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Abstract

This article sheds new light on policy diffusion by exploring policy complexity in state-level lesbian, gay, bisexual, and transgender (LGBT) antidiscrimination policies. The multiple component event history approach taken in this research allows for the concurrent study of both policy content and the factors that affect policy adoption. Results reveal that the factors influencing policy adoption vary depending on both the content and scope of the policy in question. In addition to addressing laws that protect gay people from discrimination, this article is one of the first studies in the political science and policy literature to empirically investigate the spread of transgender-inclusive laws. Despite combined advocacy and public conflation of identities, gay and transgender-inclusive laws appear to be influenced by different internal and external factors.

Keywords

policy innovation/diffusion, policy process, politics of sexuality, public policy, quantitative methods

A common complaint about state policy diffusion research is that little attention is given to the content of the adopted policies (Karch 2007). In part, this problem is rooted in the extant literature's reliance on event history analysis and the frequent

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operationalization of policy adoption as a dichotomous dependent variable (e.g., Berry and Berry 1990; Hays and Glick 1997). While this approach has proven successful in highlighting the internal and external determinants of policy adoption, it assumes that all policy adoptions are equivalent in content. If we believe that policy content varies across jurisdictions and over time, this assumption is clearly problematic. Indeed, scholarship on policy reinvention underscores this kind of policy complexity (Glick and Hays 1991; Mooney and Lee 1995). Unfortunately, when the conceptualization of policy adoption moves away from a simple dichotomous indicator, it can be very difficult to adequately assess the influences on adoption across multiple variations of a policy (Boehmke 2009). In short, it becomes difficult to determine if the forces affecting policy adoption are the same for each of the components comprising a complex policy.

In this article, we explore the determinants of policy adoption across multiple components of a complex policy by examining laws banning discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals. While there has been important work on the adoption of sexual orientation-inclusive nondiscrimination laws (e.g., Haider-Markel and Meier 1996; Lax and Phillips 2009a; Wald, Button, and Rienzo 1996), this body of literature mostly ignores the complexity of the policies. As such, there has been a failure to address the significant differences in what these state-level statutes cover. For instance, some states have limited insurance protections while others offer far more comprehensive bans on discrimination. As demonstrated by the protracted development of LGBT-inclusive nondiscrimination law in California, the levels of protection might also vary within jurisdictions over time.

Furthermore, focus on sexual orientation–inclusive protections fails to include the entire LGBT community. Transgender individuals and gender-variant gay persons are ignored.[1] This is not surprising given that gender-variant gay and transgendered individuals were marginalized within or excluded from the nascent gay rights movement (particularly the 1970s to 1990s) because they were viewed as a threat to political progress (Minter 2006). Ignoring these portions of the LGBT community has occurred despite the common conflation of gay and transgender identities and the often combined nature of their advocacy (Taylor 2007a). In fact, with the exception of Colvin's (2007) work on the implementation of gender identity-inclusive nondiscrimination policies in public employment and Nownes's (2010) work on transgender interest groups, much of the discipline's body of knowledge in this area is descriptive, centered on legal analysis, or based in critical perspectives (e.g., Currah, Juang, and Minter 2006; Taylor 2007b). There is little quantitative analysis directed at these increasingly common laws.

Additional study of the intertwined nature of gay and transgender rights is necessary, and it provides fertile ground to explore the political consequences of policy complexity. To fill this gap in the literature, we expand on the event history approach used in much of the policy diffusion literature by incorporating multiple components of these policies. By doing so, we can examine the extent to which the determinants of policy adoption vary across the components of these policies and over time. Our

analyses show that the factors affecting the passage of LGBT antidiscrimination statutes vary by *what* and *who* is protected.

Innovation, Diffusion, and Policy Complexity

A policy innovation occurs when a state adopts a new program (e.g., Walker 1969). These policy adoptions can be driven by both external and internal factors (Gray 1994). While the influence of external factors is subject to substantive criticism from Volden, Ting, and Carpenter (2008), many scholars contend (e.g., Gray 1994) that external influences are felt through social learning transmitted via other governments and policy networks. While influences can be vertical (Welch and Thompson 1980), state policymakers can also learn from the experiences of other states. Policymakers follow the lead of innovative states (Walker 1969) and look to other states to understand how policies fit into the ideological continuum (Grossback, Nicholson-Crotty, and Peterson 2004). Frequently, policymakers emulate the policies of nearby or neighboring states since these jurisdictions tend to have similar ideological, economic, and demographic profiles (e.g., Daley and Garand 2005). However, the importance of regional networks in policy diffusion may be declining due to technological change, the development of professional organizations, and the growth national policy networks (Gray 1994; Martin 2001). Indeed, centralized national policy networks have been shown to promote similar legislation in various states (Haider-Markel 2001b; Kirst, Meister, and Rowley 1984).

Despite the potential for policy learning from external factors in the area of LGBT rights, Mooney and Lee (1995; 1999) note that in the realm of morality politics, sharp clashes over fundamental values make internal factors decisive. Three broad classes of internal determinants have been identified: economic, political, and social (Gray 1994). Usually, morality policies like LGBT rights are driven by political and social factors. For instance, Democratic control of the legislature facilitates the adoption of gay rights legislation (Haider-Markel 2001b). Despite some policy incongruence, liberal states also are more likely to adopt gay rights measures than are conservative states (Lax and Phillips 2009a). Conversely, the percentage of Evangelicals within a state has a negative effect on the passage of pro–gay rights legislation (Barclay and Fisher 2003; Haider-Markel 1999; 2001a; Haider-Markel and Meier 2003). Research has also shown that states with higher percentages of college graduates tend to have more tolerant attitudes toward minority groups and are less likely to adopt discriminatory policies (Barclay and Fisher 2003; Haider-Markel and Meier 2003; McClosky and Brill 1983).

While the aforementioned literature here contributes a great deal to the understanding of policy innovation as an event, it is limited in its capacity to account for the content of these innovations (Clark 1985; Karch 2007). Much of this work relies on dichotomous indicators of policy that cannot gauge variations in similar policies across states. As a result, we often know more about how policies diffuse rather than what is actually being diffused. This limitation is important because state policies are

rarely exact replicas of one another. Public policies are often complex, with varying scopes and multiple components (e.g., Mintrom and Vergari 1998; Volden 2006). While subject to constraints due to conflict (Hays 1996), increasingly comprehensive policy reinvention can occur (Glick and Hays 1991). Though policy reinvention is usually conceptualized as occurring in complex policy areas through policy-oriented learning, states can also engage in reinvention as they learn about the political consequences (good or bad) of more comprehensive policies. States may also learn from the experiences of early innovators and adopt only those provisions that are deemed to be successful (Volden 2006; Volden, Ting, and Carpenter 2008). Even in the morality politics arena, variations in policy content have been shown to alter the conflict associated with contentious issues like state lotteries (Pierce and Miller 1999).

