

# *Innovation and Reinvention in State Policymaking: Theory and the Evolution of Living Will Laws*

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Most research on the diffusion of policy innovations focuses on the date of adoption and its correlates. This research examines an aspect of innovation which has received little attention: policy reinvention during the initial diffusion process and through amendment. The central proposition is that even though a set of laws or policies may be grouped into one broad, general category, states create substantively different policies through reinvention, which has important consequences for groups affected by the legislation. Hypotheses concerning the relationship between date of adoption and policy content and the effect of particular controversial policy provisions on reinventions are examined. The study has general implications for the study of the diffusion of innovations and policy in state politics.

**G**eneral models of the political system conceive of policymaking as a continuous, dynamic process in which demands are converted into policy. In time, reaction and the experiences of implementation—along with new demands produced by current problems—generate a new set of inputs. Finally, we expect to see new policies and alterations in the old. However, research on the adoption and diffusion of policy innovations in state politics tends to be static and incomplete. It usually focuses on the initial adoption of a presumed uniform policy and its spread throughout the 50 states, or on the extent to which an innovation has been employed in different systems. Little attention has been paid to policy changes during the diffusion process and resultant variations among the early and late adopters in the content of policy.

It is unlikely that many policies—especially those which are controversial and continually reappear on the governmental agenda—remain unchanged, either throughout a period of diffusion or after most states have initially

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adopted a program. Not only are the 50 states likely to adopt different versions of similar laws, but legislatures, courts, and the executive within each of the states are likely to change policy through amendment, litigation, and administrative rule making. Instead of a single policy spreading uniformly throughout the states, policymaking may exhibit initial innovation, varied diffusion and reinvention over time. This research examines the adoption and diffusion of a particular public policy—living will laws—in order to enlarge the way the diffusion of innovations is conceptualized in political science.

#### THEORIES OF INNOVATION<sup>1</sup>

*The Decision to Adopt.* Research on state policy innovation generally follows one of the two approaches. The first scores adopting units (e.g., state, local government, agency, etc.) according to when they adopt an aggregate of presumed uniform innovations. Early innovators receive high averaged scores and late adopters low averaged scores. Others have found that patterns of diffusion vary by policy (cf. Walker 1969; Savage 1978; Gray 1973; see also, Scott 1968; Mahajan and Agarwal 1977; Welch and Thompson 1980; Canon and Baum 1981).

Aggregate studies provide important information about the characteristics of adopting units, particularly, the states which tend to be leaders in policy innovation and the social and economic correlates of innovation. However, such analysis cannot provide information about: an adopting unit's commitment to a policy, the possibly intricate processes of change or reinvention which take place over time (Eyestone 1977; Clark 1985), the substantive content of particular policies, or inferences about political processes shaping various policies (Downs and Mohr 1976; Menzel and Feller 1977).

*The Extent of Policy Innovation.* Another approach examines the varied extent of adoption of a particular innovation, usually at a single point in time. This research assesses the penetration of a policy across adopting units and has certain advantages over the adoption/nonadoption approach. In a study of criminal justice reform, George W. Downs noted: "Although [the adoption/nonadoption] method of scoring produces an interesting ordering of adopting units, it does not differentiate between "superficial" and "deep" adoption—that is, it reveals nothing about the extent to which the innovation has been employed, and frequently it is the determinants of this extent that are really of interest (1976, 39).

An early study which examined the extent of innovation is the classic ar-

<sup>1</sup>There is a vast literature on the diffusion of innovations, but space does not permit full elaboration. For a useful survey, see Savage (1985).

ticle by Zvi Griliches (1957) on farmers' planting of hybrid corn. Rather than indicating whether they had adopted the innovation, he gathered the percentage (extent) of the farmer's acreage planted in the new crop. Recent research has examined the percentage of offenders in community-based correction programs (Downs and Mohr 1976), the percent of state money spent on criminal justice programs (Gray and Williams 1980), state adoption of centralized court management (Glick 1981), the use of computers in Public Housing Authorities and prefabricated housing for the poor (Bingham 1976). All of these studies indicate that there are alternatives to the dichotomous conceptualization of the dependent variable utilized in much innovation research.

