The Role of Organizational Leaders in Sexual Orientation Equality at Organizational and Federal Levels

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Abstract

Purpose   This article expands the discourse of the impact of the passage of the Civil Rights Act (CRA) of 1964 to sexual orientation minorities (SOM).

Design/Methodology/Approach   We first discuss the challenges faced by SOM in the workplace. We then present a model adapted from Edelman's "Handbook of employment discrimination research (pp. 337–352). Dordrecht, The Netherlands: Springer (2005)" theory of endogeneity of law to discuss the impact that such leaders and their supportive organizational SOM policies can have on the passage of nationwide SOM legislation. Finally, we discuss how organizational leaders' beliefs and actions can play a major role in affecting organizational SOM policies.

Findings   We argue that the presence of organizational protective policies can facilitate the passage of federal SOM legislation by establishing and legitimizing social norms. We also highlight how beliefs about religion, morality, controllability, and occupational stereotypes contribute to prejudice and lack of support for SOM-protective organizational policies.

Implications   We discuss the importance that organizational SOM policies have on larger societal legislative issues, and outline how specific individual-level beliefs can impact organizational-level support for SOM.

Originality/Value   We take a novel approach by focusing on what organizational leaders can do to enact SOM policies that may further influence protective laws. We also draw upon neo-institutional theory to show specifically how organizations can affect legislation; a topic often ignored in organizational psychology.

Keywords   Sexual orientation · Civil Rights Act (CRA) · Laws · Organizational policies · LGBT · Neo-institutional law

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The Civil Rights Act (CRA) of 1964 protects individuals on the basis of color, national origin, race, religion, and sex. One of the most influential sections of the CRA is Title VII, which prohibits employment discrimination. This landmark piece of legislation has helped encourage positive changes in the social and economic landscape of the United States in the 50 years since its enactment.

Despite the proliferation of laws that protect employees on the basis of other civil rights (i.e., age, disability status, family status, genetic information, transgender status, and veteran status), federal protection for sexual orientation remains strikingly absent. Some legislators have recognized this absence and support the enactment of The Employment Non-Discrimination Act (ENDA), a proposed bill that would protect individuals against employment discrimination based on sexual orientation. The passage of this bill would mean that sexual orientation would be

treated as a civil liberty—it could not be used as the basis to make workplace decisions. By ensuring that sexual orientation is defined as a civil liberty, heterosexual employees also would gain protection under ENDA. This is consistent with the CRA, in which protection on the basis of color, national origin, race, religion, and sex extends to those who are part of the majority as well. ENDA has been proposed in the U.S. Congress every year since 1994; however, in its almost 20 year lifespan, it has never been passed.

In this article, we define sexual orientation minorities (SOM) as those who identify as gay, lesbian, bisexual, or other categories outside of the heterosexual grouping (see Epstein 2009; Haslam 1997; Kinsey et al. 1948; Kinsey et al. 1953). These individuals represent a sizable portion of the U.S. workforce, with estimates ranging from a 4 to 17 % constituency (Gonsiorek and Weinrich 1991; Powers 1996). The variance in this range reflects the fact that accurate estimates are difficult to obtain, as many individuals fear the repercussions of and/or simply avoid revealing their sexual orientations in the workplace (e.g., Ragins and Cornwell 2001). In this article, we focus the majority of our attention on SOM (rather than heterosexual employees) as it is typically the minority group that has experienced widespread and consistently documented discrimination in the workplace. Therefore, this minority group would be the biggest beneficiaries of federal workplace protection such as ENDA.

We also note that some organizations already have progressive and protective policies in place to help reduce SOM discrimination, and we argue that these policies help pave the way for the passage of national legislation. However, currently, there is no consistency in the extent to which these groups are protected across the U.S. Additionally, some states have enacted laws protecting employees from sexual orientation-based discrimination, but the majority of states still do not offer such legal protection.

In this article, we first discuss why SOM need protection by exploring the negative workplace experiences that SOM employees face. Second, we discuss the effectiveness of anti-discrimination laws. Third, we examine how organizational leaders can help effect change at the federal level by passing organizational-level policies. We present a model that draws on neo-institutional theory (Edelman 2005) and highlights how the organizational policies that leaders enact can influence the eventual passage of federal laws. Fourth and finally, we examine psychological constructs and belief systems held by organizational leaders that may serve as barriers to the passage of SOM-protective policies in organizations. In this section we introduce a theoretical model for understanding the relations between organizational leaders' ideological belief systems,

prejudicial attitudes, and the enactment of SOM organizational policies.

In summary, we discuss how the individual-level attitudes of organizational leaders can affect the passage of organizational SOM-protective policies, which in turn can facilitate the passage of federal legislation through social norm formation. Importantly, we argue that organizational leaders have the power to play a key role in the passage of SOM protection by using their own organizations as laboratories to show how effective protective SOM policies can be.