Thus, our study seeks to fuse the insights of the policy diffusion literature and the work on policy complexity. We do so by employing a multiple component event history approach to the study of LGBT-inclusive nondiscrimination laws. This allows us to consider the dynamic internal and external determinants of policy adoption while at the same time recognizing that antidiscrimination policy is complex. It encompasses multiple components (e.g., housing, public accommodations, and employment) that vary over time and by which portions of the LGBT community are protected. Since previous work has not accounted for the policy complexity of LGBT nondiscrimination policy, the null hypothesis for this study can be stated as:

Hypothesis 0: The determinants of the adoption of state LGBT-inclusive non-discrimination policy are equivalent across the different components of these statutes.

However, given the wide variation in *what* and *who* is covered by a LGBT nondiscrimination policy, we propose an alternative hypothesis:

Hypothesis 1: The determinants of policy adoption vary significantly across the different components of LGBT-inclusive nondiscrimination policy.

Finally, since policies in a jurisdiction are subject to alterations and expansion over time through policy reinvention processes, we propose an additional hypothesis:

Hypothesis 2: Early adopting states will expand their initial sexual orientation-inclusive nondiscrimination policies to include additional component areas and to cover gender identity.

Dependent Variable: Content of Antidiscrimination Policy

The first step in exploring policy complexity is to construct measures of state-level sexual orientation- and gender identity-inclusive nondiscrimination laws. These laws bar governments, private entities, or individuals from engaging in bias aimed at gay

or transgender individuals. Following the literature (e.g., Glick and Hays 1991), we focus on statutory law and only address policy created directly through the legislative process.[2] In terms of *what* is covered, our statutory analysis identified seven distinct antidiscrimination policy areas where gay or transgender persons have received legal protections: private employment, housing, public accommodations, education, credit, insurance, and health care.[3] While the latter four areas may be explicitly included under public accommodations statutes, this is not always the case. For example, Wisconsin passed an antidiscrimination statute addressing education in 1990 despite its passage of a public accommodations law in 1981. Thus, we follow Haider-Markel and Meier (1996) and separate public accommodations from these other policy domains. Using this approach, we are able to include state adoption of narrow antidiscrimination measures, such as those that govern viatical settlements or regulate service provision by public university hospitals.[4] Given the distinction between sexual orientation and gender identity (Taylor 2007b), our analysis has two sets of these seven components.

Our data set was constructed via content analysis of statutes located by a keyword search of all state codes as of 2008. The search terms utilized were *sexual orientation*, *gender identity*, and *gender expression*.[5] The number of search hits in the states ranged from a low of zero (e.g., Virginia) to over 200 in California. Whenever the search terms were found in relation to an antidiscrimination policy, the statute was coded to indicate the specific policy component that it covered and the scope of its protections (sexual orientation or gender identity). The year of policy adoption was determined through examination of the legislative history. Comparison with a database maintained by the Human Rights Campaign (2010) confirms the accuracy and completeness of our data set of state-level LGBT nondiscrimination laws.

The analysis of LGBT-inclusive policies begins in 1981, the year that Wisconsin passed the first statewide nondiscrimination measure, and ends in 2008.[6] Figure 1 shows the number of states with these provisions over time. As of 2008, 28 states had some form of sexual orientation protection, while 13 states had a gender identity-inclusive measure. Of the 20 states with the most comprehensive protections for gays and lesbians, 11 had engaged in policy reinvention to some extent.[7] Figure 2 shows the number of states with each of the policy components (see the appendix for the specific years of adoption). Insurance protections are the most plentiful sexual orientation-inclusive protection, while education policies are the least numerous. The figure also reveals that there is more variation in the coverage of sexual orientation-inclusive components as compared to those including gender identity.

Multiple Component Event History Analyses

To examine the factors that influence the adoption of LGBT-inclusive antidiscrimination policies while also accounting for the complex content of these policies, we employ a variant of event history analysis (EHA) that allows for multiple policy components. In most diffusion models, the dependent variable is a dichotomous indicator of whether or not a given state adopted a policy in that year (e.g., Berry and
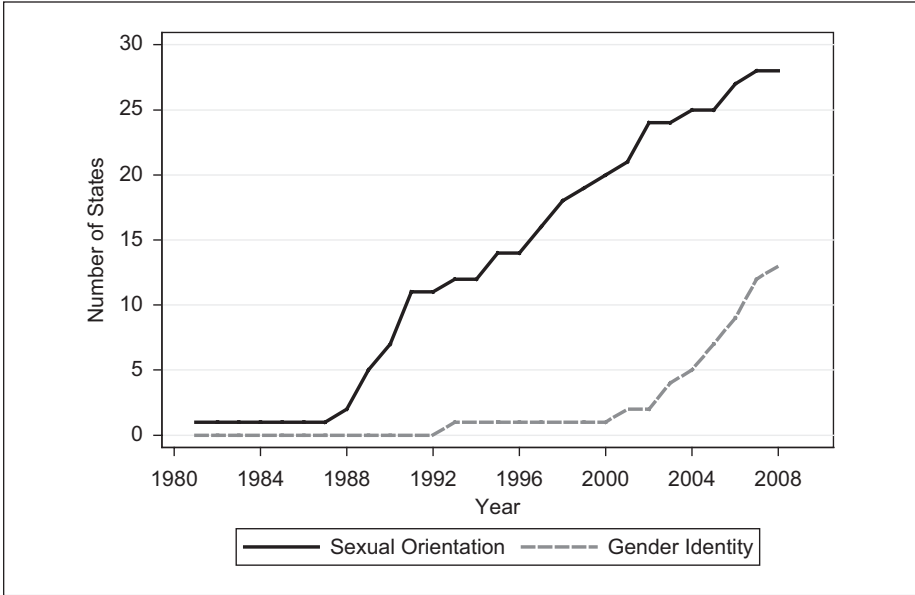
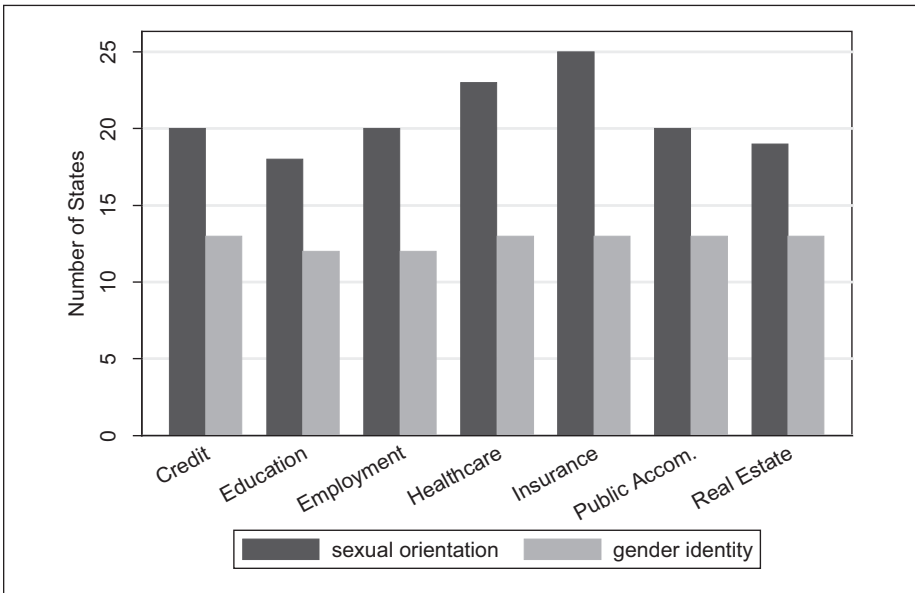**Figure 1.** States with statutory nondiscrimination provisions, 1981-2008

