

RESEARCH ARTICLE

The People's Intervention: How #BlackLivesMatter Circumvented a Culture of Congruent Criminal Justice Policies in American States

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Abstract

Since 2014, the #BlackLivesMatter movement has worked to initiate police reforms designed to increase accountability and reduce the extrajudicial killing of Black and brown people. However, policy designs are typically congruent—meaning the allocation of benefits and burdens is generally aligned with how the target group is perceived by society. How could the movement motivate policy noncongruent action that would likely burden police—a group privileged by their position within a congruent, punitive, and racialized criminal justice policy culture? An examination of the innovation and diffusion of 12 noncongruent police reforms from 2014 to 2020 suggests the movement's demands (1) reoriented the political and social contexts that fueled past diffusion processes, (2) activated key institutional actors—Black lawmakers—who served as entrepreneurs in state institutions, and (3) reactivated innovative states to serve as “leaders” in a new wave of noncongruent reform. This analysis provides a useful framework to understand how marginalized communities and their allies can exact real policy change in a political environment known for its unresponsiveness to the demands of marginalized groups.

Keywords: BlackLivesMatter; protests; social construction; policy design; policy diffusion; Black; politics; police reform

Introduction

A simple question has long motivated nearly a century of research into politics and policies: “Who gets what, when, and how?” (Lasswell 1936). Determinations of “who gets what” are deeply entrenched in American politics and have direct influences on the other elements of the decision-making process (i.e., the “when” and “how”). These considerations dictate who is invested in decision-making, the level and locus of contention around a decision, and the stability of a decision (Lowi 1964). Over time, states converge on policy cultures “that cohere around certain themes and

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endure for many generations with long-term impacts on social, political, and economic conditions" (Schneider 2012, 195). These cultures are reflected in the rhetoric that motivates policy, the contentiousness (or lack thereof) around policy decisions, and—most importantly—the outputs of policymaking processes (Schneider 2012; Schneider and Ingram 1993; Schneider and Ingram 2019).

One dominant characteristic of America's policy culture is that policies are overwhelmingly *congruent*—meaning “the prescription of policy burdens and benefits to a specific target population aligns closely with how that group is perceived in the broader social context” (Boushey 2016, 199). In other words, policies are designed so that the targets of those policies “get what they deserve” (Schneider 2012; Schneider and Ingram 1993; Schneider and Ingram 2019). An obvious example of policy congruence can be found in America's criminal justice system, where “deviants”—i.e., gang members, drug addicts, violent offenders—are punished, oftentimes with the full force of the law; meanwhile, “advantaged” groups—like police forces—are regularly benefited with ever-expanding budgets, militarized equipment, and other forms of seemingly unconditional support (Boushey 2016; Blake 2022; Nickeas 2022; A. Schneider and Ingram 1993; Weaver 2007). However, at times, policymakers are faced with demands to enact policies designed to run counter to the “natural order” of congruence.

Given how deeply entrenched congruence is in America's policy culture, how can a group that is typically disadvantaged change their policy trajectory, or that of another group, by initiating a wave of *noncongruent* policies—those that may burden groups that are typically advantaged or benefit those who are historically punished? Those interested in advancing noncongruent policies must find a way to intervene in the dominant cycle of congruent policymaking by, first, bringing emphatic demands to decision-makers' doorstep. From there, they must likely seek multiple pathways to enact change by jumpstarting a new cycle of innovation and diffusion. To better understand the struggle to disrupt the ever-present culture of policy congruence, I study the case of the #BlackLivesMatter (BLM) movement—the most significant challenge to America's policing culture in American history. Since 2014, the movement has sought to usher in a new era of criminal justice policymaking. However, their demands for accountability and transparency faced real challenges in that their preferred reforms threatened to levy burdens on police forces across the country.

Despite this, between 2014 and 2020, no fewer than forty states enacted a range of noncongruent policies designed to limit police contact, increase transparency around police interactions, and punish officers deemed to have abused their power. By examining the diffusion patterns across 12 noncongruent policies during this time, I work to forward a framework to help understand how sustained periods of organized collective demands can effectively disrupt the culture of congruence and motivate noncongruent action. By applying a social network analysis application to highlight significant changes to criminal justice diffusion processes before and during the BLM movement, I find #BlackLivesMatter was an intervening event that disrupted the traditional cycle of criminal justice policy diffusion by (1) reorienting the political and social contexts that fueled past diffusion processes, (2) activating key institutional actors who served as entrepreneurs in state institutions, and

(3) reactivated innovative states to serve as “leaders” in a new wave of noncongruent police reform.

The implications of this study are timely, far-reaching, and important to those interested in advancing considerations of how collective action shapes political processes and outcomes. Policy studies have made tremendous strides in recent decades. However, most processes are conceptualized as elite-driven and institution-dependent—the will of the people and the role of the mass public in diffusion processes are routinely subdued. More specifically, the literature leaves largely unaddressed the potential for civilian-led movements to interrupt or circumvent decades (or centuries) of unpopular, harmful, and even racialized policies and kickstart new waves of diffusions that run counter to the dominant policy culture. This analysis provides a useful framework to understand how marginalized communities and their allies can exact real policy change in a political environment known for its unresponsiveness to the demands of marginalized groups (Smith 1996).

Policy Congruence and Policy Culture-making in American States

To understand the entrenchment of policy cultures in American state-level policymaking, one must consider three factors: policy congruence, diffusion, and feedback (feed-forward) effects. Social construction theorists argue policy designs—the decision to benefit or burden particular groups—are typically arrived at based on a consideration of two factors: (1) how much political power a group has, and (2) how positively or negatively a group is perceived to be by society (deLeon 2005; Ingram, Schneider, and DeLeon 2007; Kreitzer and Smith 2018; Schneider and Ingram 1993; Schneider and Ingram 2005). Benefits or burdens are disbursed depending on where the target falls in one of four categories: groups are either advantaged (politically powerful and positively constructed), contenders (powerful and negatively constructed), dependents (weak and positively constructed), or deviants (weak and negatively constructed). Benefits are overprescribed to advantaged groups and underprescribed to “deviants”; benefits are seldom disbursed to “deviants,” and advantaged groups are rarely burdened (Ingram, Schneider, and DeLeon 2007; Pierce et al. 2014; Schneider and Ingram 1993).

Congruent policies reinforce dominant stereotypes that encompass target populations. Advantaged groups are perceived as more “deserving,” and any benefits received were “earned,” were the product of good behavior, or to justify their political influence. “Deviants,” on the other hand, deserve the burdens they receive because they are perceived as bad actors or norm violators. As a result, congruent policies routinely amass widespread support among the public and political elites (Johnson 2009; Schneider and Ingram 1993; Simmons 2017). Group constructions become a part of the electoral calculus, as politicians are ever-aware of the power of the group as well as the reactions from voters looking to express their support for (or disapproval of) different policy decisions (Schneider and Ingram 1993; Schneider and Sidney 2009).

Once congruent policies are created, they routinely spread—or *diffuse*—beyond the borders of the original innovator. States often derive their own policy actions from past adoptions from other states. Early studies of policy diffusion suggested

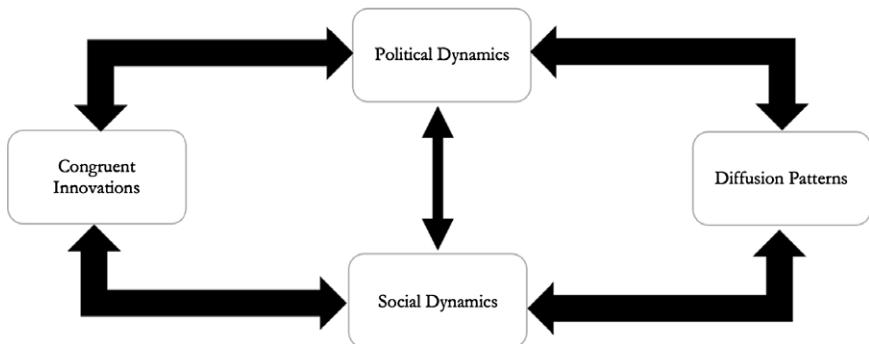


Figure 1. The entrenchment of congruent policy cultures

geographic similarities and contiguity fueled state-to-state policy spread (Walker 1969). In the time since, scholars have identified multiple mechanisms of diffusion (i.e., Berry and Berry 1999; Boehmke and Witmer 2004; Shipan and Volden 2008). States look to learn from past experiments with policy innovations and craft their own actions based on previous successes or failures (Boehmke and Witmer 2004; Butler et al. 2017). Others use heuristics to mimic the innovations of others based merely on partisan or ideological similarities that they may share (Shipan and Volden 2008). There are a few barriers to congruent policy diffusion. If states seek to learn from previous adoptions, congruent policies provide a range of information to justify emulation. Congruent policies provide political information for prospective states, as “they enjoy widespread public support, engender minimal counter-mobilization by the target population, and promise strong electoral returns for policymakers (Boushey 2016, 199).” If states base their emulation on shared values, congruent policies are easy to justify because the values that shape those decisions are aligned and reinforced by societal perceptions of deservingness.

