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The Nexus of Business and Politics: The Case of Same-Sex Partner Benefits

Ryne Scott
College of William and Mary

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**The Nexus of Business & Politics:
The Case of Same-Sex Partner Benefits**

A thesis submitted in partial fulfillment of the requirement
For the degree of Bachelor of Arts in Government from
The College of William & Mary

By
Ryne M. Scott

Accepted For: _____

(Honors)

Professor Ronald Sims, Committee Chair

Professor John McGlennon

Professor Stacey Pelika

Williamsburg, Virginia

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Table of Contents

Chapter 1 - The Social Divide	2
<i>Corporate vs. Legislative Responses to the Gay Movement</i>	
Public Opinion Trends	3
Chapter 2 - Acclimating to the Social Environment	13
<i>Understanding Corporate Adoption Policies</i>	
Corporations as Consumers: Social Legitimacy	13
Constructing Social Legitimacy Inside & Out	20
The Political Environment	26
Conclusion	28
Chapter 3 - Constructing Social Legitimacy	31
<i>Practical Narratives</i>	
Social Legitimacy as a Construct	31
Cracker Barrel: Corporate Attempts at Anti-Gay Policies	32
Disney: Initial Backlash against Pro-Gay Policies	36
The San Francisco Equal Benefits Ordinance: Institutional Legitimacy	40
United Parcel Service: Stepping Out of Line	43
Conclusion	46
Chapter 4 - Measuring Social Legitimacy	49
<i>Practical Patterns of Corporate Social Legitimacy Concerns</i>	
Measuring Trends in Corporate Attentiveness	49
Methodology	50
Data Issues	53
Analysis	54
Conclusions	66
Chapter 5 - Same-Sex Partner Benefits	68
<i>The Role of Social Legitimacy</i>	
A Model of Sociopolitical Influences on Socially Sensitive Business Practices	68
Looking Forward: Future Research & Applicability	72

Chapter 1 - The Social Divide

Corporate vs. Legislative Responses to the Gay Movement

The gay and lesbian movement has been a major political battlefield in the last twenty to thirty years. America is trying to figure out exactly how to conceptualize of these individuals. To what degree should they be included in traditional institutions and regimes, such as marriage, diversity initiatives, or suspect classifications?¹ In the words of one theorist, the American public is in the process of determining if and to what degree it wants to “queer” citizenship (Brandzel). This paper will examine one particular avenue through which America is discussing this question: workplace diversity initiatives, specifically the expansion of healthcare benefits to the same-sex domestic partners of corporate employees.

For decades the country has been engaged with this question and, like most major “cultural wars,” there is a considerable amount of back and forth movement on the issue. In 1986 the Supreme Court declared that sodomy laws were legal, only to reverse itself in 2003. The country elected a historically pro-gay president in 1992, only to see him gain virtually no legislative traction on the issue. In 1993, President Clinton began working to overturn the ban on gay and lesbian individuals serving in the military only to reach the compromise measure commonly known as “Don’t Ask, Don’t Tell, Don’t Pursue.” Ironically, under this policy record numbers of service members were discharged for being gay. Moving even further away from more inclusive policies, Congress passed the Defense of Marriage Act (DOMA) in 1996 which defined marriage for the purpose of receiving federal benefits as being between one man and one

¹ Suspect classifications refer to the constitutional practice of reviewing legislation and/or policies more closely when they make distinctions between different groups of people. Traditional suspect classifications include race and gender.

woman; it also allowed states to not recognize same-sex marriages performed in another state.

This was before a single state allowed same-sex marriage. DOMA's enactment can largely be seen as a reaction to the growing trend of liberalization within localities in the country.

Domestic partnership registries and non-discrimination ordinances acquired a considerable amount of momentum in the eighties and nineties in urban areas like San Francisco, New York, and Toledo.

Public Opinion Trends

Polling from the Gallup Organization over the last few years has indicated mixed feelings towards gay and lesbian individuals. The two questions used by Gallup to measure overall feelings and attitudes towards gays and lesbians in society are a) "Do you think homosexual relations between consenting adults should or should not be legal?" and b) "Do you feel that homosexuality should be considered an acceptable alternative lifestyle or not?" (Homosexual Relations). The polling on these two issues depicts a country very closely divided on the issue of homosexuality (see Figure 1 and Figure 2). There has been a significant up-swing in trends on both issues, but especially during the nineties, the American public had mixed feelings regarding gays. National Election Studies results for the last several election cycles have consistently reported that gays and lesbians receive the lowest favorability ratings of any group (Brewer "The Shifting Foundations of Public Opinion About Gay Rights").

Figure 1: Gallup Polling on whether "homosexual relations" should be legal or illegal. (Gallup)

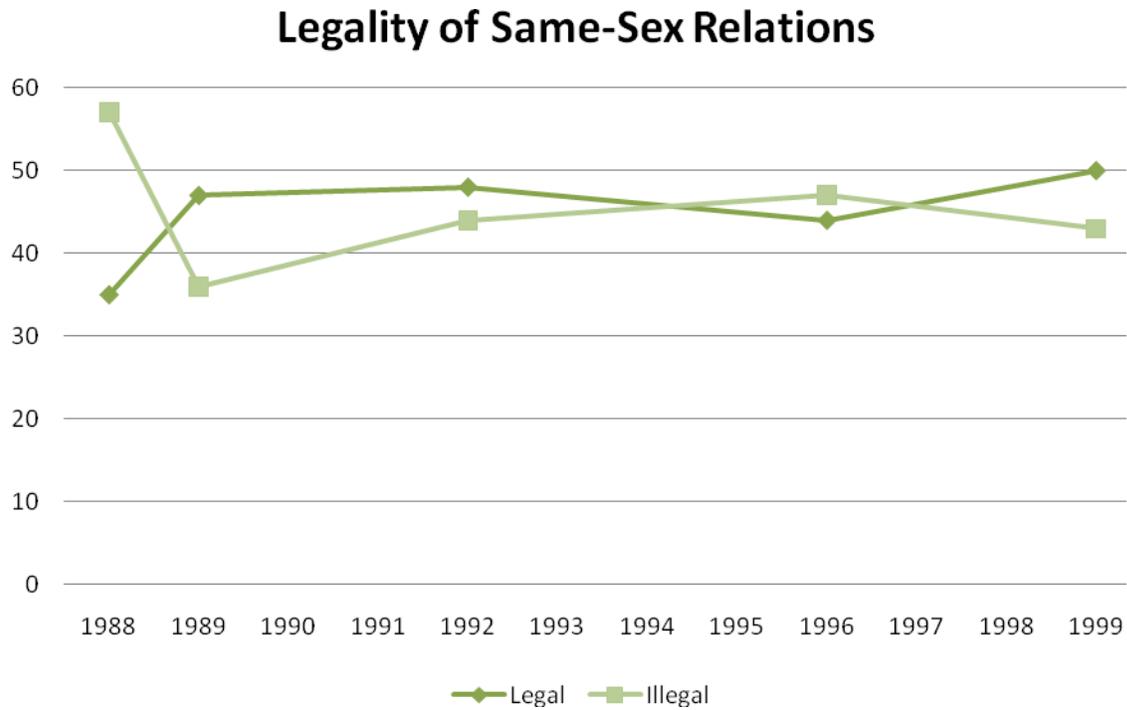


Figure 2: Gallup Polling on whether not homosexuality is an acceptable lifestyle. (Gallup)

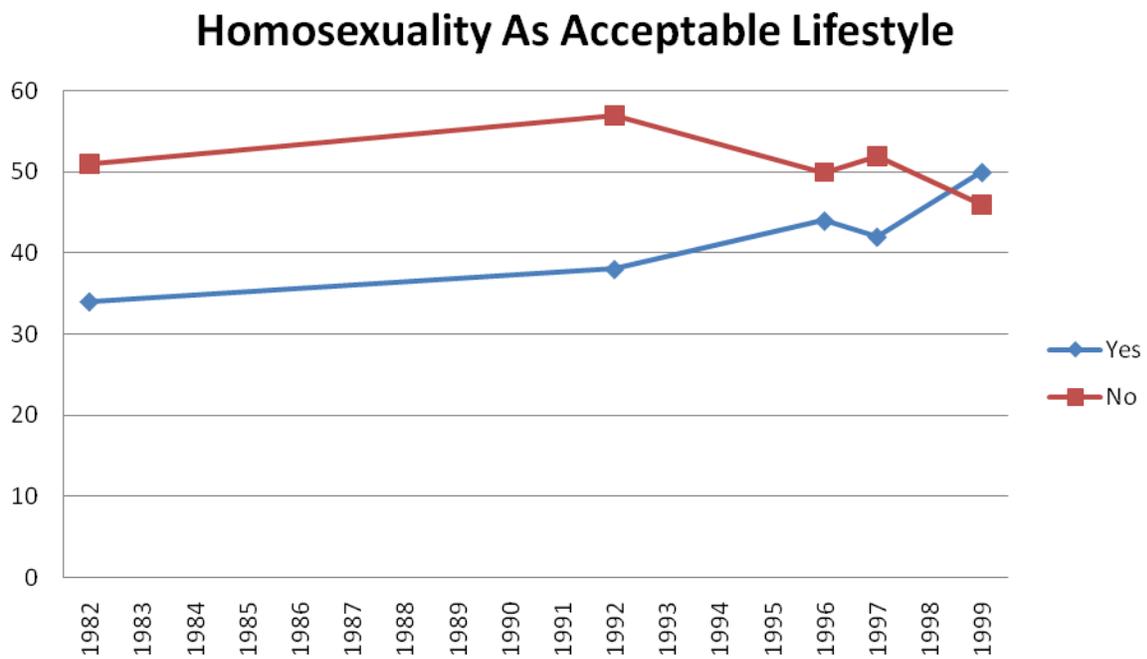
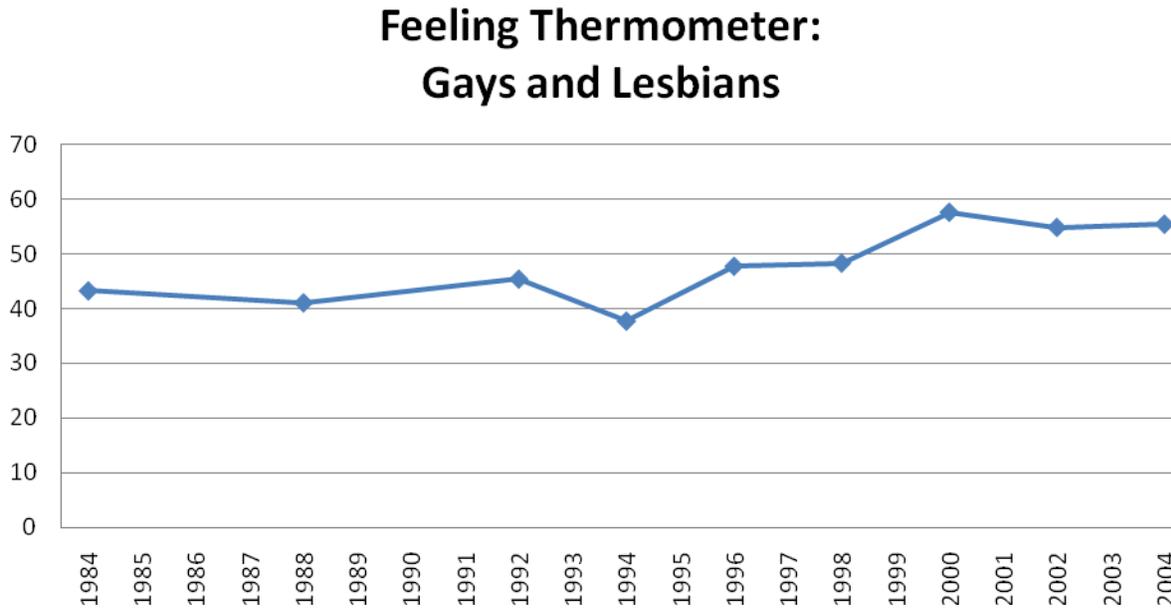


Figure 3: American National Election Studies Feeling Thermometer on Gays and Lesbians (American National Election Studies)²

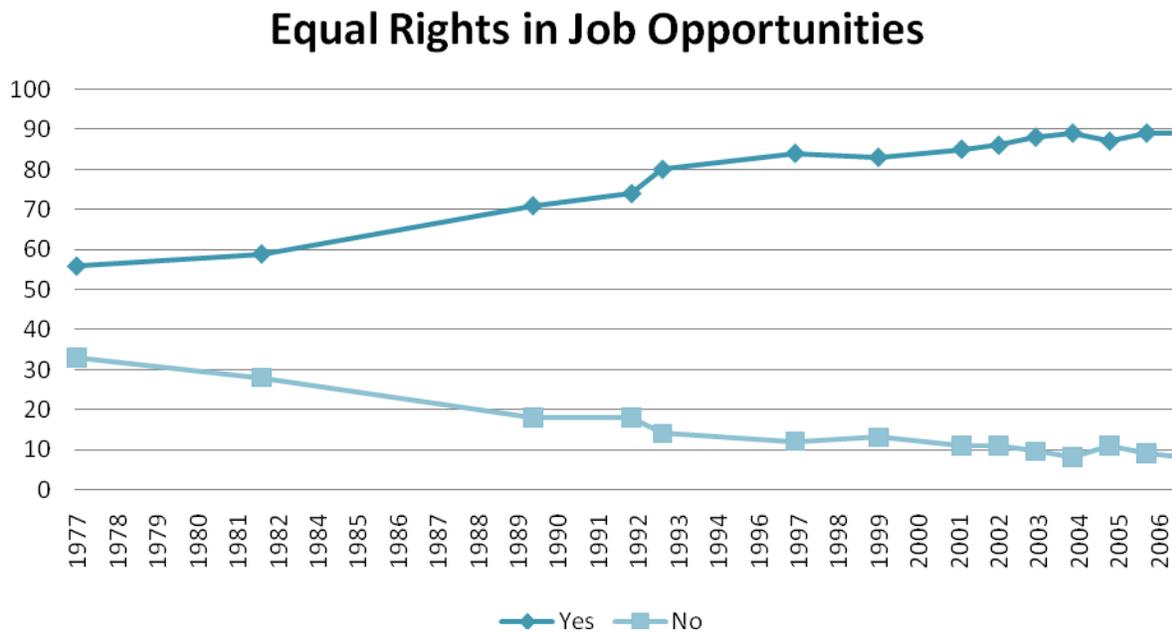


It is unsurprising then that we would see starkly differing outcomes on questions concerning gay rights inside the political sphere. In a study conducted on a random sample of Floridians, evidence was found to support the conclusion that many people hold a great deal of ambivalence toward certain gay rights. Like the elites, the public tended to conceptualize gay issues as being in one of two spheres: civil rights/liberties and family issues. When an issue was perceived to be a civil rights/liberties concern (gays in the workplace, etc.), respondents were far more likely to be supportive of the pro-gay position. However, when the issue revolved around what was conceived of as a family issue (gay schoolteachers, gay adoption, and marriage) the respondents were more likely to hold a position which was less supportive of gay rights (Craig et al.). Brewer, analyzing NES survey responses between 1992 and 2000, found three primary causal factors influencing an individual's overall support for gay rights: a measure of the respondent's egalitarianism, the strength of their belief in traditional moral structures, and their

² The American National Election Studies cumulative dataset can be downloaded from www.electionstudies.org.

general feelings towards gays (using the traditional thermometer measure). Brewer concludes: “Beneath the change in what Americans thought about the issue were changes in *how* they thought about the issue” (Brewer "The Shifting Foundations of Public Opinion About Gay Rights" 1217 italics added). As this study will explore in depth, changes in societal understanding of how gays and lesbians should be treated is translated into the decision-making process of corporate decision-makers.