Figure 2. States with lesbian, gay, bisexual, and transgender-(LGBT) inclusive nondiscrimination policies, 2008

Berry 1990). We retain the dichotomous indicator of policy adoption, but observations are uniquely identified by state, year, and *component*.[8] From this data set we can run 14 event history models, one for each policy component covering sexual orientation and gender identity. In doing so, we allow the coefficients of the determinants of policy adoption to vary by *who* is being protected and by *what* is being protected.

Estimating a separate regression model for each policy component, however, is problematic for two reasons. First, our hypotheses require us to perform significance tests on the differences between coefficients across the different equations. Second, in estimating 14 separate models, we are assuming that the error terms in the models are independent from one another. This assumption is almost certainly inaccurate, as it is highly likely that unobserved state-level factors have similar effects on the likelihood of adoption of the various policy components. To address these issues, we use a two-stage seemingly unrelated estimation procedure that allows us to conduct chi-square tests across the equations and adjusts the standard errors to account for the correlations between the equations.[9] In the first stage we estimate separate EHAs for each component using logistic regression. Next, we combine the parameter estimates and variance-covariance matrices into a single parameter vector and simultaneous covariance matrix to jointly estimate robust/sandwich standard errors clustered by state (Weesie 1999; White 1982; 1994).[10] Using this approach, we can directly test the variation in the explanatory variables across the policy components. For example, we can test whether citizen ideology has the same effect on the adoption of credit protections as it does on the adoption of education protections. Further, we can test whether citizen ideology has the same effect on the adoption of credit protections covering sexual orientation and credit protections covering gender identity.

Again, our dependent variables are indicators of whether a state adopts a particular policy component in a given year. Once a state adopts a component it is dropped from the data set since it is no longer "at risk" of experiencing that event. Though the content analysis of nondiscrimination policies produces 14 different dependent variables, we estimate only 12 simultaneous equations because the patterns of adoption for three of the gender identity-inclusive components—credit, health care, and public accommodations—are all the same.

For each equation we model the likelihood of adoption as a function of a host of external and internal determinants common to each policy component. Regional diffusion is measured as the proportion of states in the U.S. Census Bureau–defined region that has previously adopted that nondiscrimination component. Since states in the same region are likely to have similar ideological and demographic profiles, they may emulate each other's "successful" nondiscrimination policies. Thus, we expect a positive relationship with the dependent variables. We also control for other regional effects by including indicators of regions, with the South serving as the reference category. However, these regional controls perfectly predict nonadoption for the gender identity components and must be omitted from those equations.

Policy reinvention effects are discerned in three ways. First, we include a dichotomous indicator of whether a state has previously passed one of the policy components. A state that has previously adopted a LGBT-inclusive nondiscrimination component

should be more likely to pass a subsequent one since early adopters tend to amend their policies to catch up with later adopters (until it has passed all 14 LGBT nondiscrimination components). Second, we include a variable measuring the average national protection level. As more states adopt comprehensive sexual orientation- or gender identity-inclusive policies (increasing the average protection level across all states), the pressure should increase for nonadopters and limited adopters to pass policy components. For gender identity components we also include a variable indicating whether a state has an existing sexual orientation protection for that policy component.

The models also include a variety of internal political and social factors. State citizen ideology is measured using Pacheco's (2011) annual ideological identification, created using a three-year running average of estimates from a multilevel regression and post-stratification technique (Lax and Phillips 2009b; Park, Gelman, and Bafumi 2006).[11] States with more liberal citizens should be more likely to adopt a LGBT-inclusive nondiscrimination policy component. However, we expect the effect of citizen ideology to be conditional upon the presence of direct democracy institutions.[12] The "tyranny of the majority" critique of direct democracy hypothesizes that states which allow citizens to directly enact public policy are more responsive to the majority and therefore should be more likely to restrict minority rights (e.g., Gamble 1997; Haider-Markel, Querze, and Lindaman 2007; Lewis 2011). Following this argument, we interact ideology with a measure of direct democracy impact—a logged count of ballot measures that a state has considered in the previous six years. States that use initiatives more often should be more likely to follow the preferences of the majority of citizens—passing protections in liberal states and not passing them in conservative states.

The analyses also account for the effects of political parties. In general, the Democratic Party has been more supportive of LGBT rights than has the Republican Party (e.g., Haider-Markel 2000; Herrick 2008). Legislative chambers with a higher percentage of Democrats should be more likely to pass protections for sexual orientation and gender identity.[13] In addition, we expect states with divided party control of government to be less likely to pass these policies. We also control for party competition using a folded Ranney index.

Additionally, we expect that organized interests will influence the diffusion of antidiscrimination policies (e.g., Brace 1988; Shipan and Volden 2006). The organizational capacity of LGBT groups in a state is gauged with estimates of the per capita budgets of state-level LGBT rights organizations reported by the Equality Federation.[14] States with more LGBT organizational strength should be more likely to pass these laws. Meanwhile, opposition to gay rights policies is usually led by the conservative Christian movement (Haider-Markel 2000; 2001a; Wald, Button, and Rienzo 1996). Since conservative Christian groups tend to be membership groups, we can assess their organizational capacity by assessing the potential membership resources in a state—the rate of evangelical adherents.[15] We expect negative relationships between Evangelicals and the dependent variables.

Finally, the models control for education levels.[16] Since education is a consistent determinant of tolerance toward minority groups (e.g., McClosky and Brill 1983), states with higher percentages of residents with college degrees should be more likely

to pass nondiscrimination measures. Table A3 in the appendix provides descriptive, source, and hypothesis information for the independent variables.