The interactions between politics and policies entrench a culture of congruence. Scholars have long sought to settle the “chicken-or-egg” debate concerning the relationship between policies and politics. Some argue that politics dictate policies—that lawmakers work to appease voters and are responsive to the will of the public (Hacker and Pierson 2014; Mayhew 1974). Those who adopt a pluralist perspective would argue that congruent policies emerge because societal views and popular policy preferences dictate them. Policymakers are merely being responsive to their wishes. Others take a more policy-centric approach to explain how “policies create politics” (Campbell 2012; Hacker and Pierson 2014; Mettler 2002; Schattschneider 1975; Schneider and Ingram 2019). This perspective contends that politicians use their decisions to elicit specific responses from the mass public. Here, congruence becomes engrained in the political culture because policymakers intentionally design policies to invoke specific reactions from the public. Some even use deception to ensure a desired public output (Schneider and Ingram 2019). Figure 1A reveals the dilemma for those seeking to enact noncongruent policy change. Policy cultures emerge from cycles of congruent policy innovations feeding the social and political dynamics that fuel the spread of policies across jurisdictions. The diffusion of

policies then reinforces the social and political dynamics that motivate decision-makers to create new congruent policy innovations. This is an unrelenting cycle.

Motivating Noncongruent Policy Change: The Case of the State-Level Response to the #BlackLivesMatter Movement

Policy cultures are virtually, but not entirely, intractable. Occasionally, advantaged groups are burdened, and “deviants” are benefitted. However, noncongruent policies are rare, as they run counter to the logic of advantaged populations being rewarded and “deviant” groups being burdened. Further, policymakers are typically disincentivized from punishing advantaged groups because advantaged groups wield tremendous political power and resources to countermobilize politicians aiming to burden them (Schneider and Ingram 1993). There are tremendous barriers to noncongruent policy diffusion. However, several studies shed light on how noncongruent policies may spread across jurisdictions. Boushey (2016) finds that states were eleven percent more likely to enact noncongruent policies when their neighbors adopted similar policies. States are also likely to mimic those that are ideologically similar. Blanton and Jones (2021) find similar effects in the diffusion of anti-trafficking laws. However, they also find that noncongruent policies diffuse much slower than congruent policies.

Aside from a few articles, the literature pays little attention to how noncongruent policies take shape (see Blanton and Jones 2021; Boushey 2016). Even fewer explore the potential for marginalized groups to *initiate noncongruent change* amidst a culture of congruence (i.e., Taylor 2016). Political decisions are often majoritarian, and those in the minority (numerical, racial, or otherwise) are at a distinct disadvantage when influencing policy decisions (Gilens 2005; Gilens and Page 2014; Schattschneider 1975). I contend that for noncongruent policies to take hold, there must (1) be an intervention in the form of *demands for noncongruent policies* and (2) exist *pathways to motivate the innovation and diffusion of noncongruent policy action*. To further expound on this notion, I examine the adoption and diffusion of non-congruent police reforms in the aftermath of the #BlackLivesMatter movement.

#BlackLivesMatter’s Intervention: Demands for Noncongruent Police Reforms

Issues often exist in the environment but have yet to demand a public or government response. Governing bodies in Michigan knew for months of the lead-tainted water supply in Flint before videos of brown water surfaced on social media (Kennedy 2016). Governments knew of a deadly virus spreading throughout China and Europe well before implementing protective measures in America (University of California—Davis Health 2022). Black and brown folk in America have long been subject to disproportionate uses of deadly force at the hands of police (DeGue, Fowler, and Calkins 2016). It is not enough that people are simply made aware of a problem to initiate policy action. An “alarmed discovery” must be accompanied by emphatic calls to action—those calls must be loud enough to garner the attention of both politicians and the public (Downs 1972) (Fig. 1B). From the moment Darren Wilson shot and killed an unarmed Michael Brown in Ferguson, Missouri, a flow of

viral videos was followed by immediate calls to “do something” about the extrajudicial killing of unarmed Black Americans (see Downs 1972). The “something” in this instance was to enact policies that would challenge the cultures and practices that lead to police killings, change how police interact with Black and Brown communities, and provide accountability measures for those who engage in unjustified uses of deadly force.

The *qualities* of the demands matter. Robert Smith (1996) argues that the nature of the demands and the mode of delivery are directly linked to the government’s response to those demands. Demands can be systemic or non-systemic. Systemic demands—those that are “of the system”—are more likely to result in substantive policy responses. By “system,” I am referring to “the entire American complex of basic institutions, values, beliefs, etc.” that drive political, economic, and social governance (Ture and Hamilton 1992, 41). Naturally, non-systemic demands (i.e., “abolish the police,” “overturn the election,” and “end capitalism”) pose a threat to any of those systems and are more likely to be neglected or repressed with force. Like demands, the methods used to forward demands can also be systemic or non-systemic. Non-systemic methods (violence, riots, etc.) are far more likely to be rejected than systemic methods (i.e., lobbying and voting) (Smith 1996). Demands must be sustained long enough to ensure the problem does not fall out of public or elite attention. This may be especially true for noncongruent demands—decision-makers may be inclined to “wait them out” rather than change course.

These demands took aim at one of the most advantaged target groups there is—law enforcement. By most accounts, police are generally positively viewed by society and are, thus, more deserving of benefits (Kreitzer and Smith 2018; Schneider and Ingram 1993). Police have also amassed an impressive amount of political power as punitive politics have become engrained over time. They are well-organized, well-supported by segments of the public, and have tremendous leverage over elements of both major political parties (Barkan and Cohn 1998; Bies 2017; Marks 2007; Wilson and Buckler 2010). Consequentially, criminal justice policies—like most policy designs—are also overwhelmingly *congruent* (Boushey 2016; Owens and Gunderson 2022). Punitive criminal justice policies are typically reserved for “deviants,” and decisions to do so are supported by society (Chiricos, Welch, and Gertz 2004; Welch and Payne 2010). In the rare instances that benefits are dispersed, they are generally reserved for advantaged groups. Federal, state, and local governments have invested billions in policing in recent decades (Naylor 2020). Corporations benefit from the proliferation of private, for-profit prisons and the prison manufacturing complex (Hallett 2006; Logan and Rausch 1985).

The *contents* of the demands also matter. At their core, demands can carry information that has the potential to motivate and shape policy decisions by reducing information costs associated with policy action (Baumgartner and Jones 2015; Workman, Jones, and Jochim 2009). Demands often communicate the nature of a problem, the root causes, the impacted populations, the scope of the problem, and suggested courses of action (Baumgartner and Jones 2015; Downs 1972; Gillion 2013). Demands also relay information regarding the sense of urgency that should be devoted to solving the problem (Lesch and Millar 2021). Noncongruent demands also communicate policy-centered information about the problem in relation to the status-quo political culture. At a minimum, demands for noncongruent policy

actions express that congruent policy designs cannot solve the problem. At the extreme, noncongruent demands communicate that congruent policy designs cause the problem.

Demands can also inform decision-makers that the political calculus of inaction in noncongruent areas has changed. Activating potentially supportive states could involve altering the political incentives and transaction costs that motivate most political decisions. Politicians are keenly aware of fluctuations in the electoral landscape (Gordon 2007; Mayhew 1974). Groups can communicate that they are willing to organize and mobilize around the issue by applying strategic pressures on politicians and institutions (i.e., lobbying, voting, protesting, etc.) (Ainsworth 1997; Burstein and Linton 2002; Gause 2022; Gillion 2013; Victor and Koger 2016).

Groups can also motivate noncongruent actions by communicating to policymakers that the social arrangements that motive designs have changed. Groups can relay that there is a lack of consensus around how groups are constructed (Kreitzer and Smith 2018). They can also communicate to strategic partners that groups have actually changed from positively to negatively constructed (or vice versa) or that groups have gained or lost power (deLeon 2005; Schneider and Ingram 2005). Target populations are multidimensional, as are the constructions that define them (Oorschot 2000). Demands may be able to communicate that group construction should be considered along a different axis to justify the desired noncongruent design.

BLM protests carried valuable information to motivate action beyond bringing attention to police killings and outlining plans to remedy them. The movement's initial battle cry, "Hands Up, Don't Shoot!"—communicated that it would rely on systemic methods—peaceful protests—to forward their demands (Smith 1996). The movement's demands also communicated that the problem, itself, was a function of the overprescription of benefits to police and that those benefits (i.e., qualified immunity, internal investigations, paid administrative leave) stood in the way of real accountability. Lawmakers could also derive information on the political ramifications of action (or inaction). Over time, protesters clearly showed that those bringing the demands enjoyed popular support beyond the impacted target population. The movement represented a growing, rapidly diversifying, well-organized segment of the public. They also displayed that the public was willing to mobilize at a moment's notice using social media to organize and activate marches (Tillery 2020). Protests during election years applied electoral pressures on lawmakers faced with the potential for mobilization on the streets to transfer to mobilization at the ballot boxes (Gillion 2012; Gillion and Soule 2018). Protesters also regularly showed that they were willing to risk real bodily harm—or even death—to enact change (via a militarized police response to BLM or through exposure to a global pandemic).

The demands also relayed information concerning the social dynamics contributing to the problem. They first argued that police killings were directly related to the punitive practices engrained in the police culture. The disproportionate rate at which Black and brown people are intrinsically linked to the social arrangements that dictate criminal justice policies. They also challenged the construction of the police, arguing that those who are tasked with "protecting and serving" communities were engaging in unsavory behaviors and, if left unchecked,

would continue to do so. This reconstruction justifies their stance that police were less deserving of the benefits that they routinely receive and more deserving of burdens that could reign in bad actors. Finally, the demands of BLM showed that punitive policing policies were not constrained to “deviants”; unarmed citizens were subject to the ultimate burden—death at the hands of the police.

