

## The Supreme Court and Issue Attention: The Case of Homosexuality

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*Previous studies have shown that a small number of Supreme Court decisions that “rearrange[d] the . . . distribution of political benefits” have drawn the media’s attention to the underlying issues involved in those cases. This article provides an additional test of that empirical claim, examining the effects of the Supreme Court’s gay rights cases on media coverage of homosexuality from 1990 to 2005. The data indicate that Supreme Court decisions that expanded the scope of gay rights increased coverage of homosexuality in both The New York Times and USA Today, while cases that affirmed the existing scope of gay rights had no such effect.*

**Keywords** agenda-setting, Box-Tiao analysis, issue attention, gay rights, judicial politics, *The New York Times*, Supreme Court, time series, USA Today

While some have prominently concluded that the Supreme Court has little influence on public policy or public opinion (e.g., Rosenberg, 1991; Marshall, 1989), a growing literature has identified numerous paths of influence from the Court into the political environment. Franklin and Kosaki (1989) find that the Supreme Court’s decision in *Roe v. Wade* polarized public opinion on abortion (see also Johnson & Martin, 1998). Hoekstra (2000, 2003) finds that Supreme Court decisions may influence the aggregate distribution of political attitudes in communities with strong attachments to particular cases, such as those from which cases originated. More recently, Stoutenborough, Haider-Markel, and Allen (2006) find that the Supreme Court’s decisions in *Bowers v. Hardwick* (1986) and *Lawrence v. Texas* (2003) decreased and increased, respectively, public support for gay rights among those with malleable attitudes while polarizing public opinion on the issue among those who held strong beliefs prior to the Court’s actions. And, of particular importance here, Flemming, Bohte, and Wood (1997; Flemming, Wood, & Bohte, 1999) show that some Supreme Court decisions have drawn the media’s attention to political issues involved in those cases.

Flemming et al. (1997) demonstrate that a small subset of the Court’s decisions on school desegregation, free speech, and religion increased the media’s attention to those issues. Specifically, they find that cases that “markedly rearranged the prior distribution of political benefits, either material or symbolic, for various segments of the population”

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The author would like to thank Tom Carsey, Peter Enns, Kim Hill, Mike MacKuen, Dave Peterson, Jim Stimson, Georg Vanberg, and the anonymous referees for providing valuable feedback on this project.

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(1997, p. 1247) produced the observed agenda-setting effects. In other words, Flemming and his coauthors generalize that cases that substantially change a *status quo* policy are likely to draw the media's attention to the issue involved in the case. That inductive claim can serve as a theory of media responsiveness to the Supreme Court that can be tested out-of-sample.

Here I employ that theory of agenda setting to develop hypotheses about the media's responsiveness to the Supreme Court's gay rights cases from 1990 to 2005. I argue that cases that expanded the scope of gay rights, those that "rearranged the prior distribution of political benefits," should accompany increases in the media's attention to homosexuality. Conversely, those that confirm an existing policy should have no effect on media coverage.

I test these hypotheses using monthly indicators of the level of attention paid to homosexuality by two stylistically divergent newspapers, *The New York Times* and *USA Today*, employing Box-Tiao (1975) intervention analyses to assess the influence of relevant court actions on these media time series. The results indicate that changes in the media's coverage of homosexuality largely conform to theoretical predictions. Significant increases in attention to homosexuality accompanied Supreme Court decisions that expanded gay rights, though the effects varied somewhat across media outlets, while the remaining cases had no effect on media coverage. The data confirm that the Supreme Court can be systematically influential in raising the media profile of an issue in American politics, though various media outlets may respond differently to the Court's decision.

### The Supreme Court, the Media, and Agendas

The idea that agendas and agenda control matter for determining political outcomes is central in contemporary political science. Moving an issue or an alternative onto the agenda, that is to say, to the attention of those who are empowered to make policy changes, is a necessary condition for policy change to occur (Bachrach & Baratz, 1964). For American national politics, numerous studies suggest, the national media's agenda—the issues chosen to fill pages of print and minutes of broadcast time—has a strong effect on which proposed policy changes receive serious consideration in the elected branches of government and which are dead on arrival (e.g., Cook et al., 1983; Dalton, Beck, & Huckfeldt, 1998; Kingdon, 1984, 1989; Iyengar & Kinder, 1987). Thus, political scientists have frequently asked, "Who sets the media's agenda?"

In part, the answer may be the Supreme Court.<sup>1</sup> Flemming et al. (1997) investigate the role of the Court in attracting the media's attention to some issues—specifically civil rights, free speech, and public displays of religion (see also Flemming et al., 1999). Generally, the authors find that, of the Court's substantively important decisions in these issue areas (those listed in the *CQ Guide to the United States Supreme Court* from 1947 to 1992; 31 cases in all), a small number had a significant influence on the media's systematic attention to the issues each case involved. These agenda-setting cases included three civil rights cases (*Brown v. Board of Education* in 1954, *Cooper v. Aaron* in 1958, and *Griffin v. County School Board of Prince Edward County*, in 1964), one free speech case (*Texas v. Johnson* in 1989), and three Establishment Clause cases (*Illinois ex. rel. McCollum v. Board of Education* in 1948, *Engel v. Vitale* in 1962, and *Lynch v. Donnelly* in 1984).