Figure 4: Public polling on whether or not gays and lesbians should receive equal rights in job opportunities. (Gallup)³



However, where the ambivalence has largely disappeared by the nineties was over workplace issues. Gallup’s polling in the nineties indicated exceptionally high levels of support for equal rights within the workplace (see Figure 4). While Americans have, since Gallup began polling on the issue in 1977, provided majority support to this question, the support rose up into

³ The specific question used was: “As you may know, there has been considerable discussion in the news regarding the rights of homosexual men and women. In general, do you think homosexuals should or should not have equal rights in terms of job opportunities?”

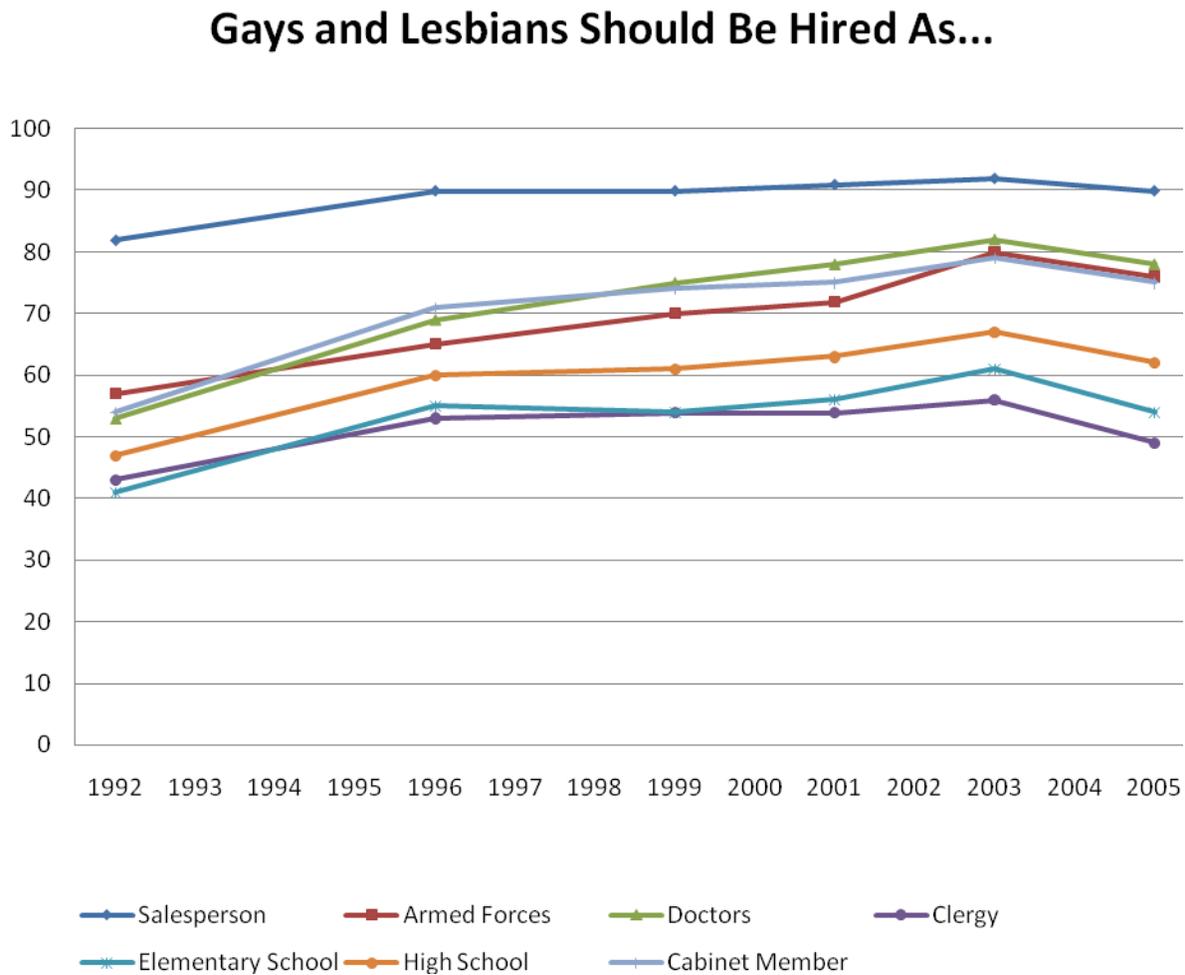
the mid-eighties range in the nineties and has remained stable at approximately 89% throughout the Bush presidency. When questioned about whether gays and lesbians were capable of holding specific kinds of jobs, the numbers also universally increased over time. Increasing acceptance of gay and lesbians inside the business world was not only seen in the public opinion polling but also within the corporate environment as well. While the first corporation to provide health care benefits on an equitable basis to the partners of its gay and lesbian employees did so in 1982,⁴ the trend in adopting this policy dramatically took off during the Clinton administration and has not lost steam during less favorable political climates.

American's perception of where gays and lesbians should be included in the workplace environment clearly responds to political cues. The two, albeit small, drops in the public's acceptance of the concept of equal job opportunities for gays and lesbians dropped in 1996 and 2004 – election years which featured gays rights as major campaign issues (Figure 4). Similarly, Figure 5 demonstrates that this reception is also seen within individual job categories. According to Figure 5, when asked about different roles⁵ for gays and lesbians, the public's trend in increasing acceptance was nearly identical for each job included in the survey. With the exception of the armed forces category, which has had a steady upward slope, we see changes in the public's attitudes in 1996, as well as a downward trend after the 2004 election.

⁴ The Village Voice, a local newspaper in Greenwich Village, became the first corporation in the United States to offer health care benefits to the same-sex domestic partners of its employees in 1982.

⁵ The roles included in the survey question by Gallup were: sales person, armed forces, doctor, clergy, cabinet member, elementary schoolteacher, and high school teacher.

Figure 5: Gallup Polling on the Acceptability of Gays and Lesbians in Various Jobs. (Gallup)



Further evidence of the shift in attitudes within the business world is demonstrated by increases in business literature on gays in the workplace, conferences, and an increasing association of lesbian, gay, bisexual, and transgender (LGBT) issues with other diversity issues. In the early to mid nineties, James Woods conducted a number of sociological interviews of gay professionals, both in and out of the closet, and how they interacted at work with their colleagues (Woods and Lucas). This work was invaluable at demonstrating how the hetero-normative⁶ model of social interaction in the workplace often made gay men and women feel marginalized

⁶ The term hetero-normative refers to the ways society enforces typical gender identities, including the assumption that individuals are heterosexual.

and uncomfortable. It also dispelled the myth that an individual can separate themselves into two distinct beings: a “professional” being and a “sexual” being. The two are inextricably linked. Most of the interviewees reported feeling reluctant to disclose the common details of their personal life – the sort which are commonly discussed around the proverbial water-cooler. This kind of discussion has begun to make it clear that while it may have been perceived that one’s sexuality was “your personal business” and that it was unprofessional to discuss it in the workplace, that it is in fact impossible to not in some way discuss your sexuality at work. Once this point has been made, business leaders are forced to come to understand this in terms of traditional work-life balances which are part of corporate discussions.

Another new source of literature has been developed, showing how gay employees and business leaders have unique traits which they can offer the business world. These books carry titles like: “The G Quotient: Why Gay Executives Are Excelling as Leaders... And What Every Manager Needs to Know” or “Lavender Road to Success: The Career Guide for the Gay Community,” both by Kirk Snyder. These books help translate to business leaders how sexual identity diversity can be an asset to the business process. Even more literature has been developed about the “gay market.” Works like “Selling Out: The Gay and Lesbian Movement Goes to Market” (Chasin), “LesBiGay Identity as Commodity” (Skover and Testy), “Gays, Lesbians, and Consumer Behavior” (Wardlow). These works have shed a great deal of light on how businesses have been marketing to the gay community and the economic impact that the community has had over the last fifty years. This increase in literature is invaluable in helping gay and lesbian employees when they are trying to persuade corporate executives to advance gay friendly policies, including health-care benefits.

Recent research, as a recent report by Timothy Werner notes, has focused on the role of employee resource groups and the economic factors associated with pro-gay policies (Werner). The most significant of these works has been Nicole Raeburn's book "Changing Corporate America from the Inside Out: Lesbian and Gay Workplace Rights". In her book, Raeburn describes how gay and lesbian employee resource groups worked with corporations, attempting to educate them about LGBT issues (Raeburn). While these are perhaps the most proximate causes for the increase in corporate adoption of same-sex partner benefits, there is a profoundly sociopolitical aspect to the process of transformation occurring across the business environment in the United States. This paper attempts to explore the theoretical underpinnings of how the sociopolitical transformation in the United States has affected the way businesses approach the question of same-sex domestic partner healthcare issues.

Perhaps the most profound way that the sociopolitical transformation has affected corporations is by informing them that they actually *have* gay employees. A strong and consistent factor in public opinion data supports a major finding – if a person knows gay individuals, they are far more likely to be sympathetic to gay rights issues (Stoutenborough, Haider-Markel and Allen; Brewer "The Shifting Foundations of Public Opinion About Gay Rights; Herek and Glunt). Since the increase in media attention on the issue of gay rights, stemming from the active gay right social movement, has in many cases made gay and lesbian Americans more willing to "come out" and publicly self-identify with the LGBT community, employers are increasingly finding that many of their employees are gay.

However, the key way in which this paper theorizes of corporation adoption of same-sex partner benefits is as a mechanism of corporate legitimization. The business world rapidly has rapidly coalesced around a consensus that gays and lesbians are to be openly welcomed inside

the organization. The process certainly has had its bumps; however, by examining the way in which “attentive publics”⁷ (Cobb and Ross; May) and corporations themselves responded to the increase in the acceptance of gays and lesbians, we can see how market pressures and “mimetic”⁸ influences have encouraged corporations to add same-sex domestic partnership benefits to their health-care policies.

How does this corporate phenomenon relate to the wider sociopolitical context?

Corporate decision makers have a large agenda of issues that they have to cover each and every day. And in a world filled with information and cues coming from a myriad number of sources, how do corporations begin to filter out exactly what is relevant to the way they need to do business? Corporations have an incentive to want to be seen as trendsetters in matters of legitimacy – increased confidence levels in the corporation based on a sense that they are “good corporate citizens” can certainly help corporations achieve their objectives with the least amount of difficulty (Zimmerman and Zeitz). Corporations that are depicted as being behind the curve can face falling stock prices and angry consumer reactions.

But how do corporations determine if their actions fall in line with a perception of what is legitimate for corporations to do? This paper will attempt to examine the relationship between the corporate world and the political environment surrounding it. It will examine, by looking at a series of public relations issues and analyzing survey results, how the corporate environment constructs for itself a concept of social legitimacy. What this paper argues is that corporations which seek to be on the cutting edge of legitimate practices will attempt to discern the political climates of the time. Once, however, the issue reaches a critical mass of consensus, the primary

⁷ The term “attentive publics” refers to groups who have interest in the issue of how homosexuality is handled by corporations. This can include consumers, employees, shareholders, corporate leaders, investors, etc.

⁸ Mimetic influences are the ways in which corporations are influenced to mimic the successful practices and organizational structures of other organizations.

legitimizing factor for the issue are the mimetic forces within the business world (DiMaggio and Powell), rather than the political environment surrounding it.

This study will begin by examining the theoretical underpinnings of social legitimacy. What is it? And how do corporations construct an image of it? Why is legitimacy important to corporations? Next, this study will provide a narrative of a series of events within the business and political worlds that have influenced the way corporations perceive and understand of same-sex partner benefits and the role of gays and lesbians within corporations. After building this historical narrative, this study will then analyze the results of a survey conducted for this study. The survey, which was sent to approximately 950 corporate executives, probed their level of political attentiveness and the types of conversations they had when discussing same-sex partner benefits. Finally we will summarize and contextualize the evidence presented here.

Chapter 2 - Acclimating to the Social Environment

Understanding Corporate Adoption Policies

Corporations as Consumers: Social Legitimacy

In the late nineties Disney suffered a highly publicized boycott by the Southern Baptist Convention. The Convention's stated objective was to raise awareness of Disney's recent adoption of pro-gay policies. The two primary policies that the Convention opposed were the granting of Disney employee's access to same-sex domestic partnership benefits and the unofficial "Gay Days" at Disney's themed amusement parks. The corporation, which refused to back down in the face of the boycott, was faced with two competing demands: the demands of consumers outraged by what they say as policies promoting an amoral lifestyle, and the threat of losing valuable labor resources if they revoked the policies.

Why did Disney choose not to accede to the demands of the Southern Baptist Convention? This study will attempt to link the actions of Disney, along with several other corporations to social legitimacy theory. The model of social legitimacy which is developed here conflates two competing theoretical models: institutional theory and resource dependence theory. This legitimization process provides a way of analyzing the broad changes that have been occurring in the business world over the last two decades on the issue of same-sex partner benefits and gay friendly business practices in general.

The day to day operation of this theory is explained by using a model of cognitive decision-making. If the social legitimization model is the wide-angle lens, allowing us to see how the pressures of the wider socio-political environment impact the business world, then the decision-making model is the close-up. The use of this model allows decision-makers to process

the information and signals provided by the environment. Once this processing has been completed, decision-makers can then translate those cues into solutions which are relevant to individual businesses.

Social Legitimacy

What is social legitimacy? While there are a number of different definitions in sociological and business literature, the most common is that the process of legitimization is the way in which organizations prove to the wider social context in which they operate that they deserve to exist (Dowling and Pfeffer). The classic definition is: “Legitimation is the process whereby an organization justifies to a peer or superordinate system its right to exist, that is, to continue to import, transform, and export energy, material, or information” (Maurer 361). Social legitimacy can therefore be seen as establishing a basis under which organizations should operate. In this model, organizational survival is not assumed – the organization must make an effort to persuade stakeholders that it should continue to exist.

There are three primary stakeholders in the existence of a corporation: consumers, labor resources, and shareholders. Each group of stakeholders has a different set of tools and cues they can use to signal their approval or disapproval of policies initiated by the corporation. Consumers do this by choosing to boycott the goods or services of a corporation that they reject, or increasing their patronage of corporations that espouse policies which they find particularly appealing. The labor market uses its ability to refuse to work for corporations that have policies with which it disagrees. Investors and shareholders can use their financial leverage to influence corporate decision making, either investing more heavily in a corporation which they feel is more legitimate or withdrawing financial support of organizations that lose legitimacy. Shareholders can also use their authority as voting members of a corporation to force change on

management. These competing stakeholders often put considerable and competing pressures on corporate executives.