*Policy Reinvention.* Closely related to the extent of adoption is the likely "reinvention" of an innovation by adopting units during the period of diffusion. This concern posits linkage between date of adoption and the evolving content of policy. Everett Rogers, a leading authority on the theory of innovation, distinguishes "reinvention" from extent of adoption: reinvention is the modification by a user of a core innovation during the diffusion process; extent is the degree of adoption of a "constant" innovation. An illustration is found in the changing goals and methods of airplane hijackers as they learned about previous hijacks through the mass media. Successful hijacking dramatically declined when the media, urged by the Federal Aviation Administration, stopped reporting details of the crimes (1983, 175, 183). Jill Clark also suggests that during diffusion, policies vary in scope, stringency of controls, and level of governmental control (Allen and Clark 1981; Clark and French 1984; Clark 1985).

If the adopting units do not embrace a uniform policy, the early/late adoption dimension is but a partial indicator of a state's level of innovativeness. Previous research indicates that state officials look to each other for information and experience when embracing previously adopted innovations. Consequently, late adopters (which also likely possess different internal characteristics) may enact laws which take the implementation experiences of early adopters into account and which conceivably are more effective in coping with contemporary social problems. Although late adopters do not score high on date of adoption measures, they may be more innovative than the earlier adopters if their policies contain new approaches for dealing with social problems and are more closely geared to current conditions. Even when states adopt proposals of the National Conference Commission on Uniform State Laws (NCCUSL), states sometime produce their own variants of policy (Jacob 1988, 87). Finally, there are two ways that reinvention may occur. Following Rogers, change is postulated to occur during the period of initial adoption of legislation, but it also can occur when early adopters amend their initial legislation. Amendment may be thought of as reinvention

through renovation, since early adopters modify their own previously enacted policy. However, the content of many initial reinventions and renovation are similar and should be viewed as components of the reinvention phenomena.

Our research focuses on this latter aspect of policy innovation: the reinvention of policy during the diffusion process and through subsequent amendment. The policy selected for this research is state living will legislation. Our general proposition is that states reinvent innovations for many reasons, including new social experiences, information and political events as well as political systems differences. Resultant state laws differ from each other in important ways even though they might be grouped under a single broad policy classification. This has important implications for the breadth of research on the diffusion of public policy.

### *Living Will Laws*

Living wills permit individuals various control over the use of heroic, life-sustaining medical treatment in the event of a terminal illness. Demand for living will laws is a product of increased social concern with the ability and tendency of modern medicine to keep elderly, terminally ill, and permanently comatose patients alive beyond the natural course of death from age or infirmity. Respirators, cardiac resuscitation, artificial feeding and hydration, drug treatment, and other procedures all have surpassed a natural and easy death, often from pneumonia, known widely in the past as the "old man's friend." Living will laws—and the broader issue of the right-to-die—affect all age and social groups, although the growing elderly population is disproportionately affected. The issue is similar to abortion since it concerns the preservation of life, but at the opposite end of the life cycle.

### *Research Design*

This research entails much more detailed study of the content of state policy than is found in most innovation studies. But our research adopts a comparative approach and similar data has been obtained from each of the 38 adopting states and Washington, DC, which enacted laws between 1976 and 1988. We also suggest general propositions that likely apply to other policies. As in past research, we have recorded the date of adoption in each state, but we also have coded the content of all original state living will laws and amendments in order to address the issue of innovation and reinvention. In addition, we have obtained bill files and recorded legislative testimony, where available, for each state which has adopted or considered this legislation. Case studies, including interviews with bill sponsors, lobbyists, and staff employees, also have been conducted in three states (California, Florida, and Massachusetts), along with detailed examination of the private ar-