Why Sexual Orientation Minorities (SOM) Need Protection

Simply put, SOM need protection because they face workplace discrimination. Studies examining the U.S. Census and similar economic data have found that gay or bisexual men earn 11–27 % less than their heterosexual counterparts, when controlling for other variables such as education, work experience, region, and occupation (Badgett 1995; Berg and Lien 2002; Clain and Leppel 2001). Similar research shows that although lesbian women actually earn more than their heterosexual counterparts (Daneshvary et al. 2009), they face discrimination (as do gay men) on a number of other workplace dimensions such as receiving lower performance evaluations (Horvath and Ryan 2003), experiencing greater amounts of interpersonal negativity (Hebl et al. 2002), and receiving fewer callback responses from employers (Adams 1981; Weichselbaumer 2003) than do heterosexual applicants. Perceptions of discrimination are related to gay and lesbian employees' greater negativity toward their jobs and careers, which in turn is related to lower job satisfaction and organizational commitment, and higher turnover intentions (Button 2001; Ragins and Cornwell 2001). Most recently, Badgett et al. (2007) conducted a 50-study meta-analysis of job discrimination against SOM and found that up to 68 % of these employees had experienced overt discrimination, including being (a) fired or denied employment, (b) denied a promotion, (c) given a negative performance evaluation, and/or (d) the victim of verbal or physical violence based on sexual orientation. The evidence is clear—SOM experience workplace discrimination and may benefit from federal protection.

Clearly, other minorities who belong to classes that are federally protected have experienced (and continue to experience, to some extent) workplace discrimination. For instance, research shows workplace biases based on color (Harrison and Thomas 2009), national origin (Dietz 2010), race (Landrine and Klonoff 1996), religion (King and Ahmad 2010), sex (Heilman and Eagly 2008), age (Rupp

et al. 2006), and disability status (Hebl and Skorinko 2005). However, one important characteristic of minorities belonging to federally protected groups is that they have the option of legal recourse and, for example, can file claims to the EEOC. Given the empirical evidence for current discrimination based on sexual orientation, federal protection on the basis of sexual orientation is simply critical to ensuring that SOM can face safe and optimal working environments. However, as mentioned previously, there has been a systematic rejection of ENDA for the past two decades. Yet, there is preliminary evidence that the presence of federal protection, as would be provided by the passage of ENDA, could help to reduce discrimination in the workplace (e.g., Barron and Hebl 2013). In the following section, we discuss why this might be the case.

The Effectiveness of Anti-discrimination Laws

Empirical evidence does not exist to show that the enactment of the CRA specifically and single-handedly *caused* a reduction in prejudice and/or discrimination in the workplace over the last 50 years. The breadth and depth of social science research simply did not exist in a sophisticated way to capture such phenomena before and after the enactment of the CRA. Thus, much of the evidence is correlational in nature (and so we must be cautious in accurately interpreting it), but the body of empirical research that does exist shows that racial and gender disparities and expressed prejudice and hostility clearly have decreased since 1964. Furthermore, there is theoretical and empirical research that does address the impact of laws on individual attitudes and behaviors (Barron and Hebl 2013).

Theoretical Justification for the Efficacy of Anti-discrimination Laws

As early as 1954, Allport argued that legislation, in and of itself, can indicate what norms are accepted at the societal level and that most citizens—after perhaps an initial fervor—will comply with laws that are democratically established. Fifty years since the enactment of the CRA, the available evidence supports this argument (e.g., Kelly and Dobbin 1999). As Barron and Hebl (2013) argue, there are at least two theoretical reasons for why anti-discrimination laws might be effective. First, at the most basic level, deterrence theory (see Becker 1968) suggests that individuals are less likely to engage in a behavior under the following conditions: (1) the behavior has been outlawed, (2) there is a high likelihood that the individual would be caught engaging in the behavior, and (3) there is a high certainty that punishment will follow (Cook 1980). Thus,

employers may engage in a cost-benefit analysis to determine if the benefits (e.g., denying access to a member of the protected group) outweigh the costs (e.g., negative publicity and legal fees) for engaging in discrimination. The presence of anti-discrimination laws (such as the CRA) provides the infrastructure for ensuring that discrimination is outlawed, that a governing body can be alerted of the discrimination, and that individuals who discriminate will be punished. Without these laws, a cost-benefit analysis would be unnecessary and irrelevant. In sum, then, organizations may be less likely to discriminate on the basis of sexual orientation following the enactment of federal legislation to the extent that organizations know SOM discrimination is illegal, believe they will be caught, *and* believe they will be punished by the EEOC or other governing bodies.