Explaining these results, why these cases produced changes in the media's attention to issues while other legally important cases did not, the authors argue that this subset of cases created important changes in the distribution of constitutional rights:

Each decision markedly rearranged the prior distribution of political benefits, either material or symbolic, for various segments of the population. The issues

involved in all of these decisions were also highly affective. As a result, the decisions were extremely controversial at the time they were announced. The media participated in expanding the scope of system-wide conflict by publicizing the initial decision and its implications. In each case, the Supreme Court's decisions sparked intense national debates that drew in new participants and expanded the scope of conflict through time. . . . The issues involved in each decision opened wide ideological cleavages among political actors that remain until this day. (Flemming et al., 1997, p. 1247).

Other cases, while perhaps addressing a substantively important legal issue, may have confirmed an existing *status quo* or offered a marginal refinement to a previous landmark case that established or redistributed political benefits, thus failing to generate enough "news" to draw the media's attention.

This explanation points to a theory of the Supreme Court and issue attention in the mass media. The idea that policy choices that alter the *status quo* draw media attention more easily than policy choices that merely confirm the *status quo* comports with the portrait of editorial decision making that emerges from scholarship in journalism and communication. The media environment demands that profit- and market-share-driven news outlets fill their "news holes" with the content that is most likely to attract attention and, therefore, support circulation and viewership (Buckalew, 1969; Dominick, 1975; Esser, 1999; Lacy, 1987, 1989). Given a finite number of print pages and broadcast minutes to fill (and limited research and reporting resources to direct), publishers, editors, and producers must choose to cover some stories and issues and not others. This creates an implicit competition among potential news stories for media attention, and those likely to succeed are those that interest or appeal to the media audience (Gartner, 2004). Thus, as a general proposition, stories that report that a policymaker has shifted the *status quo*, rearranging the distribution of political benefits, are at an advantage compared to those that report that a policymaker considered changing the *status quo* but decided not to. And, in the particular case of the Supreme Court, decisions that generate new policy outcomes should draw media attention to new issue domains, while those that merely affirm current policy should be less likely to do so.

### Assessing the Court's Influence on Issue Attention

Like all claims generated from exploring patterns in one set of observations, though, Flemming et al.'s (1997) theory of media responsiveness to the Supreme Court requires out-of-sample validation. As Beck, King, and Zeng (2000) note, "all statistical analysts must be concerned about whether they are taking advantage of some idiosyncratic features of their data [when drawing inferences] . . . . To guard against this problem . . . out-of-sample forecast accuracy is considered the gold standard for model assessment" (pp. 21–22). In this case, an out-of-sample test requires identifying a previously unexamined issue space in which the Court has acted to both confirm existing group rights and "rearrange" political benefits and then examining media coverage of that issue to see if its behavior over time conforms to the theory's predictions.

I take up this task through study of the Supreme Court's influence on the media's attention to homosexuality. In particular, I examine the extent to which the Court's gay rights decisions drew attention to homosexuality from 1990 through 2005. "Gay rights" is a quintessential "affective issue" and fits directly into the theoretical paradigm advanced by Flemming and his colleagues. In the last two decades, homosexuality's role as an issue has grown in importance, emerging alongside abortion as a central "social" or "cultural"

issue in national and state-level politics. Moreover, homosexuality is a policy domain in which courts are presumed to have been instrumental in determining policy outcomes, though few academic studies have investigated this conjecture.

Also, to capture the potentially divergent streams of coverage that exist in different media outlets, I have chosen two distinct print news sources, *The New York Times* and *USA Today*, to represent the range of news coverage of the issue of homosexuality. These newspapers both enjoy wide, national readerships, though they embrace diverse styles and intended audiences. *The New York Times* is often regarded as the nation's newspaper of record by political and social elites. Its content is heavily and consciously dominated by "hard news," and its writing is geared toward a relatively well-educated audience. *USA Today*, on the other hand, is famously written and illustrated to appeal to a mass public audience—human interest stories frequently share space with prominent news items. In many respects, these two newspapers represent poles in style and substance available in the American print media. These least similar cases should reveal any heterogeneity in various media outlets' attention to a given political issue and thus, taken together, provide indicators for a robust test of the theory of the Supreme Court and issue attention.

### Identifying Relevant Cases

The set of Supreme Court cases that involve some aspect of gay rights can be identified through the application of a relatively simple criterion to the most widely used database of Supreme Court decisions. I analyze any Supreme Court decision that involves as a litigant a homosexual person or group, or an agency that advocates for gay rights, that was decided between 1990 and 2005. Specifically, I admit those cases recorded in Spaeth's United States Supreme Court Database (Spaeth, 2007) that identify one or another party to the case as a "homosexual person or organization."<sup>2</sup> In this instance, the Spaeth database is especially useful, since it identifies parties based on references in the Court's writings on the case. Parties are described using "terminology which places them in the context of the litigation in which they are involved" (Spaeth, 2007, p. 23). Thus, database entries that identify one or another party as a homosexual person or organization do so because this identification is relevant to the issue before the Court. In other words, cases involving a party identified as a homosexual person or organization are cases involving an issue that makes the sexual identity of the party relevant: a gay rights case.<sup>3</sup>

This search reveals four cases in the observed period: *Hurley et al. v. Irish-American Gay, Lesbian, and Bisexual Group* (1995), *Romer v. Evans* (1996), *Boy Scouts of America (BSA) v. Dale* (2000), and *Lawrence v. Texas* (2003). The cases are summarized in Table 1. In two of these cases, *Hurley* and *BSA*, the Court held that the First Amendment protected private organizations from state laws that barred the exclusion of homosexuals from "public accommodations." On the other hand, the remaining cases acted to protect or expand gay rights. *Romer* invalidated a voter-created amendment to Colorado's constitution that forbade identification of homosexuals as a protected class under antidiscrimination laws. *Lawrence* invalidated state sodomy prohibitions, overturning *Bowers v. Hardwick* (1986).