TABLE 1

DATES OF ADOPTION OF LIVING WILL LEGISLATION

1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
CA	AR	—	KS	—	AL	DE	IL	FL	AZ	AK	—	—
	ID		WA		DC	VT	VA	GA	CO	HI		
	NV							LA	CN	SC		
	NC							MS	IN			
	NM							WV	IA			
	OR							WI	ME			
	TX							WY	MD			
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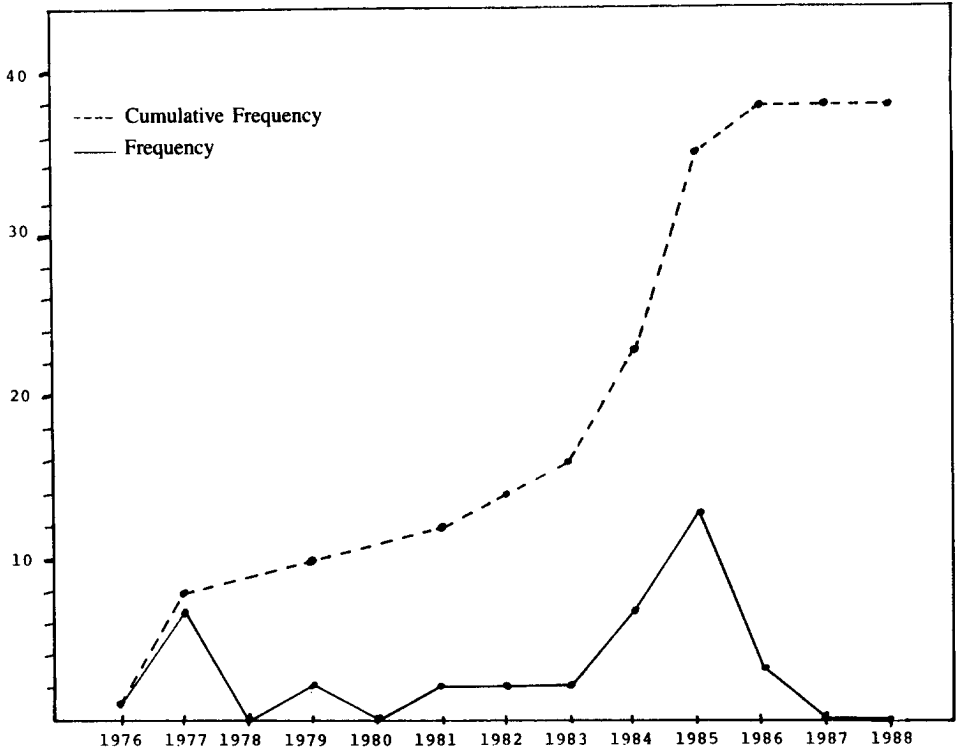
chives of many of the participants. Finally, we have coded the content of every final state appellate court decision involving medical treatment for terminally ill and comatose patients. Here, however, we concentrate on quantitative analysis of changes in the content of legislative policy as it diffuses among the states.

*The Diffusion of Living Will Laws*

Before exploring the process of reinvention, we present the chronological pattern of the diffusion of living will laws. The distribution of states by date of original adoption of living will legislation is presented in table 1. California adopted first in 1976, exhibiting its typical leadership role. Table 1 also reveals a common regional pattern to early emulation (Walker 1969; McVoy 1950; Foster 1978) in that five western states (plus Arkansas and North Carolina) followed California's lead the following year, several copying most of California's provisions. The bill sponsor of Nevada's legislation stated, for example, that the purpose of his bill was "to bring our law into conformity with California" (Hearings, Senate Judiciary Committee, March 24, 1977).

The distribution of states also conforms to a familiar S-shaped curve in cumulative adoptions over time (figure 1) (Rogers 1962, 1983; Gray 1973; Mahajan and Peterson 1985). According to Rogers, the S-shaped curve reveals a "take-off point" at which the "activation of peer networks" spread information about an innovation throughout a social system and bring increasing degrees of social pressure on a nonadopting unit to adopt the innovation (1983, 244). Once adoptions exceed approximately 20% to 30% of the potential adopters, "take-off" is reached and increasing numbers of potential

FIGURE 1  
Adoption of Living Will Laws



adopters begin to embrace the innovation. In the case of living wills, California stimulated immediate, but limited and largely regional emulation. By 1983, however, 32% of the states had adopted legislation, one year before rapid take-off began among the remaining states. Therefore, the diffusion of living will laws closely fits Rogers's "take-off" model.