Results—Components Covering Sexual Orientation

For ease of interpretation, we split the presentation of the results from the 12 equations between the sexual orientation and gender identity components.[17] Table 1 shows the estimates from the 7 sexual orientation equations. In general, we find that the diffusion and reinvention variables do not significantly affect the likelihood of adopting gay and lesbian-inclusive nondiscrimination components. The policy decisions of nearby states do not significantly affect the likelihood of policy adoption. For most of the policy components, states that adopt one policy component are no more likely to adopt other policy components than are states without existing protections. However, the average national protection level does have statistically significant positive coefficients in most of the equations. This indicates that as states, on average, adopt more comprehensive protections, the odds of policy adoption increase substantially even when accounting for temporal trends. This result is consistent with both a reinvention effect and a national diffusion effect.

As expected from the morality politics literature, the variables tapping internal political determinants, such as ideology and partisanship, have more consistently significant coefficients. Though the coefficient for citizen ideology is not statistically significant in any of the equations, this coefficient only represents the effect of ideology for nondirect democracy states. When combined with the interaction term, citizen ideology has significant positive effects that grow as states use initiatives more often. This result is consistent with the majoritarian findings of the direct democracy literature (Haider-Markel, Querze, and Lindaman 2007; Lewis 2011). High-use initiative states are more likely to pass policies that are congruent with majority preferences. This interactive relationship reaches statistical significance ($p < .05$) for all sexual orientation components except for insurance. Partisanship in the legislatures also significantly affects most of the component adoptions. For all components except the insurance component, legislatures with higher numbers of Democrats are more likely to pass the policy in question. Additionally, the organizational capacities of LGBT groups are statistically significant in six of the seven sexual orientation equations. As expected, higher LGBT group capacities are related to higher likelihoods of policy adoption. Finally, states with higher education rates are more likely to adopt sexual orientation-inclusive protections for five of the seven components.

In all, the pattern of consistently significant internal political determinants is line with morality policy theory (Mooney and Lee 1995; 1999). However, the results also suggest that there is some variation across the different policy components. On the surface, it is clear that education and insurance, in particular, stand apart from the other five components. Still, relying on levels of statistical significance alone can be misleading. A closer inspection of the results reveals more variation in terms of the magnitudes of many of the coefficients.

Table 2 shows the results of all pairwise chi-square tests of the equality of coefficients across the seven sexual orientation components. The shaded regions highlight

Table 1. Event History Analysis (EHA) of the Adoption of Sexual Orientation–Inclusive Nondiscrimination Policy Components, 1981-2008

Variable	Credit		Education		Health care		Insurance		Public employment		Public accommodations		Real estate	
Diffusion	0.248	(0.568)	-0.544	(0.545)	0.077	(0.548)	-0.090	(0.280)	0.143	(0.504)	0.270	(0.591)	0.298	(0.542)
Prior passage	0.676	(0.938)	0.326	(1.247)	1.445*	(0.783)	1.325	(0.943)	2.572**	(1.120)	1.769	(1.085)	0.150	(1.491)
Mean protection	11.757***	(2.791)	3.316*	(1.910)	4.516**	(2.117)	1.204	(1.544)	10.386***	(2.700)	13.355***	(3.166)	8.694***	(2.038)
Citizen ideology	-1.347	(17.373)	11.742	(20.881)	-12.279	(12.354)	5.221	(13.556)	-18.665	(11.697)	0.020	(19.409)	4.077	(15.126)
Initiative use	-13.067***	(3.804)	-2.985***	(1.219)	-4.706**	(1.830)	0.224	(0.987)	-12.425***	(3.113)	-14.007***	(4.285)	-9.122***	(2.052)
Ideology × Initiative Use	47.849***	(14.189)	10.461***	(4.666)	18.084***	(6.953)	-0.571	(4.170)	46.140***	(11.989)	51.476***	(15.889)	34.996***	(8.101)
Percentage Democrats (logged)	3.737**	(1.801)	6.400*	(3.471)	5.283***	(1.966)	1.534	(1.121)	6.593***	(2.370)	3.816*	(2.087)	5.181**	(2.381)
Divided government	-0.762	(1.177)	-0.547	(0.977)	0.153	(0.829)	0.928	(0.801)	0.152	(0.838)	-0.831	(1.304)	0.376	(1.022)
Party competition	-3.093	(6.918)	12.576*	(6.447)	1.847	(5.674)	-3.771	(4.864)	0.948	(6.762)	-1.958	(6.998)	2.153	(7.849)
LGBT group capacity	55.253***	(19.281)	19.153***	(8.470)	22.472***	(8.061)	22.593***	(5.941)	21.303	(13.683)	58.222***	(20.943)	24.171**	(11.823)
Evangelical rate	-0.265	(0.176)	-0.144	(0.133)	0.048	(0.030)	-0.037	(0.034)	-0.603*	(0.317)	-0.263	(0.197)	-0.142	(0.144)
Education rate	0.439***	(0.167)	0.086	(0.114)	0.222**	(0.100)	0.130	(0.112)	0.661***	(0.202)	0.496***	(0.178)	0.549***	(0.131)
Northeast	2.652	(2.125)	1.760	(2.007)	3.914***	(1.448)	0.556	(1.055)	2.495	(2.129)	3.190	(2.123)	2.669	(2.091)
Midwest	7.383***	(1.648)	4.004***	(1.316)	3.587***	(1.000)	1.684*	(1.025)	8.418***	(1.734)	7.977***	(1.696)	6.131***	(1.292)
West	6.029***	(1.745)	2.086	(1.380)	1.308	(1.085)	0.889	(0.986)	10.809***	(2.554)	6.113***	(1.965)	4.560***	(1.658)
Year	-1.183***	(0.344)	-0.146	(0.206)	-0.365	(0.289)	-0.112	(0.168)	-1.056***	(0.354)	-1.372***	(0.380)	-0.918***	(0.262)
N	1,176		1,206		1,164		1,050		1301		1304		1298	
Log likelihood	-40.663		-47.792		-63.441		-90.538		-39.792		-38.791		-45.629	
McFadden's R²	0.599		0.489		0.419		0.234		0.588		0.617		0.530	

Notes: Cell entries are logistic regression coefficients. Simultaneously estimated robust standard errors, clustered on the state, are presented in parentheses.
*p < .10. **p < .05. ***p < .01.

the statistically significant differences ($p < .10$). Of the 336 tests presented here, 117 (35%) produce statistically significant differences. Overall, this suggests a relatively high level of variation in the determinants of policy adoption across the different policy components, emphasizing the importance of accounting for the policy content of complex policies such as nondiscrimination policy. Furthermore, these tests reveal that the differences in the determinants of *what* is covered by sexual orientation-inclusive nondiscrimination policy vary beyond just the education and insurance components. For example, the tests show that the magnitude of the effect of LGBT group capacity is substantially larger for the credit and public accommodations components compared to the other components. We also see that variation in the effects of national protection levels, percentage of Democrats in the legislature, and education rates. There are also significant differences in the effects of citizen ideology in direct democracy states. To summarize, even though the findings across sexual orientation-inclusive components are consistent with morality policy theory, there appears to be variation in how different internal factors contribute to policy adoption when taking into account policy complexity.