Flemming, Bohte, and Wood's theory of media response to the Supreme Court leads to clear predictions about how coverage of homosexuality should respond to three of the four decisions. First, the theory predicts that *Lawrence* should draw the media's attention to the issue of homosexuality. This case overturned a relatively recent precedent and greatly expanded the substantive and symbolic rights of homosexuals. Likewise, *Lawrence* catalyzed subsequent legal action in some states that offered sanction to same-sex unions and marriages (Haider-Markel, Allen, & Johansen, 2006). On the other hand,

**Table 1**  
Gay rights in the Supreme Court: 1990–2005

Case	Decision date	Holding	Prediction
<i>Hurley et al. v. Irish-American Gay, Lesbian, &amp; Bisexual Group</i>	June 1995	“The . . . application of the Massachusetts public accommodations law to require private citizens who organize a parade to include among the marchers a group imparting a message that the organizers do not wish to convey violates the First Amendment.”	No change in media attention
<i>Romer v. Evans</i>	May 1996	“[Colorado’s] Amendment 2 [prohibiting laws that provide anti-discrimination protection to homosexuals] violates the Equal Protection Clause.”	No clear prediction
<i>Boy Scouts of America v. Dale</i>	June 2000	“Applying New Jersey’s public accommodations law to require the Boy Scouts to admit Dale [a homosexual] violates the Boy Scouts’ First Amendment right of expressive association.”	No change in media attention
<i>Lawrence v. Texas</i>	June 2003	“The Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause.”	Increased media attention to homosexuality

those cases that ratified the right of private organizations to exclude homosexuals and signaled limited prospects for judicially mandated advances in gay rights, *Hurley* and *BSA*, should have no effect on media coverage.

The fourth case, *Romer v. Evans*, is more complicated, though. Superficially, the Supreme Court created a policy change, invalidating Colorado’s 1992 Amendment 2. That situation should produce a change in the media’s attention to homosexuality. However, that voter-created clause had never gone into effect; its implementation had been enjoined by a federal district court almost immediately after its ratification by Colorado’s voters. Also, the amendment had been declared unconstitutional by Colorado’s Supreme Court in 1993 and 1994 on Fourteenth Amendment grounds. Thus, the state of Colorado’s appeal in *Romer* amounted to a final attempt to force the implementation of a policy change that had never taken effect. *Romer* also seems to have had a chilling effect on an emerging movement to use state ballot initiatives to repeal or prohibit antidiscrimination protections for homosexuals elsewhere, indirectly limiting subsequent legal developments with bearings on gay rights (Donovan, Wenzel, & Bowler, 2000; but see Adams, 1998). Given the murky nature of defining the *status quo* with respect to the case and its broader political setting, there is no clear theoretical prediction about its relationship with media change.

## Measuring Media Attention to Homosexuality

The principal measurement problem in this study is to establish the level of media attention to homosexuality. Fortunately, previous studies of national political institutions' influence on the media provide ample guidance in this task. In particular, Flemming et al. (1997) show that a small set of important Supreme Court decisions have drawn the media's attention to issues, such as desegregation and prayer in public schools, that were not previously on the national political agenda, at least at the pitch at which they appeared after the Court acted.<sup>4</sup> They reach this conclusion through an analysis of a monthly count of news stories listed in *The Readers' Guide to Periodical Literature* containing at least one of a set of keywords that indicate articles that relate to the issues under analysis. In their own words, these authors choose *The Readers' Guide* as a data source because:

[I]t surveys a wide assortment of general interest and specialized publications with a combined readership far greater than the circulation of any single newspaper . . . [and] *because of the size and diversity of markets served by the periodicals, the combined editorial emphases . . . can be assumed to be more representative of concerns on the systematic agenda than measures resting on selective, narrow samples of . . . media.* (p. 128; italics added)

