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An Exploratory Study of Selected Policy Diffusions in Judicial Settings

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**Nova Southeastern University
College of Arts, Humanities and Social Sciences
Department of Justice and Human Services**

An Exploratory Study of
Selected Policy Diffusions in Judicial Settings

by
Renee Pistone
A Dissertation Proposal Presented to the
Department of Justice and Human Services
of Nova Southeastern University
In Partial Fulfillment of the Requirements for the Degree of
Doctor of Philosophy

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Approval Page

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Abstract

An Exploratory Study of Selected Policy Diffusions in Judicial Settings, Renee Pistone, 2018: Dissertation, Nova Southeastern University, College of Arts, Humanities and Social Sciences, Department of Justice and Human Services. Keywords: diffusion, policy innovations, torts, criminal mental health courts.

Canon and Baum's (1981) pioneering study examined diffusion of 23 plaintiff-oriented tort doctrines among the state court systems in 1876-1975 provided an early model to study judicial innovation. Meanwhile, Berry and Berry's (1990) later model featured event history analysis (EHA) that was relevant for this dissertation which sought to explain political behavior. This dissertation used archival data only and was a quantitative research design that was descriptive and exploratory of the judicial policy adoption process. The researcher used quantitative archival data and described what sociological, political, and criminological factors had impacted policy adoptions over time and explored the possible associations with proposed covariates and independent variables. The states had differed in their adoption of the following torts and any associated reforms: tort of false arrest/false imprisonment and tort of assault and battery related to domestic violence. This study did not address causality and did not involve surveys or interviews carrying out experiment or observant behavior. This dissertation had tracked the adoption of criminal mental health courts across the states as a form of restorative justice. The diffusion of tort innovations was a changing process that was not well understood and merited further study.

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Chapter 1: Introduction

Background

Canon and Baum (1981) examined the diffusion of policy innovations that took place through courts. The goal of this dissertation was to examine state adoptions of tort laws taking into account sociological, political, and criminological factors. One seminal study in this area was Canon and Baum's (1981) prior study that examined diffusion of 23 plaintiff-oriented tort doctrines among the state court systems in 1876-1975. This dissertation, a significantly smaller study, analyzed key tort reforms regarding false arrest/false imprisonment and torts of assault and battery relative to domestic violence because these social problems still exist. These tort reforms which were referred to as new ideas were tracked for innovations from: 1975 to 2015 regarding false imprisonment and from 1972-2015 regarding domestic violence. The diffusion of innovations theory was started by Rogers (2004) and diffusion is the process by which an innovation is communicated via social systems through time. There had been significant prior research about the diffusion of innovations (Glick & Hays, 1991; Gray, 1973; Mintrom, 1997; Walker, 1969). Glick and Hays (1991), for example had focused on diffusion tracking through state-level structures. There were two reasons for conducting an update up Canon and Baum (1981)'s study. First, diffusion of judicial innovations was a changing process that was chronicled. Second, the previous study was carried out over twenty years ago and another study added to the knowledge about diffusion of innovations in the public policy context.

Diffusion of innovations and natural law. The diffusion of innovations sprang from theories that were once linked to natural law as noted by Rogers (2004). Under this

approach, an innovation would manifest itself within society and could be called into question only when other societies invented it and this was related to what Rogers (2004) referred to as human progress. Therefore, using a diffusion approach, different cultures, it was contended that the process of change or innovation could be understood, tracked, and linked by discernable distinctions in diverse cultures (Rogers, 2004). The innovations were propelled through trade and migration among people throughout the world, according to Rogers (2004). This process or aspect of diffusion was referred to as evolutionary development and it had a socio-cultural element (Rogers, 2004). Therefore, it should be noted here that Rogers (2004) postulated that the impact of the implication of diffusion as understood by researchers cannot be viewed in isolation from this socio-cultural element. For Rogers (2004), the recommendation to researchers was to study the patterns of diffusion among the adopters of the respective innovation.

Four main elements of diffusion. First, the context of the diffusion mattered, according to Rogers (2004), and the four main elements of diffusion were part of this process by which the innovation was communicated via specific channels or outlets over time through to a social system. A court was considered to be such a social system and would be a suitable environment to examine the process of diffusion. The main proposition for the innovation of diffusion theory as proposed by Rogers (2004) was that diffusion was a process that took place over time and proceeds from a place in which no part of the specific social system had been exposed to the innovation moving to a point when a specific part or member of the social system has been exposed to the innovation. Thus, the purpose of Roger's diffusion model was to show the continued increase in the number of what the theorist termed adopters over a period of time. In this dissertation, the

researcher tracked that process and examined the changes in torts. Moreover, a diffusion model permitted predictions of the continued development of the diffusion process and facilitated a theoretical explanation of the dynamics of the diffusion process which had revealed general characteristics about the torts that had diffused. Similarly, for Rogers (2004), it had been crucial for the researcher who was applying the theory to make the distinction between being exposed to an innovation and actually adopting that particular innovation which in this dissertation was a tort.

Rate of diffusion. The rate of diffusion was referred to as the temporal diffusion and Rogers (2004) described it as the way that researchers tracked diffusion across time periods. As Rogers (2004) asserted when diffusion was completed all members of the particular social system will have been exposed to the innovation. Researchers had compared the speed of the diffusion and examined several innovations within a given social system. The main purpose of comparing innovations was to determine the ways that we could assist with quicker diffusion of an innovation (Rogers, 2004).

On the one hand, Rogers (2004) advised that a researcher employing the theory could also figure out whether the diffusion was linear and whether it followed some pattern or determinable variation. On the other hand, Walker (1969) mentioned this approach and advised that a researcher might be able to classify social systems into regional groupings as well. Also, the emphasis placed on the behavior of neighbor states that made up regions marked a shift in policy diffusion research and served as Walker (1969)'s significant contribution to diffusion research design. Contrarily, Rogers (2004) posited that researchers were to consider the spatial dimension of diffusion. As noted by

Gray (1971), the time frame that was characteristic of spatial diffusion comports to a set of rules.

Environment and diffusion. In short, one main concept that emerged from the study was that the space that researchers were to evaluate dealt with the environment in which the diffusion occurred rather than any geographic location (Gray, 1971). First, diffusion introduces a contrast that had been appearing between states that adopted the innovation and the states that did not. Gray (1971) identified this next step as the expansion step that formulated a period of actual development of the process. This stage led to the highlighting of the deepest contrasts between adopting states and non-adopting states. During the next step, referred to as the condensation step, the rate of diffusion into states followed a homogeneous pattern. Finally, in the last step or saturation step, the penetration rate of the particular diffusion actually reached a point that allowed the researcher to track it using a statistical analysis. In short, one main concept that emerged from the study was that the space that researchers were to evaluate dealt with the environment in which the diffusion occurred rather than focusing solely on any predetermined geographic location (Gray, 1971).

Problem Statement

Many scholars have studied policy innovations but none have examined this particular configuration of variables through normative perspectives. Our legal system had been the protector of our rights and has provided a fair and efficient way for litigants to have their grievances addressed (Napolitano, 2004). The United States Constitution and the Bill of Rights endowed Americans with liberties that were not to be taken for granted, according to Judge Napolitano (2004). The creation of the American republic

based on the Constitution favored the primacy of the individual over the government. Our government's allegiance to the Constitution limited the government's power in favor of guaranteeing human liberties (Napolitano, 2004). This premise was tested during wartime and the aftermath of the events of September 11, 2001 which led to developments in tort law that called for the following legislative responses including: the September 11 Victims Compensation Fund which replaced the tort liability claims for victims of catastrophe and the establishment of the World Trade Center Captive Insurance Company providing excess liability insurance to the City of New York.

Procedural due process of law. Regarding liberties, it was St. Thomas Aquinas who advised that the source of human freedom came from natural law which originated from a supreme being (Napolitano, 2004). Therefore, all freedoms came from God and were only taken away when the government followed procedural due process of law (Napolitano, 2004). Under natural law theory, judges had enforced individual rights and liberties notwithstanding the legislature or the executive branches (Napolitano, 2004). Legislatures, according to Napolitano (2004) have limitations imposed upon them preventing them from enacting legislation that interfered with natural rights.

Legal positivism. Legal positivism referred to the opposite of natural law and this theory maintained that the government was powerful and stated whatever the law was (Napolitano, 2004). Critics of positivism argued that it led to majority rule sacrificing individual rights (Napolitano, 2004). The debate between natural law and positivism was not just academic and raged on into our modern times. For the positivist, the government's goal involved using jurisprudence to define what is lawful and unlawful. While, the natural law theorist advised that the government's legitimate goal in using

jurisprudence was to define morality or what is right and wrong (Napolitano, 2004). The problem in America was the positivist movement grew so strong that it has driven tort law reforms that led to innovations in the judiciary.

Torts and liability. According to Dobb's Law of Torts (2000), a tort was any conduct that resulted in a legal wrong and caused harm that courts imposed civil liability. Further, English Common Law, on the one hand, was different from natural law, and English Common Law governed the relationships among individuals inclusive of Law of Contracts, Law of Torts, and Civil Law (Dobbs, 2000). Natural law, on the other hand, was universal, determined by nature and based in human sensibilities rather than legal precedent (Dobbs, 2000). Also, under the natural law scheme, Judges had served on a case-by-case basis lacking hierarchical authority. Meanwhile, in sharp contrast, under the English Common Law system, followed by the United States, Judges were considered to be holders of an office which took the form of a career and they were viewed as politicians. The lower courts were subjected to higher court decisions that had formed a hierarchical pattern (Dobbs, 2000). Dobbs (2000) asserted that tort law was rooted in English Common Law meaning that judges, rather than legislatures, defined what conduct was considered to constitute a tort and how compensation was measured. It was for this important reason that torts were tracked in order to detect innovations.

Doctrinal innovation. This examination of doctrinal innovation addressed two paramount concerns for comparison. The first was patterns of adoption of innovations. On this subject, the researcher was particularly interested in Canon and Baum (1981)'s view that diffusion of judicial doctrines were divergent from diffusion of legislation. This view had been challenged by Gray (1971) who argued that the adoption of innovations

was really issue-specific and not part of any predisposition that was characteristic of its endorsers. This researcher sought to inform the debate and explored updated evidence to support aspects from the results and conclusions of Canon and Baum's prior 1981 study. To reiterate, this study, similar to Canon and Baum's prior one, examined and tracked state adoptions of reforms in tort laws taking into account: sociological, political, and criminological factors by region. Diffusion researchers mapped out the regions, according to the United States Census Bureau Map, as follows: Region 1: Northern states, Region 2: Eastern states, Region 3 Western states and Region 4: Southern states.

Purpose statement. The purpose of this study that used archival data was to examine and explore state adoptions of reforms in tort laws taking into account sociological, political, and criminological factors. The second goal of this dissertation addressed the gap in research surrounding the application of diffusion of innovations to: identify and investigate characteristics of states to explain why regions of states differed in their adoption of reforms to the following torts: false imprisonment/false arrest and the torts of assault and battery relative to misdemeanor domestic violence charges. Finally, another goal was to track the adoption of criminal mental health courts across the states as a form of restorative justice.

Significance

The torts and legal doctrines mentioned above were analyzed based on their application to diffusion. It was important to select tort law doctrines in order to narrow down the scope of the application allowing for generalization about diffusion of innovation in the judiciary. The topic was of interest for several reasons. First, it had revealed information about tort law reforms. Second, this study had provided program

evaluators and policy makers direction regarding which states and regions they should concentrate their advocacy efforts. Finally, another possible benefit of the study was that tracking legal diffusion helped researchers track legal innovation which was related directly to policy innovation. Later on, the idea and use of the theory of diffusion provided direction in the study of innovation and prevented researchers from finding conceptual errors (Rogers, 2004).

Despite its potential significance, the diffusion of judicial innovations had received little treatment from legal scholars relative to judicial processes. Perhaps, it was because scholars did not focus on the policy-making contributions or influences that state supreme courts had, according to Tarr and Porter (1988). As Tarr and Porter (1988) noted, state courts used their state constitutions in order to determine civil liberties for their citizens. As Glick (1991) advised historically state courts played a key role in protecting their citizens' civil liberties. Glick (1991) further advised that the incorporation of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment shifted the state court's role to the federal courts. For example, Tarr and Porter (1988) contend that state higher courts often served as the courts of last resort for most litigants in the vast majority of appeals. It was too costly to pursue an appeal with the Supreme Court and the United States Supreme Court simply would not grant certiorari in most cases (Tarr and Porter, 1988).

This dissertation is expected to contribute to research on judicial diffusion in the following distinct ways. First, the researcher provided a theoretical account of the process of diffusion of innovation across states via a regional analysis. Second, Canon and Baum (1991), in their study specifically called for a more extensive discussion of innovation by

courts as applied to the process of diffusion. Exploratory research was a useful approach and the researcher had gained more background information on judicial diffusion.

Feasibility statement. These judicial policies appeared to be more progressive policies on the liberal and conservative political spectrum. They related to a common concern with disadvantaged populations, including the criminal mental health court adoptions. Also, the torts were different from torts that were more frequently studied, including economic, product liability, or property torts. In this manner, this study had identified new research opportunities and led to better and more timely application of information. It worked elsewhere as shown in Canon and Baum (1981)'s prior study which further demonstrated viability for this type of study. Finally, exploratory research was flexible and had addressed research questions of all types.

Barriers and Issues

This study concerned the diffusion of plaintiff-oriented tort doctrines and it was difficult to track the changes in tort law from 1975-2015 relative to false imprisonment and from 1972-2015 regarding domestic violence due to the legal complexities. The barriers, however, were worth it and the usefulness of the research was that it extended knowledge beyond the pioneering patterns of innovative tort law adoptions study that Canon and Baum (1981) had completed.

Definitions of Terms

It was necessary to define several specific terms featured in this study:

assault means to place another in fear or apprehension of harmful touching (Prosser, 1995).

battery was defined as the actual harmful touching of another (Prosser, 1995).

criminal mental health courts continued to be a form of therapeutic jurisprudence designed to bring greater sensitivity into the process taking into account the law's impact on individuals, community, and families (Lerner-Wren, 2014).

diffusion referred to the process for how innovations disperse through social systems (Rogers, 2004).

doctrinal innovation included changes to laws or adoptions of those changes by legislatures and courts (Canon & Baum, 1981).

event history analysis referred to the study of the record relative to timing or the occurrence of an event (Metcalf, 2012).

false arrest/false imprisonment was defined as the unlawful restraint restricting one's freedom of movement (Prosser, 1995).

internal determinant had referred to: social, economic, and political factors that are specific or internal to a state and these factors helped to account for adoption of policy innovations (Berry & Berry, 1990).

judicial innovation included the application of laws in an innovative way (Napolitano, 2006).

neighboring states was defined as an important variable and referred to those states that shared a border or remained part of a state's region.

plaintiff-oriented tort doctrines meant that the plaintiff established that the defendant was under a legal duty to act; the defendant breached that duty; and the plaintiff had suffered damages (Prosser, 1995).

policy innovations were communicated through channels in societal systems over time (Rogers, 2004).

state adoption occurred when a policy innovation was accepted as law within a particular state (Rogers, 2004).

survival analysis was defined as a set of methods used to analyze data when the outcome variable of time until the happening of an event (Metcalf, 2012).

torts were defined as wrongful acts that resulted in injury to person or property (Prosser, 1995).

