foster awareness of race, gender, and age discrimination, the state of Michigan has never undertaken a campaign to raise awareness of weight discrimination (Roehling & Roehling, 2009). We argue that one of the reasons for this is that unlike most stigmatized groups who have strong advocacy, heavy individuals have less organized and vocal advocacy. To the extent that advocacy groups champion and make vocal the

rights of (and legislation about) heavy people we would expect that the number of incidents of weight discrimination would decline further. We now move to a theoretical discussion of why anti-discrimination legislation can be expected to reduce sexual orientation discrimination.

How Legislation Affects Behavior and Attitudes

Legal enforcement is another additional condition, not previously mentioned but somewhat obvious, that is a necessary prerequisite of legal efficacy. Depending on the perceived extent and consequences of legal enforcement, we discuss two types of effects of legislation on behavior: instrumental and symbolic.

Instrumental Effects of Legislation on Behavior

Deterrence theory (e.g., Becker, 1968) posits that outlawing a given behavior reduces that behavior to the extent that punishment is certain and severe as a result of rational cost-benefit analysis. Deterrence theory has received substantial empirical support, at least with regard to effects of punishment certainty (review: Cook, 1980). When applied to anti-discrimination laws specifically, prejudiced employers are said to discriminate less because such laws create an “expected cost” of a magnitude that equals the cost of law violation if caught (e.g., attorney’s fees, fines) times the probability of being caught (Landes, 1968).

If legislation only impacted behavior to the extent that punishment is expected, anti-discrimination laws would likely have little effect. Fundamentally, the probability of an employer facing legal consequences for engaging in employment discrimination is quite small. In states with sexual orientation anti-discrimination laws, the likelihood of a gay or lesbian employee in those areas even filing a legal complaint is estimated at only 0.01% to 0.08% annually (Rubenstein, 2002). Nationally, roughly 60% of gay men/lesbians report that they experience employment discrimination (Waldo, 1999). If the incidence of discrimination in areas with legislation were even a minute fraction of the national average, that is still much less than the likelihood of a gay or lesbian employee in those areas filing a legal complaint.

However, a consideration of instrumental effects alone is incomplete. Despite the fact that the likelihood of a gay or lesbian employee in areas with sexual orientation anti-discrimination laws filing a legal complaint is estimated at only 0.01% to 0.08% annually, that is no less likely than the proportion of women and minorities who file legal complaints of discrimination (Rubenstein, 2002), both groups for whom anti-discrimination legislation has largely been accepted as having had a causal impact on reducing discrimination (Blacks: Burstein, 1985; Donohue & Heckman, 1991; women: Gunderson, 1989).

Symbolic Effects of Legislation on Attitudes and Behavior

Much of the effects of laws likely derive from symbolic rather than purely instrumental effects (e.g., Tapp & Kohlberg, 1971; Zimring & Hawkins, 1973). The symbolic effects of legislation are such that, even absent any possibility of tangible punishment, legislation may reduce a given act (discrimination) simply by designating it as illegal, criminal, or deviant. In line with this, empirical work shows that the extent to which a law is seen as morally valid correlates with the extent to which the law is obeyed (Grasmick & Green, 1980; Meier & Johnson, 1977; Sarat, 1977). Thus, the force of law is not simply a fear of punishment; people fear violating the law because it authoritatively describes moral rules of conduct (Robinson & Darley, 1995). As such, anti-discrimination legislation may create a clear social norm that discrimination is societally unacceptable.

Thus, anti-discrimination legislation may deter both prejudice and discrimination toward a given group because it changes attitudes about the morality of inequality. Simply learning the stance of one's community has been shown to impact the extent of prejudice one expresses, even when attitudes are indicated privately, absent any real possibility of conflict or criticism (Stangor, Sechrist, & Jost, 2001; Wittenbrink & Henly, 1996). This effect is strong enough that even learning the opinion of a single community member (a stranger) has been shown to change one's attitudes toward out-group members (Blanchard, Lilly, & Vaughn, 1991; Blanchard, Crandall, Brigham, & Vaughn, 1994; Monteith, Deneen, & Tooman, 1996; Zitek & Hebl, 2007), and resulting attitude change has been shown to last beyond the short term (Stangor et al., 2001; Zitek & Hebl, 2007). Notably, more attitude change has been shown toward gay men and other groups for whom there is more ambiguity about the social acceptability of prejudice than toward groups toward whom prejudice is more clearly socially accepted (racists) or unaccepted (Blacks) (Zitek & Hebl, 2007).