Second, anti-discrimination laws may be effective to the extent to which they communicate that prejudice (negative attitudes) and discrimination (negative behavior) are no longer socially acceptable. That is, sexual orientation anti-discrimination laws may suggest that discriminatory behavior is not only unlawful but also deviant within a society (Robinson and Darley 1995), thereby producing symbolic acceptance (an internal belief system that coincides with the actions) of SOM, rather than mere compliance with law (see Barron and Hebl 2013). If SOM legislation establishes and clarifies social norms of anti-discrimination, lower expression of prejudice toward SOM may result (Zitek and Hebl 2007). Indeed, multiple studies have shown that people who express an opinion that condemns (or condones) prejudice against an out-group member can alter the opinions of others (Blanchard et al. 1991; Blanchard et al. 1994; Monteith et al. 1996; Zitek and Hebl 2007). Similarly, being informed of the socially accepted attitudes about one's in-group toward out-group individuals can also alter one's own attitudes toward that out-group (Stangor et al. 2001; Wittenbrink and Henly 1996). These changes in attitudes are not just short-term but rather, seem to withstand the passage of time (Stangor et al. 2001; Zitek and Hebl 2007) and are stronger when they involve attitudes for which previous social norms are not clear. That is, social norms about gay men and lesbians (which are not always clear) can be more influential than norms about Blacks or women (which are often strongly held and accompanied by laws; Zitek and Hebl 2007). These studies suggest that laws provide information about social norms that can influence people to change their attitudes and behavior. In sum, then, enacting federal legislation that protects SOM may set deterrence behaviors in full motion as well as provide a symbolic message that discrimination based on SOM is socially unacceptable.

Empirical Evidence for the Efficacy of Anti-discrimination Legislation

There is some empirical evidence at multiple levels of analysis that suggests (beyond theoretical arguments related to deterrence theory) that enacting legislation can improve attitudes and behaviors toward SOM. At the organizational level, employees who work in organizations that have anti-discrimination policies are more likely to disclose their sexual orientations (Day and Schoenrade 2000; Griffith and Hebl 2002) and are less likely to report experiencing prejudice and discrimination (Button 2001; Ragins and Cornwell 2001). At the local/city ordinance level, Ragins and Cornwell (2001) found that even after controlling for other relevant variables, gay and lesbian employees who worked in areas that had anti-discrimination policies reported experiencing less discrimination (the presence of anti-discrimination policies was coded independently by the researchers, so respondents may or may not have been aware of these policies). Although the results of these studies are encouraging, it should be noted that these are correlational data and may be open to alternative explanations. For instance, it may be the case that SOM seek out employment in organizations or cities that have anti-discrimination policies in the first place.

At the state level, three studies by Barron (2010; Barron and Hebl 2013) provide strong preliminary evidence that having anti-discrimination policies in place may affect internally held attitudes toward SOM. In an experimental study, Barron (2010) found that human resource managers in states without anti-discrimination laws protecting sexual orientation were more likely to evaluate gay (vs. heterosexual) applicants as less hirable; however, this difference in hirability was not seen for managers in states with anti-discrimination laws. A follow-up field study by Barron and Hebl (2013) showed that applicants who were identified as gay (versus not) experienced lower levels of discrimination when they applied for jobs in cities that had anti-discrimination laws (versus cities that did not). Critics might suggest that SOM employees seek out equitable organizations/cities and tend to move there. Hence, Barron and Hebl (2013) extended their correlational, externally valid field study findings by experimentally manipulating (in a laboratory context) the presence of anti-discrimination laws (by informing participants that laws did or did not exist in their area). This latter, tightly controlled study, similarly resulted in findings showing that negative treatment toward potential applicants who were gay versus not gay disappeared in the absence of protective laws. Hence, the laws worked in reducing discrimination and these three studies together offer the clearest evidence to date that protective laws can be highly effective. In sum, both theoretical and empirical justifications support the notion that federal legislation protecting sexual orientation can effectively reduce workplace discrimination.

How Organizational Policies can Facilitate the Passage of Federal Legislation

We now turn our discussion to how organizational leaders are in a prime position to serve important roles as catalysts toward the passage of federal legislation by first adopting their own organizational policies. Many organizational leaders already have extended anti-discrimination policies to SOM because they believe it is the morally right thing to do and/or because it provides organizations with a competitive advantage (King and Cortina 2010). We consider how such policies can promote broader SOM anti-discrimination legislation by adapting Edelman's model on the endogeneity of law (2005; see p. 341). Edelman's model illustrates how organizations can help legitimize the need for and initiate federal legislation. Rooted in neo-institutional theory, the original model states that organizational leaders develop and implement some policies not as compliance or efficiency measures, but because it is in line with their own, or growing cultural or societal beliefs (Hall and Taylor 1996). Edelman's (2005) model emphasizes the cultural aspects of organizations and legal environments and proposes that while laws are typically exogenous to organizations (they develop without the help of organizations), there are times when laws are endogenous (they come from within organizations). Edelman's theory focuses on the endogenous ways organizational policies are put into place, enforced within organizations, and eventually can motivate and significantly shape laws that develop at the state or national level. Such organizational policies become precedents and benchmarks for other organizations and the judicial system as a whole to use in the interpretation of specific cases.