This study examined the course of tort reforms and mental health courts as policy innovation. It sought to comprehend the factors that diffusion literature argued contributed to a state's adoption of tort reforms and mental health courts, including regional diffusion, socioeconomic, and fiscal factors. This study covered the gap in the literature by encountering the increases in tort reforms and mental health courts from an empirical viewpoint. In this manner, it added to prior research studies by providing a novel way in which researchers had considered the adoption of these tort reforms and criminal mental health courts. Additionally, this study had provided criminologists, politicians, and social workers with an understanding of the factors that contributed to a state's adoption of policy in the areas of tort reform and criminal mental health courts.

Organization of the total dissertation. Following the introductory chapter, Chapter two provided a literature review regarding diffusion and the use of studies that explained policy innovations across the states. Chapter two concluded with the relevant literature that guided the conceptual framework. Chapter three described the data and variables, the research design, data collection procedures, and limitations of this study. In Chapter four, the researcher had discussed the findings from the study including descriptive statistics, survival and hazard functions. Lastly, Chapter five had presented a discussion of the

findings within the context of the literature along with recommendations for further research.

Chapter 2: Literature Review

The purpose of this chapter was to present the theoretical foundations for this dissertation and to review the research on diffusion of innovations and state courts. Discussion of the theoretical foundation began with the sociologist who constructed the diffusion of innovations theory. The chapter then covered how those findings had influenced policy innovations in state courts. The diffusion of innovations theory enabled social scientists to track ideas including innovative concepts and practices within social systems (Rogers, 2004). The second half of this chapter covered the previous studies that used this approach evaluating how the diffusion of innovation was applied by those researchers. The chapter ended by presenting how this dissertation filled in the identified gaps in the research and outlined the research.

Coverage

The researcher found an exhaustive list of journal articles on the subject of diffusion that were peer reviewed. Using the JSTOR, Pro quest databases and the Google Scholar search engine the writer used the terms “correlates of diffusion” and “patterns of diffusion” in order to further limit the search results. Most of these terms were included in the title of the journal articles and there were 110 abstracts that were directly relevant and needed to be reviewed. The researcher reviewed the abstracts to make sure that they were about patterns of diffusion. The researcher read the articles and placed the key words on index cards that were associated with each article. Some of the articles cited key studies in the four key areas related to diffusion research which was discipline based and included: international relations, comparative politics, American politics, and sociological.

The articles were analyzed and charts were developed for each one under the categories: General subject, specific subject, hypothesis, the result statement of key points, context, significance, important figures/tables, and cited references that were followed up on. The articles were then divided up based on whether they were: research studies, theoretical knowledge, or methodological studies. Each research study was coded under one of the four respective disciplines as mentioned above: international relations, comparative politics, American politics, and sociological in nature. For example, papers that were published in law reviews as opposed to discipline-based journals were categorized based on their titles and analyzed according to their topics which was garnered from their respective titles and grouped according to area of law. The law topic categories were: false arrest/false imprisonment, domestic violence related torts/battered woman syndrome defense, assault and battery. Articles that were found in the *American Political Science Review* focused on American politics and diffusion proved to be easier to categorize and led to most other relevant sources that were helpful.

Synthesis

The theoretical foundation for this literature review was rooted in the sociological theory of diffusion of innovations. While, there has been a significant body of work on the diffusion of policies among state legislatures, this literature review focused on the diffusion of legal rules and the impact on the judiciary. For Rogers (2004), diffusion featured four elements including the: innovation, communication channels, time, and social system. The overall usage of the theory had been tied to learning about how the process by which innovations diffuse was improved upon within social systems. The rate at which the particular innovation was adopted has been linked to positive perception

about its usefulness. Diffusion scholars suggested a more modern methodology for organizing the literature review. It was important to review the literature, demonstrate the key areas of diffusion research, and carry on in a forward looking direction to identify the interconnectedness of the research across fields of study (Graham, Shipan, & Volden 2008).

The analysis began with Rogers (2004) who had classified diffusion research into the following categories including: innovativeness, opinion leadership, rate of adoption of innovations within the social system, diffusion networks, communication channel usage, and consequences of innovations. Further, Rogers (2004) advised that there were categories of adopters called innovators, early adopters, early majority, later majority, and laggards. The theorist noted that innovators were risk takers who would adopt the innovation even when there was a strong possibility that it would not succeed within the social system (Rogers, 2004). Clearly, the innovator had a strong ability to apply complex and technical knowledge. Rogers (2004) discovered that innovators came from outside the organization but had many connections with peers in order to facilitate changes. It appeared that being an outsider helped the innovator to initiate the specific innovation since there was no compulsion to conform to group ideals (Rogers, 2004). The early adapters were often influential on others as they impacted on the adoption rate of the innovation (Rogers, 2004). While, the early majority was comprised of the type of people who adopted new ideas or innovations before average people did. According to Rogers (2004), the late adopters did not believe that the innovation would work but they took a chance and adopted the innovation in spite of their cynicism. Finally, the laggards go through an innovation process that proved to be long and drawn out (Rogers, 2004). The

laggards were influenced by past events and tend to be cautious regarding any modifications (Rogers, 2004). Meanwhile, Glick and Hays (1991), for example provided a later more comparative approach that analyzed similar data that was obtained from 38 adopting states between 1976 and 1988. The findings revealed that diffusion research in political science needs to examine more than a chronology of the adoption of a uniform policy. Further, reinvention occurs over time within a common time frame. The researchers advised historically it was the state courts that played a key role in protecting their citizens' civil liberties. The researchers further advised that chronology between initial innovation and later reinvention via amendment does not have any apparent relationship to diffusion.

Similarly, Welch and Thompson (1980) used a sample of 57 state public policies to study federal incentives. They used data on 57 state policies to analyze the impact of federal incentives as they influence diffusion rates. The findings showed that incentives provided by the federal government stimulate the diffusion of policies through the states. These incentives impact what is considered to be a form of rapid early diffusion. In fact, the most significant finding is that federal incentives led to an instant diffusion which may be explained by the need for the money. In short, our federal government uses federal grant monies and incentives for the states as a response to certain problems at the local governmental level. Finally, Welch and Thompson (1980) found that most states did not adopt the policy until there was a form of federal action.

Diffusion continued to be a process that was not completely dominated by who was doing the adopting of the innovation since it involved other factors (Rogers, 2004). Rogers' (2004) theory was considered to be a widespread model of diffusion of

innovations highlighting innovation, communication by way of channels, the element of time, and the presence of a social system. The process of diffusion of innovation leads to organizational change to increase and maximize performance within a social system (Rogers, 2004). Hence, the theory proved to be applicable to any idea that was adopted or potentially adopted.

Previous studies, according to Teece (1980), on the diffusion of innovations focused on technical innovations with less emphasis placed on organizational diffusions. Later on, Vaidya (2008) developed a diffusion process: Desirability, Feasibility, First-Trial, and Implementation. This approach was used by social scientists to study inter-organizational and intra-organizational diffusion (Vaidya, 2008). Critics such as Alange, Jacobsen, and Jaryehammar (1998) advised that organizational innovations may be difficult to observe in isolation since the innovation may be constantly re-invented. To further add to the discussion, Birkinshaw and Mol (2008) developed a model that sought to address the gap in the literature regarding the isolation of technical innovations long enough to actually study them before they changed. What was learned from prior diffusion of innovation studies in general? Researchers were able to re-use ideas from the area of diffusion of technical innovations to predict adoption patterns and gauge the rate at which diffusion was spread through organizational innovations.

Judicial innovation studies. Victor Flango (1975) advised that there were gaps in prior research on the diffusion of innovations that needed to be filled regarding its application to judicial innovation. Flango's (1975) study, for example employed the quantitative research method as he gathered numerical data on the state judicial systems based on the rate of adoption of innovations that were related to a more uniform court

system. His data collection method involved reviewing assigning a score based on the scope of the adoptions that the courts actually made.

The study found that there was a relationship between the scope of the innovations made and state characteristics such as crime rate and average citizen's income. The study was limited in scope and did not investigate any other possible links based on other demographics. Another study a few years later by Gregory Caldeira (1985) tried to ascertain patterns in the communication of precedent regarding state supreme courts and when they cite one another in decisions. The researchers utilized a quantitative method and collected data based on a review on past decisions that were chronicled. The demographics of the study had included each state court and its decisions over five years. Caldeira (1985) discovered that there was a correlation between the communication of information among state supreme courts and it could be studied using diffusion of innovations theory. The study was weakened since the research relied on a key assumption that the mere citation of one court by another equaled influence over that court. The assumption did not factor in the notion that Judges typically disagree with another and that would not signify the expansion of influence.

Diffusion patterns of reform. There were several other studies that focused on questions related to judicial diffusion. In particular, Scheb and Matheny (1988) looked at diffusion patterns of reform and rationalization among state courts in their qualitative study. The authors began with an inquiry into Max Weber's sociology of law that resulted in an adaptation of rationalization. The scope of the study was fairly limited as it related to the initiation and diffusion of state court reforms. One shortcoming of the study was that it analyzed court reforms using only some of the tenets of Weber's legal

sociology. Contrarily, a key strength of the study was that the authors' findings revealed a trend that was not identified before in that there appeared to be a correlation between economic policy development and state court reforms. The findings reported should be treated with some caution, for they rest on the assumption that one can ascribe a relationship between economic policy development and state court reforms without using statistical analysis to show the strength of that relationship. This concept of rationalization was used by the authors as they examined the process of state court systems and their influence on state economic development. Finally, the data that the researchers used had tracked diffusion of judicial reforms among the states and reached the conclusion that the courts were advancing capitalism.

Innovation and Judicial policies. A study by Barbara Wejnert (2014) provided a framework for conceptualizing the integration of variables by classifying them into three main components. The method used involved a full explication of the innovation itself and then variables were chronicled as either public or private. Wejnert (2014) measured the variables called geographical settings, societal culture, political conditions, and global uniformity. The study found that there was a need for diffusion research to incorporate the interactive nature of diffusion variables including the effects of an actor's characteristics on the rate of diffusion.

American Tort Law. Several other studies had raised questions closely related to judicial innovation that came in the form of tort law reform. In particular, Lawrence Friedman (1990)'s work chronicled the rise of American tort law and modern shifted in growth that led to changes. The method used involved examining the judicial activism of the Warren Court highlighting governmental policies from the 1960s and 1970s. The

study found that there was a shift in tort doctrine as impacted by judicial activism with an expansion toward expanding liability. Similarly, Robert Rabin (1988)'s prior research concentrated on tort law in transition and how it led to socio-legal change. Rabin (1988) advised that critics called for the dismantling of tort law in favor of an administrative regulation in order to offer alternative dispute resolutions. Rabin (1988)'s method involved an examination of accidental harm cases over a twenty-five year period reviewing the transformations that have been identified. The findings rested on the continuity of accident law principles that there was a notion of liability based on conduct that was not reasonable triggering a cost for that behavior. Moreover, one factor limits the usefulness of this work since the findings rested on the assumption that one may ascribe that the fault system eroded away because it was constantly in a state of change.

American politics. There were four top research articles on diffusion that had been cited across subfields according to Graham, Shipan, and Volden (2008). These studies were considered to be the most influential articles on diffusion in American Politics and they were the studies by: Walker (1969), Gray (1973), Berry and Berry (1990), Berry and Berry (1992), and Mintrom (1997). Again, Walker (1969) advised that the diffusion process was faster in the future especially in the states that were slow to adopt new innovations. The methodology used had created an innovation score for the states by analyzing twenty state legislatures prior to 1965 and Walker (1969) tracked eighty-eight programs. The data had limitations because it had focused on a regional grouping of states that appeared to be limiting to generalize to the nation at large. In short and to reiterate, Walker (1969) explained how regionalism played a role in the diffusion process but ultimately concluded that there was a need for more research about diffusion.

Education, welfare, civil rights, and diffusion. There have been a steady increase in research studies in this area and Gray (1973) looked at the times when states adopted a particular law making this study relevant to the writer's study on this topic. Gray's sample included policy areas whereby the adoption was free of federal influence including: laws related to: education, welfare, and civil rights. Gray (1973) selected education, welfare, and civil rights because these three areas represented the culmination of political struggle between the rich and the poor. The rich in society had access to education (Gray, 1973).

Using an interaction diffusion statistical model for 12 innovations, Gray sought to ascertain how innovative ideas spread across the state; why some states were more innovative than others; and any discernible patterns of innovation. The diffusion interaction model compared the three policy areas: education, welfare, and civil rights. Gray (1973) shows that the average for civil rights is .9637; for welfare .9634 and .9956 for education. The results reflect that innovations in education occur with more frequency. Meanwhile, civil rights and welfare adoptions were met with resistance in certain states. The methodology used was to find the specific laws that were not influenced by the federal government (Gray, 1973). Gray (1973) found that in certain cases some of the laws profiled had still not been adopted by many states from as far back as 1780.

According to Gray (1973) there were sociological underpinnings associated with innovations and the frequency of their adoption as measured using time. Gray (1973) tested innovations in three key areas: education, welfare, and civil rights. It was important to compare the innovations within these three key areas as the research was based on the instances whereby they differed in the times that the innovations were adopted. Gray

(1973) defined the education innovation as reforms connected to the State Boards of Education, Chief State School Officer, Compulsory School Attendance, Degree Requirement for Teaching in Elementary School, Degree Requirement for Teaching in High School. Under the welfare rubric, Gray (1973) includes the Merit System for State Welfare Department, Old Age Assistance, Aid to the Blind, and Aid to Families with Dependent Children. The final rubric Gray (1973) studied is civil rights which included: Anti-Discrimination in Public Accommodations, Fair Housing (Public and Private), and Fair Employment. The method that Gray (1973) used was to expand upon Walker (1969)'s theory that there was a socioeconomic explanation for why some states adopted innovations before others. Gray (1973) found that the innovation appears to be issue specific and that time also provided a solid framework to explain why some states were more innovative regarding innovations tied to education, for example, rather than general welfare innovations. Hence, Gray's (1973) graphical analysis showed that change based on issue area whether it was education, welfare, or civil rights. There were political and economic influences that reflected which states were the first to adopt the laws. Research also showed that the adoption of Mothers' Aid legislation had a strong impact leading to more early state adopters that were interested in adopting this particular innovation.

Regional diffusion patterns. Later on, Frances Stokes Berry and William Berry (1990) studied regional diffusion patterns as applied to state lottery adoptions of innovations. Using a multivariate analysis, they wanted to determine the conditions relative to state tax adoptions in the twentieth century. The researchers used a quantitative method to show that the factors leading to innovation within state governments were political and economic and they were unique to the state.

The statistical results offer the explanation that whether there was a gubernatorial election year or not impacted the adoption of the tax policy by the state. There was weak support for the economic development conditions explanations as it impacts the adoption of tax policy. Also, the researchers found that neighboring states who adopted a tax lead to politicians that shield themselves from political fallout that comes from supporting a tax policy that result in an increase.

Likewise, their findings indicated that prior research did not take into account regional diffusion models and how regional influences could influence study outcomes. One potential weakness with the study that it assumed that all states would be influenced regionally and not all states have a state lottery. Lastly, the main conclusion of the study was that innovation literature found that regional diffusion models alone could not provide accurate and reliable results.