### *Policy Reinvention*

Accounting for the pattern of adoption (and nonadoption) is an important and typical part of innovation research, and it is a separate task for the adoption of living will laws as well. Here, however, we are concerned with demonstrating policy reinvention. Our hypothesis is that: **reinvention of policy occurs over time and along a common dimension.**

In the case of living will laws, reinvention along a common dimension occurs if, over time, the states enact living will laws which make it easier for patients to produce and carry out the provisions of living will directives. We

TABLE 2  
STATE LIVING WILL FACILITY SCORES

State	Score	State	Score	State	Score
Alaska	20	Hawaii	13	Illinois	10
Maine	20	Indiana	13	Miss.	10
Montana	20	Iowa	13	N. Carolina	10
Louisiana	18	Tennessee	13	Wisconsin	10
Virginia	18	W. Virginia	13	Nevada	9
D.C.	16	Missouri	12	N. Hampshire	9
Maryland	16	New Mexico	12	S. Carolina	9
Florida	15	Vermont	12	California	8
Utah	15	Washington	12	Oklahoma	8
Kansas	14	Wyoming	12	Georgia	7
Alabama	13	Arkansas	11	Texas	7
Arizona	13	Colorado	11	Connecticut	6
		Delaware	11	Idaho	6
		Oregon	11		

Mean = 12.2; Median = 12; Std. Dev. = 3.7.

term this *living will facility*. Reinvention can occur by liberalizing existing provisions or by adding totally new provisions to living will laws.<sup>2</sup> First, we examine the degree of living will facility in original legislation. Next, we turn to the effect of amendment on state living will facility scores. The scale of living will facility is based on 18 legal provisions covering four main areas of law: drafting, signature and witnessing requirements, covered medical contingencies, and enforcement. A higher total score indicates a law which makes it easier for patients and their families to control medical decision making and treatment. The scoring technique is similar to that used in much other content analysis of state policy (Bingham 1976; Fairbanks 1980; Glick 1981).

*Original Legislation.* The scores for each state's original legislation are presented in table 2. Theoretically, the highest possible score is 28; however, no state reaches that level since all have some restrictive provisions. Substantial variation exists among state scores, ranging from a high facility score of 20 to a very restrictive score of 6. The most significant aspect for

<sup>2</sup>In the case of living will laws, innovation generally produces less restrictive law. We do not argue, however, that all innovation produces liberalizing or nonrestrictive policy. Indeed, innovation in other areas of policy, such as certain states' restrictive abortion policies in response to recent U.S. Supreme Court decisions, is an example of innovation which produces more restrictive policy. A task for new innovation research is to determine if there is a common policy direction to innovation and what that direction is.

this analysis is that many of the states which were among the early adopters—the chronological innovators—have produced legislation which is much more restrictive than that of many recent adopters. Of the 8 earliest adopters (table 1), 7 have scale scores below the mean of 12.2, and several have the lowest scores in table 2: California scores 8, Idaho 6, and Texas 7.

An illustration of the important substantive difference between state scores is found in the contrast of California's more restrictive law and Montana's more recent facilitative legislation. In California, a valid living will can be executed by a patient no sooner than two weeks after he or she has been diagnosed as terminally ill. In Montana, a living will can be created any time. Fifty percent or more California patients are not diagnosed as terminal until after they have become permanently comatose, making it impossible for them ever to execute a valid living will. Therefore, this one provision has drastic consequences on the usefulness of this law to California residents (The California Natural Death Act 1979). In California, a living will cannot be created on behalf of a patient who is unable to sign for him or herself; Montana has such a provision. California living wills are valid for no longer than five years whereas Montana has no time limit. California imposes complicated and restrictive witnessing requirements, while Montana does not. A California living will is invalid if the patient is pregnant while in Montana it is invalid only if the fetus will develop if life-sustaining treatment is given to the patient. California doctors who refuse to comply with a living will face no penalties while a Montana doctor is subject to criminal prosecution. Overall, Montana's recent law makes it much easier for patients or their families to control final medical treatment and enforcement provisions are likely to compel doctors to comply with their wishes.