In Fig. 1, we adapt Edelman's (2005) model to show how the *theory of endogeneity of law* can explain the movement from SOM organizational policies to national SOM anti-discrimination law. There are six stages in Edelman's model that demonstrate how organizational leaders take an ambiguous law and legitimize it by forming and shaping organizational policies. Edelman focuses on this process with respect to civil rights laws that have already been passed but we propose that this model can also be used to understand how organizational policies might influence laws that have not yet been passed. Thus, our adapted model allows us to consider how organizational leaders can serve as important instigators for taking action on somewhat ambiguous legal issues, and pave the way for legitimization.
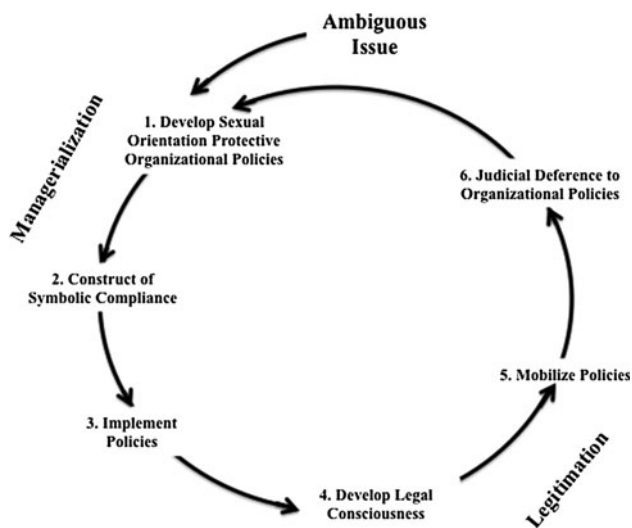
Fig. 1 The impact of endogeneity of law on facilitating passage of SOM legislation. Adapted from Edelman (2005)

Develop SOM-Protective Organizational Policies

In reaction to the CRA and other related policies, many organizational leaders developed their own organizational-level anti-discrimination policies. Such policies, instituted *after* the passage of the CRA, allowed organizational leaders to ensure compliance with federal laws, and provided an in-house method of recourse for protected individuals who feel their rights have been violated. The establishment of such policies along with the public discourse in society concerning whether or not currently unprotected characteristics (e.g., SOM) should be covered by federal legislation has led many organizational leaders to develop in-house anti-discrimination policies.

We suggest that organizational leaders can affect legal influence by developing organizational policies *before* national laws are passed. As seen in Fig. 1, such behavior initiates a cycle of taking an ambiguous social issue and legitimizing it. To the extent that more organizations decide that this characteristic should be protected in the workplace, organizational leaders can begin to develop policies that reflect this stance. These policies may include (but are not limited to) zero-tolerance rules for SOM discrimination and allowing partner benefits for same-sex couples. The Human Rights Campaign (2012) has established a Corporate Equality Index, which ranks organizations on how SOM-friendly they are by listing and quantifying each organization's specific policies. The development of such policies sends a clear signal to employees in the organization (and potential applicants) that discrimination on the basis of sexual orientation is not tolerated and that the organizational leader supports equitable and fair work environments.

Construct Symbolic Compliance

The development of policies does not automatically result in belief in or adherence to the policies among employees. Policies concerning social aspects of employment can be ambiguous and often focus on procedural behaviors more than changing organizational cultures. The development of policies may send a signal that organizational leaders care about diversity; however, this signal may dissipate readily if there are no tangible organizational structures in place to provide a strong indication that the policy is valued. Thus, the second stage in the cycle of our adapted model (see Fig. 1) is to construct symbolic compliance structures such as affinity groups with resources like time and space. Organizational leaders also can designate a compliance officer to handle sexual orientation-based complaints (this role may be fulfilled by a general diversity officer who receives training on any special SOM-related interests), and designate safe spaces for employees to meet to discuss issues related to discrimination or increasing diversity. These actions send a clear message that organizational leaders are creating a culture dedicated to SOM protection. This type of visibility also provides some legitimacy to policies by indicating that the organization is not only committed to anti-discrimination, but also committed to optimizing work environments for all employees.