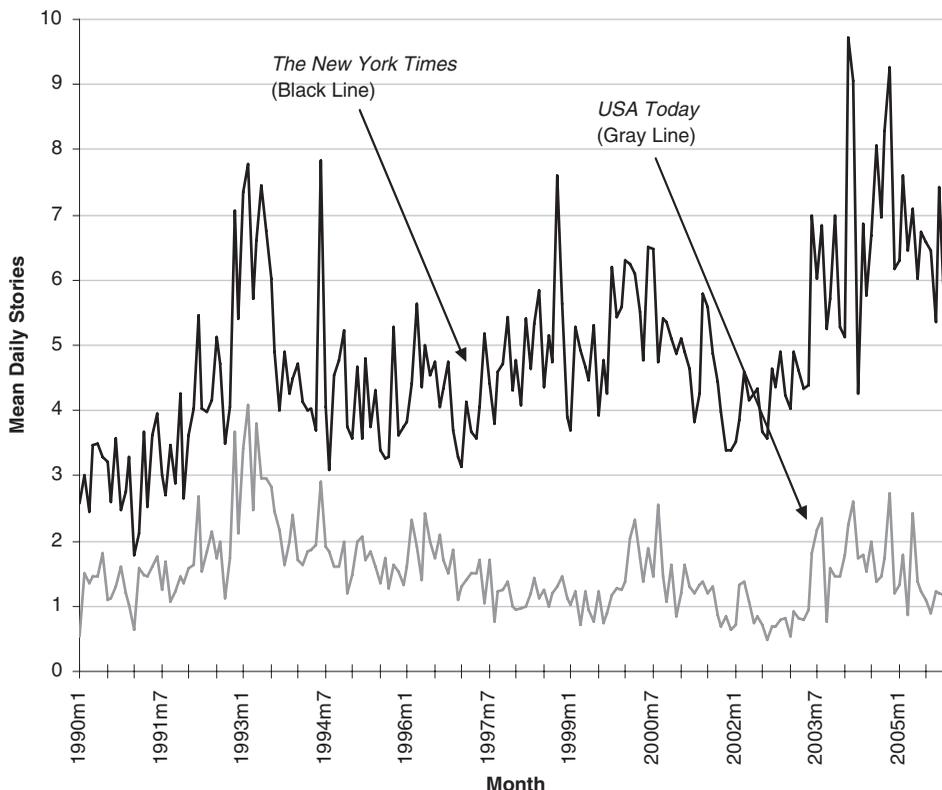
For this reason, *The Readers' Guide* has been a recurring source of article count data for political scientists studying the effects of institutional activity on the media's agenda (e.g., Baumgartner & Jones, 1993; Flemming et al., 1999; Rosenberg, 1991).

This methodological choice has important theoretical implications, though. The authors explicitly choose to examine agenda-setting effects common to the broad spectrum of American media. This choice consciously, and for good reason in the context of a particular research question, ignores potentially important variance in issue attention that may occur within particular publications or sets of publications over time. Many differences exist among media with respect to geographic dispersion, audience sophistication, and competitive standing. These differences place unique economic pressures on each media outlet. Moreover, these influences may interact with the journalistic and ideological predispositions of editors and publishers to yield interesting variance across different media with respect to the type and volume of coverage offered to different issues at different times. For studies of agenda setting, it may be advantageous to examine issue coverage across individual media outlets rather than to treat the media as a single unit.

Thus, I measure the media's attention to homosexuality through a simple count of the mean number of daily stories each month in *The New York Times* and *USA Today*, archived at Lexis-Nexis, that mention a set of keywords<sup>5</sup> that indicate content related to homosexuality.<sup>6</sup> The two series stretch from January 1990 through December 2005 (Figure 1).

A cursory inspection of these time series indicates at least two differences between them. First, the absolute difference in magnitude between the two series is seemingly large. While *The New York Times* reports an average of approximately 4.7 stories per day that make some mention of homosexuality, *USA Today* reports an average of only 1.5; this difference is statistically significant ( $p < .05$ ). In fact, *USA Today*'s attention to homosexuality exceeds the observed minimum of *The New York Times*' coverage, 2.1 stories per day, in only 20 of the 192 months observed. More plainly, on any given day, *The New York Times* is likely to have published about three more stories involving homosexuality than *USA Today*.

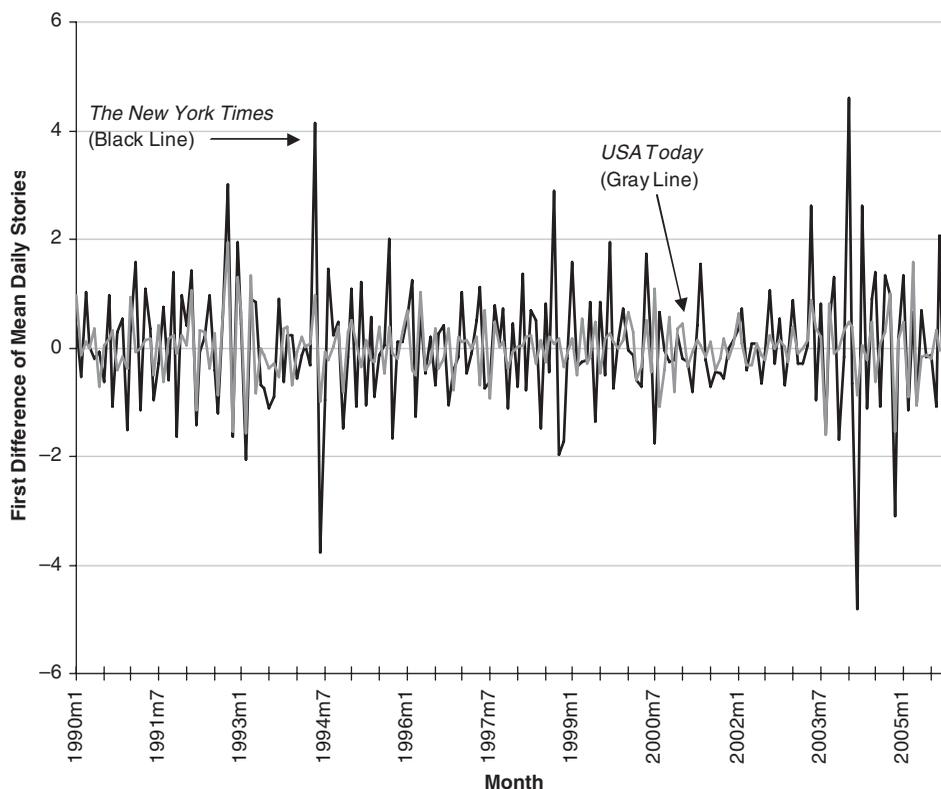
Aside from the difference in the level of attention to homosexuality evident between these two series, there is also a marked difference in trends. *The New York Times* series has a