Potential Pathways to Noncongruent Innovation and Diffusion

Once demands are made, there must exist some pathway(s) to initiate action. First, there will need to be innovative states that step up and become “first-movers” or influencers in enacting noncongruent policies (Berry and Berry 1990; 1999; Boehmke and Skinner 2012). Broadly speaking, innovative states are typically well-resourced with professionalized state legislatures, liberal-leaning, and highly populated (Boehmke and Witmer 2004; Desmarais, Harden, and Boehmke 2015). One-off innovations may not be sufficient to challenge congruent policy cultures effectively. Once policies are innovated, they must spread beyond the original innovator’s borders. Demands for noncongruent criminal justice policies could serve as an off-ramp from the persistent cycle of congruent policies. However, the likelihood of policy responsiveness diminishes without clear pathways to invoke change. Leaning on the theoretical expectations laid out in the previous section, I argue that noncongruent police reform could be motivated by (1) reorienting the political dynamics that fuel diffusion processes, (2) inspiring Black lawmakers to become policy entrepreneurs, and/or (3) reconfiguring long-standing diffusion patterns.

Pathway 1: Reorienting Political and Social Dynamics

The theoretical model suggests that initiating policy action would require changing the political and social dynamics that fuel congruent policy cultures. The information captured in the demands may be effective enough to reorient the political and social conditions that influence decisions, forcing lawmakers to update their preferences and, ideally, government outputs to match the new policy image (Baumgartner and Jones 1991; 1993). This *may* be enough to motivate noncongruent action. Preferences for congruent policies cross ideological and partisan lines. However, the punitive, racialized nature of criminal justice policies may be a quality that is particularly tied to racial and conservatism in American states (Bobo and Johnson 2004; Johnson 2009). Conservatives are more inclined to support a punitive crime agenda and justify punitiveness based on a perceived threat from minorities (Chiricos, Welch, and Gertz 2004; Eitle, D’Alessio, and Stolzenberg 2002; Peay and Camarillo 2021). This “tough on crime” posture is amplified by media reports focusing on sensationalized—and often racialized—portrayals of crime (Jackson 2019; Simmons 2017). Therefore, conservative states would be most likely to lead the charge in the diffusion of criminal justice policies prior to the #BlackLivesMatter Movement.

For noncongruent criminal justice reforms to break through, it may require more liberal states to diverge from the conservative tendency to impose immense burdens on disadvantaged groups or overprescribe benefits to advantaged ones. In fact,

Boushey's (2016) study of criminal justice policies finds liberal states and states where Democrats are empowered in the statehouse are most likely to benefit "deviants" or punish advantaged groups. Blanton and Jones (2021) found similar results in their study of anti-trafficking policy diffusion. I expect to find a similar relationship between ideology and the enactment of BLM-related reforms. From a pluralist perspective, liberal statehouses may be more susceptible to the pressures of organized, sustained demands for progressive politics. From a feedback perspective, liberal states may recognize the writings on the wall and act first to get ahead of protests in their own states. I expect there to be a clear ideological discrepancy in the likelihood for states to innovate noncongruent police reforms—one that deviates from the norm and finds liberal states adopting a more influential role in post #BlackLivesMatter movement reforms.

Pathway 2: Activating Black Lawmakers to Serve as Policy Entrepreneurs

Instead of seeking to change racial and social dynamics, those desiring to enact noncongruent change may be able to reorient the relationship between those dynamics and the policy outputs by *activating strategic actors operating within those existing political and social dynamics*. Policy entrepreneurs occupy key roles as activists, agenda setters, and networkers in order to carry policy ideas across the finish line (Anderson, DeLeo, and Taylor 2020; Kingdon 2011; Mintrom 1997; Mintrom and Norman 2009; Schiller 1995). They "are able to spot problems, they are prepared to take risks to promote innovative approaches to problem-solving, and they have the ability to organize others to help turn policy ideas into government policies" (Mintrom 1997, 740).

Mintrom (1997) contends entrepreneurs are also central to state-level policy diffusion processes. Entrepreneurs are critical to the learning processes that inspire diffusion as they build interstate networks from which to learn about past innovations in other states. They can also shape debate and consideration by developing relationships with experts from different states who can testify about past successes with the proposed innovation. Entrepreneurs also gain valuable information from their cross-border contacts about the successful strategies used to promote their preferred innovation (Dunlop 2017; May 1992; Wildavsky 1979). Well-placed strategic actors may be essential to forwarding and spreading noncongruent policies.

Black lawmakers have always had a conflicted relationship with law enforcement and policies designed to benefit them. On one hand, they are keenly aware of the tensions that exist between police and the communities that they represent (Peay and Rackey 2022). On the other hand, Black lawmakers supported punitive, tough-on-crime policies designed to curb violence and reduce drug abuse that was ravaging urban communities in the 80s and 90s. While I do not expect states with a significant Black presence in the statehouse to lead the charge in enacting punitive reforms, I do expect them to be open to taking cues from more innovative states. At the federal level, after a lengthy debate, a majority of Black lawmakers provided the pivotal votes needed to enact the 1994 Crime Bill—the punitive legislation most commonly attributed to the sharp increase in incarceration rates across the nation (Young 2016). Evidence suggests they did so at the behest of local Black elected

officials (Mann 2013). A similar dynamic may have existed at the state level—Black lawmakers may be more susceptible to external forces pushing for punitive change.

However, Black lawmakers were most likely to shift their position in the wake of the BLM movement. Black politicians understand—many of them firsthand—the struggle with policing as well as how expectations are communicated through collective action. In fact, many Black elected officials’ rise to power began as activists and community organizers (Gillespie 2010b; 2010a). They are also sensitive to shifts in the electoral calculus, and protests send cues concerning support for incumbents and the electoral vulnerability of sitting elected officials (Gillion 2012; 2020). There is also evidence that BLM protests forced Black lawmakers to alter their stance on crime, punitiveness, and deviance (Peay and Rackey 2022). Therefore, I expect Black lawmakers to transition into a central role as entrepreneurs in the policymaking process. Black lawmakers are likely to translate the demands from protesters within institutions using committee hearings and floor speeches (Peay and Rackey 2021; 2022). I expect this to certainly be the case when Black lawmakers are empowered in their state legislatures, where they can translate that power into control over legislative agendas (Minta 2011; Gillion 2012). Therefore, I expect to find that states where African Americans are better represented in state legislatures will be more influential diffusion networks in the aftermath of the #BlackLivesMatter movement.

Pathway Three: Reconstruct Traditional Criminal Justice Diffusion Patterns

I also expect noncongruent policies to be anomalous compared to congruent trends in the same policy area. Schneider (2012) argues that the current punitive political culture is a direct relic of past punitive cultures—a central tenet of the feed-forward theory. Given that, it would be illogical to expect states who led the charge toward punitive congruence to change their stripes. Moreover, because innovativeness is viewed as an inherent trait amongst states, it is also unreasonable to expect states that lack a general propensity to innovate to become first-movers out of nowhere.

Previous studies have shown that state policy innovation can vary—both over time and across policy areas (Boehmke et al. 2020). This provides an opportunity for states that have displayed tendencies to innovate policies—both generally or in specific policy areas outside of criminal justice—to step in and initiate a new way of noncongruent policy innovations. Therefore, on the condition that criminal justice policies display tendencies that are outside broader diffusion patterns, I expect to find the post-BLM diffusion network will be more resemblant to broader historical diffusion patterns and less resemblant to past criminal justice diffusion networks.

A Network Approach to Examining Noncongruent Interventions

I rely on social network analysis (SNA) to identify and examine innovation and diffusion patterns before and during the BLM movement. The development of a network application is the latest evolution in the half-century since Walker (1969) first posited scholars could potentially use “innovativeness scores” to examine what drives a state’s propensity to experiment with novel policy solutions and influence future adoptions from their peers. However, as Berry (1994) points out, modeling a

complex process such as policy diffusion presents a unique set of challenges. Namely, prior to the emergence of a network application, diffusion studies struggled to (1) capture the multidimensionality of diffusion processes, (3) capture the temporal and relational aspects of diffusion, and (3) speak broadly to the different influences on general diffusion patterns across a range of policy issues. These challenges persist over decades of scholarship that relied heavily on event history analysis (or survival models) to trace the spread of policies across jurisdictions (Berry 1994; Berry and Berry 1990; Boehmke 2009).

The social network analysis approach that grounds this study is a relatively novel advancement that is better equipped to address each of those challenges. First, SNA has the capacity to examine the internal, external, and structural factors that influence the sharing of policies across states in ways that previous models proved insufficient (Desmarais, Harden, and Boehmke 2015; Handcock et al. 2018; Hunter et al. 2008). SNA is also designed to capture both the temporal aspects of policy diffusion as well as the relation dimensions. Studies that relied on Event History Analysis, for example, were effective at answering questions related to the sequence of adoptions—i.e., who are “leaders” or “laggards” in diffusion processes—or using dyadic variants to assess how commonalities between two jurisdictions influenced the likelihood that they share policies. However, those studies were less successful at determining pathways of actual influence. There was a low level of certainty surrounding the ability to comment on who is actually influencing who in diffusion processes. SNA, by nature, is the study of relationships, transmission, and connections between entities (Barabási 2016). The use of graph theory paints a fuller picture of which states are influencing the spread of policies, who is receptive to policies, as well as how the entangled web of policy diffusion is constructed. The ability to both confidently visualize the relationships between jurisdictions *and* model the propensity for connections to be made provides SNA a distinct advantage over other empirical strategies that lack such capabilities (Desmarais, Harden, and Boehmke 2015).