Results—Components Covering Gender Identity

The results for the gender identity-inclusive nondiscrimination components are presented in Table 3. Unlike the sexual orientation components, the regional diffusion and reinvention variables are consistently significant determinants of adoption of gender identity-inclusive protections. States whose neighbors have adopted these protections are significantly more likely to pass their own policy for five of the seven components. Additionally, states that previously adopted a gender identity-inclusive protection for a different policy component are significantly more likely to pass another. Interestingly, the national protection level shows a negative impact on adoption. This may suggest that states that resist adopting a gender identity protection are not pressured by national diffusion.

Another interesting result is that the adoption of a sexual orientation protection does not increase the likelihood of adopting a gender identity protection. Of the 13 states (through 2008) with gender identity protections, only New Jersey, Vermont, and Rhode Island later added gender identity protections to a comprehensive, existing set of sexual orientation protections. California expanded three of its existing sexual orientation protections to include gender identity and later simultaneously adopted gay and transgender-inclusive measures for the remaining four components. For most states with gender identity protections, the nondiscrimination policy included sexual orientation and gender identity from the start. In addition, there remain 16 states with sexual orientation protections that have yet to adopt language including any gender identity provisions. This includes 7 states that have comprehensive coverage for sexual orientation. Among these are Wisconsin and Massachusetts, the earliest adopters of sexual orientation protections.

The results from the gender identity models also reveal another difference from the sexual orientation-inclusive policies: very few internal political and social determinants

Table 2. Tests of Differences of Coefficients across Sexual Orientation-inclusive Policy Component Equations

Variable	1/2	1/3	1/4	1/5	1/6	1/7	2/3	2/4	2/5	2/6	2/7	3/4	3/5	3/6	3/7	4/5	4/6	4/7	5/6	5/7	6/7
Diffusion	0.26	0.72	0.42	0.69	0.73	0.84	0.36	0.43	0.30	0.27	0.20	0.73	0.89	0.67	0.62	0.55	0.43	0.29	0.63	0.62	0.92
Prior Passage	0.78	0.36	0.60	0.23	0.25	0.75	0.32	0.36	0.19	0.20	0.90	0.90	0.33	0.61	0.32	0.30	0.68	0.49	0.51	0.17	0.17
Mean Protection	0.01	0.02	0.00	0.65	0.37	0.31	0.64	0.40	0.03	0.01	0.02	0.15	0.07	0.02	0.11	0.00	0.00	0.00	0.36	0.45	0.19
Citizen Ideology	0.35	0.34	0.62	0.12	0.62	0.56	0.16	0.68	0.09	0.42	0.58	0.17	0.54	0.34	0.16	0.05	0.73	0.92	0.16	0.09	0.70
Initiative Use	0.01	0.02	0.00	0.83	0.45	0.19	0.43	0.03	0.00	0.01	0.00	0.01	0.01	0.02	0.06	0.00	0.00	0.00	0.63	0.05	0.18
Ideology* Initiative Use	0.01	0.03	0.00	0.87	0.44	0.24	0.34	0.04	0.00	0.01	0.00	0.01	0.01	0.03	0.04	0.00	0.00	0.00	0.65	0.07	0.22
% Democrats (logged)	0.41	0.20	0.14	0.06	0.83	0.30	0.74	0.13	0.96	0.41	0.64	0.03	0.44	0.25	0.95	0.02	0.19	0.06	0.10	0.47	0.31
Divided Government	0.78	0.18	0.12	0.25	0.75	0.14	0.36	0.11	0.40	0.74	0.20	0.33	1.00	0.22	0.75	0.38	0.15	0.56	0.29	0.70	0.19
Party Competition	0.09	0.23	0.90	0.51	0.39	0.39	0.20	0.04	0.24	0.11	0.30	0.27	0.86	0.33	0.95	0.40	0.74	0.34	0.62	0.68	0.48
LGBT Group Capacity	0.03	0.04	0.06	0.04	0.49	0.09	0.71	0.64	0.87	0.03	0.68	0.99	0.92	0.04	0.88	0.91	0.06	0.87	0.04	0.68	0.09
Evangelical Rate	0.40	0.06	0.19	0.12	0.94	0.52	0.14	0.42	0.06	0.46	0.99	0.05	0.04	0.10	0.20	0.07	0.24	0.46	0.11	0.10	0.53
Education Rate	0.05	0.10	0.07	0.08	0.37	0.49	0.31	0.78	0.01	0.03	0.01	0.46	0.00	0.05	0.01	0.01	0.05	0.01	0.18	0.56	0.75
Northeast	0.60	0.44	0.31	0.91	0.27	0.99	0.20	0.53	0.68	0.44	0.66	0.03	0.43	0.65	0.50	0.30	0.19	0.30	0.59	0.92	0.79
Midwest	0.04	0.03	0.00	0.56	0.32	0.46	0.77	0.19	0.04	0.02	0.18	0.17	0.02	0.02	0.08	0.00	0.00	0.01	0.80	0.18	0.32
West	0.02	0.01	0.01	0.02	0.88	0.25	0.55	0.47	0.00	0.03	0.11	0.78	0.00	0.02	0.03	0.00	0.02	0.06	0.02	0.02	0.31
Year	0.01	0.03	0.00	0.72	0.37	0.43	0.51	0.90	0.02	0.00	0.01	0.37	0.08	0.02	0.07	0.01	0.00	0.00	0.38	0.65	0.25

Notes: Cell Entries are p-values from χ^2 tests of coefficients across the indicated equations. Shaded regions highlight $p < 0.1$.
Equation Numbers: (1) Credit; (2) Education; (3) Healthcare; (4) Insurance; (5) Public Employment; (6) Public Accommodations; (7) Real Estate

Table 3. Event History Analysis of Adoption of Gender Identity-inclusive Nondiscrimination Policy Components, 1981-2008