Implement Policies

The development of organizational policy and symbolic structures sets the stage for the next phase of the cycle by determining implementation of the policy, or how leaders will enact organizational policies (see Fig. 1). However, due to the unique problems and solutions that compliance professionals may encounter in their organizations, the specifics of how policies are implemented may be somewhat ambiguous as initial implementation of the policy is unprecedented. Middle managers and supervisors are crucial in this process, as they will serve as the first in the chain of command if and when discrimination complaints concerning sexual orientation-based discrimination are made. Therefore, it is important to have management buy-in regarding the importance of the policy so they are willing and able to make decisions that are in line with the spirit of the policy. Management is also important, as the nature of what falls under the broader policy may not always be clear; therefore, management will be in a position to shape the development of the policy. As Edelman (2005) states, the meaning and value of the organizational policies will be "filtered through the lens of managerial norms and tempered by managerial concerns" (p. 345), thus it is imperative that all organizational leaders (whether top, middle, or lower management) understand the intent of

the policies and that they develop consistency in how to best remain compliant with law.

Develop Legal Consciousness

Organizational anti-discrimination policies are effective to the extent that they are consistently and fairly enforced. Thus, the fourth stage in the cycle is to develop a legal consciousness within the organization (see Fig. 1). Once managers receive complaints, there must be a process in order to handle such claims. Organizational leaders should have a dispute process set up and in-house counsel, which may include compliance officers, lawyers, mediators, and arbitrators that can hear claims and adequately handle disputes. Organizational stakeholders will make value judgments concerning the legitimacy of these policies to the extent that there are visible structures set up that allow for complete implementation of the policy. In addition, consistency and fairness in the implementation of policies allows organizations to communicate that they are truly intent on abiding by the spirit of the law, not just the letter of it. These actions contribute to building a legal consciousness in which it is understood that the organizational leaders consider the laws to be valid and justified. Organizational leaders that take this stance can serve as models for judicial procedures involving other organizations that have yet to embrace similar policies. Also, like stakeholders, legislators will make similar judgments concerning legitimacy based on the policies and enforcement of them by organizational leaders, thus the development of such legal consciousness in more organizations may provide social pressure on law makers to pass such legislation.

Mobilize Policies

Organizational policy is useful to employees to the extent that they understand and use the policy, thus, the fifth stage in our model is to mobilize policies. Some SOM employees may be hesitant to file claims for fear of disclosing a previously hidden stigmatized status or for fear of retaliation from the organization. This may be particularly troublesome in the case of sexual orientation since filing a claim may involve "coming out" for the plaintiff. The establishment of symbolic structures and legal consciousness should help aid the use of such policies. Additionally, organizational leaders and legal experts within organizations can play a role in the mobilization or use of organizational policies by signaling which issues are considered important. The cases these individuals decide to take and the manner in which they are conducted help to shape the dialog on what issues are considered relevant and set the tone for the overall success (or failure) of such policies. Thus, they help to legitimize the need for and the

organizational leaders' stance on policies by making crucial decisions and setting precedents concerning employees' rights.

Judicial Deference to Organizational Policies

Although it is typical for laws to guide action of organizational leaders, the reverse can sometimes happen; that is, organizational leaders also guide law. In this sixth and final stage of the model (see Fig. 1), organizational leaders act as the agents of change and send a message that they are (often powerful) allies for employees' rights, and that they are willing to be leaders of change and pass progressive policies. Federal courts may defer to standards set in place by such leaders when making employment-related judgments. For instance, one common SOM organizational policy is to provide same-sex partners with benefits. While this is not a federal or even a consistent statewide law, the growing number of organizational leaders who provide this benefit is likely shaping the legal field. For instance, at the time of this writing, the federal appeals court in New York to became the second to strike down the Defense of Marriage Act (Ariosto 2012), thereby legally mimicking policies that many organizations have already progressively adopted.

As legal cases continue to be guided by policies set forth by organizational leaders, these decisions help achieve a critical mass necessary for enacting sexual orientation federal legislation. That is, each decision based on organizational policy is a small molehill that, when combined with others, can become the mountain of legitimization needed for enacting federal legislation.

In sum, we present our adapted model based on endogeneity theory of law (Edelman 2005) to highlight the critical role that organizational leaders can play in the passage of federal legislation, as organizational policies and the legal environment can shape each other. To the extent that management responds to pressures to enact policies with no federal legal precedent, the logistics of implementing them and the consistency of this implementation can provide a feasible trial for showing how such policies would operate at statewide or federal levels. Furthermore, the adoption of such policies is present in top organizations and is considered a "best practice." For instance, some of the organizations ranked on Fortune's 2012 top 100 list are also among those ranked as the best places to work in the Human Rights Campaign's (2012) Corporate Equality Index based on their inclusion and implementation of SOM policies. These organizational leaders provide a benchmark for how SOM legislation can be managed, even before such legislation is mandated at the federal level. However, it is the responsibility of individual leaders to implement SOM-protective policies within their organizations.