Most importantly, a network approach provides a means to speak to the broad patterns in diffusion processes in ways that decades of studies struggled to. We have learned a great deal regarding the characteristics of innovative states, the mechanisms of policy diffusion, the roles that politics play in the sharing of policies across jurisdictions, and how these dynamics interact with one another (i.e., Berry 1994; Berry and Berry 1999; Boehmke and Witmer 2004; Boushey 2010; 2016; Butler et al. 2017; Mintrom 1997; Shipan and Volden 2008; Walker 1969). However, the bulk of what we now know is the product of case studies of single-issue diffusion processes. Because of this dominant practice, “almost no significant progress has been made towards answering Walker’s (1969) second question about general patterns of policy diffusion” (Desmarais, Harden, and Boehmke 2015, 394). Network analysis, however, provides a means to uncover *persistent* pathways of policy diffusion across a virtually limitless number of policies. As a result, scholars have been given a tool designed to tackle inquiries into the broader nature of policy diffusion in ways unmatched by early studies of innovation and diffusion.

A two-step process serves as the empirical foundation for the remainder of this study, allowing me to maximize the potential of an SNA application to examine the diffusion of noncongruent police reforms in response to the BLM movement. First,

I call on the *NetworkInference* package in R to construct three different diffusion networks (Desmarais, Harden, and Boehmke 2015; Linder and Desmarais 2017). The focal network is one that depicts the diffusion of reforms from August 2014 through December 2020. The remaining two networks that depict the *broad* spread of policies and the diffusion of *criminal justice* policies leading into the movement will serve as points of comparison. Once these networks are constructed, analyze the factors that shape the likelihood for states to share policies using the Exponential Random Graph Model (ERGM), a common modeling strategy in SNA applications (Cranmer and Desmarais 2011; Handcock et al. 2018; Hunter et al. 2008).

Step 1: Inferring Policy Diffusion Networks

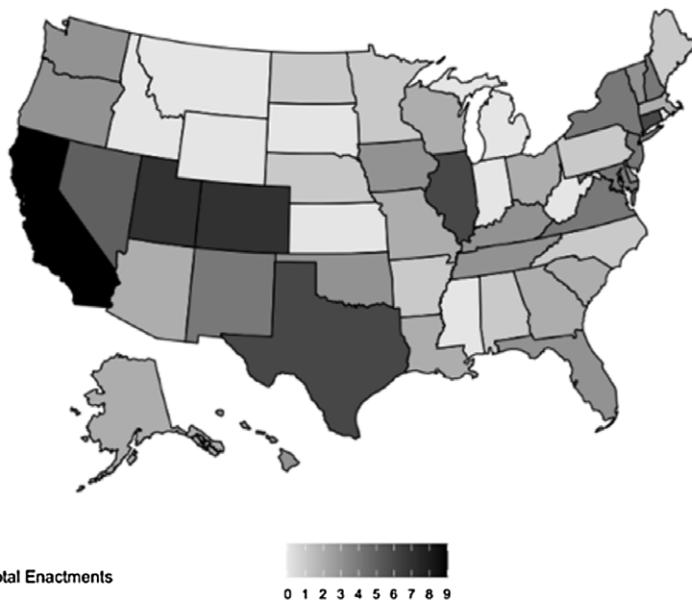
The *NetworkInference* package in R (Linder and Desmarais 2017) package converts data on policy innovations into event cascades and infers directed paths of influence between enacting states using the *netInf* function. Ties are established between States_{ij} dependent on (1) the number of times state *i* adopts before state *j*, (2) the length of time between *i*'s adoptions and *j*'s adoptions, and (3) the precision by which an adoption by *i* predicts an adoption by *j*. The probability of a tie between *i* and *j* is discounted in the case that states infrequently adopt similar policies, states take longer to adopt similar policies, and when states frequently vacillate in who is innovating policies first. The *NetworkInference* package allows users to adjust the threshold by which ties are established based on the probability that influence exists.¹ I test various thresholds for each network ($p < 0.1$, 0.05, 0.01, and 0.001).

Constructing BLM-Era Noncongruent Reform Networks

To assess reformative era policy diffusion, I examine the spread of police reform during the #BlackLivesMatter movement (2014–2020). Since the killing of Michael Brown in Ferguson, MO, on August 9, 2014, states have worked to enact various policies designed to increase transparency and accountability around unwarranted uses of deadly force and reimagining police interactions. National Conference of State Legislatures data points to forty (40) states enacting one or more noncongruent policies across three major categories and twelve subcategories. Panel A in Fig. 2 maps the total adoptions by state.

Twenty-six states have enacted policies to either require police to wear body cameras (16 states), study the effectiveness of body cameras (10), or allow for the public release of body camera footage (10). Twenty-seven states enacted laws designed to reduce or punish unjustified uses of force by defining or redefining proper uses of force (12), mandating training for the use of force (10), creating or improving mandatory reporting processes (14), or making it easier to investigate and prosecute unlawful uses of force (14). Lastly, twenty-six states enacted various policies geared toward reimagining police contact in communities across the country. Seventeen states downgraded many victimless and nuisance crimes, allowing for citations to be issued instead of arresting suspects. Ten states created programs to divert first contact for cases involving mental crisis to specialists better suited to respond to those types of distress. Three states restructured police

A. Post-BLM State-level Police Reform Policies Enacted From August 2014 - December 2020



B. Total Enactments by Policy Area	States (N)
Body Cameras	26
- Usage and Funding	16
- Research	10
- Public Record	10
Use of Force	27
- Defining	12
- Investigate and/or Prosecution	14
- Reporting and Oversight	14
- Training	10
Contact	26
- Citations in lieu of Arrests	17
- Crisis Response and Diversion	10
- Community Policing Programs	7
- School Resource Officers	3
- False 911 Calls	4

Figure 2. Post #BlackLivesMatter noncongruent reforms

involvement in K-12 educational settings, and four states criminalized making racially motivated 911 calls. Ten states enacted no laws.

Previous studies suggest that the underlying attributes of policies can greatly influence the rate at which they diffuse (Makse and Volden 2011; Rogers 2003). A policy diffuses more rapidly if it has a relative advantage over the status quo policy, if it is compatible with the existing values and needs of the eventual adopter, if there are opportunities to experiment with the policy on a limited basis, or if the effects of the previously adopted policy are highly visible. Complexity, on the other hand, tends

to slow adoptions across states. One will likely note that there is a great deal of variation in the types of reforms that spread in the aftermath of the movement and that these differences may influence the rate at which individual policies spread. For example, states more readily adopted the use of body cameras—largely because of their high degrees of trialability, observability, and a perceived relative advantage over the previous policy stance. Compare the speed and breadth of officer-worn body cameras to the slower establishment of community policing programs—a complex policy with less observable benefits and a much higher cost of implementation and experimentation.

Policy attributes can also influence the mechanism that drives innovation and diffusion (Makse and Volden 2011). Spatial and learning modes of diffusion are enhanced when policies are observable, have a high relative advantage, and are compatible and diminished for highly complex and trialable policies. This may explain the variation in the different mechanisms that drove post-BLM reforms. For example, body camera usage spread, in no small part, due to top-down pressures from the federal government, which offered monetary incentives for states and municipalities that complied (U.S. Department of Justice 2015). Policies designed to reduce police contact, on the other hand, were not a solution advocated on behalf of the federal government—states were left to their own devices to determine how to reform those practices.

Beyond these considerations, states may develop a natural tendency to resist diffusion based on the degree of congruence—or noncongruence, in this instance—that a policy embodies. Decision-makers are often hesitant to adopt policies that threaten advantaged groups or are perceived to bestow undue benefits to deviant populations (A. Schneider and Ingram 1993). This is almost certainly to manifest in response to BLM's demands for reforms. A number of states may also resist enacting policies that threaten the existence of systems and structures that have come to establish and preserve racial hierarchies in America (King and Smith 2005; Smith 1996; Ture and Hamilton 1992). There are also varying degrees of public support behind BLM reforms that bump up against many of the ideological, partisan, and racial cleavages in America (Azevedo, Marques, and Micheli 2022; Bonilla and Tillery 2020; K. Drakulich et al. 2020; K. Drakulich and Denver 2022).

While I see a great deal of value in parsing out the nuanced differences in the ways that each individual reform diffused through states, that is not the goal of this particular analysis. In this article, in particular, I am most concerned with characterizing the persistent pathways of influence across the full range of policies. I am less interested in comparing the speed of innovativeness across policies and discerning the individual mechanisms at play in the diffusion of police reforms across states. In addition to the need to restrain the topical focus of analysis, I am both advantaged and limited by the empirical strategy deployed in this work. On the one hand, I can speak to the broad patterns of diffusion and how the spread of police reforms differs from previous eras of criminal justice and general policy diffusions. However, because of my reliance on the *NetworkInference* algorithm, I cannot speak as confidently to the more granular aspects that influence the diffusion of individual policies.