The political environment can help exacerbate the pressures faced by these corporations. By providing a venue for grievances, the political arena can have a powerful influence on the way these norms are publically and privately characterized.

Institutional Theory and Resource Dependence Theory

Allison Cook, in a summary article of corporate decision-making on work/life initiatives describes a number of different theoretical models. Two of these models, institutional theory and resource dependence theory, are taken and used together on the issue of same-sex partner benefits to create an argument for how social legitimacy pressures work (Cook).

Institutional theory, initially developed by DiMaggio and Powell (DiMaggio and Powell) seeks to explain why there is a great deal of homogeneity in organizational forms. The reasoning for this focuses on the role of three mechanisms in homogenizing organizations: coercive, mimetic, and normative forms of isomorphism (DiMaggio and Powell 150). Coercive isomorphism results from the imposition of external standards of legitimacy on organizational frameworks – explicitly or through more subtle means (DiMaggio and Powell 150-51). Mimetic isomorphism is the tendency of corporations, when faced with uncertainty, to mimic the behavioral patterns of similar and successful corporations. Normative pressures result from increasing professionalization and the efforts of professionals to create standard methods of performing their work (DiMaggio and Powell 151).

Institutional theory helps explain how corporations are influenced by existing standards and social norms, but it does not help explain how these norms are established in the first place.

For this we turn to resource dependency theory. Resource dependency theory argues that corporations use their human resource policies in order to gain access to valued labor resources (Cook). In order to gain a competitive advantage, corporations seek to identify themselves as trendsetters or “early adopters” of policies. For example, by extending healthcare benefits to same-sex domestic partners, they seek to entice gay and lesbian employees to their corporation, or foster an environment of increased productivity for their existing employees.

Corporations which exist in tighter resource markets may also find themselves taking more significant risks in order to gain this competitive advantage (Cook). For example, the software development industry is one where labor resources are critical to the success of the corporation. This is also an industry where widespread early adoption was seen. Lotus made quite a splash in 1991 when it extended benefits to its gay employees (Raeburn) and the entire industry quickly fell in line on the issue. Common statements made by the IT industry, when asked about their LGBT policies, indicate that the industry extended these benefits in order to enhance worker productivity and recruitment.

By combining these two theories, we can begin to construct a model which describes the entire trajectory of corporate adoption practices on same-sex partner benefits. Institutional theory by itself generally fails to describe the way that the practice of same-sex partner benefits would accelerate in the first place; resource dependence theory, on the other hand, fails to explain fully the effects of mimetic pressures which are clearly evident when examining the widespread adoption rates seen in the last several years. Together, however, institutional theory and resource dependence theory provide a concise and clear model of how certain business practices go from having little widespread social legitimacy to quickly become normative business policy.

Resource dependency theory, as stated above, indicates that corporations will likely adopt new policies in order to gain a competitive advantage. In situations like the gay rights movement in the last several decades, adventurous firms are able to capitalize on the situation to become trendsetters. By identifying marginalized social groups that have become self-conscious of their marginalization, corporations, by extending policies friendly towards that group, provide powerful incentives for employment. The gay and lesbian movement in the early nineties, having been reminded of their marginalization by the negative backlash they experienced during the early years of the HIV-AIDS epidemic, was in just such a position.

Once the success of the policy has been established, institutional theory helps to explain how the policies spread. Institutional theory, which posits the idea that mimetic forces will lead corporations to imitate successful policies that have been initiated in similar firms, explains the next phase of adoption of same-sex partner benefits. Corporations, at this phase of the development of a new socially legitimate norm, will begin to fear that they might lose their own employees to rival firms which have adopted the policy in question. They therefore respond by adopting the policy themselves. At a certain stage the process transitions over to the normative pressures discussed by DiMaggio and Powell – the issue transforms from being a way of gaining a competitive advantage to being a natural part of work-life initiatives that corporations offer.

Each of these steps further establishes same-sex partner benefits as a socially legitimate practice. The scope and boundaries of what the socially legitimate forms of same-sex partner benefits are become defined through a back and forth effort between business and its stakeholders. Once a definition has been reached, the practice becomes legitimized and eventually becomes something which the corporation *must* offer in order to be perceived as legitimate.

The Political Environment's Role in Social Legitimacy Debates

The political environment has a particularly important role in influencing corporate legitimacy. This chapter theorizes that politics as influencing corporations in three interlocking ways: the mobilization of political interest on the subject of same-sex partner benefits, institution entrepreneurship which incentivizes a growing concern with acceptable behavior on gay policies in business, and institutional enforcement which develops after a general consensus on same-sex partner benefits is reached.

Figure 6: The Political Environment's Role in Social Legitimation

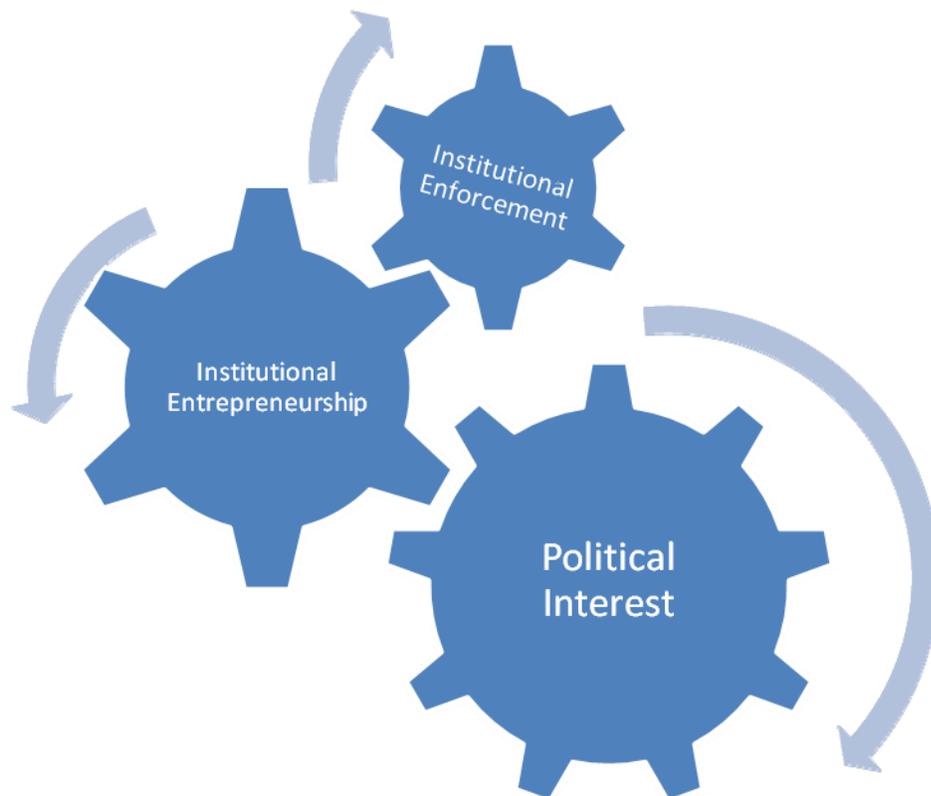


Figure 6 offers a visual model of how these three factors interact. The model is visualized as three interlocking cogs or gears. This visualization helps demonstrate the relative difficulty and momentum required to get each gear moving. The first stage is the mobilization of

political interest on either side of the same-sex partner benefits issue. A considerable amount of pressure is demanded by this initial area. This mobilization was seen, in the case of same-sex partner benefits, largely through boycotts and protests designed to stir the other stakeholders to further action. Once a general consensus has been reached by the mobilized interests (in the case of same-sex partner benefits, the mobilization largely occurred among consumers and employee groups), institutions start to take notice.

Once a certain amount of political interest has persuaded elites that the topic should be open for debate, institutional entrepreneurship becomes more likely. Institutional entrepreneurship is used here to describe the ways powerful political organizations create incentives designed to persuade business that pro-gay policies are legitimate. This argument primarily conceptualizes of “powerful political organizations” as governmental agencies. However, this is not to exclude powerful non-governmental agencies, like organized labor, that have widespread power to incentive practices for corporations. Local governments have had an especially important, and early, role in this process. The key example in this study is the efforts made by the city of San Francisco in the late nineties to provide incentives to businesses to provide these benefits through the Equitable Benefits Ordinance (EBO).

Institutional enforcement begins to engage after a practice has gained widespread social acceptance. Once corporate decision-makers begin to see a concerted effort to apply institutional enforcement to a practice, it is a pretty good sign that the practice is no longer an *optional* norm. Since non-compliance with direct governmental regulation can lead to disastrous results (a quick look at the reaction to Enron’s non compliance with corporate governance standards demonstrates this), this stage requires the least momentum to actually influence corporations. As

Figure 6 shows, however, a great deal of momentum is required behind the first two cogs to start turning this final step.

Constructing Social Legitimacy Inside & Out

Since social legitimacy is a constructed concept, a theoretical framework about social legitimacy needs to have a mechanism by which social legitimacy is constructed for each institution. This micro-level analysis allows the social legitimacy model to examine not only trends within the business world at large but also how these trends are perceived and interpreted by individual corporate decision-makers. Corporate executives need some kind of process to create and implement, internally, a concept of what is socially legitimate *externally*. If we think of top-tier management as the “interior” of a corporation and employee resources groups, political interest groups, the consumer, shareholders, and other political organizations as the “exterior” then we can begin to lay out a decision-making theory that allows corporate executives to characterize issues based on a number of diverse information flows.

On sensitive social issues, it is often difficult for corporate executives to firmly determine exactly what will or will not make sense to its stakeholders. Especially during a period where a principle is gaining social acceptance, the learning curve is often difficult for corporations. Nicole Raeburn, in her book “Changing Corporate America from Inside Out,” recounts a number of stories wherein corporate decision-makers were quite reluctant to be trendsetters (Raeburn). The risks in attempting to establish new norms of social legitimacy were too high for these corporations during the early to mid nineties. Backlash against corporations which took pro-gay positions were publicized, and corporations were concerned about continued opposition from the public. Worker mobilization efforts on this front slowed during the mid nineties, largely due to

political momentum gained by anti-gay forces and the election of a Republican Congress (Raeburn).

How do corporations, on an individual basis, come to understand what is socially legitimate? Legitimation can be described as a process through which corporations attempt to gain legitimacy, but this lacks specificity and the language of legitimacy is not part of the daily work process of corporate actors. Corporate decision-makers, like all decision-makers, react to information. This information is characterized and, if it is seen as important, filed away for quick retrieval. To gain a handle on the process undergone in real world organizational contexts, we need to look at decision-making theory.

Decision-Making Theory

A number of different decision-making models exist for the organizational context: classical economic theory, bounded rationality, political, and the process model. The classical theory, which most readers will be familiar with, focuses on utility maximization – specifically, corporations make decisions which maximize long-term profits. The political model examines how internal political dynamics influence the decision-making process. This model describes a cycle of bargaining among corporate actors, with each individual attempting to sway those higher up in the food chain (Allison; Cheshire and Feroz; Lyles and Thomas; Schneider, Shawver and Martin). The process model takes an entirely different tack for examining decision-making. It focuses on the standard ways in which decisions are made – the form and structure of the decision-making process within a corporation. For example, how centralized is decision-making? How many people review proposals and have significant impact on the outcome (Cheshire and Feroz; Allison)?

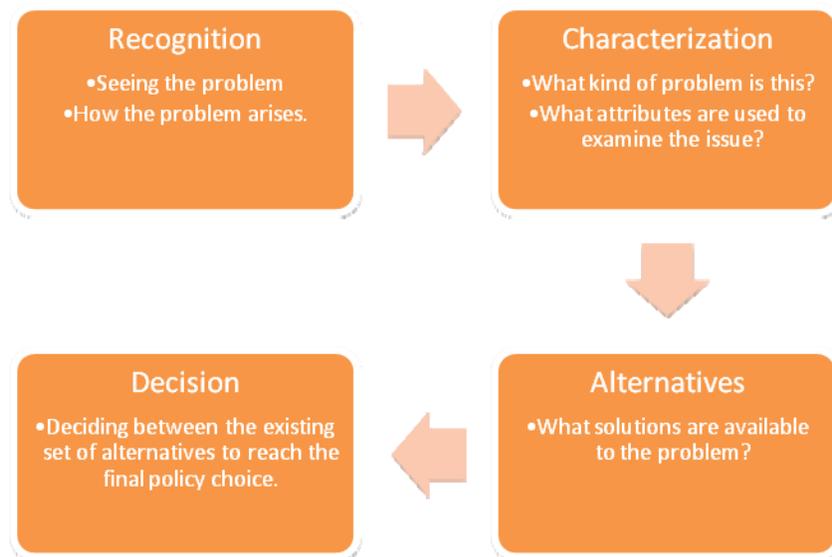
Bounded rationality, which is closest to the decision-making model used here, focuses on the mental processes of decision-making. The main thrust of this subset of decision-making theory is that decision-makers have limited resources – in terms of time, information, cognitive capabilities, etc. In order to simplify their processes, they use shortcuts and familiar decision-making patterns in order to reach quick and easy decisions (Simon "A Behavioral Model of Rational Choice; Gigerenzer).

The Jones-Baumgartner Model

The Jones and Baumgartner model of decision-making is a cognitive decision-making model originally designed for legislative processes. The advantage of using this model is that it gives us a useful way of comparing and contrasting the decision-making processes of legislators with the way corporations have dealt with the issue. It focuses on the role of new information and new ways of examining existing information in transforming the way decision-makers think about and characterize issues (Jones and Baumgartner).

Jones and Baumgartner identify four stages of the decision-making process: recognition, characterization, alternative, and choice. While other theories of decision-making all capture important individual dynamics of how the process plays out inside the corporation, the ultimate question comes down to: what information about the topic is being received and given priority by the decision-makers? The stages described are sequential and the processes which occur at each stage are heavily influenced by the preceding stages. Depending on the context of the decision-making process, these stages can be consciously executed by the decision-maker or they can be unconscious processes which are passed through without much thought (Jones and Baumgartner).

Figure 7: Jones & Baumgartner Decision-Making Model



The recognition stage identifies the problem and prioritizes it against other issues facing the decision-maker. Some sort of triggering event must occur in order for the decision-maker to recognize the problem. This event, according to Jones and Baumgartner, is one of two things: new information is presented or old information is reevaluated (Jones and Baumgartner). Generally the issue of same-sex partner benefits has come to corporations in two or three ways: 1) employees requesting such action, 2) interest groups lobbying corporations for such benefits, and 3) governmental agencies requiring or incentivizing benefits from corporations. The event itself certainly has an impact on signaling to the corporation whether their actions are socially legitimate or not. For example, new governmental regulation can support or reinforce legitimacy, while boycotts or political pressure can indicate a lack of social legitimacy.