In summary, we believe that sexual orientation employment anti-discrimination laws can reduce hiring discrimination and prejudice under certain conditions: (a) when individuals with hiring authority are likely aware of such laws, and (b) when gay employees disclose their sexual orientation. In describing the theoretical rationale for why anti-discrimination laws may affect discrimination, we have suggested that, although instrumental effects (i.e., tangible threat of lawsuit) may decrease discrimination somewhat, the threat of lawsuit probably is not so large as to account for major decreases. Rather, we believe it is the symbolic effect of legislation, in prescribing disregard and mistreatment for an out-group (i.e., gay men) as wrong or immoral that creates major decreases in both prejudice, and corresponding behaviors of discrimination. While the mechanisms underlying legal efficacy remain theoretical, empirical evidence is available to address the issue of whether sexual orientation anti-discrimination legislation does in fact reduce employment discrimination. We turn to this now.

The Efficacy of Sexual Orientation Anti-Discrimination Laws

Despite the opportunity for understanding efficacy of laws that the current patchwork of state and local legal protections presents, researchers that seek to determine the efficacy of anti-discrimination laws face a major challenge: the presence of less discrimination in areas with legal protection than in areas without does not necessarily imply that legislation caused the reduced discrimination. Rather, there may be more prejudice and discrimination in locales that legislate against discrimination for at least two very plausible reasons: (a) areas that are more accepting of gay men/lesbians are more likely to enact anti-discrimination laws (reduced discrimination causes legislation), and/or (b) legislation causes a reduction in discrimination.

Given that the adoption of local gay rights ordinances has been shown to relate positively to the presence of the gay and lesbian community and negatively to the presence of conservative political and religious groups (Haerberle, 1996; Wald, Button, & Rienzo, 1996), it is fairly safe to assume that the level of discrimination is already lower in areas that adopt gay rights laws than in areas that do not adopt such laws—even before the laws take effect. However, this does not preclude the possibility that legislation itself also has a major effect on discrimination reduction. This simply means that research on the efficacy of legislation has the difficult task of controlling for those factors that may impact both (a) the adoption of anti-discrimination legislation and (b) the extent of community discrimination at baseline.

To our knowledge three published empirical studies, conducted in the United States, using diverse methodologies, have sought to address the efficacy of state and local sexual orientation laws (Barron, 2010; Klawitter & Flatt, 1998; Ragins & Cornwell, 2001). We discuss each of the three studies in turn, noting limitations, and then suggest directions for future research.

Klawitter and Flatt (1998): Effects of legislation on wage discrimination. First, Klawitter and Flatt examined the discrepancy between wages of same-sex and opposite-sex partnered individuals, and investigated whether this wage gap was lessened in areas governed by state and local anti-discrimination ordinances. As in previous research investigating the sexual orientation wage gap, they used data from the 1990 U.S. Census, which had, for the first time, allowed gay and lesbian couples to be identified by adding an “unmarried partner” category to the list of household relationships. They then compared same-sex couples’ incomes to those of opposite-sex unmarried couples, and opposite-sex married couples, within areas with and without legal protection.

Although we recognize that self-selection of wealthier stigmatized individuals into protected locations is an alternative or additional consideration, the raw data do appear to support a lessened sexual orientation wage gap in areas with

anti-discrimination policies relative to in areas without, at least with regard to men. That is, gay men who live in areas lacking sexual orientation anti-discrimination laws do appear to be subject to greater wage discrimination than gay men who live in areas with such legal protection. Although overall wages were higher in areas with anti-discrimination legislation than in areas without legislation for both heterosexual and homosexual individuals, that difference was larger for gay men than for their heterosexual counterparts. Though the incomes of married men and unmarried men living with an opposite-sex partner were .11 standard deviations higher in areas with legislation than in areas without, the incomes of men living with a same-sex partner were .23 standard deviations higher in areas with legislation than in areas without. The magnitude of difference was smaller for women, which should be expected given that the wage gap for lesbian women relative to heterosexual women is not consistently found (i.e., as discussed, wage discrimination must exist if anti-discrimination laws are to reduce wage discrimination).