Economic development, fiscal health, election cycle and diffusion. Two years later, Berry and Berry (1992) continued their research on diffusion and had tested five state tax innovations including certain factors such as: economic development, fiscal health, election cycle, party control, and regional diffusion. The researchers had used a multivariate statistical method and found that political opportunity appeared to have the most significance out of any factor tested in order to explain state tax adoptions (Berry and Berry, 1992). This approach worked well for this study since they were comparing several factors. Meanwhile, Berry and Baybeck (2005) used a model to monitor a state's lottery policy and welfare policy choice based on what a neighboring state did. And the findings revealed that lottery adoptions diffuse due to competition rather than learning except when it comes to the diffusion of changes in welfare benefits.

There was evidence that interstate competition caused the diffusion of lottery policy but it did not impact welfare policy. The state officials operated under the assumption that many people will travel to other states to play the lottery. Meanwhile, with regards to welfare benefits it was generally assumed that large numbers of poor people will not migrate to other states.

Policy entrepreneurship and diffusion. One final key study was done by Mintrom (1997) and it focused on policy change and the role of individuals who brought these issues to light. Mintrom (1997) referred to these individuals as specific advocates who garnered attention for these issues because they had entrepreneurial traits. Education policy entrepreneurs operating at the state level networking across state lines. Using an event history analysis of education reform in 48 states from 1987 to 1992 and the specific findings were that policy entrepreneurs were found to be advocates in 26 states. The presence and actions of policy entrepreneurs were found to raise the probability of legislative consideration of approval of proposed policy changes. Policy entrepreneurs network to get their policy goals through. Event history analysis models have provided the researcher with a tool to explain the spread of policy innovations or education reform.

Diffusion studies should include more research in this area making the findings somewhat inconclusive. And Mintrom and Vergari (1998) attempted to address the marked need for further research and this later study was conducted regarding the case of state education reforms. Using an event history analysis, their goal was to empirically test for the policy entrepreneurs who are best at manipulating policy networks. Further, the researchers noted that based on the empirical evidence that political scientists should conduct more research in this area. In sum their contribution to the body of research was

that internal and external Policy networks support the diffusion of policy innovations when it comes to advancing new ideas in their states. Certainly, the external networks generate new ideas regarding how to present proposals. The relative power of such a so-called interest group like the teachers' unions became a vital indicator of the need for the respective change. The policy entrepreneur had to frame the policy innovation in a way that was the most appealing to the network. The research article attempted to establish a causal connection between policy change and policy entrepreneurship. Mintrom (1997) found that public policies set out to deal with problems and to changes were made on an incremental basis. Finally, the study concluded that conditions were improving as a result of policy entrepreneurship but the status quo remained in effect (Mintrom, 1997).

While scholars have explored the internal determinants model posited by Berry and Berry (1990) from historical and theoretical perspectives, no scholars have explored this particular combination of variables from the policy adoption perspective. This study fills a gap in the scholarly literature since it applies popular theories of innovative policy development. The nature and character of the variables that were studied were directly related to the alleviation of human suffering.

Research Questions

Question one: The first question was how did regional diffusion contribute to a state's adoption of mental health courts and a state's adoption of reforms in the tort laws of: false arrest/false imprisonment, battery and assault relative to misdemeanor domestic violence charges diffused in any discernable pattern regionally across states?

Question two: The second question was how did POPULATION of a state contribute to state's adoption of tort reforms regarding: false arrest/false imprisonment,

battery and assault relative to misdemeanor domestic violence charges, and a state's adoption of criminal mental health courts?

Question three: A third question is how did WEALTH contribute to adoption of tort reforms regarding: false arrest/false imprisonment, battery and assault relative to misdemeanor domestic violence charges and a state's adoption of criminal mental health courts?

Chapter 3: Methodology

Participants

Target population, intended participants and sample size. The analysis for this study included panel data for the fifty (50) states in the United States of America. However, it was customary for researchers who conducted event history analysis studies to incorporate the concept of person-time period as a unit of analysis, or in this case, state-time period, hence state-year (Miller, 2013). This person-period data set referred to the states as a person and each record was like a case as each year represented a different record. Therefore, the samples for the three analyses were composed of state-years reflecting the fifty states times the number of years they were each at risk of adopting the policies of interest. One advantage of using state-years as the unit of analysis was that it results in a larger sample size, allowing for controlling for more independent variables simultaneously than would be able to do with only a fifty-state sample (Singer and Willet, 2003). The sample size for the analyses of the adoption of the three policies were further described in the paragraphs below.

For the adoption analysis of the false imprisonment/false arrest tort laws, the dependent variables were (1) whether or not a state adopted a change in the false imprisonment/false arrest tort law during the period 1975-2015 and (2) how long it took in years for a policy innovation to be made. The unit of analysis was state-years, that was for each year in the time period being observed each state will be recorded as to whether or not the state adopted an innovation in the false imprisonment/false arrest tort laws extending relief to citizens who had been victimized by false arrest and/or false imprisonment. This meant that there were fifty states cases plus the District of Columbia.

The starting year of 1975 was used because that was the first time a state court adopted this tort law. The ending year was 2015 because that was the most recent year that the relevant court records may be available across all of the fifty states. The year 2015 was the end year for all the analyses done in this study. Once the state was observed to adopt the relevant judicial innovation, the state was recorded as having made a policy adoption. Further adoption and or modifications of this tort law by the states were not being considered in this research study.

For the adoption analysis of the use of assault and battery tort laws in relationship to domestic violence cases, the dependent variables for this second analysis were (1) whether or not a state adopts use of assault and battery tort laws in relationship to domestic violence cases during the period 1972-2015 and (2) how long it took in years for a policy innovation to be made. The time period that was observed for these tort laws started in 1972 because as discussed previously, that was when this policy was first judicially adopted by a state court. Like the tort laws previously discussed, the unit of analysis is state-years, that is, for each year in the time being observed, each state was recorded as to whether or not the state adopted an innovation in the assault/battery tort laws extending relief to citizens who had been victimized in domestic violence cases. After the state was observed to have adopted such a judicial innovation, the state was recorded as having made a policy adoption. Further adoption and or modifications of these tort laws by the states were not being considered in this research study.

For adoption of criminal mental health courts, the dependent variables for this third analysis were (1) whether or not a state adopts a criminal mental health court during the period 1997-2015 and (2) how long it took in years for a policy innovation to be made.

The time period being observed for this adoption started in 1997 because as cited above, that was when this policy was first implemented. Similar to the tort laws previously discussed, the unit of analysis was state-years, that was done for each year in the time period being observed, each state was recorded as to whether or not the state had adopted a criminal mental health court.

Demographics of sample. The demographic information of the states were not presented in the proposal, because the independent variables of the states that were collected had provided the demographic information once they were collected. Key demographic information of the states that were collected as independent variables include the total population and gross national state product of the states as of 1995. The researcher had collected artifact data only from sources such as state census, socioeconomic and criminal justice data and no human subjects were involved.

Instruments

These were the data gathering methods that were used to determine court decisions regarding adoption of tort laws. One of the most important sources for knowledge regarding legal innovations was legal authority from the courts that had ruled on prior innovations and this had proved to be an important instrument that was reliable and had helped validate the findings. Researchers know that legal documents were as error-free as possible and members of the judiciary act with discretion and act in an unbiased manner as they worked and meted out justice by applying the law.

Published law reports recorded the past state appellate court decisions and they were accessed and reviewed since West Publishing chronicles them. It was interesting that regional state law reports on those prior decisions had explored a legal innovation

since this helped the researcher to find the most obscure information. The state appellate court in one area adopted an innovation and this had encouraged another state appellate court to (Greenhouse, 2012). These forms of repetitive behaviors helped to further validate the sources used for the study since courts tend to act in predictable ways when they follow precedent. According to Greenhouse (2012), courts usually followed non-binding precedent which was composed of past decisions by other courts as a rationale for their current decisions. Electronic legal database services had provided decisions from past state appellate courts. A discussion about appeals and the process of legal diffusion was provided.

The researcher did not face validation problems that may have stemmed from voluminous unpublished judicial decisions that will often led to ambiguities. It was not entirely clear when the appellate court thought about a particular legal innovation since the date of the opinion was obscured from the legal community versus published opinions that everyone will be more aware of. One way to overcome this potential validation problem and to sharpen the instrument was for the researcher to conduct a search for unpublished opinions using LEXIS and WESTLAW to account for when an unpublished opinion influenced a court's decision.

Attorneys brought innovations about by raising them at trial and by objecting to them to preserve their right to appeal the issue. Appellate judges reviewed arguments that trial lawyers fully brief surrounding an issue and when and how often this was done contributes to the speed at which a particular innovation was adopted. Canon and Baum's prior (1981) study considered the decisions of intermediate courts of appeals along with other trial courts since previous studies of judicial diffusion have only looked at state

supreme courts. In this study, such a confinement of the data to state supreme court decisions had helped to reduce the number of occurrences but may leave out critical information that could render the instrument less reliable.

Procedures

The purpose of this section is to provide a specific outline of the research methodology that will be used in this dissertation. The dissertation featured the use of archival quantitative data only. The research design was a quantitative research design that was descriptive of the judicial policy adoption process. This researcher had described what sociological, political, and criminological factors impact policy adoptions over time and to explore the possible associations with proposed covariates and independent variables since states differed in their adoption of the following torts and any associated reforms: tort of false arrest/false imprisonment and tort of assault and battery related to domestic violence. This study did not involve surveys or interviews carrying out experiment or observant behavior nor did it address causality. This was a generalized approach to studying innovation that allowed for a description of a unified theory of state innovation reflected both external and regional effects and illustrated it with an analysis of tort law adoptions along with the state's adoption of mental health courts. Exploratory research provided the opportunity to define new terms as it further clarified existing concepts.

The research design was a quantitative research design that was descriptive and exploratory. The researcher had been working with quantitative data. However, the research study was not concerned with causality, but more focused on describing policy

adoptions over time and exploring the possible associations with proposed covariates or independent variables.

Rationale and appropriateness of methods. The method used to analyze the data was event history analysis, often referred to as Cox proportional hazards modelling or survival analysis. Cox regression analysis was often used to carry out event history studies. It was useful because it accounted for the possibility that a state adopting one of these innovative policies may vary in different time periods. Event histories were also known as survival/hazard analysis that connected together events that occurred over a period of time which made them useful for state policy research (Blossfield, Golsch, & Rohwer, 2007).

The advantage to using the event history analysis was that variables are not censored. In short, using the Cox regression technique, states that did not adopt within a certain duration actually did not disappear from the study. The Cox regression technique part of event history analysis allowed for more flexibility since those states who did not adopt quickly were still incorporated into the model. According to Berry and Berry (1990), the purpose of this model was to explain probability that the unit or state at risk for adopting the tort reform or mental health court adopted the innovation.

Measurement of the independent variables were based on one year, which was the midpoint of the 40-year span, which is approximately 1995, or as close to this year as possible. There were four variables that were incorporated in many previous policy innovation studies, especially those that involved judicial innovations that were used in this research project. These variables had been found to have statistically significant relationships with policy diffusion across states. These variables reflected internal state

characteristic and external interaction among states were: wealth, political ideology, population and neighboring states. Wealth was an internal state characteristic that referred to the wealth or economic well-being of a state (Berry & Berry, 1990). The rationale for including wealth was that states that were not under fiscal stress were more tolerant for changes that endowed their citizens with a higher level of services (Canon & Baum, 1981). This variable was measured by Gross State Product (GSP). The United States Bureau of Economic Analysis (BEA) derived GSP for a state as the sum of the GSP originating in all the industries in the state. According to Beemiller and Woodruff (2000) it was often thought of as the equivalent of the nation's gross domestic product. Next, the independent variable political ideology, according to Berry and Berry (1990) considered state legislative elections and they described it as an internal determinant which led public officials to recommend innovations in a state. This independent variable took into account whether the political climate of the state was conservative or liberal. The rationale was that adoption of innovations had been found to be associated with a more liberal political culture (Krause, 2011; Makse & Volden, 2011).

The researcher had looked at elections for state legislature closest to the mid-point which was during 1996 to see if Democrats or Republicans won the most state seats and the state governorship. The source for this data was on the web by Klarner (2013) and it included state Partisan Balance Data for the years 1937 – 2011. Additionally, population was a factor that had been used in previous policy diffusion studies and were statistically significantly associated with adoption of new policies (Canon and Baum, 1981; Walker, 1969; Kritzer and Beckstrom, 2007). It was measured by the total population of the various states or their ranking in size as they had in 1995 and as found in the U.S. Census.

Also, neighboring states refers to the adoption by neighboring states of the policy innovation being studied (Kritzer and Beckstrom (2007). It was speculated that states were more likely to adopt new policies when neighboring states had also adopted these policies. According to Kritzer and Beckstrom (2007), the rationale to include this variable in diffusion studies was because state court officials were influenced by the actions and behavior of neighboring state officials (Friedman et al. 1981). In this study, neighboring states was measured by the number of states that had adopted tort reforms regarding false arrest/false imprisonment.

Data Analysis

SPSS's Cox regression survival methods were used to carry out the event history analysis. This researcher followed the event history analysis procedures outlined by Miller (2013). The researcher had first obtained descriptive statistics on the dependent variables including a median time to the states' adoption for the tort laws and mental health courts. The researcher obtained descriptive statistics on the independent variables. For each dependent variable, the researcher had entered all the stated independent variables as a block for that dependent variable and evaluate the fitness of the overall model. The researcher followed the steps described in SPSS Cox regression, the variables in the SPSS table, "final variables in the equation," were reviewed to find independent variables that were significant. As stated by IBM SPSS Statistics software directions, "to understand the effects of individual predictors, that were interpreted as the predicted change in the hazard for a unit increase in the predictor (IBM Corp. Released, 2016)."

The method used to analyze the data was Cox regression often referred to as Cox proportional hazards modelling or event history analysis, or survival analysis. It was

useful because it accounts for the possibility that a state adopting one of these innovative policies may vary in different time periods. Event histories were also known as survival/hazard analysis that connected together events that occur over a period of time making them useful for state policy research (Blossfield, Golsch, & Rohwer, 2007). The advantage to using the event history analysis was that variables were not censored. In short, using the cox regression technique states who did not adopt within a certain duration actually did not disappear from the study. The Cox regression technique part of event history analysis allowed for more flexibility since those states who do not adopt quickly are still incorporated into the model. According to Berry and Berry (1990), the purpose of this model was to explain probability that the unit or state at risk for adopting the tort reform or criminal mental health court will adopt the innovation. Using a statistical analysis, the actual surviving time of the unit which was equal to or greater than some time (Steffensmeier & Jones, 2004). The hazard rate signified the relationship between the survivor function providing the rate at which units failed by time to adopt. The survivor function was the ratio of states that had adopted the tort reform over those states that had not adopted it but might at a later date. The hazard rate measures the risk that the state will adopt the tort reform or criminal mental health court in a given year since it has not by that year.

Following Berry and Berry's (1990) *Work Using Event History Analysis (EHA)*. The policy adoption to be examined in this research was state adoption of tort reforms and adoption of criminal mental health courts. Following Berry and Berry's (1990) work, the researcher had used Event History Analysis (EHA) to examine these adoptions as an event that may, or may not occur. Berry and Berry's (1990) research provided a

supplemental and precise method to extend Canon and Baum's (1981) earlier method to study regional diffusion. In fact, Mooney (2001), another researcher followed Berry and Berry's (1990) use of the EHA model to conduct research on diffusion. Mooney (2001) study tested changes in regional effect in a comprehensive analysis of the lottery.