The characterization stage is where the decision-maker makes a determination about which “attributes” will dominate his thinking on the subject. Information is absorbed about the

topic and processed by the decision-maker. The characterization of a problem arises from a number of different factors, including how the problem was recognized and the predispositions of the decision-maker (Jones and Baumgartner). These predispositions run on a number of different levels: liberal-conservative ideology, egalitarianism, moral traditionalism, organizational role and perspective, etc. The dominant characterization of an issue is key in a corporation's struggle to figure out whether or not an issue is legitimizing: characterizing homosexuality as "sexual diversity" helps a corporation include homosexuality in a category already seen as legitimate, while concentrating on the issue as "special" rights or in terms of traditional moralism de-legitimizes equitable benefits. This process of a corporation deciding how to characterize the issue is largely the way corporations construct their understanding of what society is legitimating.

The final two stages, formulating alternatives and making a final decision, are largely determined by the first two. The alternatives stage is largely a simple matter for many corporations: to extend benefits or not to extend benefits. After making a decision to extend benefits, the exact coverage type has to be determined. For example, will the corporation only provide soft benefits, full medical benefits, or even go so far as to include transgender medical issues as part of the company's medical benefit package (Jones and Baumgartner)?

What the Jones and Baumgartner model, and many other models of decision-making, recognizes is that we live in an information rich environment which has considerable time constraints. This model is used explicitly because it was constructed around this premise. The amount of information about homosexuality in general is quite extensive. Corporate executives need to focus their attention on information which is relevant to their business environment to determine how best to proceed; however, at best this reduces the amount of information they

need to process from nearly infinite to vast. Corporations need to process information about a myriad number of factors including: how shareholders will respond to these new policy changes, how the public will react, how it will affect worker productivity, the cost structure expected for the new initiatives, etc.

As the quantity of information on a subject increases, the resources needed to process that information increase correspondingly. Either more information processing units (people, computers, etc.) or more time for the existing processing units is required. Since we tend to centralize decision-making in the hands of a few rather than a many, spreading the processing requirements among more people can have detrimental effects on the decision-making process as each unit holds less and less of a completely informed viewpoint. Not only is the amount of information on individual subjects increasing but the number of issues which demand attention is also increasing. The case of same-sex partner benefits is clearly an example of how new issues arise on the corporate agenda – the issue has only been on the table for the last two or three decades.

Time constraints begin to pose a significant problem as the amount of information begins to increase exponentially. Compounding the problem is the accelerating pace of the corporate world due to globalization and telecommunications technology. When time constraints begin to impose on decision-makers they often begin relying on shortcuts. These shortcuts can include the recycling of existing methodologies, finding or developing indexes to monitor situations, and favoring status quo solutions (Gigerenzer; Schwartz; Simon "A Behavioral Model of Rational Choice").

We can understand the corporate situation using one particular metaphor. A common metaphor used in Catholic high school theology classes to explain the impossibility of understanding God seems to apply here: imagine you are walking around a gigantic cathedral in the complete dark. All you have is a flashlight. Now describe the cathedral. This is a similar process for corporate executives – with all the information out there, it is often hard to figure out where to shine the flashlight to get the information you need. So corporations have to construct a simplifying model or heuristic to understand the issue. Since they are also trying to do this for a number of other issues, they need some sort of assistance in the information gathering process.

The Political Environment

Where can corporate executives shortcut the decision-making process in regards to same-sex partner benefits? Because corporate executives have such strong time constraints imposed on their decision-making process they are liable to try and shortcut the decision-making process as much as possible. Searching for indexes of the reactions of stakeholders to any given issue can be difficult, and finding data on the specific issue of homosexuality may prove even more difficult.

Examining the political environment in which corporations find themselves may be a logical place for corporate executives to begin their search for abbreviated information about homosexuality and the public's reaction to it. In recent years, corporations have expended far more resources on monitoring governmental activities, often by creating dedicated positions or departments designed to follow issues of importance to these corporations. How we understand homosexual individuals to fit into our society has not only significance to the business community but also profoundly religious and social significance which is discussed at large in

the public forum. Since the late eighties and earlier the political environment has been discussing where gay people fit – how much funding should AIDS receive and why, the proper level of recognition of same-sex couples, the dramatic increase in the number of individuals who identify as gay or lesbian, should crimes committed against people because they are gay be considered a hate crime, etc. These issues are all heavily and widely debated within our routine political process and these political messages provide a convenient place for business leaders to glean quick and easy facts about the topic (Zaller).

Further, since governmental institutions have a profound way of shaping social legitimization in and of itself, the corporate environment may rely on government to signal *when* such shifts in policy should occur via regulation. This signaling power of government can also spur additional development in some areas, above and beyond what the regulation may require. For example, many corporations may depend on Congress to pass the Employment Non Discrimination Act (ENDA) before they are willing to include sexual orientation in their non-discrimination policies. In Chapter 3, we will discuss how one local government dramatically influenced the corporate world on the issue of same-sex partner benefits. San Francisco's Equal Benefits Ordinance was a signal to a large number of corporations that in order to maintain social legitimacy in the region they had to extend equitable benefits to their gay employees.

However, using the political environment as a barometer for social legitimacy is tricky. Business legitimization generally relies on fewer factors than go into the full political process. The audiences that are attentive of business practices are considerably less diverse than those that politicians are concerned with.

This often means that politicians, when they are discussing workplace specific issues, are not just responding to input on gay workplace issues, but rather are responding to the aggregate pressures placed on them for the entire spectrum of gay and lesbian issues. This can have the effect of slowing their response rate to issues that have a high level of consensus, like workplace diversity and discrimination issues. For example, despite the fact that polling indicates widespread support for equal rights in the workplace environment for gays and lesbians, Congress failed to pass ENDA when it was being seriously considered in 2007. Yet, when most Americans become aware of the fact that most states do not provide legal protections against being fired or penalized because of one's sexual orientation, they are quite surprised – largely because of the perception that most corporations include sexual orientation in their diversity policies (Raeburn).

It makes sense then, that corporations, aware of this limitation, would focus their attention to the places where business and politics directly overlap. They would want to focus on the mobilization of political interest groups and religious groups around corporate action. They will also want to pay attention to the way government is interacting with business on the issue of same-sex partner benefits. By limiting their search of the political environment to issues which relate directly to the workplace, corporations save a great deal of time and energy.

Conclusion

Corporations have to deal with a large number of issues on their agenda and gay rights are just starting to gain a foothold on that agenda. The particular issue of gay and lesbian healthcare benefits is one which has been gaining quite a bit of focus inside the corporation. This transformation has taken place within different industries at different rates and there have

been strong reactions by attentive publics to movements on both sides. But, despite early mobilization against pro-gay corporate policies, no corporation has ever backed down from these positions. This cannot be said of corporations that have exhibited anti-gay policies. The societal forces which have come into play suggest that American society believes the workplace should be free of discrimination.

At a time when information is exploding, corporations increasingly need to find ways to channel their information flows more quickly and effectively. One alternative is to use political resources, messages, and cues as a shortcut in order to reduce the amount of time required to locate and process information. Since governmental agencies and politicians are intrinsically involved in debating social issues and much of their job is to constantly be aware of what the public wants, it seems logical to believe that corporations would turn to their political environment as a barometer for how the public and stakeholders would react to pro or anti gay policies. Attempting to even more specifically limit their search of the political environment, corporations can focus primarily on where politics and business overlap. The Jones and Baumgartner model of decision-making gives us a mechanism to understand how information sources can change the way decision-makers characterize issues and problems, and how these characterizations influence the choices they make.

What corporations see when they examine the political environment are three interlocking forces: political interest mobilization, institutional entrepreneurship, and institutional enforcement. These three forces are the major ways that the socio-political environment interacts with the business world in order to provide cues about legitimate behavior. Political interest mobilization provides a forum for these issues to be debated and a consensus to be acquired. Institutional entrepreneurship is the way that government and other interested

organizations can help incentives and speed up the mimetic forces at play in the corporate world. And finally, institutional enforcement is the way that political environment can demand that corporations adopt policies which are no longer optional, but are fully required to justify the corporation's continued existence.

In the following chapter, we will attempt to re-construct a historical narrative filter that corporate decision-makers are likely to view same-sex partner benefits through. This narrative, which will examine four highly publicized scenarios where politics and business intersected, is the broader lens. As these kinds of events unfold they provide the background information which is useful in the characterization stage of the Jones-Baumgartner model. It allows corporate decision-makers to have a framework through which it is possible to base future assumptions about their own unique business environment.

Following the construction of this narrative, the study will then turn to examine a survey of corporate executives. The purpose of the survey was to attempt to measure the political attentiveness of corporate executives and the ways they perceived business and politics overlapping. The survey is useful in pointing out the direction of future research in the field of how corporations use their political environment as a shortcut for decision-making.

Chapter 3 - Constructing Social Legitimacy

Practical Narratives

Social Legitimacy as a Construct

In order to understand how the practice of same-sex partner benefits has become a legitimate and legitimizing practice in corporations, we need to have a historical understanding of the key or defining moments of this new trend. This historical understanding becomes the background noise – the general reference points that corporate decision-makers use when evaluating this issue for their own corporation.

The following four cases provide a framework through which it is possible to understand the way same-sex partner benefits, and policies affecting gay and lesbian employees generally, have been seen. Decision-makers often lack access to firm data about the way the world thinks about gays and lesbians. What they *do* have is a sense of a historical narrative that has slowly, over time, changed the way they think about the issue of same-sex partner benefits. Key events are often critical in our understanding of issues more generally (Pollock). This personal sense of the history of the subject can provide a common-sense framework that can be used to base future judgments on.

This study has identified four of the most major events in the gay, lesbian, bisexual, and transgender (LGBT) workplace movement. Each of these events involves a business practice and political responses to that practice, which is consistent with the arguments presented here that corporations are more likely to scan their environment for political situations which directly affect business practices. Major publicized events involving anti-gay discrimination by Cracker Barrel, backlash against pro-gay policies at the Walt Disney Corporation, institutional

momentum epitomized by the San Francisco Equitable Benefits Ordinance (EBO), and the more recent situation over the United Parcel Service's (UPS) compliance with the New Jersey civil union legislation each point out different aspects of the way the dynamics regarding the same-sex partner benefits have changed. Each of these events gives us, and corporate executives, a lesson about the way to deal with the issue. These historical lessons become part of the framework through which it is possible to understand the issue.

These four cases help demonstrate the three processes developed by this thesis. The events involving Cracker Barrel and the Walt Disney Corporation are two cases of political interest, each representing interest mobilization on opposite sides the gay rights debate. San Francisco's EBO demonstrates institutional entrepreneurship – the municipal government enacted groundbreaking legislation which not only transformed the local area, but the national airline industry as well. The EBO was equally important for its impact in spurring other municipalities and the state of California to adopt similar policies. Finally, while the nation is still developing a sense of institutional enforcement, the UPS controversy is a first step towards understanding the way America may choose to enforce growing norms of inclusion for gay and lesbians in the health-care policies of corporations.

Cracker Barrel: Corporate Attempts at Anti-Gay Policies

Case:	Cracker Barrel
Time Frame:	1991-2003
Example Of:	Political Interest Mobilization Against Anti-Gay Policies

The late eighties and early nineties were a confusing time for the gay movement. The public discussion about the AIDS epidemic was quickly changing dimensions as public education on the disease increased and new medical treatments reduced the public's fear. The

LGBT movement had been forced to mobilize and organize on a scale which the community and society at large had not yet seen or expected. The LGBT movement also began to focus on Washington at this time. Meetings between lawmakers and LGBT community leaders dramatically increased as gay leaders lobbied for support in their fight against HIV-AIDS.

The workplace movement began to develop as AIDS began to recede. The organizational efforts required to combat AIDS were critical in giving the community a support base to fight discrimination. Organizations which began to fight against workplace discrimination included the National Gay and Lesbian Taskforce, formed in the '70s, along with new organizations like Queer Nation (1990), AIDS Coalition To Unleash Power (ACT-UP, 1987), and the Human Rights Campaign (HRC, 1980).

It was against this background that, in 1991, Cracker Barrel announced it would no longer employ gays and lesbians. In the late eighties and early nineties Cracker Barrel was a rapidly rising and prospering company. It had been voted the best favorite "family dining" restaurant by a survey conducted in January of 1991 ("Consumers Name Favorite Restaurant Chains in National Survey") and was rated extremely highly in an analysis of investor trends (Brackey). Its stated identity as a family oriented restaurant was critical in its public perception.

It may well have been the intent to further this family-friendly image in the public that spurred Cracker Barrel's anti-gay policies. Cracker Barrel, with its chains predominantly in the southeast, stated that it believed it was trying to adapt to the normative values of its clientele. It believed that many of its customers would have difficulty being served by employees that had alternative sexualities. The corporation publicly announced that homosexuality was "contrary to

traditional American values.” The corporation immediately received a great deal of attention for its anti-gay hiring practices.

The media attention on the issue was remarkably pro-gay and critical of the new policy enacted by the corporation. Queer Nation, an LGBT activist organization, held public protests and sit-ins at various Cracker Barrel locations designed to mobilize political interest in the controversial policy. After an initial flurry of coverage in late January and February of 1991, the corporation apologized to the gay and lesbian community and stated that it had rescinded the policy ("Chain Rescinds Anti-Gay Policy"). While most of the immediate news coverage seemed to die down, the veracity of the company's declaration that it had rescinded the policy was in question.

Larry King conducted an in depth interview regarding Cracker Barrel's policy with Cheryl Summerville, an individual fired due to the policy, Ed McAteer, president of the Religious Roundtable, and Lynn Cothren, chairman of Queer Nation in Atlanta. Queer Nation had continued its protests, due to Cracker Barrel's failure to reinstate employees fired under its antigay policies. King, whose program has a wide television audience, seemed fairly critical of the Cracker Barrel's policies. He seemed skeptical of Ed McAteer's claims that homosexuals should be excluded from the food preparation industry because of the "reliably reported" "gay bowel disease" which "the majority of gay men have." He also seemed incredulous that neither the state of Georgia nor the federal government had enacted legislation which prevented employment discrimination based on sexual orientation (Fired for Being Gay).

It became obvious that Cracker Barrel had not really backed down. While the corporation had quickly stated the policy was rescinded, it refused to reinstate employees fired

under the policy, stating that they had been fired for inappropriate behavior. Queer Nation's mobilizing tactics paid off by encouraging shareholder activism. The City of New York, which owned approximately 89,000 shares of stock in the parent company of Cracker Barrel, demanded an explanation of the policies: "As fiduciaries, we are concerned about the potential negative impact on the company's sales and earnings, which could result from adverse public reaction, such as organized boycotts and picketing of restaurants" ("Company Is Asked About Bias in Hiring"). King's interview allowed Summerville to explain that when the company was confronted on the issue at the next shareholder's meeting, the corporation stated that she had been fired for inappropriate behavior, rather than for being gay. This clearly contradicted earlier statements made on the matter (Fired for Being Gay).