However, when variables that affect both (a) adoption of sexual orientation anti-discrimination laws, and (b) wages are controlled for, the effect of anti-discrimination laws on wage discrimination disappears. Although Klawitter and Flatt (1998) did not control for presence of the gay community or absence of religious Conservatives directly, they did control for a decent proxy for the gay community (absence of children), and two other area variables related to acceptance of alternative lifestyles (education and urban location). After controlling for these variables, in addition to a standard set of variables that typically affect earnings (age, race, work-related disability, English proficiency, and region), they found no effect of anti-discrimination legislation on the sexual orientation wage gap.

Differential disclosure. We believe the most serious limitation of Klawitter and Flatt's (1998) study is how gay men/lesbians were identified for inclusion in the study: an anonymous indication on Census forms. In the workplace, sexual orientation is not indicated anonymously, and public disclosure is a choice. The majority of gay and lesbian individuals are not "out" at work (e.g., Griffith & Hebl, 2001; Ragins et al., 2007). Employers cannot discriminate on group membership that they do not know, and empirical findings show that employees are indeed less likely to disclose when they have witnessed or experienced discrimination (Button, 2001; Ragins & Cornwell, 2001). While sexual orientation may be inferred at above-chance levels, the accuracy of such inferences in the absence of disclosure, and the resulting discrimination on the basis of non-disclosed sexual orientation, is likely substantially limited.

Additionally, because the Census data used for this study were collected in 1989 when only two states' laws (Wisconsin and Massachusetts) prohibited private sector sexual orientation employment discrimination, most of the "protected" areas in the study were governed by only city ordinances. As we have argued, legislation

must be accompanied by awareness of such laws among the public (or at least among those in management who are apt to be involved in hiring and compensation decisions). National laws may be accompanied by greater public awareness than state laws among those constituents affected, because of greater national media coverage. In addition, awareness of state laws may similarly exceed awareness of city laws among those constituents affected. Furthermore, state laws are often backed by stronger enforcement resources relative to city laws (Rubenstein, 2002). We believe both of these limitations (differential disclosure and the possibility of more limited legal awareness and enforcement) are better addressed in the studies that follow.

Ragins and Cornwell (2001): Effects of legislation on perceptions of discrimination. This research surveyed gay and lesbian individuals recruited through national gay rights organizations about their perceptions of discrimination in their workplace, and found less perceived discrimination among employees who work in areas with anti-discrimination legislation than in unprotected areas. Although individuals may be inclined to conflate reports of discrimination with the absence of legal protection, the findings are methodologically strengthened by the fact that presence of legislation was coded by researchers rather than reported by those indicating the extent of discrimination. This finding is further bolstered by complementary evidence at the organizational level: gay and lesbian employees also perceive less discrimination when organizational sexual orientation non-discrimination policies are in place than when they are not (Button, 2001; Griffith & Hebl, 2002; Ragins & Cornwell, 2001).

Most notably, the relationship between legislation and perceived discrimination remained even after controlling for extent of sexual orientation disclosure, co-worker and supervisor sexual orientation, and gay-friendly organizational policies (i.e., company non-discrimination statement, same-sex partner benefits). That is, gay and lesbian employees in areas with legal protection are more likely to disclose that they are gay, to have gay co-workers and supervisors, and to work for organizations with gay-friendly company policies relative to gay and lesbian employees in areas without legal protection. Disclosing one's sexual orientation, having gay co-workers and supervisors, and working for a company with gay-friendly policies are all related to lesser discrimination individually. However, the statistical evidence suggests that even if gay men/lesbians in areas with and without legal protection were to disclose equally, and work in companies with proportions of gay staff and gay-friendly company policies equally, gay and lesbian employees in areas with anti-discrimination laws would still perceive less discrimination than those in areas without such laws.