Mooney's (2001) decision to employ Berry and Berry's (1990) EHA model likely related to Mooney's expansion of the time periods beyond what Canon and Baum (1981) used.

Berry and Berry (1990)'s findings regarding lottery diffusion added in so-called dummy variables to stabilize the hazard rate to protect against the positive regional effect which was a bias or common expectation in the research since Berry and Berry (1990)'s original findings. Also, Berry and Berry (1990) showed a dramatic effect in terms of the neighboring states impact on the research allowing for what Mooney (2001) terms the regional effect to take hold having a positive effect on the diffusion of state lotteries. This regional effect became even more pronounced after the fourteenth adoption however, the regional effect was positive but not linear (Mooney, 2001). And after 1978, according to Mooney (2001), the existence of the lottery in those neighboring states actually did not impact whether or not a state adopted a lottery of its own. Mooney (2001) found that there was a statistically significant and positive regional effect on lottery diffusion.

Mooney (2001) confirmed Berry and Berry's findings regarding lottery diffusion and his approach did not reveal anything novel. For this reason, and more directly relevant to the methodology of this particular research, Berry and Berry (1990), rather than Mooney (2001)'s approach provided this researcher with the best method to study regional effects on a single policy's diffusion. More specifically, Berry and Berry's (1990) use of the EHA model provided the most reliable method for this researcher to show the regional

effects of these specific policy diffusions relative to the state adoptions of: (1) false arrest/false imprisonment, (2) assault and battery within the context of domestic violence, and (3) criminal mental health courts. Also the EHA model helped this researcher explain why states differed regionally in their adoption of torts and criminal mental health courts.

Data analysis was aligned with research questions. Each analysis was done separately. The researcher had addressed the research questions specific to the dependent variable of state adoption or not of the tort laws and establishment of criminal mental health courts during their respective time periods of exposure. Each description was presented of the states that adopted and those that did not at the time of the end of the observation period. As previously mentioned, the internal determinants model posited by Berry and Berry (1990) held that there were political, social and economic factors internal to the state which contributed to a state's adoption of policy. The conceptual framework for these research questions continued to be part of the line of research in diffusion literature that Berry and Berry (1990) stated regional associations had impacted state adoption. Therefore, research question one focused on the extent to which regional policy innovation diffusion explains a state's adoption of tort law reforms and mental health courts. Research question two had explored the internal factor which was state wealth that helped to explain adoption of tort law reforms and adoption of mental health courts. Research question three had also related to internal characteristics of the state which was population since adoption may occurred as a result of internal characteristics of the state.

Repeatable Events Analysis. There were no events that occurred more than once for each state respondent. A state may adopt more than one tort reform studied. As

suggested by Miller (2013), it was advisable to analyze one event per state respondent in order to avoid what Miller (2013) called non-independence. The dependent variable was whether the state adopted the tort reforms regarding assault and battery in domestic violence misdemeanor charges, and mental health courts versus non-adoption. The other dependent variable was whether the state adopted tort reforms regarding false imprisonment/false arrest versus no action. These were the two versions of the dependent variable to be used in this event history analysis type of study. The dependent variable can be expressed in the form of questions. Did the state adopt tort reforms regarding assault and battery in domestic violence misdemeanor charges? Did the state adopt mental health courts? Did the state adopt tort reforms regarding false imprisonment/false arrest? Did the state specifically reject tort reforms regarding assault and battery in domestic violence misdemeanor charges? Did the state specifically reject mental health courts? Did the state specifically reject tort reforms in connection with false imprisonment/false arrest?

This model of tort law adoptions and the state's adoption of mental health courts was explored via event historical analysis (EHA), which was a technique used in the social sciences discipline according to Berry and Berry (1990). In order to investigate the ways in which judicial diffusion took place it was necessary to examine the unique attributes of American appellate courts, the diffusion of legal issues, and the organization of appellate courts. On the one hand, appellate courts addressed policy issues only when they were prompted to when litigants bring suit (Napolitano, 2004). On the other hand, legislative bodies had considered issues from a political standpoint because they had acted on any issue whenever they chose to (Napolitano, 2004).

In fact, prior to becoming a legal commentator, Judge Napolitano (2004) formerly served in the Southern District of New York, and advised that it was important to consider that legal information traveled through judges and lawyers with the litigating parties driving the direction and topics that may led to innovations (Napolitano, 2004). The history of judicial diffusion was also related to the judges' reluctance to play an activist role and to decide certain issues that were not traditionally brought by counsel. According to Linda Greenhouse (2012), an expert on the judiciary, judicial passivity was encouraged since it relates to the way the adversarial system functions (Greenhouse, 2012). Certainly, a fair resolution to a trial involved the vigorous litigation of the issues by both parties at trial (Greenhouse, 2012). It was the litigants, not the Judge, who determined the nature and course of the proceedings (Greenhouse, 2012). Clearly, attorneys had a key role in any determination regarding whether there was an innovation involving a specific legal issue (Greenhouse, 2012). They had to be motivated enough to raise the possibility for innovations (Greenhouse, 2012). The litigator had to win in instances whereby winning the case depended on putting forth innovative legal issues, such novel evidentiary techniques spurred the attorney forward with sufficient motivation to proceed. The attorney who brought forth a novel legal issue had sufficient motivation and the requisite skills with information that proved to be a crucial part of success in this challenging endeavor (Greenhouse, 2012).

This study updated Canon and Baum (1981)'s study involving state court adoptions of tort innovations that was done over twenty years ago and more current research on diffusion was needed. Canon and Baum (1981) advised that there was one complication related to the determination of method used to study judicial innovation and

it related to stare decisis. Judicial innovations, according to Canon and Baum (1981) were linked to the expectations that courts have to follow stare decisis or the precedents already set down. Therefore, the likelihood of judicial innovation was affected by the existence of precedents related to the particular innovation along with state law as it related to the innovation.

Eaton (2013) studied eight hypotheses using an event history analysis in her dissertation that focused on the regional influences to changes in healthcare transparency law. The results were that inpatient health care transparency law was likely to be enacted in states when there was a gubernatorial election. Also, an inpatient healthcare transparency law was more likely to be enacted when fiscal health was bad. Finally, two other additional main points were that healthcare transparency laws were more likely to be enacted in states as the healthcare costs are increased. And inpatient healthcare transparency law was more likely to be enacted in a state government as liberalism was increased. Meanwhile, in another dissertation study, Schmeling (1999) used an event history model to develop a state's score for five issues: wrongful pregnancy; wrongful birth; wife's claim for loss of consortium; prenatal injuries; and wrongful death of a stillborn fetus. The results were that diffusion began when attorneys made the decision to litigate cases. Diffusion started when courts adopted the innovation since attorneys were more likely to raise the issue in neighboring courts. The major findings were that three out of five of the doctrines studied wrongful pregnancy, wrongful birth, wife's claim for loss of consortium; prenatal injuries; and wrongful death of a stillborn fetus revealed that the adoption processes were actually identical. Thus, the research suggested that it was

not the behavior of the courts but the attorneys since they were bringing these innovations to the court's attention.

Another dissertation by Metcalf (2012) had also used an event history analysis as the researcher had tested the probability of internal and external factors in the adoption of tax expenditure in the state budget. The findings were that there was a statistically significant and positive impact on the likelihood to adopt a tax expenditure budget. The major findings of the dissertation showed that tax expenditures were becoming more commonplace at the federal level and this factor made it easier to study. In short, this dissertation had contributed to a better understanding in terms of the reasons why states had reported tax expenditures and why others did not.

Here, the form of this quantitative research design and the selection of the legal innovations that were studied had been propelled by a consideration of the problems related to research on judicial diffusion. It was important to minimize any diffusion related research problems by developing a set criterion for issue choice. Here, the method was to select issues that were similar in content and each issue chosen was a tort law issue related to the tortious conduct of others. In this manner, the research design avoided difficulties with binary choice and minimized such problems with too much variation.

Also, diffusion research had required researchers to consider incrementalism in their designs (Rogers, 2004). In this study, each torts issue was considered in a new light in order to avoid too much precedent that was linked to it. It appeared to be a good idea to select tort doctrines that were apart from each other in order to develop a new beginning for each one.

Determining adoption of criminal mental health courts. Criminal mental health courts are problem solving courts that were designed to alleviate the increasing problem of criminalizing mental illness. The Council of State Governments Justice Center created reports and tracked pending legislation regarding the proposed adoption of criminal mental health courts in states that did not have them. The Statewide Mental Health Court Outcome Evaluation: Aggregate Report (2012) provided information about states who had adopted these courts because the report also tracked information regarding the outcome or impact of criminal mental health courts in those states citing information from the census project on mental health courts.

First analysis: adoption of false imprisonment/false arrest tort laws. According to Prosser (1955) false imprisonment was the equivalent of any unlawful detention. Prosser (1955) did not make a distinction between false imprisonment and false arrest. False arrest remained a form of restraint that inhibited the person's movement. According to Prosser (1955), this detention did not have to be forcible. The conduct or threat of such force was sufficient and did constitute imprisonment.

An individual's rights were violated when law enforcement made an arrest without probable cause or a suspicion that a criminal act had occurred. The act of arresting someone meant to restrict the individual's movement that also meant to take into custody. There had been recent changes to the law in this area and the adoption by states was studied. Some relevant cases were: *United States v. McQueeney*, 674 F.2d 109 (1st Cir. 1982) and *Matos v. Davila*, 135 F.3d 182, 186 (1998); and *Eroh v. Ramirez* 540 US 551 (2004). False Imprisonment meant that someone was detained for an unreasonable amount of time against that person's will which usually involved an

authority figure. The relevant cases are: *Hardy v. LaBelle's Distributing Co.*, 661 P.2d 35 (1983) and *Dupler v. Seubert*, 69 Wis. 2d 373 (1975).

Dependent variables. The dependent variables were (1) whether or not a state adopted a change in the false imprisonment/false arrest tort law during the period 1975-2015 and (2) how long it took in years for a policy innovation to be made.

Main independent variables. The independent variables considered for diffusion across state courts of this tort law reflected variables used in previous research studies cited in Chapter 2 as well as variables that were deemed specifically relevant to the tort law that was examined. Measurement of the independent variables was based on one year, which will be the midpoint of the 40-year span, which was approximately 1995, or as close to that year as possible. This task had avoided having time-varying independent variables.

There were four variables that had been incorporated in many previous policy innovation studies, especially those that involved judicial innovations that were used in this research project. These variables had been found to have statistically significant relationships with policy diffusion across states. These variables reflected internal state characteristic and external interaction among states were: WEALTH, POLITICAL IDEOLOGY, POPULATION and NEIGHBORING STATES.

WEALTH (of states) referred to the wealth or economic well-being of a state (Berry and Berry, 1990). The rationale for including wealth was that states that were not under fiscal stress were more tolerant for changes that endowed their citizens with a higher level of services (Canon and Baum, 1981). This variable was measured by Gross State Product (GSP). The United States Bureau of Economic Analysis (BEA) derived

GSP for a state as the sum of the GSP that originated in all the industries in the state. According to the United States Bureau of Economic Analysis, gross state product was dependent upon the state's gross output which included sales, its operating income, and taxes subtracted from the state's consumption of goods and services that were bought. In fact, Beemiller and Woodruff (2000) state that gross state product "was often considered the State counterpart of the Nation's Gross Domestic Product" (p. 38 ff). The Gross State Product figures for 1995 were used for all states and were found in, *Gross State Product by Industry, 1977-98. Survey of Current Business*. Beemiller and Woodruff (2000) provided the most comprehensive data that was categorized by industry in Table 7 entitled, "Gross State Product by Component in Current Dollars, 1987-98" (pp. 81-84).

The POLITICAL IDEOLOGY factor, as measured by Berry and Berry (1990), focused on state legislative elections and described this variable as a factor leading public officials to recommend innovations in a state. This independent variable took into account whether the political climate of the state was conservative or liberal. The rationale was that adoption of innovations had been found to be associated with a more liberal political culture (Krause, 2011; Makse & Volden, 2011). The researcher looked at elections for state legislature closest to the mid-point which was during 1996 to see if Democrats or Republicans won the most state seats and the state governorship. The source for this data was found in Klarner (2013)'s table entitled, "State Partisan Balance Data, 1937 - 2011" which provided a comprehensive source to measure such political trends.

The POPULATION factor was a factor that had been used in previous policy diffusion studies and found to be statistically significantly associated with adoption of

new policies (Canon & Baum, 1981; Walker, 1969; Kritzer and Beckstrom, 2007). It was measured by the total population of the various states or their ranking in size as they had in 1995 and as found in the U.S. Census.

NEIGHBORING STATES referred to the adoption by neighboring states of the policy innovation being studied (Kritzer and Beckstrom (2007). It was speculated that states were more likely to adopt new policies when neighboring states had also adopted these policies. According to Kritzer and Beckstrom (2007), the rationale to include this variable in diffusion studies was because state court officials was influenced by the actions and behavior of neighboring state officials (Friedman et al. 1981). In this study, neighboring states were measured by the number of states that had adopted tort reforms regarding false arrest/false imprisonment.

Other independent variables. Other independent variables that were used in the diffusion analysis of the false imprisonment/false arrest tort law are factors based upon their relevance such as having correlation with the behavior being observed, i.e., false imprisonment and/or false arrest. Factors found to be associated with these false arrests, false convictions and false imprisonment included:

- (1) Defendant is African-American male
- (2) Defendant is young, 18-25 yrs. old
- (3) Defendant had previous arrests
- (4) Errors in forensic evidence
- (5) Death penalty culture
- (6) Prosecution's withholding of evidence
- (7) Lying by a non-eyewitness (Gould, Carrano, Leo, et. al., 2013)

The dissertation project had included measurements of three factors related to the occurrence of false imprisonment/false arrests across the states and investigated whether they were associated with adoption of false imprisonment/false arrest tort laws. The three factors were RACE1 and DEATH PENALTY and INNOCENCE PROJECT.

RACE1 as a variable was measured by the percentage of African-American males in each state for the midpoint year of 1995 or as close to this year as possible. The United States Census Bureau Report entitled, Projections and Size of Composition of the United States (2015) tracked, among other things, the number of African-American males per state and was the source of getting this information.

DEATH PENALTY as a variable measured a state's death penalty culture. The indicator used was whether or not a state had the death penalty in 1995. This indicator had been used in previous research on false imprisonment/false arrests. (Gould, Carrano, Leo, et. al., 2013). Berkley Law Professor Franklin Zimring (2013) a death penalty expert compiled a source of information on states with and without the death penalty for serious crimes that was utilized.

Finally, the factor relating to the increase in national recognition of false imprisonment as a social problem was incorporated. This factor was named INNOCENCE PROJECT. This was a factor that reflected before and after major historical events relevant to the policy changes that were studied. According to Barry Scheck and Peter Neufield they were Cordozo Law students who had started "The Innocence Project" in 1992 as they utilized DNA evidence or science to free wrongfully convicted prisoners. This organization had a tremendous impact in publicizing the plight of persons falsely imprisoned exposing the criminal justice system's vulnerabilities in

making gross errors in arrests that led to wrongful convictions. In fact, according to the “Know the Cases” weekly topics in the Innocence Project Newsletter (2016), over 340 people previously convicted of serious crimes in the United States were acquitted by DNA testing since 1989, including many who were sentenced to death.