Variable	Credit-health-public accommodations		Education		Insurance		Public employment		Real estate	
Diffusion	8.862***	(2.839)	9.796**	(3.933)	12.465***	(4.048)	6.020	(4.507)	5.663	(3.866)
Prior passage	5.541**	(2.490)	3.288**	(1.469)	9.987***	(2.815)	—	—	—	—
Mean protection	-3.911**	(1.577)	-3.529**	(1.759)	-5.076***	(1.690)	-3.987*	(2.070)	-2.946	(1.938)
Prior sexual orientation policy	-0.645	(1.778)	0.174	(1.873)	-0.581	(1.829)	-0.800	(1.499)	-1.515	(1.715)
Citizen ideology	18.308	(27.655)	3.310	(22.410)	17.610	(26.808)	10.014	(23.988)	22.806	(23.126)
Initiative use	0.437	(1.645)	0.475	(2.448)	-1.159	(1.722)	0.120	(1.997)	0.549	(1.678)
Ideology × Initiative Use	-4.149	(6.908)	-2.639	(9.369)	1.787	(6.675)	-0.621	(7.948)	-2.495	(6.695)
Percentage Democrats (logged)	3.952	(2.438)	6.166**	(2.738)	3.761	(2.554)	5.342**	(2.382)	6.274**	(2.491)
Divided government	-3.053**	(1.447)	-2.697***	(1.273)	-2.828**	(1.350)	-2.687***	(0.987)	-1.783*	(1.027)
Party competition	5.004	(6.920)	12.585*	(7.433)	3.752	(8.179)	10.870	(6.610)	7.904	(6.301)
LGBT group capacity	3.790	(5.234)	-0.520	(5.181)	2.022	(5.052)	0.613	(5.513)	-2.935	(8.101)
Evangelical rate	-0.039	(0.058)	-0.072	(0.058)	-0.032	(0.056)	-0.057	(0.058)	-0.042	(0.052)
Education rate	-0.104	(0.107)	-0.072	(0.133)	-0.121	(0.110)	-0.031	(0.106)	-0.027	(0.103)
Year	0.425*	(0.231)	0.322**	(0.149)	0.435*	(0.225)	0.496*	(0.289)	0.501**	(0.265)
N	1,304		1,309		1,301		1,298		1,299	
Log-likelihood	-32.697		-30.579		-30.368		-37.142		-38.984	
McFadden's R^2	0.551		0.552		0.583		0.455		0.464	

Notes: Cell entries are logistic regression coefficients. Simultaneously estimated robust standard errors, clustered on the state, are presented in parentheses.
*$p < .10$. **$p < .05$. ***$p < .01$.

are statistically significant. Among those internal factors that are statistically significant, the partisan makeup of legislatures affects the likelihood of adoption for three of the components. The percentage of Democrats is positively and statistically significant. Also, the divided government coefficient is significant and negative, indicating that policy adoption is less likely when lawmaking authority is divided between the parties. However, contrary to the sexual orientation results and the expectations of morality policy theory, internal factors like citizen ideology, party competition, interest group capacity, and education do not have significant impacts.

In terms of the factors that affect *what* is being covered by gender identity-inclusive protections, there seems to be little variation across the components. Table 4 shows that less than 13% of the chi-square tests reach the .10 level of statistical significance. Unlike the sexual orientation components, the adoption of the different gender identity components seems to be driven by the same set of factors. This suggests that states tend to adopt gender identity protections in a more comprehensive manner. In fact, that is what has occurred in most states with transgender-inclusive policy. California and Hawaii are notable exceptions to this trend. In addition, these results suggest that the adoption of gender identity-inclusive protections is more likely the product of policy and political learning and less driven by internal political conditions.

In examining the results of the event history analyses by *who* is being covered, it seems as if there are striking differences in the factors that affect sexual orientation and gender identity protections. In Table 5, we test whether these differences are statistically significant, comparing the coefficients across the different groups protected by each component area. As expected, most of the differences evident from Tables 1 and 3 are statistically significant (55%). This is strongly supportive of the argument that gender identity is treated differently from sexual orientation. This differential treatment occurs despite the often combined nature of LGBT advocacy and the conflation of gay and transgender identities.

Discussion

The complexity of nondiscrimination law highlights the limitations of most approaches to policy diffusion research. In this policy domain, attention should be provided to *what* and *who* is protected, not just when a law is adopted. In short, the dynamics of the diffusion process are contingent upon the content of the policy being diffused. For sexual orientation-inclusive protections, the process is dominated by internal political factors. However, the factors that affect the adoption of these protections varied significantly across the different components. Ideology, the partisan makeup of the legislature, interest group capacity, and education rates all varied widely across the different dimensions of nondiscrimination law. For some of the components the determinants of policy adoption varied even more distinctly from the others. Insurance protections in particular stood out from the other components and had fewer political determinants than did other components. We attribute this to the fact some of the insurance provisions originated during the earlier years of the AIDS crisis and these statutory revisions provided protections that extended beyond the LGBT community. We also found less adoption

Table 4. Tests of Differences of Coefficients across Gender Identity-inclusive Policy Component Equations

Variable	1/2	1/3	1/4	1/5	2/3	2/4	2/5	3/4	3/5	4/5
Diffusion	0.641	0.034	0.274	0.122	0.361	0.028	0.017	0.062	0.025	0.720
Prior Passage	0.226	0.004	-----	-----	0.007	-----	-----	-----	-----	-----
Mean Protection	0.727	0.080	0.936	0.360	0.234	0.617	0.516	0.445	0.167	0.031
Prior SO Policy	0.359	0.799	0.795	0.215	0.362	0.358	0.126	0.754	0.259	0.242
Citizen Ideology	0.348	0.854	0.408	0.664	0.393	0.631	0.139	0.402	0.596	0.130
Initiative Use	0.972	0.015	0.751	0.887	0.280	0.678	0.942	0.360	0.158	0.437
Ideology*Initiative Use	0.692	0.012	0.368	0.610	0.417	0.637	0.974	0.629	0.321	0.412
% Democrats (logged)	0.269	0.772	0.341	0.063	0.307	0.625	0.957	0.396	0.092	0.345
Divided Government	0.444	0.336	0.534	0.063	0.753	0.986	0.184	0.774	0.100	0.064
Party Competition	0.258	0.430	0.097	0.436	0.263	0.777	0.411	0.135	0.398	0.094
LGBT Group Capacity	0.266	0.068	0.381	0.185	0.500	0.788	0.668	0.687	0.313	0.273
Evangelical Rate	0.356	0.439	0.316	0.872	0.312	0.630	0.312	0.291	0.681	0.297
Education Rate	0.657	0.266	0.362	0.259	0.493	0.577	0.531	0.278	0.188	0.860
Year	0.401	0.629	0.479	0.362	0.366	0.323	0.205	0.593	0.492	0.950

Notes: Cell Entries are p-values from χ^2 tests of coefficients across the indicated equations. Shaded regions highlight $p < 0.1$.
Equation Numbers: (1) Credit-Health-Public Accommodations; (2) Education; (3) Insurance; (4) Public Employment; (5) Real Estate

of education policies. While public opinion toward LGBT rights has improved (Brewer 2003), the exposure of children to LGBT rights remains a sensitive topic. This insight is consistent with Lax and Phillips' (2009a) findings of a lack of support for the adoption of children by gay individuals.