Though solid, the findings are somewhat limited by the analysis of differences in perception. That is, by assessing perceptual differences rather than objective differences in workplace treatment, it is possible that individuals in areas with

and without laws apply different standards in determining whether or not discrimination has occurred. Many gay men/lesbians may be knowledgeable of their legal protections, and view the lack of anti-discrimination law as indicative of a greater likelihood of discrimination. That is, interpersonal slights at work are often subtle and ambiguous (i.e., “is my boss being rude because he found out I’m gay or because I botched a work assignment?”), and individuals may perceive discrimination more readily when they know there is no legal mandate preventing their employers from discriminating.

Additionally, the Ragins and Cornwell (2001) study did not control for two of the community variables shown to affect both community adoption of sexual orientation anti-discrimination laws (Haerberle, 1996; Wald, Button, & Rienzo, 1996) and extent of sexual orientation prejudice in the absence of legislation (e.g., Herek, 1988; Herek, 1994): political and religious Conservatism. These limitations are addressed in recent research from our lab.

Barron (2010): Effects of legislation on objective hiring discrimination and prejudice. Third and finally, in this study, we objectively assessed the extent of hiring discrimination, using a between-subjects design in which human resource managers evaluated resumes of a hypothetical male applicant for a management position that were matched on all qualifications. Sexual orientation was manipulated by presenting the candidate as either (a) recipient of the university “Alumni Scholarship” and president of the “Student Activities Association” (control condition) or (b) recipient of the university “Gay and Lesbian Alumni Scholarship” and president of the “GLBT Student Activities Association” (gay condition). To increase the likelihood of awareness of the presence or absence of anti-discrimination laws in their areas, we chose as our sample human resource managers, whose occupation requires familiarity with employment legislation, and typically allows for ample involvement in hiring decisions. Participants were recruited through local chapters of a national professional organization of human resource management, with approximately participants roughly evenly divided between those who worked in states with and without sexual orientation employment anti-discrimination legislation (32 chapters in 28 states were represented).

We found that human resource managers in areas without anti-discrimination laws evaluated the applicant as less hireable when presented as gay relative to when he was presented as non-gay; in contrast, no hireability differences between the gay and non-gay applicant were found in areas with anti-discrimination laws. Though we did not have sufficient statistical power to detect differences in hiring discrimination after controlling for participant sexual orientation, organizational gay-friendly policies, and political and religious views, strong support emerged for the ability of legislation to reduce prejudice toward gay men. Despite the fact that almost 50% of the variability in human resource managers’ attitudes toward gay men can be explained by political and religious Conservatism, even

after controlling for these factors, the presence of anti-discrimination legislation still decreases sexual orientation prejudice further. That is, anti-discrimination legislation was substantially related to decreased prejudice toward gay men, even after controlling for those factors previously shown to impact community adoption of legislation. As such, our findings suggest that employment anti-discrimination legislation goes beyond affecting the specific behaviors that are outlawed (i.e., hiring discrimination) to affecting the underlying principles of acceptance and tolerance toward gay men. Even privately held attitudes of prejudice toward gay men—which are not, and cannot be legally enforced—appear to be affected by anti-discrimination legislation. This provides initial theoretical support for the idea that the effects of legislation are not simply instrumental effects based on the tangible threat of lawsuit, but are also symbolic, in morally prescribing disregard and mistreatment for an out-group (i.e., gay men) as wrong or immoral.

Empirical Evidence of Effective Policy

While the Civil Rights Act has generally been accepted as having had a causal effect on discrimination reduction for Blacks and women based on quasi-experimental analysis (Burstein, 1985; Donohue & Heckman, 1991; Gunderson, 1989), ongoing research in our lab is focused on experimentally documenting this effect for gay rights legislation.

Existing research has documented lesser perceived discrimination among gay and lesbian employees in U.S. areas with state or local sexual orientation anti-discrimination legislation than in areas without such legal protection (Ragins & Cornwell, 2001). Although individuals may be inclined to conflate reports of discrimination with the absence of legal protection, the existing finding is methodologically strengthened by the fact that the presence of state or local legislation was coded by researchers rather than reported by those indicating the extent of discrimination.