This variable, the impact of the Innocence Project, was measured by the year the Innocence Project was established, which was 1992. The diffusion of the false imprisonment/false arrest tort law was looked at in terms of whether a state had adopted this tort before or in 1992 and after. The variable captured two categories Before INNOCENCE PROJECT and After INNOCENCE PROJECT and 1992 was the year defining the categories of this factor.

Second analysis: adoption of use of assault & battery torts for domestic violence. Assault and battery was either classified as a misdemeanor or a felony charge. The classification related to the seriousness of the crime and the penalty that was imposed. Some states treated assault and battery relative to domestic violence charges as a misdemeanor rather than a felony. Also, the battered woman syndrome defense had been used in New Jersey, for example, the Administration of Civil and Criminal Justice Act (2013) and in Washington, California, Illinois, and other places. It was useful to track this innovation and its adoption throughout the nation’s state courts as an affirmative defense or self-defense for legally justified homicide.

Under *Spivey v. Battaglia* (1972), the Florida court found that assault and battery is found when there was an intention and the actor is substantially certain his or her actions will intentionally lead to cause actual injury. For example, in the state of Florida, assault and battery supplements domestic violence law was defined by Florida Statute

784.021 and the penalties are more severe because the assault and battery takes place within the context of domestic violence. Assault was defined by Prosser (1955) as seeing the perpetrator's fist coming at your face which had placed you in fear or apprehension of the landing but the assailant missed you. The battery was defined as the landing of fist on your face which had caused bodily harm, according to Prosser (1955). Outside of the context of domestic violence, these crimes were treated as less serious. It was significant that the state of Florida, under statute 784.011 made this exception and treated assault and battery relative to domestic violence as an aggravated assault and felony of the third degree.

Dependent variables. The dependent variables for this second analysis were (1) whether or not a state adopted use of assault and battery tort laws in relationship to domestic violence cases during the period 1972-2015 and (2) how long it took in years for a policy innovation to be made.

Main independent variables. The independent variables being considered for diffusion across state courts of this tort law reflect variables were used in previous research studies cited in Chapter 2 as well as variables deemed to be specifically relevant to the tort law being examined. Measurement of the independent variables was based on one year, which was an approximate midpoint of the 43-year span, which was approximately 1995. This researcher kept the 1995 year as an approximate midpoint between 1972—2015, particularly as it was a year that had facilitated finding information on the independent variables.

There were four variables that had been incorporated in many previous policy innovation studies, especially those that involved judicial innovations that were used in

the analysis of assault and battery tort laws used in domestic violence cases. These variables had been found to have statistically significant relationships with other policy diffusion studies across the states. The variables reflected internal state characteristic and external interaction among states were WEALTH, POLITICAL IDEOLOGY, POPULATION and NEIGHBORING STATES.

WEALTH (of the state) referred to the wealth or economic well-being of a state (Berry and Berry, 1990). The rationale for including wealth was that states that were not under fiscal stress was more tolerant for changes that endow their citizens with a higher level of services (Baum and Canon, 1981). This variable was measured by Gross State Product (GSP). The United States Bureau of Economic Analysis (BEA) derived GSP for a state as the sum of the GSP originating in all the industries in the state.

According to the United States Bureau of Economic Analysis, gross state product was dependent upon the state's gross output which includes sales, its operating income, and taxes subtracted from the state's consumption of goods and services that were bought. In fact, Beemiller and Woodruff (2000) state that gross state product "was often considered the State counterpart of the Nation's Gross Domestic Product" (p. 38 ff). The Gross State Product figures for 1995 were used for all states and was found in, Gross State Product by Industry, 1977-98. Survey of Current Business. Beemiller and Woodruff (2000) provided the most comprehensive data that was categorized by industry in Table 7 entitled, "Gross State Product by Component in Current Dollars, 1987-98" (pp. 81-84).

The POLITICAL IDEOLOGY factor, as measured by Berry and Berry (1990) focused on state legislative elections and described this variable as a factor leading public

officials to recommend innovations in a state. This independent variable took into account whether the political climate of the state was conservative or liberal. The rationale was that adoption of innovations were associated with a more liberal political culture (Krause, 2011; Makse & Volden, 2011). The researcher had looked at elections for state legislature closest to the mid-point which should be during 1996 to see if Democrats or Republicans won the most state seats and the state governorship. The source for this data was found in Klarner (2013)'s table entitled, "State Partisan Balance Data, 1937 - 2011" which provided a comprehensive source to measure such political trends.

The POPULATION factor was a factor that had been used in previous policy diffusion studies and found to be statistically significantly associated with adoption of new policies (Baum & Canon, 1981; Walker, 1969; Kritzer and Beckstrom, 2007). It was measured by the total population of the various states or their ranking in size as they had in 1995 and as found in the U.S. Census.

NEIGHBORING STATES referred to the adoption by neighboring states of the policy innovation being studied (Kritzer and Beckstrom (2007). It was speculated that states were more likely to adopt new policies when neighboring states had also adopted these policies. According to Kritzer and Beckstrom (2007), the rationale to include this variable in diffusion studies is because state court officials were influenced by the actions and behavior of neighboring state officials (Friedman et al. 1981). In this study, neighboring states were measured by the number of states that had adopted tort reforms regarding false arrest/false imprisonment.

Other independent variables. Other independent variables that were used in the diffusion analysis of the assault and battery tort laws in domestic violence cases were factors based upon their relevance such as having correlation with the behavior being observed, i.e., correlates of domestic violence. According to Dr. Lenore Walker (2009), violence happened among mixed heterosexual and same sex couples with or without sexual intimacy.

In carrying out research to better understand the correlates and causal factors of domestic violence, the Centers for Disease Control and other government agencies had identified certain risk and protective factors found to be associated with domestic violence. Although domestic violence or intimate partner violence was not limited to female victims, women are much more likely to be the victims in intimate partner violent situations, according to Walker (2009). Some public health factors and criminal justice standpoints included:

- (1) Being of a minority group Black-American and Hispanic female victims
- (2) Low income of victim
- (3) Low academic achievement of victim
- (4) Young age of victim
- (5) Aggressive or delinquent behavior as a youth of perpetrator
- (6) Heavy alcohol and drug use of perpetrator
- (7) Economic stress of household
- (8) Poverty and associated factors (e.g., overcrowding)
- (9) Low social capital---lack of institutions, relationships, and norms that shaped a community's social interactions Households in states that mandated arrest

for domestic violence were less likely to suffer from domestic violence
Prosecution may have served as a power resource used by a woman to made
her abuser keep from battering her and community sanctions against IPV (e.g.,
unwillingness of neighbors to intervene in situations where they witness
violence) As explored in greater depth in the Centers for Disease Control and
Prevention recent report, Preventing Intimate Partner Violence Across the
Lifespan: A Technical Package of Programs, Policies and Practices (Niolon,
et al., 2017).

In addition to the basic independent variables mentioned previously, the
dissertation project included measurements of factors more directly related to the
correlates of domestic violence across the states to investigate whether they were
associated with adoption of assault and battery tort laws. The factors were RACE2,
ETHNICITY, POVERTY RATE, DOMESTIC VIOLENCE RATES, ATTORNEY
ACCESS and BEFORE/AFTER VAWA.

RACE2, as a variable were measured by the rate of African-American females per
100,000 total population of each state for the midpoint year of 1995 or as close to this
year as possible. The U. S. Census records tracked the number of African-American
females per state and was the source of getting this information. The United States
Census Bureau Report entitled, Projections and Size of Composition of the United States
(2015) tracks by census year, among other things, the factor of race demographics in state
populations and was the source of getting this information.

ETHNICITY as a variable was measured by the rate of Hispanic females per
100,000 total population of each state for the midpoint year of 1995 or as close to this

year as possible. The U. S. Census records tracked the number of Hispanic females per state and was the source of getting this information. The United States Census Bureau Report entitled, Projections and Size of Composition of the United States (2015) tracked by census year, among other things, the factor of ethnicity in state populations and served as the source for this information.

POVERTY RATE was measured by data presented in the table entitled, “Table B--Percent of Persons in Poverty by State: 1993, 1994, and 1995,” as found in the census publication called, Poverty in the United States. This table was useful because it presented the percentage of poverty for all states for the years 1993, 1994, 1995 and was updated with each census.

DOMESTIC VIOLENCE RATES in states was another independent variable representing incidents per 100,000 in the state population. The higher risk of recidivism in offenders led to a higher risk that a state adopted an innovation to curtail the problem. The rationale for including domestic violence rates in states was that it related to recent tort reforms in assault and battery. The Centers for Disease Control and Prevention recent report, Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies and Practices (Niolon, et al., 2017) The estimated rates of intimate partner homicide/100,000 population among black females by state 1981-1998.

ATTORNEY ACCESS was a variable measuring the amount of access to legal assistance persons have who were vulnerable to being victims of intimate partner violence. The measurement data of this factor looked at the number of attorneys per state’s poverty population. The data was obtained from a report by the National Center for Access to Justice called the “Justice Index.” The Justice Index which is an online

resource featuring indexing using data-analytics tools. The purpose was to help protect civil rights within the state justice system absent the person's ability to pay for legal counsel. The Justice Index scored and ranked the 50 states on their adoption of these civil rights safeguards for ensuring access to justice.

BEFORE/AFTER VAWA was a variable reflecting before and after major historical events relevant to the policy changes being studied. In the case of domestic violence a significant event occurred in 1994, when the national Violence Against Women Act (VAWA) was enacted by Congress. It addressed the increasing importance American people and legislators were giving to violence against women especially, but not limited to domestic violence. According to the Congressional analyst Lisa Sacco (2015)'s report prepared for members of Congress entitled, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, Congress enacted the Act to address the influx of violence against women in America. These crimes were frequent and often linked with domestic violence or intimate partner violence, sexual assault, and stalking. This Act emerged from the efforts of a broad, grassroots coalition of advocates and survivors who informed the work of Congress. According to Sacco (2015)'s report, which includes data by state, the public policy rationale for enacting VAWA stemmed from the escalation of violent crime against women over the two decades before it was enacted.

BEFORE/AFTER VAWA will be measured by the year the VAWA was passed, which was 1994. The diffusion of the assault and battery tort laws in domestic violence cases will be looked at in terms of whether a state adopted these tort laws before or in

1994 and after. The variable had captured before VAWA and After VAWA and 1994 was the year defining the categories of this factor.

Third analysis: adoption of criminal mental health courts. Mental health courts were treated as legal reforms that remedied injustices within the criminal justice system (Lerner-Wren, 2014). These courts were considered to be a form of restorative justice since these courts recognized that a defendant was suffering from mental difficulties and they were sick rather than criminal, according to Judge Lerner-Wren (2014). In June 1997, Judge Lerner-Wren developed the first U.S. criminal mental health court in Broward County, Florida and has been active in the expansion of this form of restorative justice throughout the country. It was useful to track this innovation in order to expand human rights by curtailing the revolving door aspect of the criminal justice system.

Dependent variables. The dependent variables for this third analysis were (1) whether or not a state adopted a criminal mental health court during the period 1997-2015 and (2) how long it took in years for a policy innovation to be made.

Main independent variables. The independent variables that were considered for diffusion across the states reflected variables used in previous research studies cited in Chapter 2 as well as variables specifically relevant to mental health courts, just like the tort laws being that were examined. Also, as previously mentioned, measurement of the independent variables was based on one year, which was an approximate midpoint of the 43-year span, which was approximately 1995, or as close to that year as possible. The dissertation kept the 1995 year as an approximate midpoint between 1972-2015.

Due to the June 1997 start date, when the first U.S. criminal mental health court was founded, the researcher used the same 1995 data for independent variables as for the

tort adoptions, it will not be mid-point data but a beginning point data since it was the beginning of the criminal mental health court state adoptions. As a beginning point, it had served the same purpose as defining a stationary independent variable measurement of state characteristics for: WEALTH, POLITICAL IDEOLOGY, and POPULATION, AND NEIGHBORING STATES. There were four variables that had been incorporated in many previous policy innovation studies, especially those involving judicial innovations which were used in the analysis of assault and battery tort laws being used in domestic violence cases. These variables had been found to have statistically significant relationships with other policy diffusion studies across the states. The variables reflected internal state characteristic and external interaction among states continued to be: WEALTH, POLITICAL IDEOLOGY, POPULATION and NEIGHBORING STATES.

WEALTH (of the state) referred to the wealth or economic well-being of a state (Berry and Berry, 1990). The rationale for including wealth was that states that were not under fiscal stress may have been more tolerant for changes that endowed their citizens with a higher level of services (Canon and Baum, 1981). This variable was measured by Gross State Product (GSP). The United States Bureau of Economic Analysis (BEA) derives GSP for a state as the sum of the GSP originating in all the industries in the state.

According to the United States Bureau of Economic Analysis, gross state product was dependent upon the state's gross output which includes sales, its operating income, and taxes subtracted from the state's consumption of goods and services that were bought. In fact, Beemiller and Woodruff (2000) state that gross state product "was often considered the State counterpart of the Nation's Gross Domestic Product" (p. 38 ff). The Gross State Product figures for 1995 were used for all states and can be found in, Gross

State Product by Industry, 1977-98. Survey of Current Business. Beemiller and Woodruff (2000) provided the most comprehensive data that was categorized by industry in Table 7 entitled, "Gross State Product by Component in Current Dollars, 1987-98" (pp. 81-84).

The POLITICAL IDEOLOGY factor, as measured by Berry and Berry (1990) focused on state legislative elections and described this variable as a factor leading public officials to recommend innovations in a state. This independent variable took into account whether the political climate of the state was conservative or liberal. The rationale was that adoption of innovations had been found to be associated with a more liberal political culture (Krause, 2011; Makse & Volden, 2011). The researcher looked at elections for state legislature closest to the mid-point which was during 1996 to see if Democrats or Republicans won the most state seats and the state governorship. The source for this data was found in Klarnar (2013)'s table entitled, "State Partisan Balance Data, 1937 - 2011" which provided a comprehensive source to measure such political trends.

The POPULATION factor was a factor that had been used in previous policy diffusion studies and found to be statistically significantly associated with adoption of new policies (Canon & Baum, 1981; Walker, 1969; Kritzer and Beckstrom, 2007). It was measured by the total population of the various states or their ranking in size as they had in 1995 and as found in the U.S. Census.

NEIGHBORING STATES referred to the adoption by neighboring states of the policy innovation being studied (Kritzer and Beckstrom (2007). It was speculated that states were more likely to adopt new policies when neighboring states had also adopted

these policies. According to Kritzer and Beckstrom (2007), the rationale to include this variable in diffusion studies was because state court officials were influenced by the actions and behavior of neighboring state officials (Friedman et al. 1981). In this study, neighboring states was measured by the number of states that had adopted mental health courts as a legal reform.

Other independent variables. Other independent variables that were used in the diffusion analysis of adoption of criminal mental health courts study were:

(1) Estimate of percent of per capita of persons with mental illness by state and the Substance Abuse and Mental Health Services Administration provides the most comprehensive data (2014) in the NSDUH Report: State Estimates of Adult Mental Illness National Surveys on Drug Use and Health.