To that end, Fig. 3 presents a directed network that maps the persistent pathways of diffusion from August 2014 through December 2020. The post-BLM reform

The Diffusion of #BlackLivesMatter Policies from 2014 – 2020

(A) Full Network with Isolates

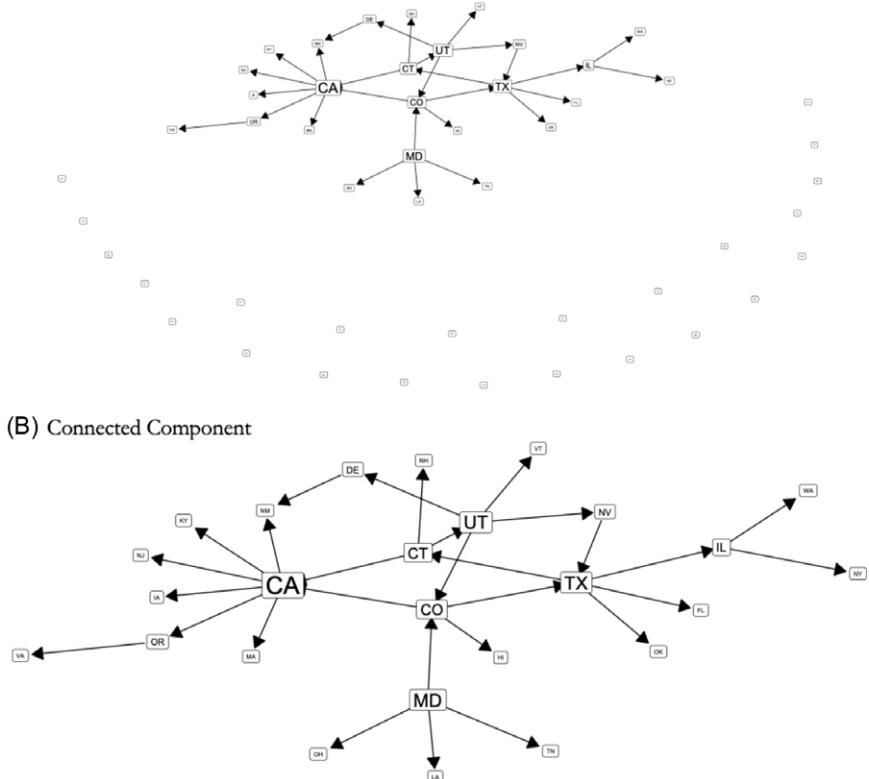


Figure 3. Inferred post-BLM diffusion network—Panel A represents the entire network, including isolate states. Panel B visualizes the connected component in the network. States are sized according to their outbound influence on other states.

network is established using a threshold ($p < 0.1$).² The *NetworkInference* algorithm identified connections between 36 of 50 states—ten of the isolated states enacted zero reforms in the six-year period, and the remaining isolates only adopted a single policy. The most influential states in the diffusion of BLM reforms, according to the network, were California, Utah, Colorado, Maryland, and Texas. This network becomes the first point of analysis to be compared with previous policy adoptions from a more congruent era.

Constructing Pre-BLM Reform Networks

This case study is grounded in a comparative analysis between pre- and post-BLM policing policies using data from the State Policy Innovation and Diffusion Database (Boehmke et al. 2020). This dataset catalogs the spread of 728 policies across a myriad of distinct substantive areas dating back to the 17th Century, making it the most comprehensive data collection on policy innovation available to date. The

database allows researchers to test broad hypotheses on the mechanisms of diffusion or hone in on their focus by allowing them to subset the data into time splices or narrowing their concentration on specific topical areas. I will take on elements of both strategies by examining diffusion trends across the entire collection of substantive areas that spread between 1994 and 2014, as well as those in criminal justice reform during the same time.

This period is significant for two reasons. First, 1994 is the symbolic start to one of the more reformative periods of criminal justice reform. The infamous Clinton-era crime bill, rising crime, and civil unrest ushered in a period of punitive criminal justice policies. Second, the end of that period, 2014, symbolizes the start of a new era of criminal justice reform. The nation entered the first wave of the #BlackLivesMatter movement following the killing of Michael Brown in Ferguson, MO, on August 9, 2014. Studying this twenty-year span of diffusion cycles serves a practical function by providing a historical baseline to compare policies enacted due to the BLM movement.

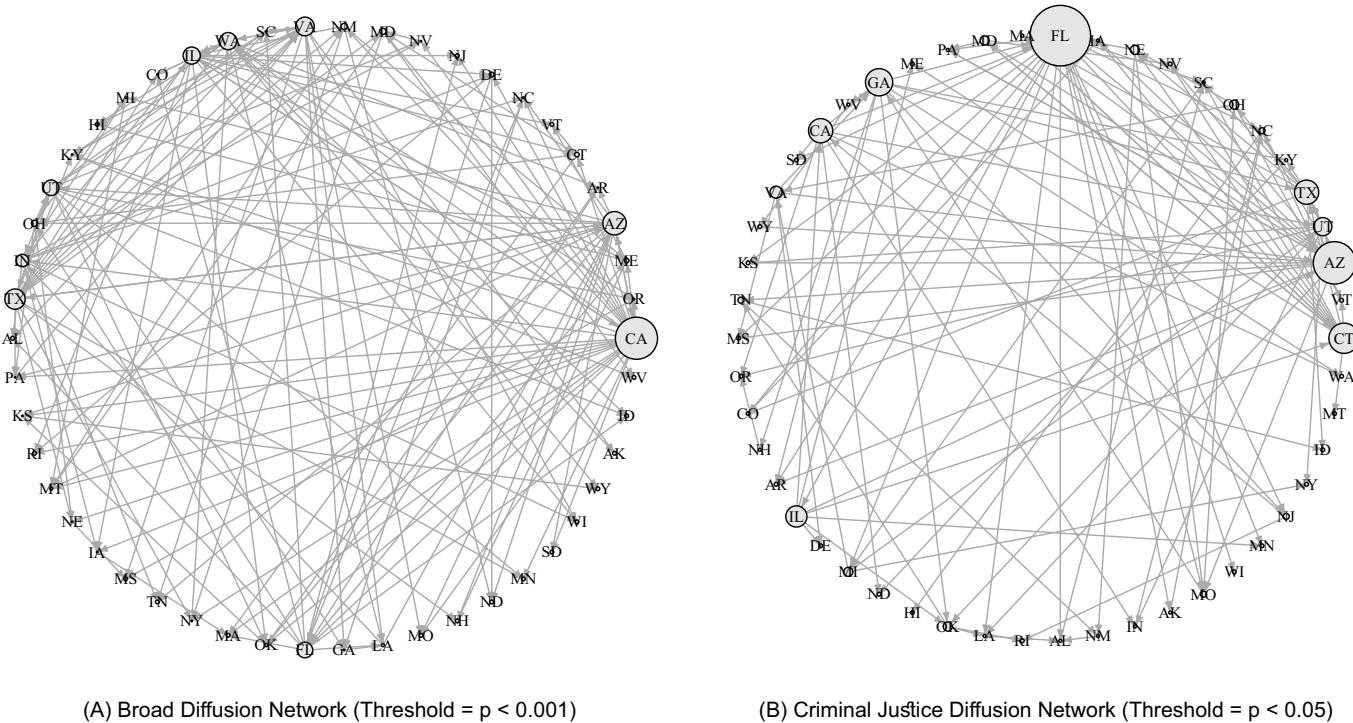
Figure 4 presents the two resulting directed networks constructed using the *NetworkInference* process. The criminal justice diffusion network selected was at the traditional $p < 0.05$ threshold, meaning there is a 95% confidence that a pathway exists when a tie appears between States_{ij}. When testing at higher thresholds for this network, states began to drop out of the network (i.e. West Virginia at the $p < 0.01$ threshold). For the broader policy diffusion network, I selected the graph that was subject to the stricter $p < 0.001$ threshold (Fig. 4).³

Step 2: Modeling Policy Diffusion using the ERGM

I draw on the ERGM to examine the characteristics of the diffusion networks. The ERGM is frequently used to examine networks at nodal, dyadic, and structural levels (Butts 2008; Handcock et al. 2008; 2018). The foundation of the ERGM model is a multi-level logistic regression that evaluates the likelihood that a tie exists between States_{ij}. The ERGM takes this analysis one step further by allowing researchers the ability to identify endogenous structural characteristics that may exist in the broader network. Significance is determined if a characteristic exists in the observed graph to a degree that would not be uncovered at random.

I call on three standard functions within the ERGM to explore policy innovativeness and emulation. The first is the likelihood that a state adopts a position of influence within the network. In this case, influence represents a state that is the source or sender of a policy to another state. This is accomplished using the nodecov function. I draw a straight line from the likelihood of a state to influence others to their broader propensity for innovativeness and to be senders, first-movers, or “leaders” in diffusion cycles. Second, I include a measure designed to capture the likelihood of a state being influenced by another state’s adoption. The nodeicov function is designed to identify exogenous trends that contribute to in-bound (receiver) edge formation. In terms of a diffusion network, this may signal that a state has taken on a position as a “laggard” (Desmarais, Harden, and Boehmke 2015).

The third measure is *homophily*—the propensity for nodes in a network to form ties with nodes that are similar to them. Shared characteristics often lead to



collaboration, communication, and shared political behaviors. Shared political beliefs, partisan affiliation, and gender and/or racial identity often increase the likelihood that political actors co-sponsor legislation, share information, and vote in a similar fashion (Bratton and Rouse 2011; J. E. Campbell 1982; Craig et al. 2015; Fowler 2006b; Ringe, Victor, and Gross 2013; Victor and Ringe 2009; Victor and Koger 2016). Relevant to this study, there is a long line of research that consistently finds state similarities—partisan, ideological, cultural, etc.—influence paths of influence, shared adoption, and even who states choose to learn from (i.e., Berry and Berry 1990; Boehmke 2009; Boehmke and Witmer 2004; Butler et al. 2017; Desmarais, Harden, and Boehmke 2015; Shipan and Volden 2008). I use the *absdiff* (absolute difference) function for continuous variables and the *nodematch* function for categorical variables.