**Figure 1.** Media coverage of homosexuality: Monthly mean daily stories.

relatively strong upward trend of approximately 0.013 daily stories per month.<sup>7</sup> This amounts to an expected difference of nearly two stories per day from  $t_1$  to  $t_{192}$ . In contrast, the *USA Today* time series exhibits a small, but significant, downward trend of roughly 0.003 stories per month. This reflects a reduction of roughly on-half story per day over the observed time period. Substantively, these divergent trends reflect growing heterogeneity in the media's treatment of homosexuality. In *The New York Times*, homosexuality became an increasingly prominent issue during the 1990s and into the new century. Conversely, *USA Today* has moved (very) modestly away from coverage of homosexuality in terms of absolute attention to the issue.

These superficial differences, however, mask underlying similarities. The trends in the raw time series belie a common set of "high points" in the two newspapers' coverage of homosexuality. In other words, a shared set of salient events appears to have drawn the media's attention generally to homosexuality. This common responsiveness to news-making events for *The New York Times* and *USA Today* can be seen more clearly in Figure 2, which shows the first differences in the monthly time series of mean daily news items involving homosexuality in each newspaper. Overlaid, the two series show a common systemic pattern: brief periods of large increases in coverage generally immediately followed by short periods of decreases in coverage. These patterns suggest a model of media coverage of homosexuality in which salient news events draw the media's attention to homosexuality, which produces the observed increases in media coverage. However, these increases appear, for the most part, short lived as the media moves on to cover other events and issues.



**Figure 2.** Media coverage of homosexuality: Changes in monthly mean daily stories.

Of course, this does not imply that the observed trends in the data are unrelated to the causal events listed above, or others. The increases in coverage over time may be related to the accumulated effects of identifiable events over time. Identifying these effects, their decay, or their accumulation is an empirical matter, though.

### Modeling Influence on the Media

This theory of agenda setting can be assessed using Box-Tiao (1975) "intervention analyses," again the strategy employed in Flemming et al.'s (1997) study of the effects of Supreme Court decision making on media attention, though applied to new data on a new issue. Box-Tiao analyses are used to estimate the effects of an event or events on a set of serial observations of some quantity of interest. Specifically, Box-Tiao methods estimate the following equation:

$$Y_t = f(I_t) + N_t$$

where :

$Y_t$  = media coverage time series,

$I_t$  = the effect of judicial "interventions," and

$N_t$  = ARIMA error process

This design has a number of attractive properties. First, as a matter of internal validity, intervention analyses—Box-Tiao or some other formulation—are methods for assessing natural experiments. In this case, the “experiment” examines the effect of judicial decisions on media coverage of issues relating to homosexuality. While “the rival hypothesis exists that . . . some more or less simultaneous event may have produced the shift” in the dependent series (Campbell & Stanley, 1963, p. 37), only the identification of a rival causal event threatens inferences drawn from the assessment of the impact of the event of interest.

Moreover, Box-Tiao analyses explicitly model ARIMA error processes ( $N_t$ ) by estimating the auto-regressive and moving average components of the dependent time series (Box & Jenkins, 1976). Thus, the effects of interventions on a time series are assessed once other sources of dynamic errors in that series have been accounted for with an appropriate ARIMA model (i.e., the dependent series is reduced to white noise prior to the estimation of intervention effects).

Thus, to begin, I develop an appropriate ARIMA model of each media coverage series, logged to ensure variance stationarity. Next, I model the effects of each judicial decision as a dummy variable where the incidence of a judicial decision involving gay rights is indicated by a dichotomous variable that is set to zero prior to the relevant event and “switches on,” changing to one, in the month that the decision is announced. Pulse interventions—those that produce transient changes in the dependent series—are coded “on” for the month of the intervention and “off” for all other time periods. Step interventions—those that produce permanent effects in the time series—are coded zero for time periods prior to the event and one for all other time periods. Finally, I estimate transfer functions to assess the effects of the interventions on the media time series.

The flexibility of Box-Tiao analyses, though, produces difficult modeling choices for time series analysts. As Flemming et al. (1997) point out, “in Box-Tiao modeling, there is always some duplicity between specifications involving steps and pulses. For example, a first order pulse specification with a very slow rate of change parameter is virtually identical to a zero order step.” These types of modeling choices are ubiquitous in Box-Jenkins-type analyses, and decisions between alternative specifications must ultimately balance theoretical priors and model performance. This reflects the origins of the Box-Jenkins approach to time series analysis in applied forecasting problems. Here, final model specifications were derived in a stepwise approach. First, all events were modeled as zero order pulses. Events that demonstrate a significant influence were subsequently modeled with increasing complexity, adding decay parameters and treating the interventions as “steps” to the extent that the data supported such specifications. Events without significant influence, or added complexities that were unsupported by the data, were eliminated from the models. The final model estimates for *The New York Times* and *USA Today* are presented in Tables 2 and 3, respectively.