There appeared to be little support even among religious conservatives for the policies enacted by Cracker Barrel: "Even groups like Family Research Council and Morality in Media, which espouse the traditional family values that Cracker Barrel's management said it was defending, had little to say in support of the company's initial policy," said one news article from the New York Times. It went on to state: "Joseph Reilly, president of Morality in Media,... said: 'It was prudent to rescind the policy, and it would have been even more prudent to never have instituted it'" (Smothers). Even the first Bush administration appeared to be startled by the situation (Bray and Vaid). Articles also generally referred to Cracker Barrel's practice as "discrimination" even when discussing homosexuality in a generally negative light ("Out and About"). The link between the term discrimination and homosexuality indicated a general level of acceptance by the mainstream media that this kind of treatment of gays and lesbians was inappropriate. It took nearly 12 years for the city of New York to overthrow the policy via

shareholder activism; however, in 2003 Cracker Barrel was persuaded to revise its employment policies due to a shareholder proxy vote.

It is difficult to argue that the practice of initiating anti-gay and discriminatory policies have received any sort of public legitimacy. Rapid and powerful organization against anti-gay policies by organized political interest groups like Queer Nation and the city of New York led to Cracker Barrel's swift apology on the issue. While it took 12 years for New York City to force a change of policy through its shareholder activist efforts, the initial victory and apology by Cracker Barrel was significant in and of itself. It demonstrated that anti-gay policies were something that needed to be apologized for.

The Advocate ran a story in 2003 which quoted Shelley Alpern, the assistant vice president of Trillium Asset Management, an investment corporation, in which she said: "It is important the poster boy for corporate anti-gay bigotry has finally acknowledged that lesbians and gays are part of their own workforce and part of their customer base as well" (Quittner). From the very beginning of the controversy of early 1991, political interest groups had a rapid and significant impact on Cracker Barrel's policy. By forcing Cracker Barrel to apologize, thereby shaming the company, Queer Nation won the moral high ground. While it did take a considerable amount of time for shareholder activism to formally overturn the policy, it quickly became apparent to the wider audience of corporate decision-makers that overt anti-gay discrimination would no longer be acceptable.

Disney: Initial Backlash against Pro-Gay Policies

Case:	Walt Disney Corporation
Timeframe:	1995-2005
Example Of:	Political Interest Mobilization Against Pro-Gay Policies

During the early nineties more and more corporations began providing their gay and lesbian employees with non-discrimination protection and same-sex partner benefits. One article notes:

The issue of discrimination against homosexual workers has become an acrimonious one, as gay groups target the workplace as a setting ripe for change. In the past year alone, a dismissed Shell Oil executive won \$5.3 million after a court ruled he had been terminated illegally for being gay... Gay rights groups, together with the city of New York, have publicly battled the Cracker Barrel Old Country Store Inc. chain for firing gay restaurant workers. And the city of San Francisco forced General Motors Corp. to withdraw an internal marketing video in which a customer described Japanese pickups as "little faggot trucks." (Hammonds)

As the corporate world grew more gay-friendly, it became an increasingly tempting target for backlash by the segment of the public that was not happy with this particular turn of events. This backlash finally reached a pinnacle in 1996.

The Walt Disney Corporation, widely known for its family friendly media and theme parks, announced in 1995 that it was going to provide health-care benefits to the same-sex domestic partners of its gay and lesbian employees. The question "Why?" is particularly interesting. Disney is a prolific entertainment giant with a fully nationalized constituency. Being family friendly, like Cracker Barrel, it might be assumed that Disney would decide to take an anti-gay stance. However, it was operating in the entertainment industry which relies more heavily on gay and lesbian employees than many other industries. As a whole the entertainment industry had rapidly gone gay friendly, and Disney was one of the last holdouts (preceded by Viacom, Warner Brothers, and MCA) (Goodstein). Mimetic forces, which encourage corporations to mimic each other's successful policies, suggest that Disney would follow its industry's suit in order to lure and retain top talent (Cook; Pfeffer and Salancik; Raeburn).

Over the next two years (1996 and 1997), a large number of Southern Baptists announced plans to initiate a boycott of the company in response to the company's extension of health care benefits and the policy of allowing outside groups to organize "Gay Days" at their theme parks (Goodstein; Sharn).⁹ Disney commented only so far as to say: "We are proud that the Disney brand creates more family entertainment of every kind than anyone else in the world."

The Southern Baptist Convention leaders publicly acknowledged that they did not anticipate the boycott would have a significant impact on Disney's economic status. And indeed, they did not appear to have much financial success as Disney's stock price rose by approximately 10% in the five months immediately after the boycott was launched (Rich). Their goal, in the words of Tom Elliff, the president of the Southern Baptist Convention at the time, was to: "[bring] Southern Baptist[s] up to God's standard of morality" (Pilgrim). The mobilization efforts of leaders of the Southern Baptist Convention attempted to energize religious conservatives to halt the advancement of pro-gay policies in the corporate environment.

The media response, while not *strongly* biased against the actions of the Southern Baptists, did not appear to align against Disney. The Walt Disney Corporation was largely ignored as the media attention focused almost exclusively on the statements and actions of the Southern Baptist Convention. One business oriented article examined the way the Walt Disney Corporation had changed over the 80s and early 90s, essentially concluding that it had changed in order to survive; that its decisions should be based on the entire public's view, not that of "individual interest groups" (Abrahms and Kaplain).

⁹ The "Gay Days" at the Disney theme parks were not officially organized by the Walt Disney Corporation.

More significantly, there seemed to be far more negative press directed at the Southern Baptist Convention than at Disney. One article, written for the St. Petersburg Times in Florida, characterized the motivation of the Southern Baptists as “hateful” (Wilson). There were also a number of articles which discussed the fact that the rank-in-file Baptists were splitting with their church leadership (Janofsky; Washington). And when the Southern Baptists admitted that they had little hope that the boycott would significantly harm Disney, they began to take their legs out from under themselves.

When so little consensus formed around the idea that Disney’s pro-gay attitudes were illegitimate or dangerous, the issue faded into the background. While this may well have been the most famous boycott in recent memory, it was largely ineffectual. Disney’s financial situation seemed largely unaffected by the boycott in the months following the launch (Rich) and it is hard to argue that the boycott began to take effect years later. When the annual Southern Baptist convention ended the boycott in the summer of 2005, all they could say was that they felt that their boycott had “communicated effectively our displeasure concerning products and policies that violate moral righteousness and traditional family values” (Reuters).

The trend of failure against pro-gay business practices was not restricted to the Disney/Southern Baptist situation. Boycotts initiated against corporations like Proctor & Gamble, the Ford Motor Company, and Kraft Foods have all been unsuccessful. The end of the Disney boycott was widely seen as a formal gesture and made very little news coverage compared to its inception. One writer believes that this failure rate is largely due to the unpopularity of conservative religious groups (which, according to the presented by this study, is a group which is seen as less reliable than many other sources of information) (Henneman).

When compared against the general success of boycotts and political action against corporations which engage in *anti* gay policies, it becomes possible to recognize a trend of behavior which corporations should engage in. The public, even by the early nineties, was far more accepting of pro-gay policies than anti-gay policies. These two corporations, which both carried the “family values” corporate identity, came to different conclusions. The public seemed to accept Disney’s position as legitimate and rejected Cracker Barrel’s. Further, while Disney’s insistence on upholding their pro-gay policies may have been in large part due to their dependence on gay and lesbian employees and the need to compete inside the entertainment industry, this was not the public face that Disney presented. The corporate world was largely left with the impression that pro-gay policies were the only direction that corporations could take. This effectively reduced their alternative set by a full third.

In the next section, we will see how pro-gay policies began to be institutionalized through local ordinances. However, the story that is developing was not lost on corporations – stay neutral if you want, but anti-gay policies will hurt.

The San Francisco Equal Benefits Ordinance: Institutional Legitimacy

Case:	San Francisco Equal Benefits Ordinance (EBO)
Timeframe:	1997
Example Of:	Institutional Entrepreneurship

The LGBT movement has a long history of advancing itself through local government initiatives. Domestic partnership registries have been a major victory for gay groups in urban areas. Efforts by localities in Colorado to prevent discrimination against gays led to one of the three major Supreme Court cases dealing with homosexuality – *Romer v. Evans* in 2001. It

should come as no surprise that San Francisco, well known for its large gay population, would lead the way on government regulation of same-sex partner benefits.

In December of 1996 the City of San Francisco enacted a local ordinance, the Equal Benefits Ordinance (EBO). The EBO required that all corporations with city contracts in excess of \$5,000.00, that already offered spousal benefits, must provide the same benefits to domestic partners. The policy was enacted in order to garner the support of the LGBT community in upcoming municipal elections. Proposed by three LGBT activists (Jeff Sheehy, Carol Stuart, and Geoff Kors), and largely a reaction to the recently passed federal Defense of Marriage Act (DOMA), the bill was designed to begin giving gay and lesbian individuals the same benefits of married couples (Rogers and Dunham 6-8). The policy, which was new at time, was designed to both incentivize the adoption of same-sex partner benefits policies by giving them an advantage in competing for city contracts and punish existing city contractors who refused to adopt the policy.

Three years later, the San Francisco Human Rights Commission, the body responsible for enforcing the ordinance, declared “the employee benefits landscape has been forever changed as a result of the Equal Benefits Ordinance.” A report by Marc Rogers and Daley Dunham for the Institute for Gay and Lesbian Strategic Studies (IGLSS) noted:

The EBO’s impact has been magnified because it has inspired other cities to consider and, in several instances, pass similar legislation. By the end of 2003, the State of California and seven cities or counties – including Seattle and Los Angeles – had enacted similar laws... New York City and Atlanta are currently considering such legislation. (Rogers and Dunham 6)

The entrepreneurial venture of San Francisco paid off – spreading to numerous other localities and the state of California. Nicole Raeburn goes on to note that while only about 287

corporations had adopted equitable health care benefit policies by the end of 1996, the number rose to over 1,500 by the end of 1997 – in large measure due to the role of the EBO (Raeburn):

In proportional terms, legal mandate accounted for 96 percent of new adoptions in 1997, 91 percent in 1998, and 59 percent in the first seven months of 1999. As of April 20, 2000, of the 3,402 total employers that offered equitable benefits, 2,612, or 77 percent, did so in order to comply with the ordinance. (Raeburn)

While Raeburn goes on to note that the EBO's effect was primarily on small employers, the EBO did profoundly effect at least one national industry – the airline industry. Many of the corporations in the airline industry, especially American Airlines and United Airlines had begun in the mid to late nineties to receive criticism from conservative groups for the increasingly pro-gay practices ("Airlines Fasten Their Seat Belts.; Taking Aim at United.; Wilke). So when the San Francisco International Airport decided not to renew its lease with United Airlines because of the company's denial of benefits to same-sex domestic partners, the corporation was reluctant to cave to the city's demands. The Air Transport Association (ATA) began a lawsuit against the city of San Francisco.

The resulting court ruling was a mixed bag for both parties. The court ruled that the EBO could not be used to force corporations to provide health-care benefits to its employees when the city was engaged in a monopoly situation (as in the situation of the city's ownership of the local airport). However, it could require corporations to provide what it termed "soft" benefits, notably bereavement leave. The court ruling also marginally restricted the geographic reach of the ordinance.

On the very same day that the ruling was announced, United Airlines announced that it was going to extend the full line of benefits demanded by the ordinance – despite the court's ruling that it was not obligated to do so. Within a week, American Airlines became the second

airline company to provide the benefits, followed 4 days later by US Airways. By 2002 the entire industry had followed suit (Raeburn). This trend of rapid industrial adoption is not unique to the airline industry, although it is a particularly rapid example. The entertainment industry moved rather quickly and early and Raeburn also notes industrial level concern among telecommunication corporations (Raeburn). The “Big Three” automakers in the US announced at a joint press conference that all three corporations were going to extend healthcare benefits to domestic partners (Bradsher). Corporations specializing in computers and software have also been relatively quick adopters due to their need to garner support among valuable IT laborers.

The EBO can be seen as an example of what this study considers to be institutional entrepreneurship. The powerful LGBT community in the San Francisco community encouraged local politicians to incentivize pro-gay policies. In order for corporations to compete for city contracts, corporations needed to provide same-sex partner benefits. The institutional entrepreneurship was possible due to the large gay and lesbian population in San Francisco, and the policy became co-opted across the country.

Clearly the EBO had a tremendous impact in at least one of two different ways. It may have *created* a sense of legitimacy on the issue for these corporations in a way that had not existed before. However, what is more likely is that it both reinforced an existing corporate sense of legitimacy and gave the corporation cover with religious conservatives on the issue. United Airlines had already begun to target the gay community for advertising purposes which indicates that the corporation had already begun to accept pro-gay positions – it just needed an institutional push to get it to take this big step.

United Parcel Service: Stepping Out of Line

Case:	United Parcel Service
Timeframe:	Summer 2007
Example Of:	Institutional Enforcement

By the latter part of the 2000s, the progress of pro-gay policies in corporate America appears to be progressing inexorably towards more inclusive policies. By the time that the 2005-2006 State of the Workplace report was published by the Human Rights Campaign, 51% of Fortune 500 corporations were providing health-care benefits to same-sex domestic partners (State of the Workplace). To the author's knowledge, no corporation ever extended such benefits and then decided to remove them, indicating only momentum towards pro-gay policies, rather than mixed signals on the issue.

Marriage was now becoming a hot bed topic. In 2003, the Commonwealth of Massachusetts began offering civil marriage to its gay and lesbian citizens. Politicians and interest groups were mobilizing for a major battle on the issue over the Federal Marriage Amendment, which would prohibit same-sex marriage from being recognized by the federal government *and* by the states. This issue was heavily debated in the 2004 Presidential Election, although it was one of the least important factors in people's decision when they reached the ballot box (Homosexual Relations).

In 2006, New Jersey became the third state in the nation (after Vermont and California) to recognize civil unions. Responding to a state Supreme Court ruling which required the legislature to give gay and lesbian couples the *benefits* of the institution of marriage, if not the title of marriage itself, the state legislature passed a bill creating a separate institution for same-sex couples. The New Jersey civil union bill was clearly meant to be an equivalent of marriage in New Jersey. This marks one of the first major developments of institutional enforcement on

the issue. Since most states have legislation regulating spousal healthcare benefits, extending the same spousal rights to same-sex couples implies that these couples would be entitled to the same statutory protections provided to married straight couples.

The United Parcel Service (UPS), however, did not begin giving equitable health care benefits to its union employees after the legislation was passed. When asked to explain itself, UPS stated that it could not provide such benefits to its employees currently engaged in civil unions because it would have to renegotiate its entire contract with the UPS union. Garden State Equality, the New Jersey branch of the Equality network of state gay activist organizations, and other LGBT activist organizations lobbied quickly and heavily the governor's office in order to gain some political pressure to help quickly resolve the situation. The lobbying paid off - on July 20th, Governor Corzine sent a letter to UPS officials urging them to extend benefits to same-sex partner benefits ("New Jersey Governor Asks Ups to Recognize Same-Sex Unions").