In contrast to the results for sexual orientation protections, those for gender identity protections showed much more consistency. Further, this consistency clearly showed that internal political factors have very little impact on policy adoption. This finding conflicts with the expectations of morality policy theory (Mooney and Lee 1995; 1999). Perhaps for transgender-inclusive measures, policymakers look to the experience of other states and find that constituents make little distinction between gay and transgender protections. If nearby states can pass these laws without electoral pushback, it is politically safe to pass it.

Notably, our study is one of the first to quantitatively explore the adoption of transgender-inclusive law. This is an increasingly important area of inquiry given the number of states that have adopted transgender-inclusive protections. Support for the study of transgender laws is also bolstered by the inclusion of gender identity in the Matthew Shepard Hate Crimes Act and in the debate over the proposed federal Employment Non-Discrimination Act (CBS News 2010). We find that transgender-inclusive bills

Table 5. Tests of Differences of Coefficients between Corresponding Sexual Orientation-inclusive and Gender Identity-inclusive Equations

Variable	Credit	Education	Healthcare	Insurance	Public Employment	Public Accommodations	Real Estate
Diffusion	0.005	0.008	0.004	0.002	0.209	0.006	0.177
Prior Passage	0.040	0.150	0.073	0.002	-----	0.120	-----
Mean Protection	0.000	0.003	0.001	0.004	0.000	0.000	0.000
Citizen Ideology	0.373	0.613	0.204	0.602	0.205	0.410	0.315
Initiative Use	0.003	0.139	0.061	0.447	0.001	0.003	0.000
Ideology*Initiative Use	0.002	0.134	0.036	0.730	0.001	0.003	0.000
% Democrats (logged)	0.919	0.933	0.573	0.254	0.620	0.950	0.581
Divided Government	0.128	0.077	0.015	0.002	0.007	0.165	0.063
Party Competition	0.319	0.999	0.593	0.364	0.099	0.371	0.363
LGBT Group Capacity	0.003	0.005	0.020	0.002	0.093	0.003	0.008
Evangelical Rate	0.236	0.613	0.179	0.937	0.106	0.287	0.525
Education Rate	0.011	0.283	0.030	0.107	0.006	0.010	0.002
Year	0.002	0.056	0.030	0.054	0.001	0.000	0.000

Notes: Cell Entries are p-values from χ^2 tests of coefficients across the indicated equations. Shaded regions highlight p < 0.1.

are more likely to succeed if they are passed along with sexual orientation protections. This echoes Soule and Earl's (2001) study on hate crimes laws—prior passage of a less controversial measure lessens the chance for the adoption of a stronger measure. Again, regional diffusion patterns appear to be relevant for this policy area. Given the public's lack of knowledge about transgender identity (Taylor 2007a), policymakers face political uncertainty and may look to the experiences of other states.

The apparent importance of external factors in the adoption of transgender nondiscrimination policies was surprising. However, it is plausible that policy learning could be more relevant for this area than for gay rights. In both arenas, the state-level LGBT interest groups that advocate for these measures reside in national policy networks like the Equality Federation. Additionally, nationwide interest groups like the Human Rights Campaign and the National Gay and Lesbian Task Force assist their state counterparts. Consistent with Haider-Markel and Meier (1996), transgender inclusion may be viewed as an incremental adjustment once the decision has been made to protect on the basis of sexual orientation. In fact, no state has passed a transgender-inclusive nondiscrimination law without concurrently or previously offering similar sexual orientation protections. Thus, while Volden, Ting, and Carpenter (2008) argue that states might independently make similar policy choices, the activities of policy networks raise questions as to whether decisions to address LGBT rights occurs in a vacuum driven solely by internal determinants. The independence of states might be reflected in decisions to address sexual orientation, but policy learning seems to play a role for transgender inclusion.

While our work focuses on LGBT nondiscrimination law, this approach can be extended to other policy domains. For instance, hate crimes statutes have similar *what* and *who* considerations (e.g., Jenness and Grattet 2001). Laws against bullying in schools could be investigated in this manner. Alternatively, anti-tobacco policies could address the types of establishments covered (e.g., restaurants, public buildings, offices) and the types of tobacco products being regulated. Importantly, the study of policy content should not be restricted to a single policy dimension. We must take a multidimensional view to account for policy content.

Appendix

Table A1. Adoption Dates of Nondiscrimination Policies—Sexual Orientation

State	Credit	Education	Health	Insurance	Private employment	Public accommodations	Real estate
AZ	—	—	—	2001	—	—	—
CA	2007	2007	2007	1990	1992	2007	1992
CO	2008	2008	2008	1989	2007	2008	2008
CT	1991	1991	1991	1991	1991	1991	1991
FL	—	—	—	1988	—	—	—
HI	2006	2006	2006	2006	1991	2006	2005
IL	2004	2004	2004	2002	2004	2004	2004
IA	2007	2007	2007	2007	2007	2007	2007
KY	—	—	—	1990	—	—	—
ME	2005	2005	1998	2003	2005	2005	2005
MD	2000	2001	2001	2001	2001	2001	2001
MA	1989	1993	1989	1989	1989	1989	1989
MN	1993	1993	1993	1993	1993	1993	1993
MS	—	—	2004	—	—	—	—
MT	—	—	—	1997	—	—	—
NE	—	—	1998	—	—	—	—
NV	2005	2005	2005	2005	2005	2005	—
NH	1997	—	1997	1997	1997	1997	1997
NJ	1991	1991	1991	1991	1991	1991	1991
NM	2003	—	2003	2003	2003	2003	2003
NY	2002	2002	2002	2002	2002	2002	2002
OH	—	—	—	1989	—	—	—
OR	2007	2007	2007	1995	2007	2007	2007
RI	1995	1995	1995	1995	1995	1995	1995
TN	—	—	2006	—	—	—	—
VT	1991	1991	1991	1991	1991	1991	1991
WA	2006	2006	2006	2006	2006	2006	2006
WI	1981	1990	1981	1981	1981	1981	1981

Note: Cell entries are the year the state adopted the listed components.

Table A2. Adoption Dates of Nondiscrimination Policies—Gender Identity

State	Credit	Education	Health	Insurance	Private employment	Public accommodations	Real estate
CA	2007	2007	2007	2005	2003	2007	2003
CO	2008	2008	2008	2008	2008	2008	2008
HI	2006	2006	2006	2006	—	2006	2005
IL	2004	2004	2004	2004	2004	2004	2004
IA	2007	2007	2007	2007	2007	2007	2007
ME	2005	2005	2005	2005	2005	2005	2005
MN	1993	1993	1993	1993	1993	1993	1993
NJ	2006	2006	2006	2006	2006	2006	2006
NM	2003	—	2003	2003	2003	2003	2003
OR	2007	2007	2007	2007	2007	2007	2007
RI	2001	2001	2001	2001	2001	2001	2001
VT	2007	2007	2007	2007	2007	2007	2007
WA	2006	2006	2006	2006	2006	2006	2006

Note: Cell entries are the year the state adopted the listed components.