Key Variables

The variables of interest are three measures of state racial dynamics. The racial threat hypotheses expect innovation and diffusion to be dependent on the racial composition in a state. Therefore, I include a state's *average White population* from the 1990 through the 2010 census. I also include a measure of the *decline of the White population* in a state from the same period to accommodate the racial diversification hypotheses. To assess the influence of *Black representation* on diffusion processes, I include the 2015 record of the percentage of Black lawmakers in state lawmaking chambers from the National Conference of State Legislatures survey.

In addition to the variables designed to account for state racial dynamics, I incorporate several measures that capture characteristics most often associated with innovation and diffusion. I account for the *average statehouse ideology across chambers* using the estimates from Shor and McCarty (2011). Conservative states are those that fall on the higher end of their scale. I include the 2015 Squire (2007) measure to gauge the impact of *legislative professionalism* on the adoption and spread of policies, where state legislatures with higher measures are presumed to have more state resources, spend longer lengths of time in session, and have more staff at their disposal. Well-resourced legislatures often translate these features into a more innovative policy posture and regularly serve as a model to their peer states (Jansa, Hansen, and Gray 2019; Squire 2007).

Boushey (2016) finds evidence that electoral competitiveness may contribute to noncongruent policy innovation. Therefore, I include Ranney's most recent folded measure of electoral competitiveness (2010). The Ranney measure ranges from .5 (not competitive) to .99 (most competitive). To account for partisan control, I create a variable that captures the dynamic realignment that took place during this period. I include two variables for *gubernatorial* and *legislative partisan control* using a categorical scale—(non-partisan; solid Democrat, trending Democrat, trending Republican, solid Republican, competitive). I account for the potential that *state contiguity* impacts sending and sharing policies by including a matrix that indicates if states share borders.

There are subtle changes to the post-BLM models. The measures of racial dynamics essentially remain the same, except that I account for only the 2010 census measure in determining the racial composition of states and the change of racial

composition from 2000 to 2010 in measuring racial diversification. There are, however, two new variables added to each model. Both are measures of a state's influence in the *historical broad* and *criminal justice* diffusion processes. This is measured using each state's out-degree centrality—or the number of outbound paths of influence on other states. I argue that (1) a state that has been historically influential in diffusion processes will be similarly influential in modern ones, and (2) past diffusion "leaders" will be more likely to influence past "laggards." Given these assumptions, I expect to find a significant, positive relationship between the source measures and homophily measures.

In the pre-BLM ERGM models, I include three measures to capture the structural nature of the broader diffusion network. The first two account for the *geometrically weighted in-degree* and *out-degree* distribution. I also measure the network's transitive nature by incorporating the *geometrically weighted edgewise shared partners* (GWESP). GWESP is a common measure of transitive clustering in single-mode networks. I also account for structural features of the network—using out- and in-star measures. These are typically used to account for network propensities to cluster in sparser networks. This also serves to improve model fit. Table 1 presents a table of the descriptive statistics of the key individual-level variables used in this study.

Findings

Table 1 presents the results of the Exponential Random Graph Models. Models 1 and 2 are evaluations of the pre-BLM *broad* and *criminal justice* diffusion networks, respectively. Model 3 is the examination of characteristics that shape post-BLM police reform. Each of the models is the result of 50,000 Markov Chain Monte-Carlo simulations following a burn-in of 1,000 permutations. The models are subject to standard goodness-of-fit tests, and each model fits reasonably well with each of the corresponding networks.

To better understand the movement's role in shaping noncongruent policy, I begin by placing historical criminal justice diffusion within the context of broader diffusion to highlight its similarities and uniqueness. In many ways, criminal justice diffusion mimicked many of the patterns found in broader diffusion processes. The first pattern identified, which is both consistent between models and consistent with supporting literature, is that states will mimic those that are ideologically similar. Ideological homophily is a strong predictor if states share policies in both the broad diffusion network (coef. = -0.443 ; $p < 0.01$) as well as in the pre-BLM criminal justice network (coef. = -0.523 ; $p < 0.01$).

One dynamic that is often understudied is the influence of racial diversification on diffusion studies. While a small number of studies incorporate the racial composition of states influences the spread of policies, few (if any) have considered how changing racial dynamics in a state shapes innovation and emulation. In the broad network (coef. = -0.061 , $p < 0.01$), states experiencing the most precipitous declines in White population share have about a nineteen-percent probability of influencing another state, whereas states where the White population remained relatively steady had almost no chance of shaping other state's policy adoptions. Like the broad network, states that experienced the greatest decline in White

Table 1. Exponential random graph model results

	Broad Diffusion (1994–2014)	Crim. Justice Diffusion (1994–2014)	Post-BLM Diffusion (2014–2020)
	(1)	(2)	(3)
<i>Source of Policy (nodeocov)</i>			
Statehouse Ideology	0.094 (0.093)	0.362 (0.133)**	-1.294 (0.574)*
Legislative Competitiveness	-0.380 (0.692)	-0.461 (0.760)	-5.567 (2.732)*
Legislative Professionalism	0.780 (0.769)	0.751 (0.976)	0.670 (3.764)
White Population	-0.004 (0.006)	-0.012 (0.009)	0.027 (0.027)
Change in White Population	-0.061 (0.019)**	-0.082 (0.024)***	0.246 (0.155)
Black Representation	-0.001 (0.009)	0.007 (0.012)	0.122 (0.052)*
<i>Influenced by Policy (nodeicov)</i>			
Statehouse Ideology	0.302 (0.407)	0.286 (0.298)	-1.412 (0.623)*
Legislative Competitiveness	-0.061 (1.925)	-0.989 (1.257)	5.365 (4.402)
Legislative Professionalism	-0.707 (2.621)	0.073 (1.947)	-3.325 (3.604)
White Population	0.016 (0.023)	0.023 (0.020)	-0.047 (0.027)
Change in White Population	-0.017 (0.059)	-0.079 (0.046)	-0.236 (0.203)
Black Representation	0.057 (0.038)	0.059 (0.029)*	-0.029 (0.055)
<i>Homophily Measures (absdiff/nodematch)</i>			
Difference in Statehouse Ideology	-0.443 (0.143)**	-0.523 (0.181)**	0.374 (0.624)
Difference in Competitiveness	-1.203 (1.029)	-0.171 (0.861)	-2.736 (2.957)
Difference in Professionalism	1.267 (1.011)	1.278 (1.222)	-3.456 (2.754)
Similar Legislature Partisan Control Trends	0.160 (0.217)	-0.083 (0.270)	0.018 (0.018)
Similar Gubernatorial Partisan Control Trends	0.010 (0.184)	-0.324 (0.227)	0.055 (0.140)
Difference in Minority Composition	0.008 (0.009)	-0.003 (0.011)	0.140 (0.804)
Difference in Racial Diversification	-0.038 (0.024)	-0.043 (0.027)	0.078 (0.477)
Difference in Black Representation	-0.014 (0.016)	0.012 (0.017)	-0.103 (0.044)*
<i>Historical Measures</i>			
Broad Leader Source	-	-	0.157 (0.065)*
Broad Leader Influenced	-	-	0.193 (0.079)*
Broad Leader-Laggard Relationship	-	-	0.103 (0.040)*

(Continued)

Table 1. (Continued)

	Broad Diffusion (1994–2014)	Crim. Justice Diffusion (1994–2014)	Post-BLM Diffusion (2014–2020)
	(1)	(2)	(3)
Criminal Justice Leader Source	–	–	0.021 (0.087)
Criminal Justice Leader Influenced	–	–	–0.045 (0.125)
Criminal Justice Leader-Laggard Relationship	–	–	–0.146 (0.077)
<i>Geographic Measures</i>			
State Contiguity Matrix	0.530 (0.265)*	0.058 (0.341)	0.819 (0.624)
<i>Structural Measures</i>			
GW Out-Degree	–2.629 (0.404)***	–2.307 (0.439)***	–
GW In-degree	33.869 (6.499)***	7.936 (1.992)***	–
GWESP	0.658 (0.141)***	0.409 (0.189)*	–
O-Star (3)	–	–	–0.215 (0.170)
I-Star (2)	–	–	–5.003 (1.498)***
Edges	–7.490 (3.292)*	–6.215 (2.977)*	–3.867 (5.609)
Isolates	–	–	2.702 (1.291)*
AIC	928.899	828.627	253.080
BIC	1073.995	973.723	432.999
Log Likelihood	–439.449	–389.313	–95.540

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.

population share were most influential in the spread of criminal justice policies (coef. = –0.082; $p < 0.001$). This equates to just under a three-percent decline in establishing an outbound tie to another state.

The broad and criminal justice networks also appear to share several structural characteristics. The positive, significant findings for the *GW Out-degree* measures suggest that there are relatively few states that are influencing diffusion. The negative, significant coefficients associated with the *GW In-degree* measure, however, suggest that influence is distributed broadly across both networks. Finally, the positive *GWESP* coefficients indicate that both diffusion patterns display transitive properties.