UPS quickly recanted its policy:

Based on an initial legal review when New Jersey's law was enacted, it did not appear that a 'civil union' and 'marriage' were equivalent... Over the past week, however, we have received clear guidance that at least in New Jersey, the state truly views civil union partners as married. We've heard that loud and clear from state officials and we're happy to make this change. (UPS)

A number of things are striking about UPS's decision to extend these benefits to civil union partners in New Jersey. First, the language used in New Jersey's press statement on the issue, was decidedly optimistic and enthusiastic about the change. It was careful to emphasize that management and administrative officials already possessed the benefits. Alan Hill, UPS's senior vice president for human resources, used words like "happy" and "quite pleased" to describe UPS's decision to work with New Jersey state officials on the issue. However, contrast this with the speed with which UPS backtracked on the policy – just over a week passed between

Governor Corzine's letter being sent to UPS and their decision to backtrack. How much legal analysis could have been undertaken on the issue?

What this suggests is that UPS was beginning to understand that doing business in New Jersey, as well as other states which were moving towards either gay marriage or civil unions, required extending these benefits. The political environment was relatively uniform – the media reported very little in the way of conservative political backlash against the efforts to persuade UPS to cooperate with the civil union legislation. UPS's legitimacy in the region depended on it – and unless it wanted to face the very real possibility of civil litigation brought against it, UPS needed to comply. By caving so quickly, UPS demonstrated an understanding that if the coercive forces of government would require it to extend these benefits, it would lose a significant amount of prestige (not to mention the costs of legal fees).

Lambda Legal, an organization dedicated to litigating on behalf of LGBT rights, had already filed a class action suit against UPS. UPS's decision to grant these benefits in New Jersey before a court order can be seen as an attempt to escape the results of institutional enforcement. This kind of business self-regulation is, as Timothy Werner argues, a more efficient and less costly way to manage internal business practices. It also allows corporations more flexibility in the way they initiate policies (Werner).

Conclusion

Each of these stories tells us an important part of the process that has slowly started to legitimize the practice of same-sex partner benefits. Individually they tell us why one or another aspect of the issue fell as a legitimate idea or rose as something worth emulating. The construction of this historical narrative is exceptionally important. We often think about things

in terms of what other people have been able to do. From demanding that our parents give us something because our sibling got it to justifying procrastination because everyone else around us is procrastinating just as much, everything around us becomes a game of relativity.

It is logically consistent to argue that that the same might be true of the way corporations approach questions of social legitimacy. Social legitimacy is, after all, an attempt by a corporation to justify its very existence (Pfeffer and Salancik; Maurer; Dowling and Pfeffer). There is clear evidence that corporations want to use each other as cover. From the quick adoption of same-sex partner benefits by American Airlines and US Airways immediately after United did so to the fact that the “Big Three” automakers felt the need to do so in a joint press conference, the fear of being first is quite palpable. However, the powerful pressure to follow suit with other major players in the industry can almost, of itself, be a form of institutional enforcement.

This chapter has given us a linear narrative on same-sex partner benefits. First, it examined how anti-gay policies were delegitimized by the experiences of Cracker Barrel in the early nineties. Then it demonstrated that public protest of pro-gay policies had little to no effect on corporate survival through the Southern Baptist boycott of the Walt Disney Corporation. These two examples show the results of political interest mobilization – mobilization which successful shamed a corporation for its anti-gay policies and but had little to no success in shaming a corporation with pro-gay policies. Then it demonstrated the powerful force that government can have in creating social norms through legislation in the San Francisco Equal Benefits Ordinance. This institutional entrepreneurship was an exceptionally powerful force in the creation of a pro-gay workplace culture. Finally it demonstrated how so many forces all together had come together to create an environment where UPS’s denial of benefits was so

quickly and resoundingly denounced that UPS had little choice but to concede the point. Fearing institutional enforcement, UPS self-regulated itself in order to avoid a far more punitive process that would have been enacted through the court system.

The cases examined here are looked at from the benefit of hindsight, and are simplified to make it easier to digest. However, according to bounded rationality theory, this is the exact kind of simplification that decision-makers need to be effective in making decisions.

There are events that have had direct bearing on the social legitimacy of the issue that were *not* discussed here at length – for example, the gay boycott of Coors. However, the events discussed here represent the most publicized, universal, and unambiguous kinds of events that have occurred when the business world and corporate world came together over the issue of gays in the workplace. And they are the kinds of events that corporate decision-makers are keeping in the back of their minds when they have conversations amongst themselves and with gay and lesbian activists within their own corporations. These kinds of events become part of the very fabric of our thinking on the issue and begin to define social legitimacy.

Chapter 4 - Measuring Social Legitimacy

Practical Patterns of Corporate Social Legitimacy Concerns

Measuring Trends in Corporate Attentiveness

The original goal of this study was to measure corporate trends of social legitimacy over time using survey methodology. However, while a large group of corporate executives were surveyed in conjunction with this study, a low response rate makes it difficult to generalize results or to build a model on the survey responses. What this chapter will therefore do is attempt to piece together a couple of perspectives about how corporations receive and process information. The goal of this chapter therefore becomes a way of encouraging and guiding future empirical research in the field of social legitimization theory.

A group of approximately 950 corporate executives received a survey in relation to this study. The survey hoped to capture a sense of the way in which corporate executives examined the same-sex partner benefits issue and the degree to which political dialogue influenced it. While the number of respondents was quite small, the survey does provide a few insights into the issue. Further, it lays out a guideline for a more intense and methodological examination of the issue in the future.

After laying out the methodology of the survey, the chapter will turn to analyzing particularly important pieces of the results. Three areas of interest are discussed: reliability of information sources, partisanship, and critical discussion topics for corporations about same-sex partner benefits. We find that LGBT groups are the most reliable political group that corporate executives trust on the issue of same-sex partner benefits; religious groups opposed to same-sex

marriage and politicians rank at the low end of list. We also find that corporate decisions believe that partisanship is a relatively poor barometer for how stakeholders would react to changes in policies regarding same-sex partner benefits. Finally, by looking at what discussion topics dominate conversations about same-sex partner benefits, we can see how corporate decision-makers currently characterize the policy internally.

Methodology

The survey was composed to question corporate executives, within human resource departments at Fortune 1000 companies, about three things: 1) how attentive they were to politics, and what news sources they most frequently used, 2) what they considered to be reliable sources of information regarding homosexuality more broadly, and 3) the role this information plays in their corporate decision-making process. After approval by the Protection of Human Subjects Committee, the survey was released and sent out to the random sample (see the section entitled “About the Sample” for clarification on how the sample was selected) via the electronic survey software “Opinio” which is licensed by the College of William & Mary.

The survey was kept open for three weeks, at which point it was closed. Every Tuesday and Thursday morning a reminder email was sent to each of the respondents who had not yet completed the survey in order to remind them to participate. After the survey was completed, the results were imported into SPSS 16 for analysis.

The respondents were promised full anonymity, both for themselves and for their corporations. Therefore, when discussing specific cases and interesting examples, this survey will not use names. The most identifying information used will be the industry of the

respondent. This was done to insure the anonymity of the respondents, and in order to encourage a sense of safety for those respondents.

About the Sample

The random sample was drawn from the Fortune 1000 list, compiled by *Fortune* magazine each year. A computer-generated random number between zero and one was assigned to each corporation in the list, and the list was then sorted based on its number assignment. The list was then divided into four parts and each part was given to a research assistant to gather information about that specific corporation's benefits. The research assistants then used the Human Rights Campaign's Employer Database, located online at their website, to look up the policies of each of these corporations. The assistants submitted their separate databases back and the completed records were pulled together to constitute the actual sample of corporations.

After the corporation sample was completed, a contact database was purchased.¹⁰ This contact database contained the information for roughly eleven thousand HR executives in the Fortune 1000. After comparing the corporation sample database with the contact database, this provided approximately 950 HR contacts. After sending the survey out to each of these contacts, 53 complete and partial responses were received over a three week window.

There are a number of strong characteristics regarding the sample. A majority of respondents (66.7%) had been with their corporation for ten or more years (see Figure 8). This indicates that most of the respondents will be fairly familiar with their corporation's decision-making patterns. Figure 9 indicates that the majority of respondents pay fairly close attention to the political world (58.3% of respondents in the top two categories), with only 8.3% stating that

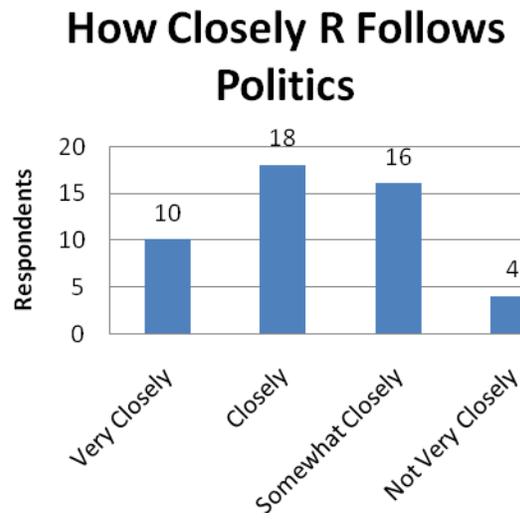
¹⁰ The contact database was purchased from Taylor, Rodgers and Associates, Inc. Their website can be found at: <http://www.taylor-rodgers.com/TheSENG%20-%20HR%20DB.html>.

they follow politics “not very closely.” As we can see in Figure 10, there was also a fairly even spread of corporations who had adopted benefits in three of the four major adoption periods identified: 16.7% of respondents’ corporations adopted equitable benefits in 1995-2000, 2000-2004, and 2005-2008.¹¹ While this spread is ideal for making generalizations about the way the decision-making process has changed over time, the sample size is so small that it is difficult to see a coherent pattern.

Figure 8: How Long Respondents Have Been Employed by Current Corporation



Figure 9: How Closely Respondents Follow Politics



¹¹ 2.1% of respondents’ corporations

Figure 10: When Respondent's Corporation Adopted Same-Sex Partner Benefits

When R's Corporation Extended Same-Sex Partner Benefits

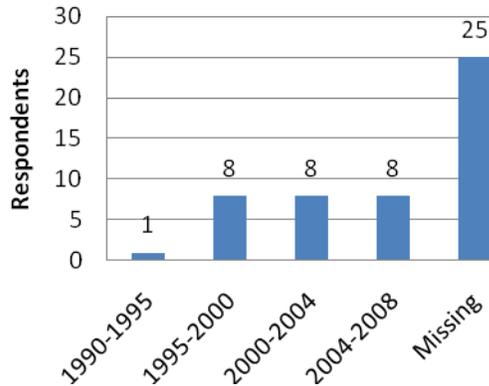
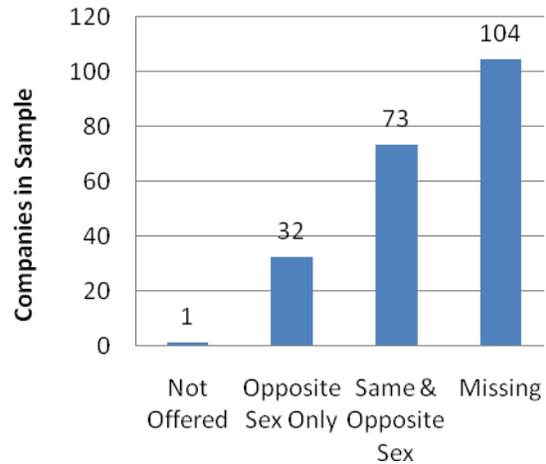


Figure 11: Companies Offering Same-Sex Partner Benefits (Total Sample)¹²

Companies Providing DP Benefits



Certain biases may have crept into the sample as well. Individuals with a high interest in politics seem to have been more likely to respond to the survey. The sample of respondents may also have a higher than average interest in same-sex partner benefits than the population. The first issue in particular is problematic, because there is little way to test to see if this is the case without a larger sample to compare against. However, the second issue appears to not be the case, considering the large number of respondents who answered “Not Sure” to a large number of questions on the whole, or chose not to answer the final pages of the survey (20+ respondents).

Data Issues

There are a number of difficulties in assembling data that is useful for analyzing this particular problem. In the first place, measuring these attitudes, and their historical change, is

¹² Data was provided to and retrieved from the Human Rights Campaign’s Employer Database.

difficult. This survey attempted to analyze the change in the primary discussion topics that occur inside corporate decisions about extending same-sex partner benefits; however, since the survey responses were all acquired in February of 2008, the accuracy of responses are in question.

In addition, there was a low response rate to the survey. This makes it difficult to draw any major causal inferences. The majority of the observations that will follow in the analysis section will largely be speculative, given the small sample size. However, the data does provide some insight into the fact that corporations may well respond to the political environment, at least in terms of what they discuss when talking about the issue. Further exploration and surveying on the topic is warranted in order to validate these findings.

Why was there such a low response rate, considering the large deployment? This could be due to a number of different factors. First, there appeared to a rather significant error with the Opinio software itself, which continually pestered the respondents. However, more significantly, the issue itself is one which many corporations are still a little reticent to discuss at all. This is evidenced by the fact that a large plurality of corporations (49.5%) chose not to disclose their same-sex partner benefits policies to the Human Rights Campaign's employer database (see Figure 11). Repeated attempts to contact officials at various corporations for interview regarding the case studies were all either ignored or turned down. This presents significant data retrieval and analysis issues when trying to investigate corporate attitudes towards same-sex partner benefits which need to be addressed systematically.

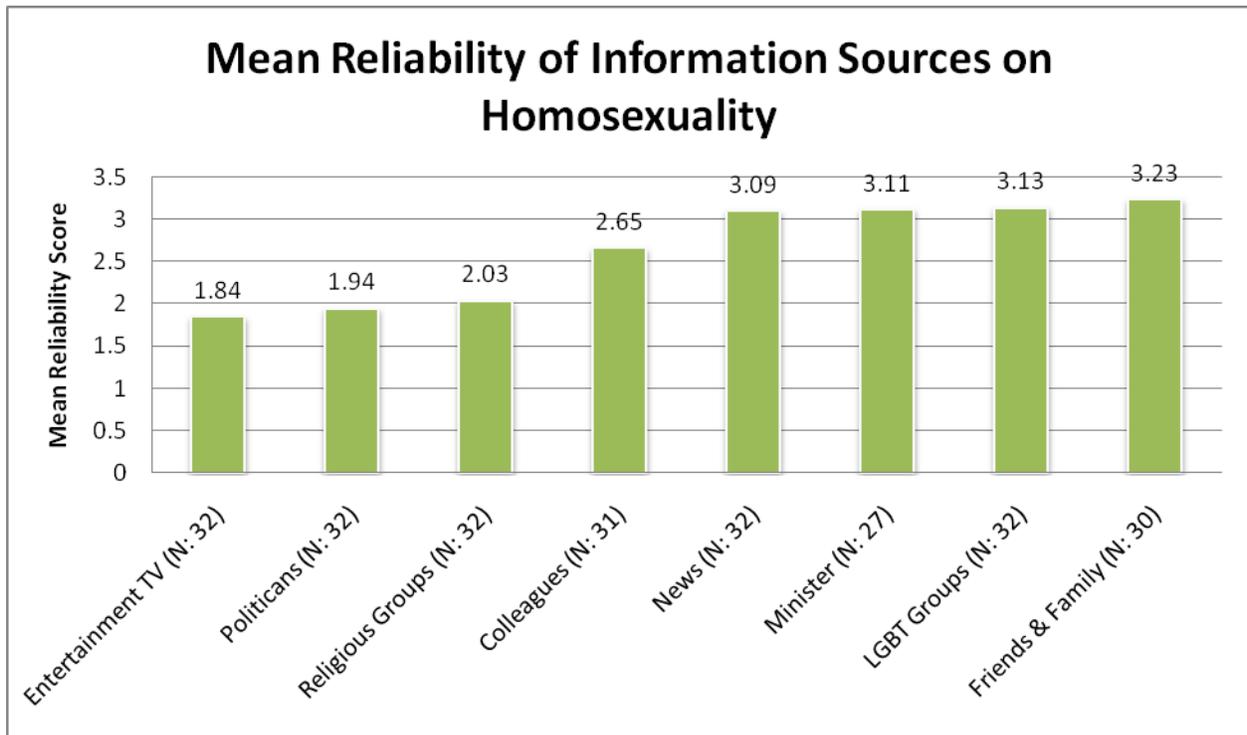
Analysis

The data in the survey provided three valuable insights into the way corporations view same-sex partner benefits and the way they interact with the political sphere to gain a conception

of how society at large views the issue. The first two sections of the analysis examine the relationship between sources of information about homosexuality and the level of trust that corporations place in partisan attitudes and their relationship to potential reactions that the public might experience if the corporation were to extend benefits to same-sex domestic partners. The third and most significant part of the analysis focuses on critical issues.