(2) Estimates of per capita mental health expenditures by state were also included by the Substance Abuse and Mental Health Services Administration data (2014) as integrated within the NSDUH Report: State Estimates of Adult Mental Illness National Surveys on Drug Use and Health.

(3) Ranking of states by NAMI National Association of Mental Illness provided comprehensive data and rankings annually in the report entitled, NAMI's Annual Reports: Grading the States.

These three independent variables, in particular, served to capture the relevant factors that had correlation with the behavior observed and the state's motivation to adopt the criminal mental health court.

Canon and Baum's prior (1981) study considered the decisions of intermediate courts of appeals along with other trial courts since previous studies of judicial diffusion

have only looked at state supreme courts. In this study, the confinement of the data to state supreme court decisions helped to reduce the number of occurrences. Canon & Baum (1981) used measurements of factors that were related to the adoption process by states and then selected independent variables based on what was plausible under that rationale. Their study can be seen as exploratory just as this study was -exploratory since the researcher was looking at new dependent variables. This study incorporated Canon & Baum's prior (1981) conceptual measurements of the independent variables mentioned. Therefore, this researcher did not develop the instrument but uses the validation procedures that Canon & Baum's prior (1981) study utilizes.

In addition to Canon and Baum's prior (1981) study, other researchers had also followed this form of instrument validation using variables similar to the ones used in this dissertation. For example, Makse and Volden (2011)'s study also used similar variables in their research regarding race, socioeconomic variables and in death penalty temporal diffusion studies. More specifically, Makse and Volden (2011) used population as a critical variable to help capture the racial segment in connection with diffusion of the criminal justice policies they were studying. Further, Jones -Correa(2000) conducted research on the origins and diffusion of racial restrictive covenants finding that in order to track institutional change historically certain variables would be necessary. Jones-Correa (2000) also studied population and also concentrated chiefly on socioeconomic variables consistent with the writer's approach. Finally, Friend, Shlonsky & Lambert (2008) studied domestic violence also using domestic violence as a key variable citing that this variable proved to be vital because there were many new discourses that were evolving

and needed to be tracked within the realm of domestic violence approaches by state.

Limitations

The primary limitations of this study were the data. While event history was a widely accepted analytical tool, the fact that the research design was quantitative is limiting. There was no true control group introduced in the study and there were concerns regarding the relationship between all of the variables. Generalizability was also a concern as the population under review was limited due to the demographics of the population. Therefore, the findings regarding race/ethnicity may not be representative of minority populations in all states. The researcher had looked at the availability of resources as the conduits of information about legal innovations. Scholars took several paths in order to learn about legal innovations (Greenhouse, 2012). Here, the researcher examined those sources, their availability, and the methods by which their use had impacted the diffusion of information about innovations in the law. Some lawyers found out about legal innovations by reading the newspapers and online publications. Articles about innovations that were discussed contemporaneously normally appeared in the daily news. One reason why this may have been problematic was that the amount of coverage may have been insufficient since the reporters chose to focus on local crime rather than on larger legal issues.

The State Supreme Court decisions helped to bring about diffusion because it was more likely that legal practitioners had learned about these higher court decisions more readily enhancing diffusion, as noted by Canon and Baum (1981). It was important to expand beyond Canon and Baum's (1981) study and search for intermediate court

decisions since these courts remained vital as the courts of last resort since state supreme courts had discretion over their dockets.

This procedure was also followed by Walker (1969), however, Walker (1969) gave slightly higher scores when a particular State had adopted the judicial innovation later than other states. Walker (1969) analyzed 88 different programs in the areas of: welfare, health, education, conservation, planning, administrative organization, highways, civil rights, corrections and police, labor, taxes, and professional regulation enacted or adopted by at least 20 state legislatures prior to 1965. The method employed was to review the list of 88 adoptions to create an innovation score for each state. The researcher developed an innovation score for the states looking at 20 state legislatures prior to 1965 and tracking 88 different programs. The limitations in the data allowed the researcher to only outline each regional grouping of states precluded their ability to develop a more elaborate theory. And prior studies found that a state's degree of industrialization and other social measures also influenced diffusion. Certainly, diffusion studies helped to determine if other similar programs should have been started as well within these specific policy areas. Thus, the speed of diffusion continued to be tracked as researchers analyzed the state legislature and by developing regional groupings among the states. The significance of this study explained how regionalism had impacted diffusion during the time frame: 1930-1966 which further highlighted the need for more updated studies such as this proposed research. Walker (1969) found that the diffusion process was faster even in states that were initially slower to adopt new innovations.

Hence, this proposed study was the culmination of research that began technically with Walker (1969) who formulated a statistical methodology and was continued by

Canon and Baum (1981) and culminated with this study. A potential limitation in this study was that it employed a quantitative research design and lacked more straightforward forms of probability sampling. A limit was that this was a sample of convenience that made it hard to provide generalizations about the population or sample that was studied from the data. The sample population studied represented more than one demographic within the state's population that helped to instill confidence in the generalizability from the sample to the state's population at large. Hence, generalizability remained a concern because the population under review was constrained due to the demographics of the population. Thus, the findings regarding race/ethnicity was not entirely representative of minority populations in all states. This dissertation did not only study a specific population but rather focuses on a social system. Of course, any study proved to be only a snapshot in time about conditions that occurred and that was another limitation. There was no true control group introduced in this study and there were concerns regarding the relationship between all of the variables.

Finally, the delimitations of the study or scope were that it does focus on a specific time period. This factor served as the special characteristic of the sample and where it came from. Therefore, the study did not cover an all-inclusive history of tort law and its impact on state court innovations. A key strength was that this dissertation was more than a replication study and extended the research beyond what other researchers had already done. A quantitative method involved the study of constructs and the measurement of variables which made it the ideal choice for this particular study. SPSS software was used and prior studies by Walker (1969), Canon & Baum (1981), and Berry

& Berry (1990) were reviewed and relied upon. The Westlaw database was utilized and innovations were identified.

Chapter 4: Results

The purpose of this study was to describe policy adoptions over time and the researcher explored the associations among proposed covariates or independent variables. According to Singer and Willett (2003), exploratory analysis of data using descriptive statistics revealed information including patterns that provide insight. The study was not concerned with causality as the research design was descriptive and exploratory. The study accomplished two important tasks as the researcher (1) tracked the diffusion of three state adoptions which were: (a) changes in the false imprisonment/false arrest tort law during the period 1975-2015 (b) state adoptions of assault and battery tort laws in relationship to domestic violence from: 1972-2015 and (c) adoptions of criminal mental health courts during 1997-2015. The second task was (2) for the researcher to determine how long it took in years for a policy adoption to be made. This chapter reported descriptive statistics for the variables for each of the three studies including survivor and hazard function analyses.

Research Question 1. Research question one asked did regional diffusion contribute to a state's adoption of: (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/false imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges diffused in a discernable pattern regionally across states. Each state was assigned a diffusion score which was consistent with Canon and Baum's procedure and this analysis will be discussed in greater detail in the upcoming concluding Chapter 5. *Research Question 2.* The second question was did POPULATION of states contribute to a state's adoption of (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/false

imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges

Research Question 3. A third question was did WEALTH contribute to adoption of (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/false imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges.

Population

As detailed in Chapter 3, each of the three state adoptions had a different starting point and different variables making it necessary to conduct three separate studies. Therefore, the results were analyzed based on three different sets of data. The following descriptors were helpful to address research questions 1, 2, and 3. The variable POPULATION was analyzed for all three analyses in regards to adoption of: (1) criminal mental health courts, (2) false arrest/false imprisonment, and (3) battery and assault relative to domestic violence misdemeanors. The researcher demonstrated the range in POPULATION taking into account all 50 states and the District of Columbia measured in 1995 which represented the midpoint of all three analyses. The mean state population was 6,054,047.00 and according to the U.S. census, the largest states which were significantly larger than the mean were: California, Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina, Michigan, New Jersey, and Virginia. Meanwhile, the smallest states were: Wyoming, Vermont, Alaska, North Dakota, South Dakota, Delaware, Montana, Rhode Island, Maine, New Hampshire, Hawaii, Idaho, West Virginia, Nebraska, New Mexico, Kansas. The District of Columbia also had a population significantly lower than the mean. Also, in analysis one, there were two additional variables related to POPULATION. The first variable was the PERCENTAGE

OF PEOPLE WITH MENTAL ILLNESS within the 50 state populations and the District of Columbia. The other variable related to POPULATION was each STATE'S PER PERSON SPENDING ON MENTAL ILLNESS and the average was \$91.81. The District of Columbia had the highest amount of per person spending at \$360.57. The other states that fell significantly higher than the mean were: Maine \$346.92, Alaska \$310.01, Pennsylvania \$280.78, New York \$256.31, Vermont \$239.84, Arizona \$221.27, New Jersey \$200.09, and Connecticut \$189.34. Meanwhile, the states that fell significantly below the mean were: Idaho \$36.64, Texas \$38.99, Florida \$39.55, Arkansas \$42.02 and Georgia \$46.54. Another hidden aspect to population was captured from the data by the NATIONAL ASSOCIATION OF MENTAL ILLNESS (NAMI)'s GRADING OF THE STATES. NAMI graded the states in terms of four categories: (1) health promotion and measurement, (2) financing and core treatment/recovery services, (3) consumer and family empowerment, and (4) community integration and social inclusion. The mean was 2.71 which falls somewhere in between a C and a D since the letter data was numerically coded B=1, C=2, 3=D, and 4=F. Connecticut, Maine, Ohio, Wisconsin, and South Carolina earned a grade of B. The data showed that there was not one state that received a grade of A for excellence further demonstrating that more attention was required to deal with this problem. The District of Columbia who spent the most money per person on mental illness received a grade of C. Meanwhile, Idaho, Illinois, Iowa, Kansas, Montana, North Dakota, Kentucky and South Dakota received a grade of F. The range was far apart which further illustrated this point.

Regarding Analysis two for false arrest/false imprisonment, the average POPULATION in analysis two was over six million and RACE1 (males) was another

variable related to POPULATION in that particular analysis. The average amount of African-Americans in the population was 773,356. According to the U.S. Census, the African-American population was divided by gender 52.29% of each state population was African-American female and 47.71% of each state population was African-American male. And 773,356.76 was the mean calculated for RACE for all states including the District of Columbia. In fact, according to the U.S. Census, the District of Columbia had the largest percentage of African-American people per state population and other states with large African-American populations were: Mississippi 1,074,200, Louisiana 1,506,534, Georgia 3,150,435, Florida 2,999,862, Maryland 1,798,593, South Carolina 1,290,684, Alabama 1,251,311, New York 3,073,800 and North Carolina 2,048,628. The states with the lowest African-American population were: Montana 4,027, Vermont 6,277, Idaho 9,810, Maine 15,707 North Dakota 7,960 and South Dakota 10,207. Although RACE can be categorized by gender, analysis two concentrated on African-American males and was coded as RACE1 regarding false arrest/false imprisonment since more African-American males were incarcerated as detailed in Chapter 3. For Analysis three, assault and battery relative to domestic violence misdemeanors, the researcher had included two other population related variables (a) ESTIMATED DOMESTIC VIOLENCE VICTIMS and (b) ETHNICITY was the percentage of Hispanic people in the POPULATION. The mean for ETHNICITY/HISPANIC is 7.77. States that had significantly lower percentages of Hispanics in their populations when compared with the mean were: West Virginia 0.7%, Maine 0.7%, Vermont 0.9%, North Dakota 1.2%, South Dakota 1.2%, Mississippi 1.4% Kentucky 1.5%, Alabama 1.7% and New Hampshire 1.7%. The states that had Hispanic populations significantly higher than

the mean were: New Mexico 42.1%, California 32.4%, Texas 32.0%, Arizona 25.3%, Nevada 19.7%, Colorado 17.1%, Florida 16.8%, New Jersey 13.3%, Illinois 12.3% and New York 15.1%. According to the U.S. Census, the Hispanic population was divided by gender 41.7% of each state population was Hispanic female and 58.3% of each state population was Hispanic male. While, ETHNICITY/HISPANIC can be categorized by gender, analysis three concentrated on Hispanic females since Hispanic females were more likely to be domestic violence victims as detailed in Chapter 3. Although RACE can be categorized by gender, analysis three concentrated on African-American females and was coded as RACE2 (females) since more African-American females were more likely to be domestic violence victims as detailed in Chapter 3.

The mean for the variable ESTIMATED NUMBER OF DOMESTIC VIOLENCE VICTIMS for all states including the District of Columbia was 386,668.63 which showed that this problem had impacted a significant amount of people. The states that were significantly higher amounts of estimated domestic violence victims than the mean were: California 2,034,000, Texas 1,781,000, New York 1,171,000, Florida 1,006,000, Pennsylvania 947,000, Illinois 922,000, Ohio 755,000, Michigan 676,000, New Jersey 638,000, North Carolina 500,000, Georgia 492,000 and the states with significantly lower estimated domestic violence victims were: Wyoming 28,000, North Dakota 35,000, South Dakota 37,000, Vermont 46,000, Delaware 49,000, Alaska 50,000 Rhode Island 57,000, Montana 68,000, Hawaii 70,000, New Hampshire 79,000, Idaho 100,000 and Maine 94,000. The average rate for Hispanic population in 1995 was 7.77. Meanwhile, the lowest percentage of Hispanic people in a state population was West Virginia

with .70% and the highest percentage of Hispanic people in a state population was 42% New Mexico.

Wealth

The variable WEALTH of states was analyzed for all three analyses in regards to adoption of: (1) criminal mental health courts, (2) false arrest/false imprisonment, and (3) battery and assault relative to domestic violence misdemeanors. The mean for all states and the states with significantly more wealth than the mean were: California \$918,928, New York \$589,506, Texas \$515,866, Illinois \$353,639, Florida 338,651, Pennsylvania \$312,252, New Jersey \$266,702, Ohio \$292,076, Michigan \$247,725, Kentucky \$200,152. The states with significantly less wealth than the mean were: Vermont \$13,867, North Dakota \$14,248, Wyoming \$15,608, Montana \$17,567, South Dakota \$18,481, Alaska \$23,207, Rhode Island \$25,147, Maine \$27,751, Delaware \$27,813, Hawaii \$36,681, New Mexico \$41,004 and the District of Columbia was \$49,512. The WEALTH of states was also measured in terms of political factors in accordance with Canon and Baum (1981)'s study. POLITICAL IDEOLOGY Variables: 1996 Presidential Race Outcome. This variable was used in all three of the analyses. The mean for this variable was 1.37 and the variable was coded 1=Democrat and 2=Republican. A Democrat won the election and the states that voted Republican were: Alabama, Alaska, Colorado, Georgia, Idaho, Indiana, Kansas, Mississippi, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming.

1996 State Majority Legislature. This variable was also used in all three of the analyses. The mean for this variable was 1.12 and the variable was coded 0 Split Majority, 1 Democratic Majority, and 2 Republican Majority. The mean indicated that the average

was Democratic majority in the state legislature. The states who had a Republican majority were: Alaska, Arizona, Colorado, Florida, Idaho, Kansas, Montana, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Utah, and Wyoming. The states with split legislatures were: Delaware, Illinois, Indiana, Michigan, Nevada, New York, South Carolina, Texas, Vermont, Virginia, Washington, and Wisconsin.