*Chronology and Policy Content.* Inspection of tables 1 and 2 suggests that recent adopters have produced more facilitative law. We wish to assess the strength of this relationship for all of the states with living will laws. We do not suggest that date of adoption explains reinvention in a theoretic sense. The causes of reinvention likely include accumulating social experience from the application of medical technology, changes in the policy positions and priorities of interest groups, patterns of emulation among the states—all of which occur over time—as well as differences in endogenous state political characteristics.

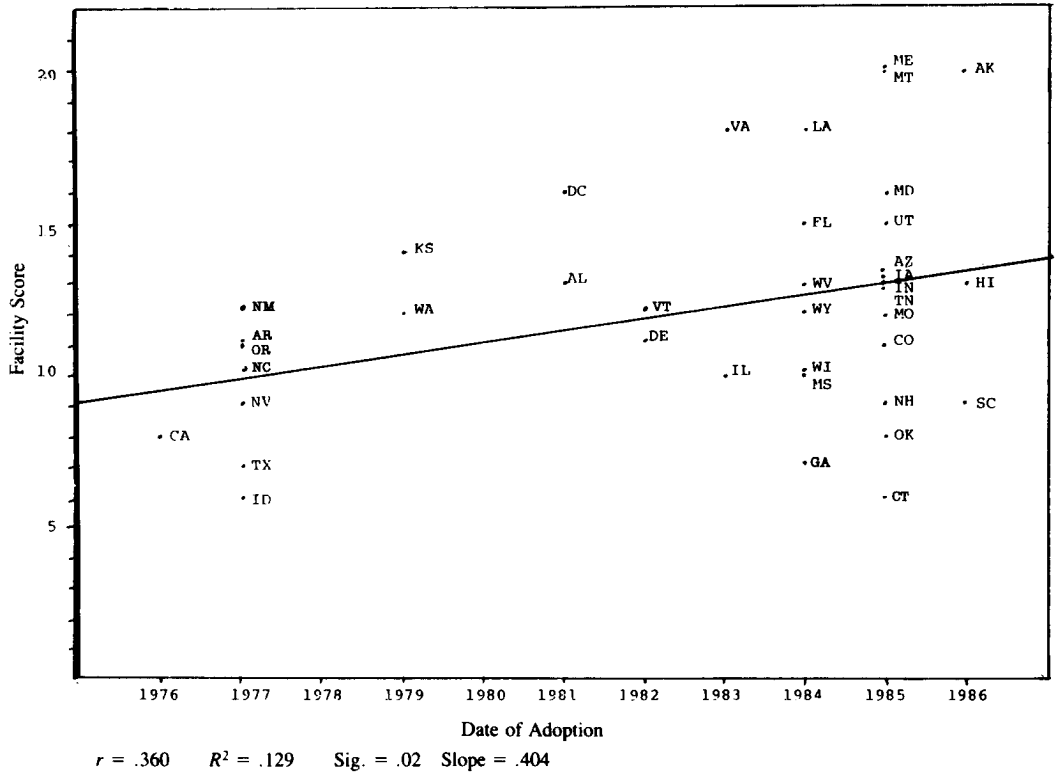
State scores on date of adoption (100 minus the last two digits of the date—giving early adopters higher scores) is correlated with state facility scores.<sup>3</sup> A scatterplot depicting the relationship between these variables is

<sup>3</sup>Since we are studying a single issue and only those states which have adopted legislation, we do not employ the scoring technique used in previous innovation research. With an aggregation of policies, adoption scores for each policy are measured by the time between the first