The Uniqueness of Punitive-era Criminal Justice Diffusion

The criminal justice network has several distinct characteristics that distinguish it from more diffusion patterns in other areas. First, criminal justice reforms are spearheaded largely by conservative states (coef. = 0.350; $p < 0.01$). This should be no surprise considering the tendency for racial and political conservativeness to

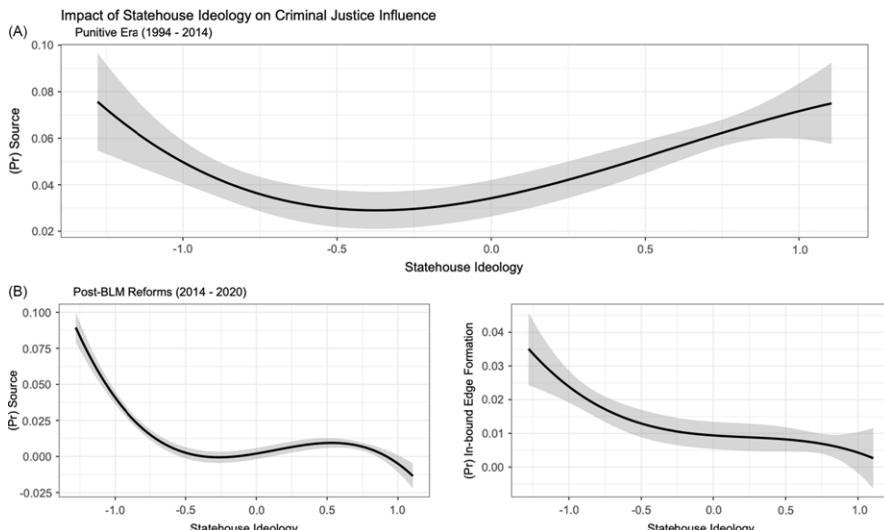


Figure 5. Impact of statehouse ideology on pre- and post-BLM diffusion patterns

create an attachment to punitive policies (Bobo and Johnson 2004; Johnson 2008; K. M. Drakulich 2015). There is no clear link between ideology and the innovativeness of states' broad diffusion patterns. Model 1 also provides support for the decades-old assumption that states that share borders are more likely to emulate each other (coef. = 0.539; $p < 0.05$). This finding is often disputed in the half-century of diffusion studies—with many single-issue diffusion studies finding little support for Walker's (1969) initial study (i.e. Berry and Berry 1990, 1999; Boehmke and Witmer 2004). However, this is not the case with the criminal justice diffusion network, where contiguity plays no significant role in the potential for shared policies.

From Congruent Policies to Noncongruent Police Reforms

I proposed three potential pathways to enact noncongruent policies in response to demands from the #BlackLivesMatter movement. Model 3 presents results from the ERGM modeling of the diffusion network of those reforms. These findings can then be compared to the punitive-era criminal justice reform network to identify differences any differences that may exist.

Pathway 1: Reorienting Political Dynamics that Contribute to Innovation and Diffusion

The first proposed pathway suggests that the demands may be enough to operate on the political and social dynamics and motivate noncongruent innovations and diffusion. I find support for the proposition that the political dynamics that shape criminal justice policies shifted dramatically in the wake of the BLM movement. As previously discussed, criminal justice policy innovation during the pre-BLM era was dominated by conservative states (Fig. 5A). The projection suggests that this

relationship may be quadratic, with some “liberal” states innovating punitive policies during this time (i.e., California and the “three strikes” laws). Alternatively, this may capture the rare instances where noncongruent policies cut through the dominant punitive, congruent culture (Boushey 2016).

During the BLM era, noncongruent policies emerged largely—but not exclusively—from liberal states ($\text{coef.} = -1.294$; $p < 0.05$). This supports assumptions derived from Boushey (2016) and Blanton and Jones (2021) that posit state liberalism as a source of noncongruent innovations. There is over a nine percent chance that the most liberal states influence any other state to adopt one of the twelve policies identified in this study. That probability decreases to zero for the most conservative states. This finding comes despite findings that Texas and Utah were among the most influential states (see Fig. 3). On average, the general tendency was for conservative states to lag behind their liberal counterparts. I also find evidence that political ideology also influenced how policies spread from state to state. The negative, significant coefficient associated with the **nodecov** function of ideology suggests that liberal states were more receptive to the spread of noncongruent reforms ($\text{coef.} = -1.412$; $p < 0.05$). Some may interpret these findings—taken together—that the diffusion of police reforms was siloed in only liberal states. However, this does not appear to be the case, given the nonsignificant findings associated with the ideological homophily measure.

Boushey (2016) found that electoral competitiveness contributed to the diffusion of noncongruent criminal justice reforms. The negative coefficient associated with the **nodecov** variant of that measure supports this notion—suggesting that electorally stable states may have been more inclined to lead the way in post-BLM reforms ($\text{coef.} = -5.567$; $p < 0.05$). The positive coefficient with the **nodecov** measure of competitiveness suggests that competitive states may be more likely to be influenced by other state’s innovations. However, the measure fails to reach traditional measures of statistical significance. Beyond ideological and electoral considerations, I do not find support that other political dynamics influenced the speed or spread of police reforms. Shared partisanship in the statehouse or governor’s mansion had little substantive impact on the likelihood that states enacted similar policies. Legislative professionalism also had no significant impact on the diffusion of noncongruent reforms.

Pathway 2: Black Lawmakers as Policy Entrepreneurs

There may need to be strategic actors with access to the decision-making process who must serve as entrepreneurs to initiate policy change. I focus my attention on Black state lawmakers, who I propose play central—yet different—roles in the diffusion of criminal justice policies across eras. First, I draw on historical and empirical accounts that contest Black lawmakers played a critical role in the spread of criminal justice policies during the punitive era. Model 2 supports the expectations that statehouses with a larger presence of Black lawmakers were more receptive to punitive-era innovations ($\text{coef.} = 0.059$; $p < 0.05$). At the federal level, Black lawmakers were front and center in advocating for the punitive policies that followed the 1994 Crime Bill (Peay and Rackey 2022; Young 2016). These findings may provide support for similar dynamics at the state level. There is an eight-

percent difference in the likelihood that a state was influenced by an outside adoption between the statehouses where Black Americans are most represented and those where they are least represented.

Model 3, however, provides significant evidence that the role of Black lawmakers may have shifted from providing key support to adopting policies from other states to occupying entrepreneurial roles needed to spark innovation. States where Black lawmakers occupy more seats were more likely to be first-movers in enacting noncongruent police reforms ($\text{coef.} = 0.122; p < 0.05$). This relationship, too, may be quadratic, as states where African Americans make up ten percent of their legislators are twice as likely to lead the way in criminal justice policy diffusion than the most and the least diverse legislatures. This is likely a relic of the fact that many of the most diverse statehouses are in the American South—a region that is notorious for conservative reign and racially regressive policies. Aggressive policing, harsh sentencing, mass incarceration, and other policies have long been used as tools of oppression against minority communities, and these conservative states may serve as a “red wall” that no critical mass of Black representation can break through.

An additional finding supports this notion that Black lawmakers served as entrepreneurs in statehouses. Mintrom (1997) argues that entrepreneurs are able to reach across state lines and develop relationships used to fuel policy diffusion. Model 3 finding states that enjoy similar levels of Black representation are more likely to share policies ($\text{coef.} = -0.103; p < 0.05$). This small, yet significant, finding suggests that there may be somewhat of a critical mass in Black representation that needs to be met in order for similar policies to spread from state to state. This finding would be consistent with prior research from Mansbridge (1999), Tate (2014), and countless others that have examined the role and utility of Black lawmakers in political institutions (i.e., Gamble 2007; 2011a; 2011b; Minta 2011; Minta and Sinclair-Chapman 2013; Peay and Leasure 2023; Swain 1993).

Pathway Three: Divergent Diffusion Trends

The third line of inquiry suggests that there would be a distinct difference between historical criminal justice diffusions and the diffusion of noncongruent policies in the wake of the #BlackLivesMatter movement. In a previous section, I explored the similarities and differences between criminal justice diffusion patterns and broad diffusion patterns. While some of the mechanisms of diffusion were similar (i.e., ideological similarity), there are sharp differences in which states occupy central roles in the innovation of policies. Pathway 3 proposes that noncongruent diffusion will be more likely to resemble broad diffusion patterns than the diffusion of criminal justice policies of years past. Model 3 finds significant support for this notion (see also Fig. 6).