Sources of Information & Reliability

The data presented in Figure 12 presents an analysis of where corporate decision-makers put their trust when receiving information about homosexuality generally. We would expect, if the practice of providing pro-gay policies, to see sources of information which are more pro-gay to receive higher reliability scores. This seems to be indicated in the data. LGBT groups receive the highest rating of any group except the friends and family category. It is very likely that had this question been asked in the early nineties, the rating of LGBT groups would not have been quite as high.

Figure 12: Reliability of Information Sources on Homosexuality¹³

Further, news sources also receive fairly high marks (See Figure 12). Since the news media has remarkable power to influence social norms via agenda setting and providing a venue through which social movements can advance their causes, the comparatively high level of trust corporations place in the news suggests a strong relationship between social legitimacy concerns and corporate actions – however, more direct testing of this argument is necessary. What this *does* support is the idea that the media can have a profound impact on the way the issue is characterized by corporate decision-makers. This provides a valid reason for using news sources to construct the historical narrative offered by this study.

Given the country’s general attitude towards politicians, it is not surprising that corporate actors are reticent to rate politicians highly. Perhaps most interestingly, while decision-makers were quite eager to rate their personal religious minister quite highly, they rate religious groups

¹³ The data presented in Figure 1 is the *mean reliability score*. Respondents were asked to rate each information source on a 1 to 7 scale, with 1 equaling “Not Reliable” and 7 equaling “Very Reliable.”

quite lowly. While this could indicate any number of things, it may suggest that corporate actors are unwilling to admit that religious groups opposed to same-sex marriage are a socially acceptable group to listen to for individuals in their position.

Using Partisanship as a Barometer

One thing can be very clearly drawn from the survey. Corporate executives do *not* believe that the partisan makeup of a political institution is a good way to measure the reaction of the public to policies on same-sex partner benefits. Respondents were asked two questions: “How would you rate the partisan makeup of Congress or state legislatures as a barometer for how opposed or supportive the public would be of same-sex partner benefits?” and “How would you rate control of the White House or the governorship of a state by the Republicans or Democrats as a barometer for how opposed or supportive the public would be of same-sex partner benefits?”

The full results are reported in Figures 13 and 14. A large majority¹⁴ of respondents answered both questions with either “Neutral” or “Not sure.” While those respondents who did formulate an opinion were fairly well split between whether not partisanship represented a good or bad barometer, the ambiguity inherent in a “neutral” response, combined with the extremely high numbers of “not sure” responses indicates that large majorities of respondents did not believe that the partisan makeup of Congress or the White House was a good way to measure the public's opinion on the issue of same-sex partner benefits. This may reflect similar attitudes as seen in the reliability of information section above. Corporate decision-makers seem reluctant to believe politicians in general.

¹⁴ **75.9%** for Congress/State Legislatures and **68.9%** for White House/Governorship

Figure 13: Partisan Makeup of Congress or State Legislatures as a Barometer of the Public's Support of Opposition to Policies Concerning Gays and Lesbians In the Workplace

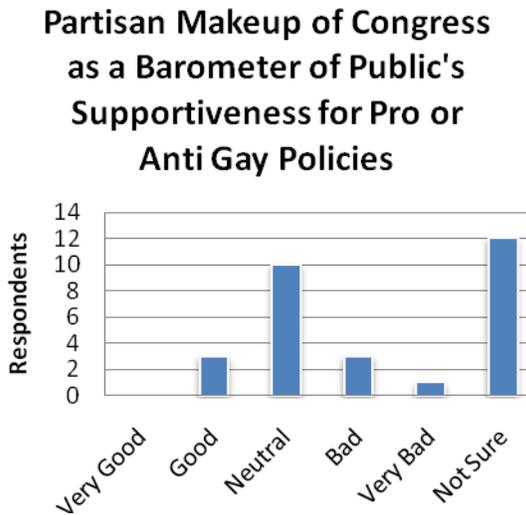
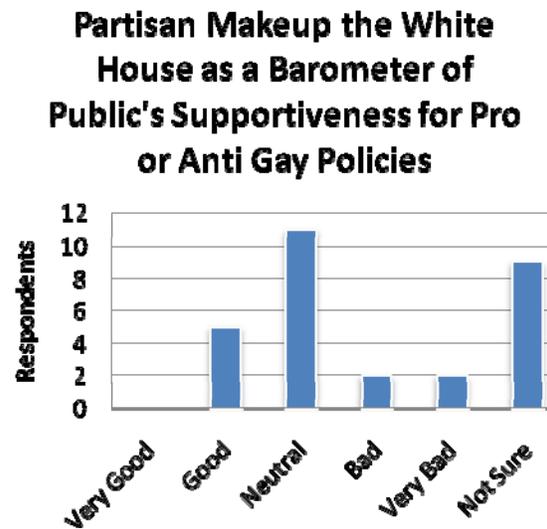


Figure 14: Partisan Makeup of Congress or State Legislatures as a Barometer of the Public's Support of Opposition to Policies Concerning Gays and Lesbians In the Workplace



This supports the contention of this study that corporate executives feel a need to narrow their search of a shortcut from analyzing the entire spectrum of politics to the narrower intersection between politics and business itself. Even in election years, like 2004, which seem to focus heavily on gay rights, there is little direct evidence that the issue is a motivating factor for the average voter. Further, the public's ambivalence about gay rights in general is *not* indicative of their position on gays in the workplace. Since politicians are responding to pressures on the topic which corporations do not have to respond to, politicians are the most efficient way of measuring the legitimacy of the issue in the workplace.

Critical Issues

Part of understanding how social legitimacy affects the way corporations function is gaining an accurate grasp on how corporations perceive certain issues. A number of different issues have been major factors for corporations when they debate and discuss the issue of same-

sex partner benefits: boycotts, competitor adoption, court rulings, worker productivity and recruitment, legislative action, public relations issues, and the financial costs of extending such benefits. These issues can be divided into three groups: testing legitimacy, implicit legitimacy, and external legitimacy demands (see Table 1).

Table 1: Critical Issue Groups

Issue Category	Issues	Corresponds To...
Testing Legitimacy	<ul style="list-style-type: none"> • Boycotts • Public Relations Issues 	Political Interest Mobilization
Implicit Legitimacy	<ul style="list-style-type: none"> • Worker Productivity & Recruitment • Financial Costs • Competitor Adoption 	Institutional Entrepreneurship
External Legitimacy Demands	<ul style="list-style-type: none"> • State Legislative Action • Congressional Action • Court Rulings 	Institutional Enforcement

The first group is concerned with testing the legitimacy of a position. A corporation seeking to justify its position would be largely concerned with the question of whether or not their activities were externally legitimate. Issues like boycotts and public relation problems are largely concerns over the external face of the internal policy. This is closely related to the concept of political interest mobilization. Corporations are interested in how the different groups which are concerned with these kinds of policies will react.

Next, there are implicit legitimacy concerns. Once same-sex partner benefits conversations are dominated by these issues, the legitimacy battle has largely been won. The issue is clearly legitimate and worthy of discussion – whether or not the corporation ends up adopting the policy or not. These are the traditional conversations typically thought of in terms of classical rational actor decision-making theory. Once business leaders start thinking about same-sex partner benefits in these terms, the battle has largely been won. While these issues do

not exactly correlate to one of the three phases of the political interest mobilization-institutional entrepreneurship-institutional enforcement model, we would expect to see these issues dominate during and after institutional entrepreneurship has been in effect for some time. The specific issues examined by the survey were worker productivity and recruitment, financial costs, and competitor adoption of same-sex partner benefits.

The final set of critical issues focuses around complying with demands made outside of the corporation to comply with entrenched legitimacy concerns. External legitimacy demands can take the form of governmental regulation (required inclusion of non-discrimination, regulation of what constitutes a spouse, etc.) or through other organizational regulation (i.e. demands by organized labor). This can largely be seen as compliance with the institutional enforcement stage. The survey asked questions about concern over state and congressional action, as well as court rulings in order to measure the degree that this topic intrudes on discussions about same-sex partner benefits.

The survey, in an attempt to measure which critical issues dominated corporate discussions on the topic asked the respondent to rate eight issue areas (boycott threats, state legislative action, congressional action, public relation problems, court rulings, competitor adoption, worker productivity, and financial costs) on a four point scale. The specific question was “Within your corporation, during discussions about same-sex partner benefits, please rate how much time you discuss each of the following issues.” They were then given a four point scale (a great deal, a fair bit, somewhat, not at all) for each issue. The average scores for each issue area are reported in Figure 15.

Figure 15: Mean Discussion Time of Critical Issues

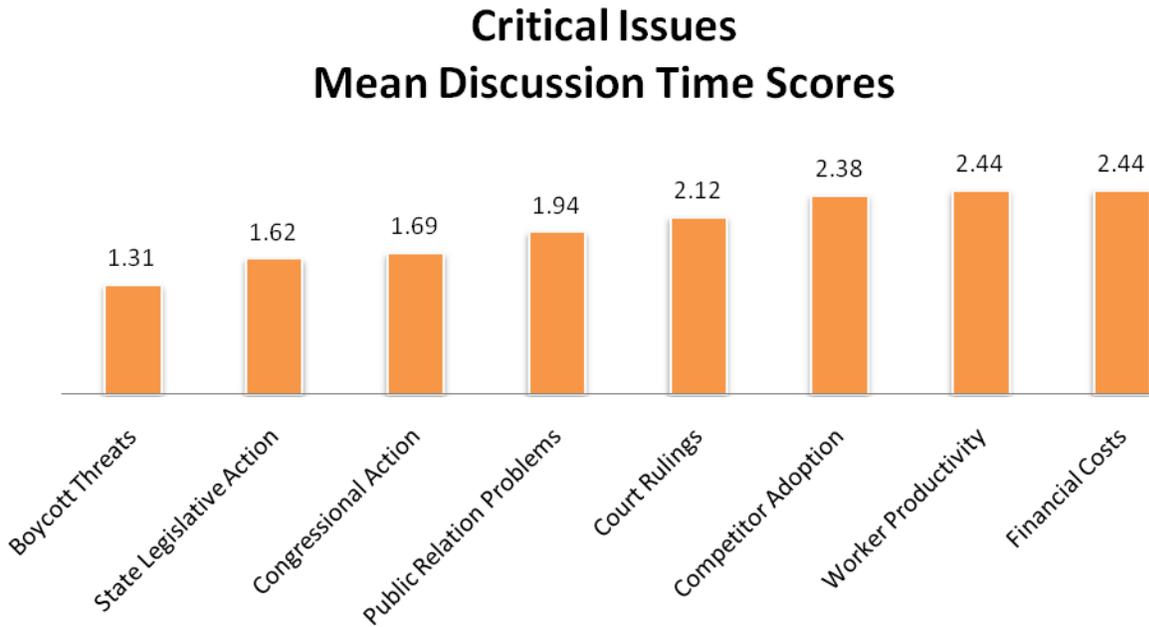


Figure 16: Mean Discussion Time of Critical Issues, By Issue Category

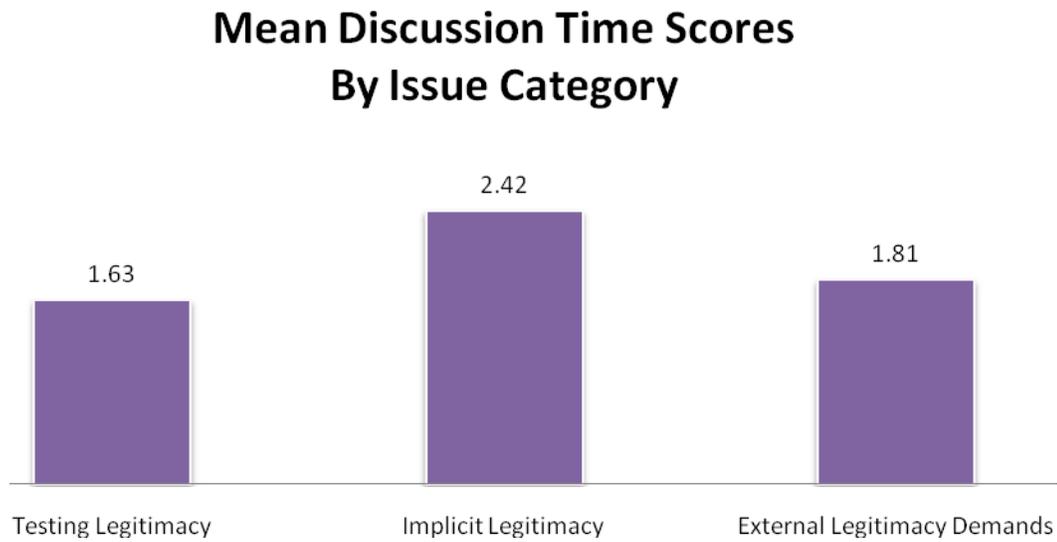


Figure 16 aggregates those average scores by the three issue categories discussed above. This figure provides a more concise picture of what the data attempts to construct for us. We can see that the testing legitimacy category’s discussion time is the lowest of the three. This

indicates that corporations are largely unconcerned with attempting to justify pro-gay policies to external political forces. Boycotts have declined or ended (most notably the end of the Southern Baptist boycott of Disney in 2005) and the vast majority of press on the issue of same-sex partner benefits focuses on the fact that corporations are overwhelmingly adopting them.

The high level of concern with implicit legitimacy issues indicates that corporations have largely bought into the idea that same-sex partner benefits should be treated like other work-life initiatives inside the corporation. They are concerned that other corporations may have a competitive advantage by offering the benefits, and their main concerns appear to be the balance between the additional cost of same-sex partner benefits and the corresponding increase in productivity and worker retention and recruitment (their competitive advantage in the labor market). These two issues are at the top of the discussion list, in Figure 15, and competitor adoption is only slightly less of a concern.