Table A3. Independent Variables

Variable	Range	Source	Expectation
Previously passed component (SO)	0 to 1	Authors	+
Previously passed component (GI)	0 to 1	Authors	+
Average protection level (SO)	0.12 to 2.9	Authors	+
Average protection level (GI)	0 to 1.66	Authors	+
Subregional diffusion (SO)	0 to 6.833	U.S. census, Authors	+
Subregional diffusion (GI)	0 to 0.8	U.S. census, Authors	+
Percentage liberal	0.126 to 0.315	Pacheco (n.d.)	+
Initiative use (logged)	0 to 3.850	National Conference of State Legislators Ballot Measure Database	−
Percentage Democrats (logged)	2.351 to 4.586	U.S. Statistical Abstract	+
Divided government	0 to 1	U.S. Statistical Abstract	−
Party competition—Folded Index	0.640 to 1	Ranney (1976); Authors	+
Gay rights budgets per capita	0 to 0.229	Equality Federation; Guidestar	+
Evangelical rate	1.1 to 74.0	The Association of Religion Data Archives	−
Percentage with a college degree	10.4 to 32.7	U.S. Statistical Abstract	+
South	0 to 1	U.S. census	
Northeast	0 to 1	U.S. census	
Midwest	0 to 1	U.S. census	
West	0 to 1	U.S. census	

Note: SO = sexual orientation protections; GI = gender identity protections.

Declaration of Conflicting Interests

Funding

Notes

1. We use the term *gender identity* in conjunction with *transgender*. For further discussion, see Taylor (2007b).
2. Executive orders, administrative regulations, and court decisions are not included in this analysis. Additionally, we do not include statutes repealed through the ballot initiative process, such as was the case with Maine's overturned laws in 1998 and 2000. Executive orders are limited because they only affect nondiscrimination in public employment. Furthermore, a change in administration can result in the removal of gender identity- or sexual orientation-inclusive protections via the issuance of a new executive order (e.g., Kentucky and Virginia). In general, state courts have not incorporated sexual orientation-inclusive protections without direct statutory language. Only three state courts have extended transgender protections under the guise of other protected classes (Taylor 2007b).
3. While there are other areas of lesbian, gay, bisexual, and transgender (LGBT) law, such as marriage or hate crimes, these policy areas are qualitatively different from laws banning discrimination. This is particularly true for topics of family law, given the public's divide over same-sex marriage and the adoption of children by gay couples (Lax and Phillips 2009a). Additionally, our nondiscrimination areas follow the types of legal protections offered to other minority groups under state and/or federal statutes (e.g., Civil Rights Act of 1964, Civil Rights Act of 1968, and Education Amendments of 1972).
4. A viatical settlement is used to extract money from an insurance policy. The holder, who has a short life expectancy, sells the policy to an investor for less than the death benefit.
5. The state codes were examined between November 2008 and October 2009 using Lexis-Nexis Academic Universe. We give no special treatment to the terms *actual or perceived* before any of the protected classes but acknowledge that this is probably a stronger legal protection than solely listing sexual orientation or gender identity.
6. Wisconsin's policy only covers sexual orientation. While Minnesota enacted the first state-wide transgender-inclusive nondiscrimination law in 1993, we also use 1981 as the starting point for our transgender models because Minneapolis, MN, passed the nation's first local transgender-inclusive nondiscrimination ordinance in 1975.
7. In 2009, Delaware became the 21st state to enact comprehensive protections for gays and lesbians.
8. For further discussion of event history modeling with multiple components, see Boehmke (2009).
9. Unfortunately, the application of more direct simultaneous equations methods, such as multivariate probit and correlated event history analysis, is in practice often problematic. Even

in the case of relatively simple two-equation bivariate probit models, the maximum likelihood and maximum simulated likelihood estimation procedures typically employed by software packages such as Stata and R will often fail to converge when more than a handful of independent variables are included in the analysis. The number of parameters that must be estimated increases substantially as each additional equation is added. The computational demands of calculating M-dimensional multivariate normal probabilities increase rapidly with the size of M (Gassman, Deák, and Szántai 2002; Genz 1993). Regardless of the software used, for models with more than a few regressors, the computational limits of such approaches are almost always reached when three or four equations are jointly estimated.

10. Alternative approaches that pool the components and interact indicators of the components with all the other independent variables produce similar results. In addition, Cox proportional hazards models with shared frailties also produce similar results, but this approach presents difficulties in unpacking reinvention pressures from the discrete time duration dependence.

11. We use this measure because it allows for annual, survey-based estimates of ideological identification. While the Erikson, Wright, and McIver (1993) measure is also survey-based, it aggregates across many years to get sizable state samples.

12. We use initiative use, rather than a dichotomous indicator of direct democracy, in order to capture the variation in institutional arrangements of the direct democracy. Direct democracy tends to have more of an impact on policy outcomes in states where it is used more frequently (Bowler and Donovan 2004; Pippen, Bowler, and Donovan 2002).

13. We use the natural log of the average percentage of Democrats in a legislature to account for the expected curvilinear relationship.

14. Estimates of state-level LGBT advocacy group budgets per capita are based on annual "State of the States" reports issued by the Equality Federation Institute and the Movement Advancement Project (www.equalityfederation.org/template.aspx?id=3) and were supplemented with IRS form 990 reports (www.guidestar.org). Budgets for 2008 are averages from the previous periods with outliers dropped. Budget estimates were then calculated linearly to 1980, the year before the first statewide adoption of a gay-inclusive nondiscrimination law. Using budget data from state LGBT rights groups is a more direct measure of state-level interest group strength than proxy measures drawn from membership in national LGBT rights groups or census counts of same-sex partnered households (Allen, Pettus, and Haider-Markel 2004; Haider-Markel and Meier 1996).

15. We use the Evangelical rates from the 1980, 1990, and 2000 Religious Congregations and Membership surveys, available from Association of Religion Data Archives at www.thearda.com and collected by Association of Statisticians of American Religious Bodies. Following Erikson, Wright, and McIver (1993), we include membership in the Church of Jesus Christ of Latter Day Saints as part of this measure.

16. From U.S. statistical abstracts: http://www.census.gov/compendia/statab/. Education levels are measured as the percentage of the population age 25 or older with a bachelor's degree or higher.

17. Constants from all equations were estimated, but are not presented here.

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