Belief Systems Preventing Organizational Leaders from Adopting SOM-Protective Policies Within Their Organizations

Although there are many potential benefits to passing organizational-level SOM policies, individual differences can affect people's willingness to support such actions. We now discuss general factors that influence people's willingness to support SOM policies and focus specifically on how these factors might impact organizational leaders in their support and enactment of SOM-protective policies within their organizations. In Fig. 2, we provide a meaningful framework that highlights the ideological belief systems and stereotypes that may impact organizational leaders' feelings of prejudice, which in turn may strongly indicate their support for adopting organizational SOM policies. We also discuss the role of pressure from organizational stakeholders on the enactment of such policies.

Ideological Beliefs

As shown in the left-hand column of Fig. 2, we propose that four belief systems influence SOM prejudice, which in turn can influence whether or not organizational leaders will be likely to enact policies that protect SOM in their organizations. We recognize up front that this presentation of belief systems and other elements in the model may not be exhaustive and that other elements not discussed here also may be influential (e.g., Right-Wing Authoritarianism; Poteat and Spanierman 2010). In this model, however, we focus particularly on four ideologies that we propose are especially relevant to views about and support for SOM.

Religious Beliefs

As shown in Fig. 2, religious beliefs of organizational leaders can serve as antecedents of prejudice against SOM employees. Previous research has shown that many forms of religiosity (e.g., fundamentalism and religious service attendance) are related to negative attitudes toward gays and lesbians (Batson et al. 1993; Herek 2009; Hunsberger and Jackson 2005; Whitley 2008). Specifically, studies have found both religious fundamentalism (strict adherence to theological doctrines and often intolerance of other views) and Christian Orthodoxy (belief in basic Christian tenets such as Jesus Christ being the Son of God) are associated with negative attitudes toward SOM (Rowatt et al. 2006; Whitley 2009; see also Trevino et al. 2012). Similarly, Muslim, Hindu, and Jewish individuals high on religious fundamentalism also express more negative attitudes toward SOM than those lower on this ideological belief (Hunsberger 1996). While the condemnation of homosexual behavior is rooted in many fundamental religious teachings (e.g., Christian, Jewish, Sikh, and Muslim), it is important to note that not every denomination or sect within specific religions hold negative attitudes toward SOM (in fact, some are accepting of SOM). Overall, however, the research does show that an increase in religiosity is linked to more negative attitudes toward SOM. Those who voice opposition to ENDA often utilize this association in their reasoning. For example, recent headlines opposing ENDA read, "Employment Non-discrimination ACT (ENDA) threatens Christians and business owners" (Traditional Values Coalition 2011). Thus, a possible mechanism behind why religious individuals are opposed to SOM rights is that they perceive such laws as threats to their traditional values (see Whitley 2009). To the extent that organizational leaders have high levels of religious fundamentalism, they may be less likely to support or enact organizational policies explicitly protecting SOM employees.

Although the link between religiosity and prejudice is strong, the separation of church and state should make this relation a moot point in passing SOM federal legislation. Specifically, the First Amendment establishes that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This means that the government cannot create or ban a law

Fig. 2 The influence of organizational leader's beliefs on SOM anti-discrimination policies at organizational and federal levels
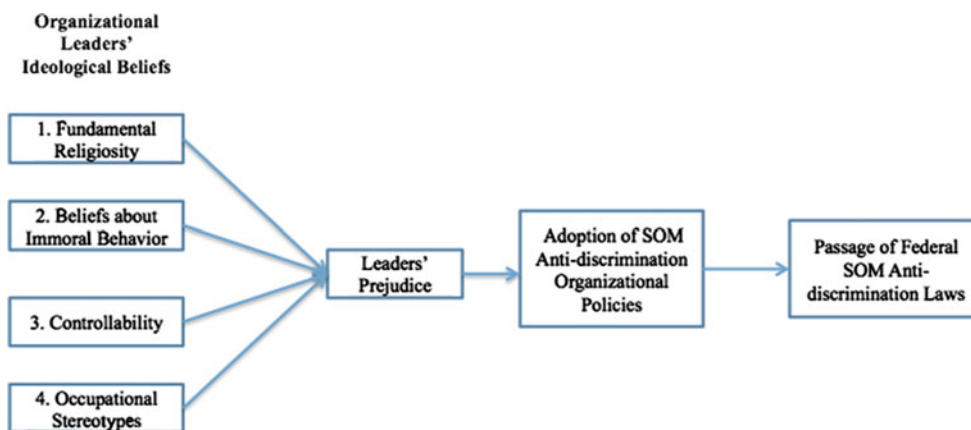
based on a national religion or religious denomination. Imparting laws on the preference or basis of one or more religions is a violation of this mandate; therefore, objections from any particular religion or religious denomination should not influence law. This may be seen as a violation of the establishment clause by enforcing portions of religious orthodoxy; thus, religious objections should not be relevant in the discussion of passing legislation protecting SOM.