Other Variables

Below were some other Independent Variables Factors Associated with False Arrest: Death Penalty Rate/Culture. This variable measured the state's DEATH PENALTY culture. The variable in data was coded 0=no death penalty and 1=yes death penalty. The mean for this variable was .65. Therefore, the minority states that were farthest from the mean at 0 did not have the death penalty and were: Michigan, Wisconsin, Maine, Minnesota, Hawaii, Alaska, Vermont, Iowa, West Virginia, North Dakota, Massachusetts, Rhode Island, New York, New Jersey, New Mexico, Illinois, Connecticut and the District of Columbia.

Custodial Interrogations Recorded. This variable measured stemmed from factors found to be associated with false arrest, false convictions as mentioned in Chapter 3. Some states require that state officials record all custodial investigations and it was believed that this criminal procedure could help to prevent civil rights violations and stop false arrests and false convictions. The mean for this variable was .49. The variable was numerically coded in the data as 0=no, the state does not have a statute requiring recorded custodial interrogations and 1=yes. The states are almost tied with 27 states that did not record and 24 states that did record including the District of Columbia.

1992 Innocence Project. This variable was used to analysis two false arrest/false imprisonment and was coded in the data as states that adopted before 1992 which were coded as 0 and states that adopted an innovation after 1992 were coded as 1. The INNOCENCE PROJECT started in 1992. As detailed in Chapter 3, the INNOCENCE PROJECT was started to prevent false arrests and false convictions. The officials from Cardozo Law School helped to free people who were wrongfully convicted and they carried out political lobbying work that influenced lawmakers. The mean was .69 indicating that more states adopted an innovation during the years after the INNOCENCE PROJECT. The states that adopted prior to the INNOCENCE PROJECT were: Wisconsin 1975, Texas 1976, Nebraska 1977, Pennsylvania 1978, Kentucky 1979, New Mexico 1980, Rhode Island 1981, Oklahoma 1982, Minnesota 1983, Iowa 1984, Kansas 1985, Idaho 1986, Utah 1987, Alabama 1988, Arkansas 1989 and Wyoming 1992.

Attorney access for those households under the poverty rate. The variable ATTORNEY ACCESS related to analysis three battery and assault relative to a misdemeanor domestic violence charges. The mean was .78806 which reflected that there were only seven states and the District of Columbia that had percentages over one. The strongest states where access to any attorney per 10,000 people under 200% of the federal poverty line were: District of Columbia ranked first with 9.326, New York ranked second 2.653, Maryland ranked third with 1.486, Connecticut ranked fourth 1.461, Hawaii, Arkansas, and Washington had just over 1. South Carolina was the lowest state with .244.

Violence Against Women Act/ VAWA. The variable BEFORE/AFTER VAWA of 1994 was utilized in analysis three, adoption of battery and assault relative to domestic violence charges. The Violence Against Women Act was enacted by Congress to assist

women as it called attention to domestic violence issues as it increased advocacy at the state level calling for state legislatures to make domestic violence assault and battery a felony rather than a lesser offense, a misdemeanor. The data was numerically coded as 0=before VAWA 1994 and after VAWA 1994 which was coded as one. The mean was .88 which reflected the fact that the majority of state adoptions of assault and battery relative to misdemeanor domestic violence charges took place after 1994. The states that adopted innovations before VAWA were: Florida 1972, New York 1978, Arizona 1980, Oklahoma 1985, Pennsylvania 1989, and Connecticut 1993.

State Poverty Rate. The variable POVERTY RATE was included in analysis three, adoption of battery and assault relative to domestic violence misdemeanor charges.

Household poverty and associated factors like overcrowding were considered public health factors from a criminal justice standpoint. This variable also related to low social capital since households living in poverty had little to no institutional support. The mean for poverty rate was 14.87. The states that had households in poverty that were significantly higher than the mean were: Mississippi 21.9, New Mexico 20.6, Louisiana 19.9, Alabama 19.2, Kentucky 19.0, Arkansas 18.7, and the District of Columbia 18.4.

State Murder Rate. The Centers for Disease Control and other government agencies had identified this risk factor as associated with domestic violence. The variable MURDER RATE factored in the number of murders that also included non-negligent murder/manslaughter per 100,000 state inhabitants. The mean for this variable was 4.95. The District of Columbia had the highest murder rate 24.2 and the states with murder rates that were also significantly higher than the mean were: Louisiana 10.3, Mississippi 8.7, Maryland 8.6, South Carolina 8.2, Missouri 8.3, Alaska 8.0, Alabama 7.2 and

Delaware 6.7. The states that had significantly lower murder rates than the mean were: New Hampshire 1.1, Hawaii 1.3, Vermont 1.6, Maine 1.7, Utah 1.8, Idaho 1.9, and Iowa 2.3.

Neighboring States. This variable NEIGHBORING STATES related to all three analyses. This variable was used in this diffusion study since state court officials tend to be influenced by the actions of neighboring state officials. In this study for all three analyses, NEIGHBORING STATES was measured by the number of states that have adopted. For Analysis one, Adoption of Criminal Mental Health Courts, NEIGHBORING STATES, During the period from: 1997-2001 There were ten states who adopted Neighbors: Tennessee 2000 and Georgia 2001; Nevada and Utah 2001; 2002-2007 22states adopted and the NEIGHBORS were: Idaho and Oregon 2002; Maryland and West Virginia 2002; Louisiana, New Mexico, and Texas 2003; Minnesota and North Dakota 2003; New Hampshire and Vermont 2003; Illinois and Kentucky 2004; North Carolina and Virginia 2004; Alaska and Hawaii both adopted in 2005 and neither state has border states; Delaware and District of Columbia 2007; Michigan adopted in 2007; Michigan's neighboring state Indiana adopted one year later in 2008. Iowa and Kansas adopted in 2009; Alabama and Mississippi were the last neighboring pairs that adopted in 2010. From 2011-2015 Arizona was the only state to adopt.

This variable was also used in Analysis two, Adoption of False Arrest/False Imprisonment NEIGHBORS. During the period from: 1975-1980 There were six states who adopted and the NEIGHBORS were: Texas (1976) and neighboring state New Mexico adopted four years later in 1980. From 1981 to 1987 7 states adopted and Oklahoma adopted in 1982 and neighboring state Kansas adopted in 1985. In 1983,

Minnesota adopted and neighboring state Iowa adopted one year later in 1984. In 1986, Idaho adopted and neighboring state Utah adopted one year later in 1987.

Meanwhile, Alabama adopted in 1988 but did not have a paired neighbor and the same was true with California who adopted in 1990. In 1989, Arkansas adopted and its paired neighbor Oklahoma had adopted earlier in 1982. In 1986, Idaho adopted and its neighbor state Utah adopted in 1987. In 1992, Wyoming adopted and neighbor state South Dakota adopted in 1993. During the period from: 1994-1999, six states adopted and there were no neighbor state pairs that had adopted. In 2000, North Carolina adopted and its neighbor state Virginia adopted two years later in 2002. In 2001, Connecticut adopted and its neighbor state New York adopted two years later in 2003. In 2005 Ohio adopted and its neighbor state Michigan adopted in 2007 two years later. In 2007, Michigan adopted and its neighbor state Indiana adopted four years later in 2011. In 2008, the District of Columbia adopted and its bordering state Maryland adopted two years later in 2010. In 2009, Georgia adopted and its neighboring state Tennessee adopted four years later in 2013. In 2012, Montana and its neighboring state North Dakota had both adopted. In 2013, New Hampshire adopted and its neighboring state Vermont adopted in 2015.

This variable was used in Analysis three, Adoption of Battery and Assault Relative to Domestic Violence NEIGHBORS, From 1972-2004, there were eighteen states that adopted without a paired neighbor. In 2005, Texas adopted and two years later in 2007, neighboring state Arkansas adopted. Also, in 2005, Montana adopted and neighboring state South Dakota adopted one year later in 2006.

Interestingly, from 2008-2010, there were five states that adopted with no paired neighbor. In 2011, Indiana adopted and neighboring state Iowa adopted in 2012 along

with neighboring state Illinois and its neighboring state Minnesota both adopted in 2013 along with its neighbor Missouri. Also, in 2012, Louisiana adopted and neighboring state Mississippi adopted one year later in 2013. Meanwhile, in 2012, Oregon had adopted and its neighboring state of Washington had adopted in 2013. Finally, in 2013, Massachusetts adopted along with neighboring state New Hampshire.

In this study, data was collected to explore and to report the diffusion pattern rather than to test a hypothesis. For an event history analysis, the survivor function was helpful in order to track diffusion within the states. This method was widely used to study and to track diffusion as mentioned in Chapter 3.

Figure 1 below illustrated the survival function for **Analysis one**, adoption of Criminal Mental Health Courts. Meanwhile, Figure 2 had depicted the survival function for **Analysis two**: false arrest/imprisonment. Finally, Figure 3 had portrayed the survival function for **Analysis three**, battery and assault relative to domestic violence misdemeanors. Figure 1, the survival chart, below captured this aspect of Analysis one and the analysis had involved fifty states and the District of Columbia. There were seven states that had not adopted this particular judicial innovation before the data capture end date which was 2015.

Figure 1, reflected the entire set as 1.0. As the years passed from 1997, the first state adoption, to 2015, a total of eighteen years, the chart depicted analysis years in five year increments that stopped at eighteen years. As the states adopted the innovation, which was the year when the state had added a criminal mental health court within its state judicial system, the survival rate dropped for each state that adopted within each year. As the survival function dropped, then the hazard function increased. Figure 1 also

showed that one or more states moved from survivor to hazard because they adopted the innovation. Finally, as the states adopted, the graph line moves downward and the decline which was manifested as a short line represented when multiple states adopted in the same year.

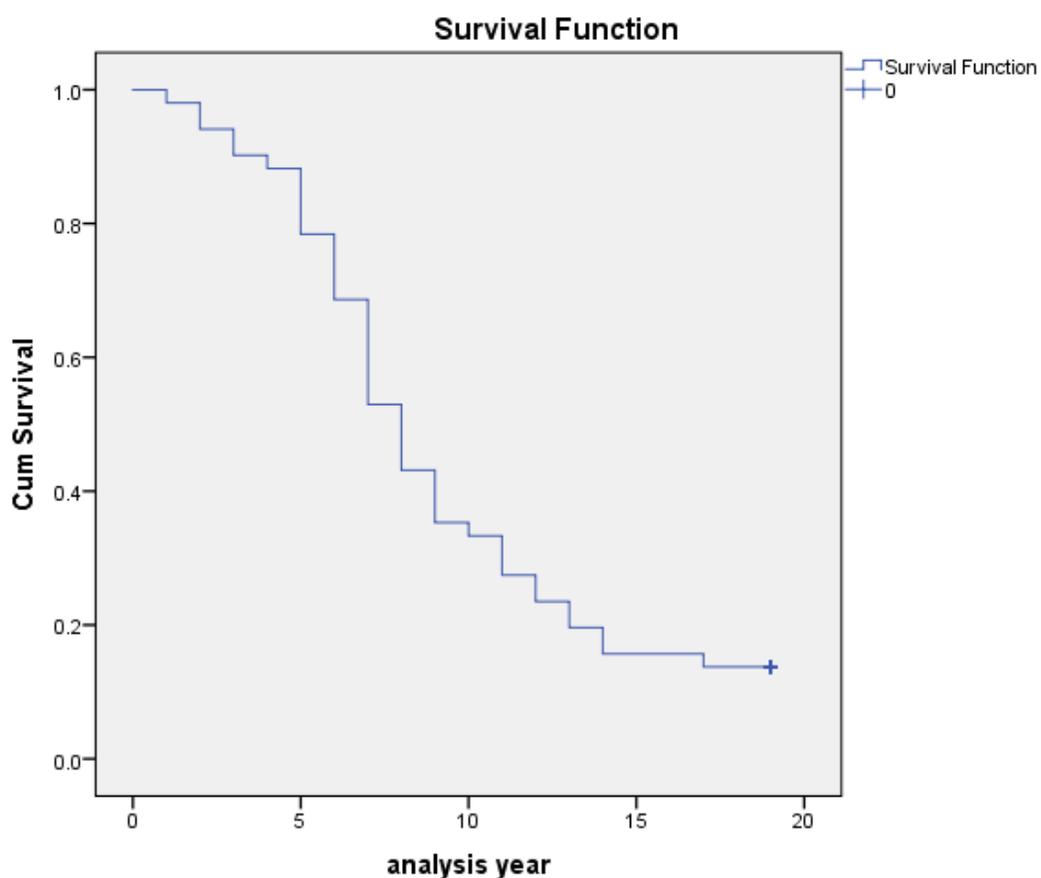


Figure 1 Survival Function: Criminal Mental Health Courts

Figure 2 below represented the survival graph for Analysis two regarding state adoption of false imprisonment/false arrest. All fifty states and the District of Columbia were included in Analysis two. There were two states that did not adopt the innovation. Figure 2 started at 1.0 which represented the entire list of the states at risk for adoption in the analysis. As the years passed from 1975 to 2015, the forty years of states

adopting were depicted as the graph line moved down to the right with markers every ten years. Figure 2 showed a smooth movement down because most of the years had only one state that adopted the innovation in a year. Next, the years in the thirty to forty year block were jagged edged because six years had two or three states that adopted within this time frame.