FIGURE 2

Plot of Facility Scores with Date of Adoption



presented in figure 2. There is a linear, positive relationship ( $r = .360$ ) which supports the hypothesis that living will legislation becomes more facilitative over time. The attenuation of the coefficient is caused by greater dispersion of scores in recent years, rather than high scores in earlier years. Early adopters tended to enact similarly restrictive and conservative laws and, while many recent adopters have created considerably more facilitative laws, not all have done so. Therefore, the direction of the relationship is as expected and our hypothesis receives support. But the correlation is a modest one and there are contrary subdimensions to reinvention, which are discussed in the following section.

and last adoption and states are assigned a score for the percentage of time which has elapsed between the first adoption and their adoption of the policy. All scores are averaged and subtracted from 1.000 to give early adopters higher scores (Walker 1969).

TABLE 3

## REGRESSION OF RESTRICTIVE PROVISIONS ON DATE OF ADOPTION

Provision	Beta <sup>a</sup>
Create living will for minors	-.012
Block living will in court	-.166
Withhold/withdraw artificial food and hydration	-.575*
Application of living will in case of pregnancy	-.075

<sup>a</sup>Standardized regression coefficients; adjusted  $R^2 = .330$ ; \* $p < .001$ .

*Variations on Reinvention.* Although state facility scores generally increase over time, intense political conflict has developed over particular provisions, and some recently adopting states have produced living will laws which are restrictive in certain key ways. This suggests a subhypothesis: **certain provisions produce reinvention in more than one policy direction.** We do not argue that certain provisions cause late adoptions, but that late adopters are affected by recent political changes, lobbying, and other factors which lead them to adopt different kinds of laws. Since the adoption of particular restrictive provisions by recent adopters runs contrary to the overall tendency of these states to enact more facilitative laws, extracting restrictive provisions from the facility scores will cause an increase in the positive relationship between date of adoption and the scores.

In order to identify restrictive provisions in recent laws, we performed a series of regressions. First, we performed bivariate correlations for each provision with date of adoption and noted those with negative coefficients, i.e., became more restrictive over time. Four of the 18 provisions produced negative coefficients: regulation of the artificial administration of food and hydration (tube feeding); validity of living wills in the case of pregnancy; creation of living wills for minors; and provisions permitting interested parties to block the implementation of living wills through court order.<sup>4</sup> We then performed a multiple regression with these four provisions on date of adoption to determine which of the four had the greatest negative impact on the overall positive correlation between date of adoption and facility scores. Table 3 indicates that the food and hydration provision produces the only large and

<sup>4</sup>Factor analysis confirmed that the states generally have responded to these four provisions the same way: three of the four loaded on one and only one of four provision factors. The factor loadings are: food and hydration, .69176; pregnancy, .70608; living wills for minors, .33738; and blocking a living will, .21939. The eigen value for this factor is 1.6. One additional provision (decision making for those who lack a living will) also loaded with the four restrictive provisions (.58331), but this variable loaded on another factor as well. Provisions concerning living wills for minors also loaded equally on another factor.

significant relationship and contributes heavily to the  $R^2$ .<sup>5</sup> Finally, in order to measure the effect of these provisions on the overall positive correlation between date of adoption and state facility scores, we correlated date of adoption and the facility scores with the food and hydration provision removed and with all four provisions eliminated. With the food and hydration provision eliminated, the correlation between date of adoption and the facility score improves from .360 to .493 (sig. < .01). With the three additional provisions removed, the correlation increases to .593 (sig. < .0001). Thus, the food and hydration provision mainly accounts for the lower than anticipated facility scores of the recent adopters.

These findings suggest that while states are likely to reinvent policy during diffusion and late adopters often have higher innovation scores (here, facilitative living will laws), specific provisions of state law may create a contrary substream in policymaking, thereby partially masking the overall tendency of recent states to reinvent policy when they adopt an innovation. Therefore, we need to be sensitive to how particular provisions are treated by state institutions, for there may be several directions to innovation—those which facilitate and those which limit the options of groups affected by the law.