## Results and Analysis

The data support the hypotheses derived from Flemming et al.’s (1997) theory of media responsiveness. Consistent with the hypotheses, the Court’s decision in *Lawrence v. Texas* (2003), which invalidated a Texas statute and other similar state laws that criminalized homosexual sodomy, produced a significant, lasting (step) increase in coverage of homosexual content for both *The New York Times* and *USA Today*. Conversely, *Hurley* and *BSA* failed to produce a significant increase in coverage of homosexuality in either paper. Finally, though there were no clear expectations for this case, the Supreme Court’s

**Table 2**  
Supreme Court decisions and *New York Times* coverage of  
homosexuality ( $N = 192$ )

Model component	Parameter	Estimate
<i>Lawrence v. Texas</i> (step)	$\omega_{01}$	0.48* (0.15)
	$\delta_{11}$	-0.45† (0.31)
First order autoregressive (AR1)	$\phi_1$	0.93* (0.06)
First order moving average (MA1)	$\theta_1$	-0.67* (0.07)
Mean (constant)	$\mu$	1.51* (0.07)

\* $p < .05$ ; † $p < .1$  (one-tailed tests).

**Table 3**  
Supreme Court decisions and *USA Today* coverage of  
homosexuality ( $N = 192$ )

Model component	Parameter	Estimate
<i>Romer v. Evans</i> (pulse)	$\omega_{01}$	0.42* (0.25)
	$\delta_{11}$	0.75* (0.36)
<i>Lawrence v. Texas</i> (step)	$\omega_{02}$	0.55* (0.24)
	$\delta_{12}$	-0.75* (0.19)
First order autoregressive (AR1)	$\phi_1$	0.90* (0.04)
First order moving average (MA1)	$\theta_1$	-0.50* (0.08)
Mean (constant)	$\mu$	0.31* (0.11)

\* $p < .05$ ; (one-tailed tests).

decision in *Romer v. Evans* (1996) had a temporary (pulse) influence on *USA Today*'s attention to the issue, though it had no effect on *The New York Times*. I discuss the results for each media outlet more fully below.

### *New York Times*

The final model for *The New York Times*' coverage of homosexuality (Table 2) includes one of the four gay rights cases heard by the Supreme Court in the observed period,

*Lawrence v. Texas* (2003). This case was best modeled as a step intervention; that is, the data indicate that *Lawrence* had a permanent effect on *The New York Times*' coverage of homosexuality. In the month preceding the Court's decision, *The New York Times* printed an average of 4.4 stories a day involving homosexuality in some respect. In the month the decision was announced, it printed 7.0 homosexuality-related stories. This immediate increase was followed by a sustained elevation in the paper's attention to that issue. Thus, even though there was a small recession of media coverage of homosexuality—following an immediate flurry of attention to homosexuality accompanying *Lawrence*—postintervention coverage was significantly higher than preintervention coverage.

The magnitude of this effect should be assessed by transforming the logged coefficients into a quantity of substantive interest. One such quantity, the percentage change due to the first order intervention, is given by the following equation (McCleary & Hay, 1980, p. 174):

$$\% \text{ change} = 100 \left[ \exp \left( \frac{\omega_0}{1 - \delta_1} \right) - 1 \right].$$

Using this transformation, the transfer function estimates predict that *Lawrence* would produce a permanent 39% increase in *The New York Times* articles involving homosexuality. The negative first order transfer function denominator ( $\delta_{11}$ ) for the *Lawrence* intervention indicates that the effect of the case on the media coverage series oscillates before settling into its equilibrium effect.

### *USA Today*

The final model for *USA Today* appears in Table 3. The results indicate that two cases, *Romer v. Evans* (1996) and *Lawrence v. Texas* (2003), had a significant influence on the paper's coverage of homosexuality. The first case was best modeled as a pulse intervention, while the second was best modeled as a step intervention.

The Supreme Court's decision in *Romer v. Evans* (1996)—which invalidated a voter-created amendment to Colorado's constitution that forbade the state or municipalities from extending anti-discrimination protection on the basis of sexual orientation—temporarily increased *USA Today*'s attention to homosexuality. In the month preceding the announcement of the *Romer* decision, *USA Today* ran an average of 1.4 stories a day that involved homosexuality in some respect. In the month of the decision, that figure increased to 2.4. The  $\delta$  parameter of 0.75 indicates that *Romer*'s influence on this paper decayed at a relatively brisk pace. The model predicted that the logged intervention effect of 0.42 would decay by slightly less than half in 2 months. In 5 months, the intervention effect had approximately a quarter of its initial influence, and the effect of *Romer* had decayed almost completely by the eighth month. So, while *Romer* had a temporary influence on *USA Today*'s coverage of homosexuality, the case does not appear to have had a lasting influence on the prominence of homosexuality as an issue.

On the other hand, *Lawrence v. Texas* (2003) had a permanent effect on *USA Today*'s attention to homosexuality. In the month preceding the decision, the paper offered an average of 0.9 stories per day involving homosexuality; there were an average of 1.8 stories per day in the month of the decision. Using the percentage change transformation implemented above, the model predicts a permanent 37% increase in *USA Today*'s

coverage of homosexuality. As with *The New York Times*' model, the negative first order transfer function denominator ( $\delta_{12}$ ) suggests that *Lawrence* caused some oscillation in coverage of homosexuality before the equilibrium effect was achieved.