Figure 2 Survival Function: False Arrest/False Imprisonment

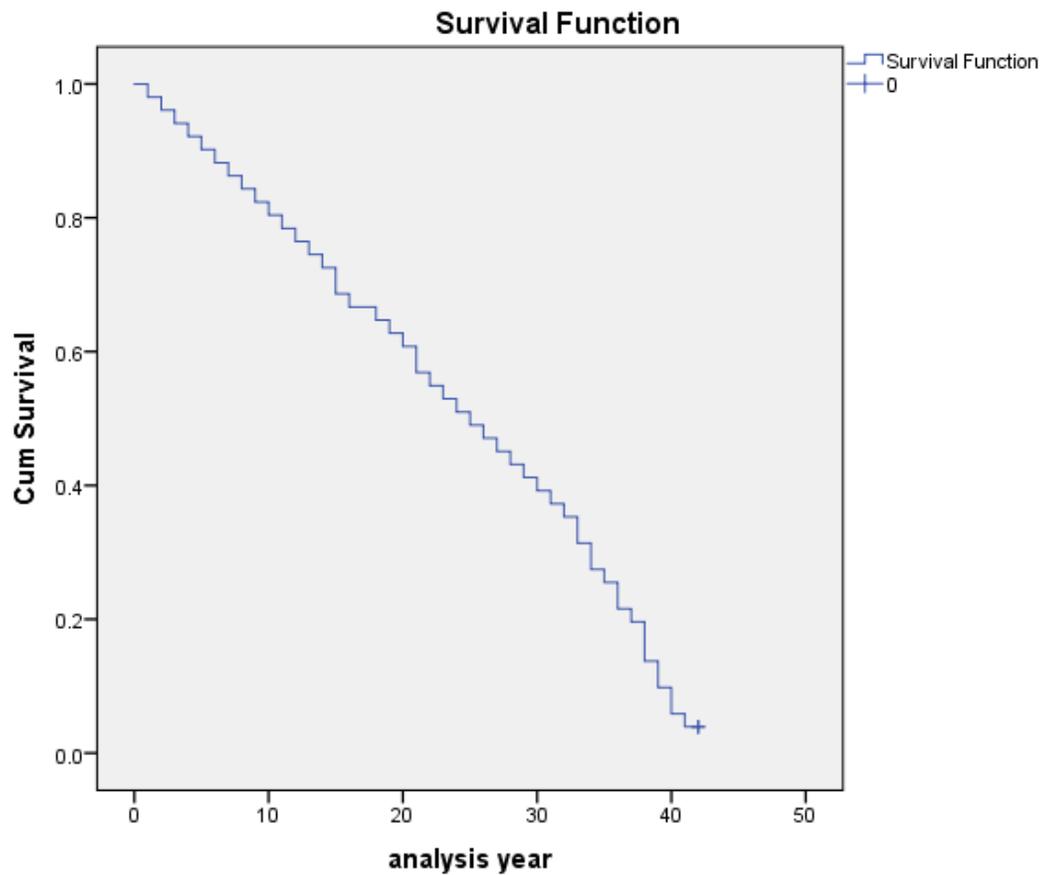


Figure 3 Survival Function: Battery and Assault Relative to DV

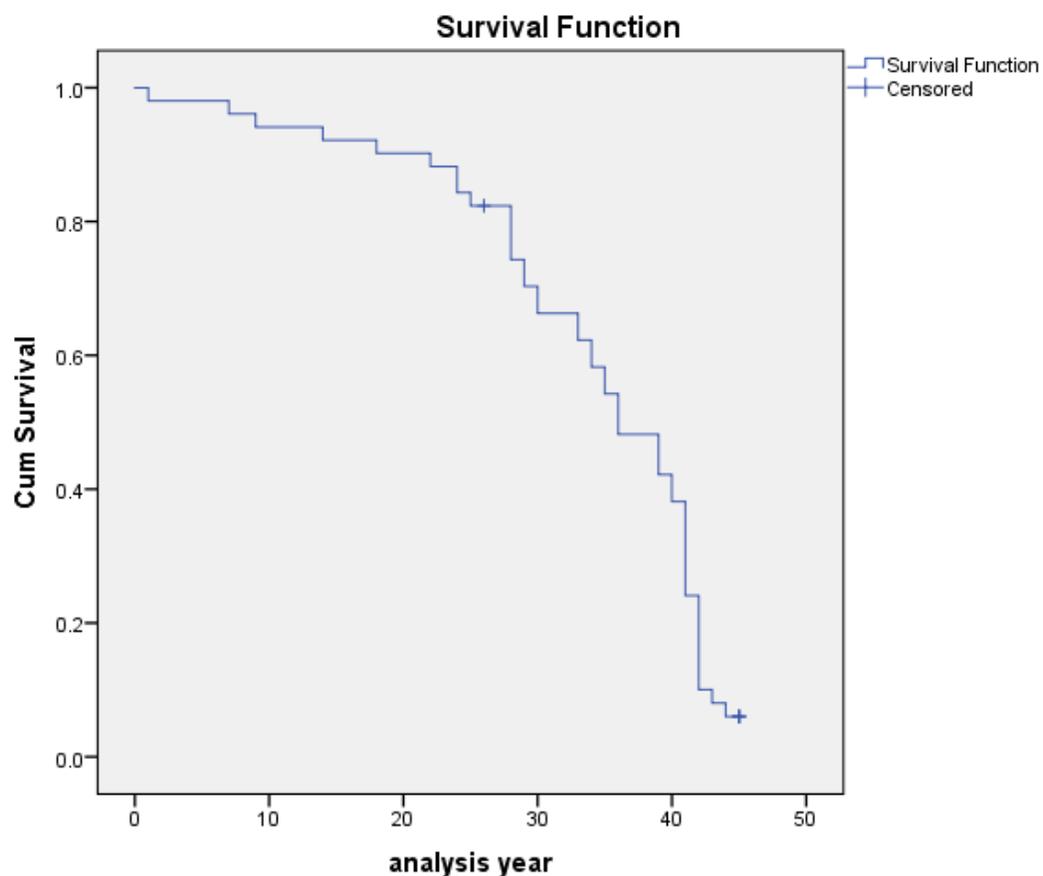


Figure 3 above represents the survival graph for Analysis three regarding state adoption of a tort reform in battery and assault relative to misdemeanor domestic violence offenses. This innovative reform related to states that enacted a law that treated a misdemeanor, as a felony, when it was connected to domestic violence. All fifty states and the District of Columbia were included in Analysis three. There were three states that did not adopt the innovation by 2015. Figure 3 started at 1.0 which represented the entire list of the states at risk for adoption in the analysis. As the years passed from 1972 to 2015, the forty years of states adopting was depicted as the graph line moved down to the right with markers every ten years. Figure 3 showed that adoptions increased around

1999 with four states adopting in one year, then a scattering of two states adopting per year, followed by two years when seven states adopted in each of them. The ten year markers in the figure pointed out these main trends in the analysis three. Further, there was more information beyond the means, standard deviations of the dependent and independent variables from Analysis: one, two, and three. The survivor function, hazard rate, and cumulative hazard rate each described policy adoption over the time period of analysis. The survivor function represented the ratio of states that had adopted over those that might still have adopted. Further, the hazard rate reflected the chance that policy adoption may have occurred in that particular year regarding a specific state, given that the specific state was still at risk of adopting. The cumulative hazard rate referred to the rate of change in the likelihood of adopting an innovation in the specific year regarding states that had not adopted yet. As the hazard rate reflected the likelihood of adoption for that specific year, the cumulative hazard rate had reflected the accumulation of this likelihood across time.

The spread of adoptions of criminal mental health courts had occurred in a tailing-off pattern, with a clustering of adoptions that happened from 2001-2005. In 1997, the start of the analysis, there were 50 states and the District of Columbia in the risk set. Over the course of the analysis, the risk set decreased as states adopted this particular policy innovation. Also, the survivor function was tracked as a decimal for example .980 decreased to .137 as the states had adopted. The remaining .137 was reflective of the seven states that did not adopt by 2015, which was the end of this analysis. Next, the cumulative hazard grew as the states had adopted and this began with the decimal .020 which had represented the first state to adopt and ended with .863,

The survival function was tracked as a decimal .980 that decreased to .000. The cumulative hazard grew as the states had adopted. In 1989 and 2012, there were two and three adoptions those years. The total figures to the right reflected the total impact of all of the states that had adopted that year. Meanwhile, the survivor function was also listed as a decimal .979 that had decreased to .000 over time. Here, the cumulative hazard increased as the states had adopted. In 2012 and 2013, there were seven states that had adopted and the decimal figures reflected the impact of all of those adoptions in those two time periods. Next, Chapter 5 concluded the dissertation with a summary of the study, discussion, limitations, future research, and implications.

Chapter 5: Discussion

This study explored the adoption of : (1) criminal mental health courts, (2) innovations in battery and assault tort laws in relationship to domestic violence, and (3)

innovations regarding the false imprisonment/false arrest tort laws across the states and the District of Columbia. In this chapter, the results focused on the adoption of diffusion for Analyses: one, two, and three regionally along with a closer analysis of the variables: population and wealth of states in order to address all three research questions.

Next, the findings were discussed in the larger context of the literature and what contributions this study made to diffusion of policy innovations in the states. Further, implications for future research were identified, and study limitations were presented, followed by a brief summary of the study's findings. This study did not have a hypothesis since it tracked trends and determined that states adopted in a regional pattern regarding Analysis one: criminal mental health courts.

Meanwhile, there was less of a relationship and regional pattern of diffusion regarding both Analysis two: false imprisonment/false arrest and in Analysis three: battery and assault relative to domestic violence. The variables population and wealth of states were focused on because Canon and Baum (1981)'s seminal study identified them as important variables within a diffusion study about the states.

Research Question 1

Research question one asked did regional diffusion contribute to a state's adoption of: (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges. This particular study of regional diffusion within states focused on innovations and included the District of Columbia. The tables below showed where the researcher demonstrated a comparison of three doctrinal changing laws in these areas. These doctrines were used based on the selection of doctrine strategies as outlined

by Canon and Baum (1981)'s study. Similarly, this researcher also considered a state to have adopted the specific innovation when the state legislature either implied or said that the law had now changed resulting in this particular innovation. This study just like Canon and Baum (1981)'s study did not consider any subsequent dis-adoptions as it focused on the initial adoption. Likewise, this study included so-called partial adoptions when it had represented a change from previous state law. The researcher began with the first year that a state adopted the innovation or new law that led to action. Next, the value for each subsequent state that adopted was proportionately lowered by the time it took to adopt the specific innovation. Canon and Baum (1981)'s procedure provided that the earliest state court's that heard an issue had the highest diffusion score relative to that issue. The states that did not innovate by the end of all three analyses in 2015 received a zero score relative to that particular analysis.

Canon and Baum (1981)'s study featured the use of composite scores. Each state's score on each issue was tabulated after recoding the date of adoption as a percentage of the time that had passed from the first adoption: 1997 for criminal mental courts, 1975 for false imprisonment/false arrest, and 1972 for battery and assault relative to domestic violence misdemeanors to the end of the study period, which was in 2015 for all three analyses.

This researcher utilized Canon and Baum's (1981) procedure and the scale was inverted so that the earliest courts to consider the matter or issue had received the highest diffusion score. Also, the state courts and state legislature that did not hear cases or did not propose new laws that involved: adoption of criminal mental health courts, false imprisonment/false arrest, and battery and assault relative to domestic violence received a

zero score. The scores for each state rule were averaged which led to the composite innovation score. Canon and Baum (1981)'s state legal innovation scores that were based on that were listed in their study for the purposes of comparison. Although this researcher employed some of the same correlates as Canon and Baum (1981), several additional ones were added to their list. Canon and Baum (1981) found that some of the correlates that they had identified were directly relevant to diffusion there were others, for example court officials specific education backgrounds that were only relevant to innovative behavior. The variables that were used in this study had not been considered in this combination by other diffusion studies. It was important to consider that when the scores were viewed side by side. Canon and Baum (1981)'s seminal study had included ecological, environmental variables that related to the areas where the state courts were located. Canon and Baum (1981)'s study included political and legal system variables that were similar to this researcher's project. The political variables in their study and in this one represented the state's political environment. Also, the legal system variables in their study were closely related to this study since this study captured data about the impoverished individual's access to an attorney. The variables that were part of this study made it important to include the District of Columbia as opposed to the variables in Canon & Baum's study since many of the variables in that study related to the functions of a state and the District of Columbia was not a state participant.

The ten states with the highest innovation score in this study were: Pennsylvania, Florida, Oklahoma, New York, New Mexico, Idaho, California, Nevada, Ohio, and Texas. Meanwhile, in Canon and Baum (1981)'s study, the ten states with the highest innovation score were: Minnesota, Texas, Kentucky, Washington, California, Missouri, Connecticut,

Louisiana, New Jersey, and Mississippi. Further, the ten states with the lowest innovation score in this study were: Mississippi, New Hampshire, Wyoming, Maine, Indiana, Missouri, New Jersey, Massachusetts, Oregon, and Alaska. Moreover, in Canon and Baum (1981)'s study, the ten states with the lowest innovation score were: Wyoming, Hawaii, Maine, Vermont, Alaska, Massachusetts, Nevada, New Mexico, Rhode Island, and West Virginia. The researcher followed Canon and Baum (1981)'s procedure to track diffusion on a regional basis. An innovation score was determined for each of the four Census regions: (1) Northeast included: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania (2) North Central included: Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas (3) South which included: Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas and (4) West which included. Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, California, Alaska, and Hawaii.

The researcher had investigated the role of regionalism and had identified a pattern of diffusion in this study. The pattern was identified because the presence of regionalism was seen when states clustered from one region within a single Analysis. In Analysis one for the adoption of mental health courts, there was a clustering of states that adopted from one region during years 2002, 2003, and 2004. Meanwhile, in Analysis two for the false imprisonment/false arrest, there was a clustering of states that had adopted from 1982 to 1987 and from 2000 to 2013. In Analysis three, for battery and assault relative to domestic violence, there was a weak connection to regionalism until 2011.

From 2011-2013, there was a strong clustering of adoptions during 2012 and 2013 with no adoptions during 2014 and 2015. The variable neighboring states was discussed in Chapter 4.

Research Question 2

Research question two asked did POPULATION contribute to a state's adoption of: (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges. According to Canon and Baum (1981), the variable POPULATION was considered to be the most important since there was more litigation in these large states. Also, more people came into contact with the criminal justice system due to the sheer number of people who lived within such a large state. In this study, there was a strong relationship between the variable POPULATION and the state's innovation score. According to U.S. Census data, the ten largest states by population in 1995, the mid-point of all three analyses were: California, Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina, and Michigan. Also, for this study, there were six out of the top ten in terms of highest innovation score and largest population.

Research Question 3

Research question three asked did WEALTH OF STATES contribute to a state's adoption of: (1) criminal mental health courts and a state's adoption of reforms in the tort laws of: (2) false arrest/imprisonment, (3) battery and assault relative to misdemeanor domestic violence charges. As noted by Walker (1969), attorneys within industrialized wealthier states were better trained and were more likely to institute the litigation that led

to innovations within states. Canon and Baum (1981) referred to this characteristic as environmental.

The variable WEALTH OF STATES in this study had related to the gross state product for states during 1995 which was the mid-point of all three analyses. The ten wealthiest states were: California, New York, Texas, Florida, Illinois, Pennsylvania, New Jersey, Michigan, Ohio, and Kentucky. Here, there was a strong relationship between the variable WEALTH OF STATES and the state's innovation score. Also, for this study, there were six states out of the top ten in terms of highest innovation score and highest WEALTH OF STATES were: Pennsylvania, Florida, New York, California, Ohio, and Texas.

Future research

Future research might explore other types of tort doctrines and how they diffused across the states including the District of Columbia. It was also important that future researchers to include the adoption of criminal mental health courts in order to determine whether more of the seven states that did not adopt the innovation had later adopted it.

Implications

The most important implication for this researcher's findings related to the dramatic clustering of states that adopted an innovation in all three Analyses by region. There was a significant amount of clustering within Analysis: one, two, and three. Also, a second implication related to the continued importance and role of the two variables: POPULATION and WEALTH OF STATES in innovation of diffusion studies, The importance and significance of these two variables had continued since Canon and Baum (1981)'s study over thirty years ago. Canon and Baum (1981) did not have significant

findings that diffusion took place in a discernible regional pattern and it was not focused on in that study. Moreover, some of the states that received high innovation scores within the top ten in Canon and Baum (1981)'s study also had high innovation scores in this study as mentioned earlier. Interestingly, the four states that had low scores in this study and in Canon and Baum (1981)'s study were: Wyoming, Maine, Massachusetts, and Alaska.

Another implication was that the trend for courts to follow patterns or legal precedent made sense since cases were heard in one neighbor state. The court's decision had seemed to influence the neighboring state who had adopted a related change within one to two years. Interestingly, the new interpretation and expansive application of that law took place in the neighboring state, a short time later. Many of those specific adoptions took place within one year. It appeared to remain the case that courts were not the only reactive policy makers since the adoption of a criminal mental health court was so pervasive throughout the nation and in the District of Columbia. As Judge Lerner-Wren (2018) advised mental health courts were designed to provide an appropriate context to decriminalize those who suffered from psychiatric conditions. It was important that this critical issue within the criminal justice system be addressed on a nation-wide scale (Lerner-Wren, 2018).

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