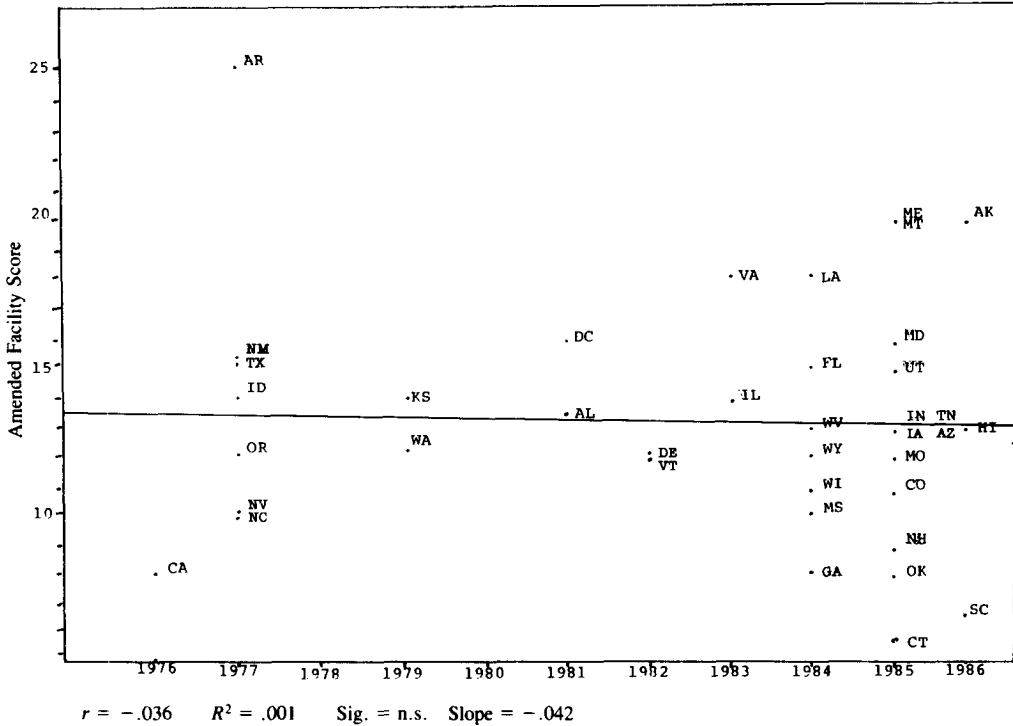
*Amendment.* Early enactment and reinvention by later adopters does not exhaust the reinvention process. Seventeen states amended their living will laws. Seven produced only technical changes which did not affect their facility scores, but 10 others made various substantive changes. *Most important, all 10 made their laws more facilitative*, in keeping with the trend established during the take-off period of original adoptions. Amending states changed their scores from 1 to 14 points, but the median change in score was a modest 2.5. We might expect that amendment occurs when early adopters conform to the most recent reinvented adoptions. However, 7 of the 10 states with substantive amendments changed their laws before or during the take-off period of original adoptions (1983 and 1985). Thus, many of the early innovators often renovated their laws before others had gotten on the bandwagon.

The process of amending legislation, along with reinvention among states which adopt legislation for the first time, strongly suggests that we need to reconceptualize the diffusion of policy innovation and the position of individual states in the adoption process. The earliest adopters receive credit as chronological innovators, but their original facility scores tend to be lower than the later adopters. However, since the early adopters also amend before many initial adopters create *any* legislation, this further en-

<sup>5</sup>The recorded political record and interviews with political activists in the three-case study states confirm that conflict over the withdrawal or withholding of artificial food and hydration currently is the most controversial right-to-die issue in the states.