Morality

Similar to the previous argument, another reason depicted in Fig. 2 that organizational leaders may be hesitant to adopt SOM-protective policies in their organizations involves a moral opposition to SOM lifestyles. Morality is not synonymous with religion as different religious denominations have different values that may be considered moral or immoral within that denomination. Morality is defined as conformity to ideals of proper human conduct (Merriam-Webster Dictionary). Some believe that homosexuality is in opposition to good and proper behavior and that providing federal protection to SOM may legitimize this immorality and initiate a slippery slope toward other immoral behaviors. These beliefs regarding immorality often manifest in a fear that SOM might be dangerous to children and/or unable to provide sound moral advice. Beliefs concerning morality can lead to the desire to restrict SOM from certain occupations. Thus, many people perceive SOM as being unfit for certain occupations such as being lower grade school teachers or clergy (Herek 1991; Sherrill and Hardesty 1994). These perceptions currently serve as opposition to the passage of laws federally protecting SOM in the workplace.

There is no conclusive scientific evidence to support the claims that SOM tend to be immoral. For instance, opponents of SOM have claimed that SOM are more likely than heterosexual adults to molest children. However, a recent review of the articles on this topic does not support this claim (see Herek 2012). Furthermore, pedophilia is not motivated by attraction toward the female or male gender, but by a need for intimacy or emotional fulfillment from pre-pubescent children of any gender (Seto 2012). Additionally, many legal experts argue that morality should not be incorporated into decisions regarding public policy, as there is no objective way to determine what is or is not moral (Ball 2012; Goldberg 2004). Even among those considered to be moral experts (such as philosophers and religious leaders), there is a large degree of disagreement about what are "correct" versus "incorrect" behaviors. For this reason, we cannot rely on the state to determine the legitimacy of disputed moral values. Because of their inherently subjective nature, moral arguments could be used inappropriately to

justify corrupt government interests or in this case, implicit prejudicial beliefs.

Some legal experts, however, contend that moral arguments can be used, but only in certain cases. According to Ball (2012), moral considerations can be used when (1) creating new laws that expand, rather than restrict rights, (2) when the moral considerations are consistent with the nation's constitution, and (3) when the moral assertions are grounded in empirical evidence. These principles are echoed by Cicchino (1998), who reasoned that, "[a] bare assertion of public morality, divorced from any empirical effect on the public welfare, cannot constitute a legitimate government interest for equal protection review" (Cicchino 1998, p. 142). None of these principles would be upheld in the case of enacting SOM-protective legislation. Given the lack of consensus regarding what morality is and the unfounded empirical evidence to support claims regarding the impact of SOM's morality in employment, the morality claim should not be seen as a valid argument to impede the passage of organizational leaders' SOM policies and of wider legislation protecting sexual orientation.

Controllability

Beliefs about controllability influence people's levels of prejudice, and hence, also may affect an organizational leader's decision to adopt SOM anti-discrimination law (see Fig. 2). Some organizational leaders denigrate SOM because they believe one's sexual orientation is controllable, it is willingly chosen, and employees simply can and should choose to change their sexual orientations to align themselves with societal approval and leading religions (Family Research Council 2009). The extent to which a characteristic is perceived to be controllable largely influences people's reactions to those who possess such characteristics (Goffman 1963; Hegarty and Golden 2008). Specifically, people react with more positivity and sympathy, and less negativity to those who have characteristics perceived to be uncontrollable (e.g., physical disability and race) than controllable (e.g., obesity; Crandall and Moriarty 1995; Hebl and Kleck 2002; Weiner et al. 1988). Similarly, those who view sexual orientation as controllable (versus uncontrollable) tend to denigrate SOM by showing decreased positive feelings, and decreases in support for SOM-related policies (Haider-Markel and Joslyn 2008). These findings likely translate to organizational leaders' feelings about supporting such policies. That is, to the extent that leaders see sexual orientation as controllable, they will not perceive the development of supportive SOM-related policies as important or necessary for their organization.