## Discussion and Conclusions

Here I have sought to confirm and extend existing research that has demonstrated an agenda-setting effect in the national media flowing from the Supreme Court. Examining coverage of homosexuality in two stylistically distinct newspapers, *The New York Times* and *USA Today*, I find evidence that supports Flemming et al.'s (1997) conclusion that the media increases its attention to issues in which the Court's decisions produce important policy changes. Specifically, the data indicate that Supreme Court decisions that expanded gay rights increased content related to homosexuality, while gay rights cases that confirmed the existing scope of gay rights had little effect on media coverage of homosexuality.<sup>8</sup>

Indeed, both *The New York Times* and *USA Today*'s coverage of homosexuality conformed to the theory of judicial agenda setting considered here. Each newspaper demonstrated a lasting (step) response to *Lawrence v. Texas* in 2003, permanently increasing coverage of homosexuality-related items by 37% and 39%, respectively. *Lawrence* substantially expanded the scope of gay rights in the United States. By invalidating homosexual sodomy statutes, the case "markedly rearranged the prior distribution of political benefits, either material or symbolic, for various segments of the population" (Flemming et al., 1997, p. 1247). *Lawrence* also overturned a prominent privacy decision (*Bowers v. Hardwick*, 1986), yielding a landmark change in the national legal status of gays—decriminalizing consensual homosexual sexual conduct and offering a symbolic validation of homosexual lifestyle choices. Moreover, the case hinted that the Supreme Court might be amenable to other claims of privacy rights by homosexuals. These rearrangements of political benefits are not only news in their own right, yielding extensive news coverage of the decision itself. Mobilization of political resources was provoked to oppose further expansions of gay rights, particularly in the case of *Lawrence*, producing changes in media coverage of homosexuality. *Hurley et al. v. Irish-American Gay, Lesbian, and Bisexual Group* (1995) and *Boy Scouts of America v. Dale* (2000), on the other hand, produced no such effects. In both *Hurley* and *BSA*, the Court merely upheld a *status quo*, affirming the right of private organizations to exclude homosexuals. Because these cases yielded no change in the distribution of political benefits, they yielded less news value and provoked less reallocation of political resources to the issue of homosexuals' political and social status than *Lawrence*.

Finally, the murky theoretical status of *Romer* is reflected in the data. While *USA Today* temporarily increased its coverage of homosexuality in the wake of the decision, this effect was short-lived, while *The New York Times*' coverage of homosexuality was unmoved. This observed heterogeneity in the newspapers' responses to *Romer* may be a function of their respective audiences. *The New York Times*, though it has a national audience, is, in the end, a local paper for New York City. Municipal concerns, New York state news, and regional news from the mid-Atlantic are overrepresented in its pages. *USA Today*, on the other hand, is an explicitly national newspaper. Though *Romer v. Evans* had implications for the status of homosexuals in Colorado and in other states likely to adopt similar constitutional measures, the case had little direct influence on New York. There are surely other plausible explanations for the observation that *USA Today* responded to *Romer* in a more significant way than *The New York Times*, though it would be difficult to validate any such "just so" stories with the data considered here.

While these results confirm that the Supreme Court may play an important role in shaping the media's attention to some issues, they also indicate the limitations of the Court's agenda-setting influence. Both Flemming et al.'s (1997) original study and this work indicate that judicial agenda setting is the exception rather than the rule. Among the 31 civil rights, free speech, and Establishment Clause cases examined by Flemming and his coauthors, only 7 significantly increased media attention to the issues they concerned. Similarly, I find that only one of four gay rights cases heard by the Supreme Court between 1990 and 2005 drew attention to the issue of homosexuality in both newspapers examined.

These results also serve as a connection between scholarship on courts and issue attention and the larger literature on linkages between the judiciary, the media, and the mass public. First, this study joins recent research that shows other relationships between Supreme Court decisions and the coverage and tone of media content. For example, Haider-Markel et al. (2006) find that newspapers in states that legally banned sodomy prior to *Lawrence*—and that, therefore, experienced a policy change as a result of the decision—covered the Supreme Court's decision more intensely and more negatively than newspapers in states that had no legal restrictions on sodomy—and therefore experienced no change in policy as a result of *Lawrence*. Together, these studies also indicate that while the Supreme Court may catalyze media coverage of new issues, the Court has little control over how those issues are ultimately manifested in the media. Though the Supreme Court and its justices may work with the press corps to control the public face of its decisions (Davis, 1994; Davis & Strickler, 2000), the Court has substantially fewer opportunities to shape coverage of broader issues raised by its decisions.

This lack of control over its influence in the media may have important implications for the interactions between the Court and public opinion. Though there is little evidence that the Supreme Court's decisions directly alter the aggregate distribution of policy attitudes in the mass public (Marshall, 1989), a growing body of scholarship suggests that the Supreme Court's decisions can influence the strength of citizens' views on salient national issues under some circumstances (Franklin & Kosaki, 1989; Johnson & Martin, 1998) and, perhaps, have more profound effects at the local level (Hoekstra, 2000, 2003; Hoekstra & Segal, 1996). At the same time, other research indicates that media frames may be critical for how citizens connect political information and personal values to form policy attitudes (Iyengar, 1990; Jacoby, 2000; Kinder & Sanders, 1996; Kellstedt, 2000; Koch, 1998; Nelson, Clawson, & Oxley, 1997; Zaller, 1992), particularly with respect to gay rights (Brewer, 2003, 2008).