Conclusion

Whether it is at the level of a single community member, an organization, or a governed society, non-targets play a crucial role in creating norms of acceptance for previously stigmatized individuals. While the current patchwork of legal protection and non-protection may be personally or morally loathed by advocates on both sides of the issue, this also presents a much needed opportunity for empirical scholarship on the efficacy of sexual orientation and weight anti-discrimination laws. State and local governments have often served as “laboratories” for evaluating new policies before their implementation at the federal level (Inman & Rubinfeld, 1997), and sexual orientation and weight anti-discrimination policies should be no exception. With national legislation such as ENDA still awaiting

passage, we can draw on evidence of the efficacy of corresponding state and local laws to inform legislative debate with empirically based research estimates for the likely efficacy of pending national legislation.

Limitations and Future Research Directions

Researchers have only begun to study the impact of legal protection on such (at least previously) “accepted” stigmatization of weight and sexual orientation. However, as legislators have begun responding to calls for broader legislation (e.g., the national ENDA Massachusetts House Bill 1844) we believe researchers have a unique and timely opportunity to add to this almost nonexistent body of comparative literature. They may now be able to compare the level of discrimination in areas with and without local protections under rigorous and controlled conditions to begin to speak to the likely effectiveness of wider legislation. This is particularly important given that some politicians who will likely play a key role in whether ENDA becomes law (e.g., moderate Republican Senator Collins) have attempted to oppose sexual orientation anti-discrimination legislation by characterizing the likely efficacy of such legislation as dubious (see Committee on Health, Education, Labor, and Pensions, 2002).

Preliminary research on the impact of anti-discrimination legislation on both weight and sexual orientation stigmatization has found that reports of perceived discrimination by the targeted groups are fewer in areas with legal protection (Ragins & Cornwell, 2001; Roehling & Roehling, 2009). Beyond this, even after controlling for all variables previously shown to relate to the adoption of anti-discrimination legislation, sexual orientation anti-discrimination laws were also shown to correspond to decreased attitudes of prejudice among organizational decision makers (Barron, 2010). We were not able to show this same finding with regard to discrimination. That is, the relationship between such legislation and discrimination did not reach levels of statistical significance after controlling for religious beliefs. Further research will need to revisit the issue of the effects of legislation on hiring discrimination using a larger sample, or more salient manipulation of sexual orientation (many of the participants within the Barron, 2010 study did not recall the applicant’s sexual orientation when asked).

Importantly, future research ought to measure public or managerial knowledge of anti-discrimination legislation directly, given the need for legal awareness if legislation is to impact employment behavior. It is probably more likely that human resource managers are aware of their state employment legislation currently (Barron, 2010) than co-workers and supervisors across all occupations (Ragins & Cornwell, 2001) or management involved in compensation decisions in 1989 when few state laws covered sexual orientation discrimination (Klawitter & Flatt, 1998). However no research to date has studied the effects of sexual orientation

anti-discrimination legislation on employment discrimination among a sample with documented knowledge and awareness of these laws.

Beyond this, the prevalence of state and local weight and sexual orientation laws continues to expand to new jurisdictions. We see the need for research designs that use pre- and post-test designs, such as those used in the 1960s to document the efficacy of Title VII of the Civil Rights Act in reducing employment discrimination toward Southern Blacks (e.g., Heckman & Payner, 1989). In particular, the combination of field setting realism and experimental control afforded by correspondence testing (e.g., Adams, 1981; Weichselbaumer, 2003) begs the extension of this methodology to comparisons of jurisdictions with and without weight or sexual orientation anti-discrimination legislation. Further research on legislation efficacy ought to broaden the type of discrimination studied to include more subtle, less readily legally enforceable interpersonal discrimination as well (e.g., Hebl et al., 2002).

In summary, we do not have the power, as researchers, to experimentally manipulate the presence or absence of legislation in a given community. However, research to date goes far in statistically controlling for those factors previously shown to influence whether legislation is adopted in a given community, so as to otherwise equalize jurisdictions. As such, we can go a long way toward responding to Senator Collins’ claims that employment sexual orientation anti-discrimination laws may not “promote true acceptance, of the underlying principle” of non-discrimination (Committee on Health, Education, Labor, and Pensions, 2002). While future research is needed to understand how reductions in prejudice specifically translate into reductions in discriminatory behavior, the research findings to date do provide strong evidence that laws succeed in reducing true, underlying principles of prejudice. In this way previously “acceptable” stigmatization can be transformed as legislation serves as a symbolic and instrumental mechanism for further remediation of stigmatization.

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