External legitimacy demands are less of a concern than implicit legitimacy issues. State and federal legislation concerns are quite low (the 2nd and 3rd least discussed issues). However, court rulings are a more significant concern for corporations. This *may* have some bearing on the fact that there seems to be little traction for legislative initiatives on same-sex partner benefits nationally, while courts have been more active in promoting policies which have impacted corporations in recent years. However, more investigation is necessary to confirm this argument.

What seems to be occurring is an increase in social norms that are pro-gay in the workplace. Corporations are less concerned about boycotts and more concerned with pressures to conform to industry standards. The nation is entering a stage where political interest has mobilized enough social concern on the issue that institutional entrepreneurship is beginning to

take over the process of legitimizing same-sex partner benefits. The early stages of institutional enforcement on the subject are already being seen – such as policy initiatives like same-sex marriage and civil unions in Massachusetts and New Jersey.

Individual Case Analysis

One striking thing about the responses was the almost universal trend in respondents was their use of the concept of fairness. Nine respondents (out of a total of 13) provided such an answer to the question “If you can remember, please briefly state what prompted your corporation to start discussions about whether or not to extend healthcare benefits to same-sex partners.” These respondents were from such diverse industries as oil, IT, entertainment, and financial.

A number of the respondents replied that fairness was the overriding issue without even mentioning another topic. A shipping and transportation executive stated “Issues of fairness to employees in domestic partnerships, whether same or other-sex.” Interestingly, this individual’s corporation has not yet decided to extend same-sex partner benefits. And, while headquartered in a southern state which is known for its anti-gay sentiment, the corporation did not respond that it was concerned about state legislative action, focusing rather on financial costs, the courts, Congress, and worker productivity. This sentiment seemed to be echoed in the response of an executive at a major oil corporation who simply said “Right thing to do.”

Another respondent stated: “As I have rather strong feelings about this issue and about issues of fairness in general, I brought this topic to the table personally and pushed the change through myself...” This respondent’s answer, while generally supportive of the fairness principle, is interesting for another reason. While stating that it was the respondent’s personal

feelings which drove the respondent to push this change through, the respondent's answer to a question about how much decision-makers use their personal feelings to make decisions was "Only a little."

However, the more general sense was that the issue of equity and fairness was important but linked to other issues like worker productivity. A respondent from a major primary metal manufacturer stated:

Fairness to employees as it relates to our corporate people value that states that we should treat all employees with dignity and respect. We also want to win the war on talent, all talent. If we want the best talent, we must be open to people of all classes, races, religions and sexual preferences.

This response almost seems to be pulled directly out of a pamphlet that an LGBT workplace organization might publish. This makes one wonder if it was copied straight out of the corporation's diversity handbook. However, it does provide some insight into the way corporations feel they need to justify their responses. Not only does a corporation need to provide these benefits, but its motives also need to be couched in such a way that employees and potential employees believe that the offer was sincere. The issues associated with external legitimacy demands were not discussed at all and implicit legitimacy demands, such as competitor adoption and financial costs were the most significant issues areas.

This need to couch the language of worker productivity and retention inside a discussion of fairness and equity generally required the respondents to make worker productivity subordinate to fairness. A respondent from a major computer software firm stated: "I believe the discussion was mostly about equity for EEs and secondly as an attraction and retention tool." A respondent from a major office supply corporation stated "focus to diversity and our ability to attract and retain quality talent." And a computer software reseller executive stated "It was part

of our inclusion initiative. We just wanted to do the right thing.” These responses all seem to indicate that *fairness* was the most important factor in the decision, rather than the economic impact of better worker productivity. This poses interesting questions about how and why corporations need to justify their compliance with legitimacy concerns – it may not be enough to comply, but the corporation needs to be seen as eager and sincere in their compliance.

One respondent, however, did not follow this pattern of subordinating worker productivity to equity. The respondent, an executive at a major financial corporation, stated: “Productivity. They believe that a good brain is a good brain, and that people who feel supported by their employer will put that brain to grateful use on behalf of the corporation.” While we can assume this respondent probably meant to say “a happy brain is a good brain” or something similar, we can see that the corporation’s motives were primarily increased productivity rather than providing the social benefit of equity. It would be interesting to have more data from the financial industry, to see if this industry’s focus on financial efficiency affects the way they approach this issue. The special relationship of the financial industry to efficiency with money may prompt them to take a different and interesting perspective on the way they need to justify their actions to the external world.

Only two of the thirteen respondents who provided open-responses made external legitimacy demands their largest concerns. While the financial corporation above appears to be focusing exclusively on productivity, the respondent’s answers to the critical issues questions seems to contradict this. The respondent’s answers to those questions indicate that external legitimacy concerns were more important than competitor adoption and the financial costs of the benefits. And a financial corporation in the Midwest apparently faced a boycott threat between 2005 and 2008 which inspired the corporation to adopt same-sex partner benefits. A third

corporation, while focusing on fairness and worker productivity in the primary open-response question, mentioned the patchwork of local ordinances (like the San Francisco Equal Benefits Ordinance) as a major factor in their discussions on the topic.

Conclusions

The survey's responses provide interesting details and observations about the way that corporations characterize the issue of same-sex partner benefits. From providing analysis on who corporate executives trust on the issue of homosexuality to discussing the way that corporate executives frame the presentation of same-sex partner benefits, this characterization has a significant impact on the social legitimacy of same-sex partner benefits.

What can we take away from this study? The reliance of corporate executives on LGBT groups for reliable information on homosexuality indicates a growing characterization that these groups are more legitimate than their political counterparts. Religious groups opposed to same-sex marriage receive contrasting low scores, indicating that their perspective is not considered to be as socially valid. It would be interesting to have conducted this same study ten years ago, and to have seen what was true at that time.

The partisan barometer analysis helps support the idea that corporations are not as interested in wide-spread political events so much as they are focusing on where business and politics meet. This is linked back to the idea that politicians are rated very lowly on the reliability scale in the previous section. Politicians are less reliable, in part, given the fact that their positions on workplace issues are murky due to their more complex loyalties. Corporations do not have to appeal to an audience as wide as politicians, and therefore they need to find a narrower way of focusing their attention than the very broad categories of partisanship.

The critical issues section points out the issues which are important to corporations when they are making decisions about same-sex partner benefits. These issues are divided into three broad categories: testing legitimacy, implicit legitimacy, and compliance with external legitimacy demands. What the section points out is that implicit legitimacy demands are, at the moment, be the forefront concern of most corporations in the same. This implies that we are at a stage where institutional entrepreneurship and political interest mobilization have pushed the issue to one where legitimacy is starting to be assumed. We would expect over the next few years to see institutional enforcement increase as more corporations follow this practice.

The analysis of the individual cases takes this a step further and looks at how corporations are justifying their practices to themselves and the external environment. It gives us a more concrete footing to argue that these benefits are socially legitimate. The open responses to the survey demonstrate that the principle of fairness appears to be the overwhelming way these individuals justify their actions. The link between fairness and more traditional business (i.e. profit-based) reasoning provides an interesting way of justifying their actions. They have to justify themselves largely to two audiences – employees and shareholders. By combining the principles of fairness, which would appeal to employees, with profit-based arguments, they can successfully appeal to arguments that legitimize their position to both of their primary audiences.

Chapter 5 - Same-Sex Partner Benefits

The Role of Social Legitimacy

A Model of Sociopolitical Influences on Socially Sensitive Business Practices

This thesis has developed a model through which we can better understand the way the sociopolitical influences on the corporate world can influence those corporations to take action. Corporations do not live in a vacuum – they respond to a significant number of external stimuli, including social pressures. The model provided here gives us a way to understand the way society and business interact to create socially legitimate business practices.

This model, which combines institutional theory (DiMaggio and Powell) and resource dependence theory (Pfeffer and Salancik; Zimmerman and Zeitz), proposes a three-step process. This process provides a way to analyze the stages that business and society go through when attempting to change what is socially legitimate. The particular issue examined here has been same-sex partner benefits and gay rights in the workplace; however, the model developed could be used to analyze the way other socially-sensitive topics are being interpreted in the workplace.

The three steps in this process are political interest mobilization, institutional entrepreneurship, and institutional enforcement. Political mobilization is the development of interest and discussion on a topic by corporate stakeholders. These stakeholders are largely consumers, employees, and shareholders. Institutional entrepreneurship is the way that organizations like governments and organized labor promote policies and practices in the business world. Examples include tax incentives or employer of choice status for corporations that comply with the practice that is being encouraged or discouraged. Institutional enforcement,

the final stage in this process, occurs when the practice is not just socially legitimate, but socially essential. If an organization cannot be legitimate without engaging in a certain practice, then institutional enforcement is the way that practice is mandated. Direct governmental mandate of the practice is the primary mechanism of institutional enforcement.

The case of same-sex partner benefits provides an excellent way to demonstrate this model. The practice of same-sex partner benefits has gained a great deal of traction since the early nineties. Over 50% of Fortune 500 corporations now offer these benefits (HRC 2008 Corporate Equality Index; HRC State of the Workplace) and each year the number continues to climb. Considering the fact that, according to a report by the Williams Institute at UCLA, over 770,000 self-identified same-sex couples live in the United States, the issue of same-sex partner benefits has a powerful impact on the lives of nearly a million Americans (Gates). Since, on average, nearly one-fifth of an employee's compensation is received through healthcare benefits packages this issue is one which deeply affects LGBT families (HRC State of the Workplace 13). Further, even when these benefits are offered to same-sex partners on an equitable basis with heterosexual married couples, there remains a fundamental tax inequity. The benefits are not considered taxable income for heterosexual married couples¹⁵ while it is taxable income for gay and lesbian couples. This is not only significant to the couples themselves, but also to the business, which has to pay additional employer taxes on these benefits which do not apply to marital benefits (Badgett).

The study constructed a historical narrative of the dialogue between the sociopolitical environment and the business world. By using critical moments in that history, moments which

¹⁵ Even though gay couples are allowed to marry in Massachusetts, the Defense of Marriage Act does not grant federal recognition to their marriages. Thus, gay and lesbian married couples in Massachusetts do not receive the tax benefits of a married couple.

resonate and would be instantly recognizable and familiar to many corporate executives, we can start to understand the mental framework through which decision-makers perceive same-sex partner benefits. From the early nineties through to the present day, the issue continues to be one which generates a great deal of press and discussion.

The evidence provided in this study indicates that if the three stages of political interest mobilization, institutional entrepreneurship, and institutional enforcement are sequential, then the nation is somewhere in the overlap between institutional entrepreneurship and institutional enforcement. The stage of political interest mobilization appears to have started in the early nineties. A decade later and the major mobilizations against same-sex partner benefits had largely collapsed (Disney & the Southern Baptist boycott) and mobilizations for same-sex partner benefits and gay equity had succeeded (Cracker Barrel). Institutional entrepreneurship began to develop in the mid to late nineties with the San Francisco Equal Benefits Ordinance (EBO). The EBO, which incentivized the practice of same-sex partner benefits by allowing those corporations that provided same-sex partner benefits to have access to large city contracts, was instrumental in spreading the practice. Thousands of corporations in the years following the enactment of the EBO instituted same-sex partner benefits in order to comply with the EBO or similar city or state policies over the next several years (Raeburn; Rogers and Dunham).

Where the country appears to be right now is a place between institutional entrepreneurship and institutional enforcement. In certain states in the country, such as Massachusetts and New Jersey, civil union and marriage law is being applied to gay and lesbian couples. This kind of regulation of gay and lesbian relationships spills over into the business world and directly affects the way they implement healthcare policies. The controversy surrounding UPS in the summer of 2007 demonstrates how corporations respond to these kinds

of regulatory cues. By complying with governmental regulation, corporations which are reticent to adopt same-sex partner benefits are given a new dimension to their decision-making process: the potential results of running afoul of governmental regulation. By failing to comply with these regulations, corporations open themselves up to both civil and criminal litigation. UPS quickly realized that by failing to comply with the New Jersey civil unions legislation, they were liable to suits being filed by Lambda Legal.

Institutional enforcement may occur more slowly than political interest mobilization or institutional entrepreneurship. Institutional enforcement generally occurs through governmental regulation. Politicians are often susceptible to larger range of social pressures than business leaders and are generally more reactionary. In addition, Timothy Werner's analysis of corporate adoption of same-sex partner benefits looks at how corporations choose to self-regulate themselves in order to avoid the higher costs of being forced to comply with governmental regulation (Werner). If this is the case, then government may not feel a need to actually enact regulatory policies if business is already self-regulating.

By examining the way corporate decision-makers have changed the way they think about same-sex partner benefits we can see how the historical narrative influences day-to-day decision-making at a micro level. The Jones and Baumgartner model of decision-making provides a mechanism for analyzing how changing characterizations can influence the types of choices that are available and taken by decision-makers. With more empirical data available on the exact way that decision-makers have characterized socially-sensitive issues over time, it would become possible to map out more precisely how these external influences shape their decision-making process.

Looking Forward: Future Research & Applicability

Empirical measures of the model developed here prove difficult with the kinds of data that is available to researchers. Public opinion data on homosexuality is restricted to a handful of isolated cases. This poses problems when attempting to generalize from the data. In addition, the data does not stretch very far back. Questions in the General Social Survey about the number of gays and lesbians that the respondent knows were only added in the 2006 survey. Once these sorts of questions have been in circulation for some time, measuring this issue will be considerably easier.

More importantly, however, would be an over-time measurement of how corporate decision-makers view same-sex partner benefits. The survey that this study conducted was answered in a two week period in February of 2008. An over-time analysis on the critical issues section would have been extremely helpful in measuring the efficacy of the model developed here, and understanding the more precise changes in characterization that the issue of same-sex partner benefits has seen inside the corporate board-room. It also would allow a more direct connection between the micro-level decision-making theory and the broader social legitimacy theory. A more extensive, and over-time, dataset of responses from corporate decision-makers would allow the model to be expanded and refined based on how characterizations changed in response to certain specific stimuli. For example, if we were able to take a measurement of critical issues after each of the four cases discussed in the historical narrative, we could determine with a great deal more precision exactly how these kinds of influences shape characterizations. We could also see if there was a lag time in which the impressions of events became conventional wisdom.

The ultimate goal of this thesis; however, has been to present a model which presents a direct relationship between the sociopolitical external environment of a corporation with the decision-making process of the internal decision-makers. The model provided here should be used to analyze similar new business practices which receive media attention and are of concern to a wide audience. The role of socially marginalized groups within the workplace, of which gays and lesbians are just one, is a critical area where this kind of analysis is useful. Other groups, like women, ethnic minorities, those who identify as transgender, would allow the same kind of analysis as has been presented here. Another area where this analysis may be useful is examining the increased demand for environmentally friendly business practices.

This model and analysis fills an important void in the literature of organizational change theory. It links the sociopolitical environment of an organization with a direct *process*. This process can be conceptualized and measured in terms of historical events, governmental regulation, and the characterizations of issues by corporate decision-makers.

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