These streams of research suggest that media frames used to cover Supreme Court decisions and their underlying issues may have important effects on public responses to the Court and the evolution of policy attitudes following judicial actions (Clawson & Waltenberg, 2003). Thus, legal support for gay rights may have unintended consequences for homosexuals and other sexual minorities in mass public opinion. If judicial decisions in support for gay rights produce increased media attention to homosexuality and if the tone of media content about homosexuality is relatively negative in media outlets that operate where political support for gay rights is more limited in the first place, then expansions of gay rights that originate in the courts may harden opposition to future expansions of gay rights and contribute to polarizing public attitudes on the issue. Of course, additional research is necessary to explore these implications.

Finally, this study speaks to the debate over the "constrained" versus "dynamic" views of the Supreme Court. While this article obviously rejects the strongest claims of a constrained Court (e.g., Rosenberg, 1991), neither does it support assertions of a

broadly dynamic Court. Instead, both this study and the work of Flemming and his coauthors suggest a tempered view of judiciary effects on the media's agenda. Indeed, the results reported here add to an emerging body of research that rejects exaggerated claims of either the Supreme Court's importance or its influence. Instead, scholars of judicial politics have increasingly focused their efforts on more precisely estimating the extent of the Court's influence in various circumstances rather than simply pronouncing that influence to be large or small. Broadly, claims of judicial influence in the larger political system remain modest in comparison with the political echoes of presidential and congressional behavior, but it is increasingly clear that the Supreme Court's actions may have important effects for the media and public opinion in ways that are consequential for decision making in other branches of government and, perhaps, for electoral behavior. Thus, scholars of American national politics should renew their attention to the role that the judiciary may play in political outcomes, particularly in the contemporary period of expanding judicial institutionalization and independence (Kramer, 2004; McGuire, 2004).

## Notes

1. While this study focuses on the relationship between Supreme Court decisions and issue attention, there are other literatures on the Court and the media. One strand of this scholarship examines the way in which media cover the court, generally finding that newspapers tend to focus on political responses to the Court's decisions rather than the substantive legal issues involved in its cases (Ericson, 1977; Newland, 1964; but see Larson, 1985). Alternatively, other scholars have focused on understanding when the media turn their attention to the Court, finding that its activities in salient issue domains tend to produce coverage of the Court (e.g., Slotnick & Segal, 1998).

2. Specifically, I use those orally argued cases for which the variables "PARTY\_1" or "PARTY\_2" are coded as "GAY."

3. This procedure is superior to using Spaeth's "ISSUE" variable. This variable might be used to identify cases that include those relevant for this study, such as privacy and due process, but these identifiers would include many other cases that are not relevant (i.e., the "ISSUE" variable does not identify a class of gay rights cases).

4. This finding contrasts with the well-known conclusion reached by Rosenberg (1991), who argued that Supreme Court decision making does not significantly alter the media's coverage of particular issues. Flemming et al. (1997) conclude that Rosenberg's result is a product of his reliance on an overly broad measure of media coverage of race-related stories, which failed to capture sharp increases in media coverage of segregated public education and racial segregation generally (p. 1229).

5. The keywords are gay, gays, lesbian, lesbians, homosexual, and homosexuals. Interestingly, the most regular contamination of this procedure is the annual surge in the number of articles mentioning the keyword "gay" surrounding the anniversary of the American bombing of Hiroshima at the close of World War II. As such, articles that include the term "Enola" are excluded.

6. Even though broadcast and electronic media are increasingly important for the mass audience, print media remains relevant for both the public and (especially) political elites. To choose one recent example, Van Belle's (2003) study of bureaucratic responsiveness to media agendas found that (a) U.S. foreign-aid allocations were responsive to media attention to international events and (b) the *New York Times*' coverage of international affairs explained a greater degree of variance in the aid-allocation data than broadcast media. In addition to his substantive conclusions, Van Belle makes the methodological claim that "in the absence of conceptual, methodological, or practical justifications for using television coverage, and for several reasons beyond those found here, such as availability, ease of coding content, greater variation and greater temporal domain, *The New York Times* is likely to be the more useful source for the practical challenge of measuring news media coverage." Thus, this study, like most previous scholarship on media agenda setting, focuses on print media.

7. The time series' trends are diagnosed by the estimation of the OLS model  $yt = \alpha_0 + \alpha_1t + \varepsilon_t$ , where  $\alpha_1$  indicates the estimated trend component, which is significantly different from zero for both series ( $p < .05$ ; two-tailed tests).

8. Unfortunately, these data cannot shed much light on the paths over which this influence travels. Do Supreme Court decisions draw the attention of reporters and editors to new issues directly? Or do the Court's actions activate elites and interest groups who in turn create additional newsworthy activity in the wake of the Court's actions? Surely, each of these mechanisms plays some role in the process, and uncovering the precise causal sequences involved in translating judicial behavior (or policy changes more generally) into media attention seems likely to be an important frontier in judicial politics and political communication scholarship.

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