FIGURE 3

Plot of Amended Facility Scores with Date of Adoption



hances their position as innovators. But of seven 1977 adopters, only three substantially increased their scores through amendment, and only one (Arkansas) exceeded the scores which later adopters achieved through their original legislation (table 2). Consequently, it is difficult to evaluate the innovative role of early adopters which amend, but do not exceed the original scores of late adopters. From the perspective of the chronology of innovation, they are the leaders, but in terms of facilitative legislation, they are among the pack.

A remaining question is how these amendments have affected the original legislation and the relationship between date of adoption and state facility scores. First, amendment contributed to a slight increase in the overall range of facility scores. The range in the original legislation was from 6 to 20 with a mean score of 12.2. With the amendments, the range in scores changed from 6 to 25 with a mean of 13.3. In 6 of the 10 states with substantive amendments, legislatures adopted both more facilitative and

more restrictive provisions, but nevertheless increased their overall facility scores.

The effect of amendment on the relationship between date of adoption and final facility scores is to reduce the correlation to zero (figure 3). As indicated above, except for Arkansas, all of the amending states produced final scores that fell well within the range for all adopters. This does not mean that amendment resulted in nearly uniform legislation, but that through amendment, most early adopters increased their scores to fall within the spread of scores of the later adopters.

Previous research on policy innovation has examined original legislation or initial court cases in particular fields of policy. Amendments and later judicial revisions rarely are considered (Eystone 1977). Our findings indicate, however, that it is important to distinguish between original and amended policy and that amendment should be considered part of the ongoing cycle of innovation which affects the final content of policy and the relative position of the states as innovators.

#### CONCLUSION

Through an examination of living will laws in the states, we have argued that diffusion research in political science needs to examine more than the chronology of the adoption of a presumed uniform policy. Early innovation and reinvention through later adoption and amendment are important and distinctive parts of the continuing innovation process. The hypothesis that reinvention occurs over time along a common dimension was confirmed, but conflict over particular provisions also leads to reinvention in more than one direction. Also, the relationship between the chronology of innovation and reinvention disappears as early adopters amend their laws to fit within the range created by the recent ones, although no uniform policy appears among the states. Policy analysis done after a lengthy period of diffusion, but which overlooks the distinctions between initial innovation and later reinvention, including renovation through amendment, may reveal a range of policy with no apparent relationship to the chronology of diffusion. But this final overlay covers up political processes affecting how policy evolves among the states.

As most political scientists and other astute observers are aware, legislators, interest groups, and judges struggle over the precise words and phrases of law to construct their image of correct public policy because they expect the language to have an effect on how policy is implemented. It is an empirical question how much variation exists in other state innovations, and the effect they have on people and political institutions. At a minimum, failure to take policy variation into account discards valuable data and glosses over important differences among the states.

Finally, our research raises questions concerning the value of chronology alone as innovation. The earliest adopting state provides important policy leadership by elevating a proposal into law, regardless how tentative or restrictive the policy may be. Therefore, the initial adoption is a crucial political event and probably deserves much more study than it has received. It is less clear, however, how we ought to treat the states which immediately follow the leader. Previous research and our findings indicate there are several reasons to reconsider this issue. Regional proximity seems to be the most important influence on early decisions to adopt; the early followers frequently copy the legislation of the leader with few changes; the content of their original legislation is less innovative than that of recent adopters; and even through amendment, their policies generally do not become distinctive.

Since California was first with a living will law, it is not surprising that many of its western neighbors joined in, but if Florida had been first (it was the first to have a living will bill before a legislature), perhaps Georgia, Mississippi, and Louisiana would have been among the early adopters. (They joined Florida in 1983.) If the immediate followers in a particular policy vary depending upon which of the other states is the leader, the rank order of the followers is much less significant as an indicator of innovation in policymaking, and it may be more interesting and important to direct attention to how policies evolve over time and the content of reinvented innovations.

Although our research is limited to one innovation, the evolution of living will laws in the states raises a number of important issues concerning innovation and the way in which political scientists generally approach this subject. Future research needs to examine other policies to assess the links between the chronology of diffusion and reinvention in policymaking and the value of reinvention as part of the innovation process.

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