If sexual orientation is perceived as uncontrollable, comparisons become relevant to other uncontrollable

characteristics—such as race, color, and sex—that are currently protected by the CRA. Indeed, a significant body of empirical evidence affirms that at least some portion of sexual orientation is uncontrollable (e.g., Hamer et al. 1993; LeVay 1991; Savic et al. 2005). A strong link to the uncontrollable roots of sexual orientation also exists when examining twin studies, which show that monozygotic twins have a greater probability of having the same sexual orientation than do dizygotic twins (Bailey et al. 1993; Pillard and Weinrich 1986). Recent research examining brain activity based on exposure to same- versus opposite-sex stimuli show differences in response patterns to the stimuli for homosexual and heterosexual men, suggesting accuracy in predicting sexual orientation based on brain activity (Ponseti et al. 2009). Additionally, statistics show an inefficacy of change therapy programs, which are designed to help SOM change from homosexual to heterosexual (Haldeman 2002; Moran 2012). In a response to such results, the APA has released a policy statement condemning the practice of change therapy by licensed psychologists, stating that such practices should be avoided and can be detrimental to one's mental health (American Psychological Association 2008), and the governor of California recently banned such therapy in this state (Levs 2012).

Occupational Stereotypes

As shown in Fig. 2, a final antecedent to prejudice against SOM that we discuss is stereotypes about what are appropriate occupations for SOM based on stereotypical gender role beliefs. For instance, SOM are perceived as having cross-gender characteristics—gay men often act like women and lesbian women often act like men (Blashill and Powlishta 2009)—and thus, they often are perceived to be more suitable for cross-gender occupations than gender-normative ones (e.g., gay men are unsuitable for construction, but suitable for hair salons and clothing design). Such stereotypes may lead organizational leaders to justify discriminating against SOM in certain employment arenas because they believe that SOM would not succeed in (or even desire) positions in which there is an incongruence between their perceived gender role and the stereotype of the gender role of the job (Pichler et al. 2010).

Discrimination based on perceptions of lack of fit or role incongruity is reminiscent with the difficulties that women, particularly female leaders, faced during the Civil Rights Movement—and still somewhat face today (Eagly and Karau 2002; Heilman 1983). However, findings from a meta-analysis incorporating data back to 1973 have revealed that the stereotypical gender role of leaders in organizations has become less masculine and more androgynous over time (Koenig et al. 2011). While a direct causal link to the CRA has not been made, it is possible that the passage of the CRA and other legislation has influenced the evolving perceptions of gender roles. If the CRA is extended to SOM, we might anticipate that with time, people will relax their strong beliefs about what SOM employees are and should be restricted to doing in the workplace.

There is also no empirical evidence to suggest that SOM would be less qualified than heterosexual employees in any particular occupation. In fact, research shows that SOM often have higher levels of education than non-SOM (Berg and Lien 2002), and may actually possess, in at least some cases, more knowledge and abilities necessary to perform their jobs well. Furthermore, employment discrimination on the basis of sexual orientation (or gender in most cases) is rarely, if ever, a bona fide occupational qualification (BFOQ), and, therefore, should not be considered in employment decisions. Relying on stereotypes and assumptions may lead to less-than-optimal employment decisions (e.g., a qualified SOM applicant may be denied employment because of stereotypes). Thus, occupational stereotypes should not serve as a barrier to federal protection for SOM.

In sum, it is important to have an understanding of the general factors that prevent individuals, and particularly organizational leaders, from supporting and passing SOM policies. Moreover, it is important to not obfuscate the critical issues involved with protecting SOM employees with issues unrelated to equal opportunity employment that are unlikely to be resolved if they continue to be mired together (e.g., religion and SOM). Removing barriers to affecting change at the organizational level can help organizations begin the process of smoothly enacting organizational-level policies, which can in turn lead to federal-level changes.

Conclusion

The U.S. has made great strides in reducing overt forms of discrimination against stigmatized individuals. One large step in achieving this goal was passing the CRA, which led to formal protection of individuals belonging to the groups covered by this law. Over time, there has been greater acceptance and inclusion of members belonging to these protected classes in the workplace and society as a whole. In this paper, we have argued that discrimination is readily apparent for SOM in the workplace and that there are psychological belief systems that can act as barriers to organizational leaders adopting protective SOM policies within their organizations. However, we argue that organizational leaders are in a unique position to facilitate the passage of SOM legislation by creating

socio-organizational pressure and passing policies within their own organizations that guide laws, instead of following them. By learning from the history of the CRA, and the 50 years since its passage, organizational leaders can be at the forefront of influencing effective legislative changes that promise protection on the basis of SOM. The passage of ENDA and similar anti-discrimination laws protecting sexual orientation may be beneficial not only to SOM employees, as they will finally have legal recourse to fight against workplace injustices, but also to the U.S. as a nation, as we will be even closer to living up to the very American ideal that "all men [and women] are created equal."

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