First, I find that BLM did not have to seek out new innovators. They simply activated states that were already innovative outside of criminal justice diffusion networks. The broad network suggests that the most influential states in broad diffusion patterns from 1994 to 2014 are California, Texas, Virginia, Washington, Arizona, Florida, Illinois, and Utah. This is consistent with overlapping results from Desmarais et al. (2015) who examined pathways of influence from 1960 through

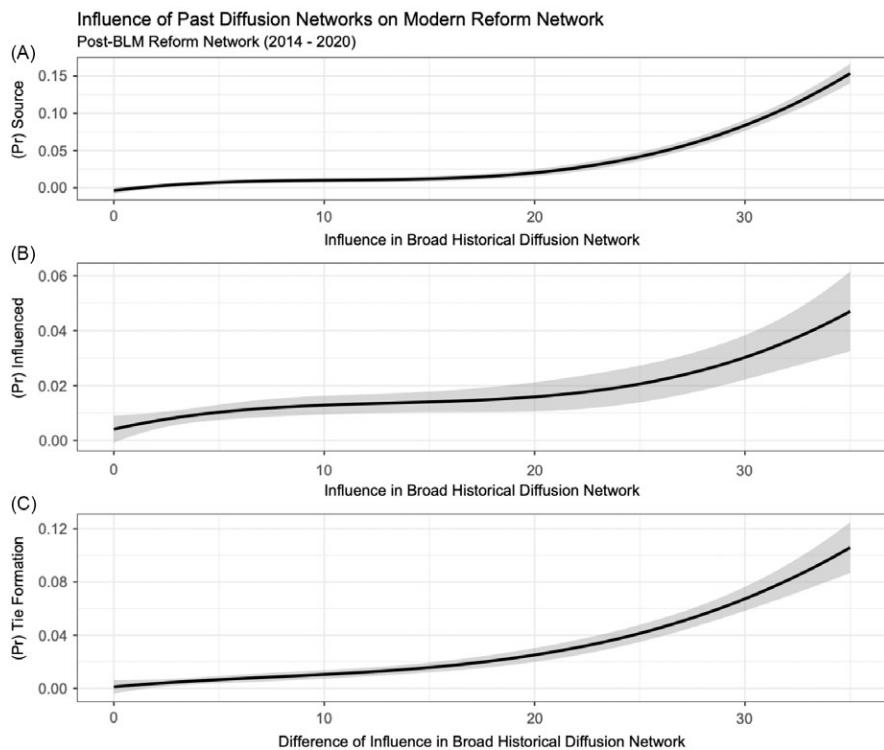


Figure 6. Influence of past diffusion processes on post-BLM reforms

2009. Many of these states were among the top fifteen leaders identified in their study. The six most central states in the police reform diffusion process are California, Utah, Texas, Colorado, Maryland, and Connecticut. The directed ERGM model also provides evidence that leaders in past diffusion cycles are more likely to remain leaders in the diffusion of noncongruent police reform ($\text{coef.} = 0.157$; $p < 0.05$). This equates to a fifteen-percent increase in the probability of past leaders influencing another state in the police reform diffusion network.

It also appears that innovative states in broad diffusion processes were more open to taking cues on police reform from states than the laggard states in that same network ($\text{coef.} = 0.193$; $p < 0.01$). However, this does not mean that the diffusion of noncongruent police reforms was *solely* between innovative states. In fact, Models in Table 3 suggest past diffusions influenced both the speed and spread of police reform adoptions during the BLM movement. This would be supported, first, by a significant heterogeneous relationship between past “leaders” and “laggards”—meaning leaders would be more likely to influence policy adoptions of laggards than they are of other leaders or vice versa. Leader states were over ten times more likely to form ties with the most laggard states than they are with other leaders ($\text{coef.} = 0.103$; $p < 0.05$).

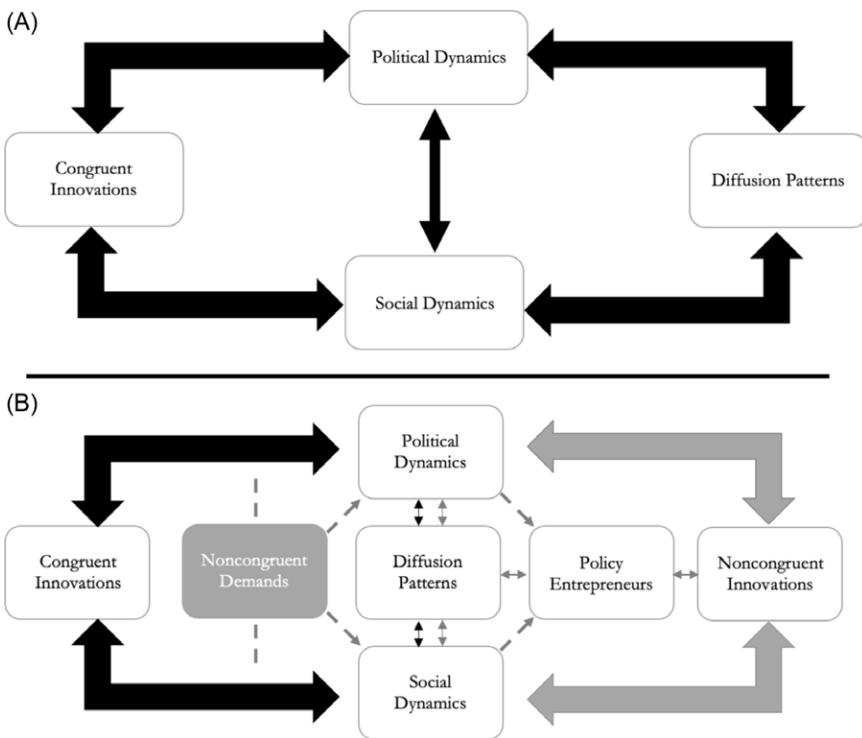


Figure 7. The multiple pathways to noncongruent policy innovation and diffusion after the #BlackLivesMatter Movement: Panel A displays the expected process during typical congruent innovation and diffusion. Panel B outlines proposed pathways to noncongruent action

Discussion: Toward a Theory of NonCongruent Policy Diffusion

Much of the early criticism of the BLM movement centers around a perceived lack of tangible policy change (i.e., Szetela 2020). Few ground their critique of the movement on a foundation that acknowledges (1) how deeply entrenched punitiveness and congruence are in the culture of criminal justice policymaking and (2) the seemingly insurmountable challenges that exist for those seeking noncongruent policy change. This work finds the BLM movement captured the attention of the American public, media, and governing elite and brought demands of noncongruent change to their doorsteps. Those demands reshaped the discourse around the American policing system, challenged the social and political conditions that contribute to a culture of punitiveness, and activated strategic agents within institutions to spark policy change that diverges from the dominant policy culture.

I offer three important caveats concerning the limits to efforts to initiate noncongruent change. First, this proposed path is a perfect storm of events. So much of the process is dependent on each component being in place and effective. Removing any piece of the puzzle drastically decreases the likelihood of wholesale noncongruent action. Without demands for noncongruent action, there is very little that could motivate decision-makers to deviate from the norm of congruent policymaking (Fig. 7B). Those demands must be heard—the process fails

should powerful groups effectively silence, neglect, or repress them with force. Next, the demands likely need to operate on *both* political *and* social dynamics. Reorienting social constructions may be meaningless if there is no political incentive to change course. Likewise, politicians are unlikely to give in to political incentives if the demands run counter to the values that they hold dear. The demands, and the effects that those demands have on political and social arrangements, may not be enough to spark innovation. They may need strategically placed actors to convert policy ideas to government action. Even then, single innovations are not enough to effectively challenge the dominant policy cultures across the states. Policies need to diffuse after being innovated.

Because of the uniqueness of the BLM movement, it would be prudent for future studies to explore these dynamics across a broader range of noncongruent policies and, likely, more importantly, across a range of movements. The BLM movement represented the most significant challenges to what may be the most deeply entrenched congruent policy culture imaginable. It is likely that there may be some policies and movements that do not need this “perfect storm” to enact substantive noncongruent change. Future studies should examine the conditionality of each mechanism of change. It is also important to delve into questions of how the nature of demands (i.e., level of violence, systemic versus non-systemic, level of inclusivity, longevity, etc.) influence the conditionality of each mechanism.

The second caveat is that the effects of noncongruent policy innovations and diffusions are likely confined to the policy problem in question. One noncongruent policy and diffusion process does not necessarily dismantle the entire culture of congruent policymaking. Demands are problem-specific, and even if demands are received and acted upon, the processes are unlikely to bleed into other areas. Political elites are working constantly to confine conflict into small, manageable arenas (Baumgartner and Jones 1991; Cobb and Ross 1997; Rochefort and Cobb 1994; Schattschneider 1975; Smith 1996). Issue-specific demands are unlikely to alter the political calculus and social norms across *all* policy domains. Congruence will likely remain the norm, even within policy domains.

Third, noncongruent policies are unlikely to permanently reconstruct the culture of congruence, particularly in the American policy culture where congruence is so deeply embedded. BLM in no way fundamentally changed policing policy culture from punitive to reformative. Noncongruent change is an *anomaly*. It is the occasional one-off that runs alongside the dominant culture of congruent policymaking. It is a brief deviation from the norm, not an abolishment of the norm. Policy congruence is systemic—it is not only reinforced by dominant societal values and norms but also drives action in institutions tasked with preserving those values and norms (Ture and Hamilton 1992). The powerful are unlikely to entertain demands that could threaten the entire system of governance and the arrangements that legitimize the power they hold.

There is certainly resistance to noncongruent police reforms. The data suggest that much of this resistance can be captured in the hesitance on the part of conservative states to both initiate reforms and be influenced by diffusing policies. This could be semblance of a broader trend of conservatives’ reluctance to depart from congruent policies, as congruence may be more aligned with conservative values. Alternatively, the hesitancy to adopt noncongruent police reforms may be a

sign that conservative states may be more committed to preserving the racialized, punitive culture that informs criminal justice practices than they are to remedying extrajudicial police killing of Black and brown citizens. Future studies should seek to parse out the difference between a state's adherence congruence versus its investment into the political and social arrangements that dictate the dominant policy culture.

Readers will likely note that the state-level reforms that resulted from the BLM movement were moderate, at best—the burdens placed on police are mild. More punitive demands (i.e., “defund the police”) were nonstarters, as politicians on both sides of the aisle balked at implementing reforms that would burden police forces any further. In fact, some politicians actively campaigned against further burdening police and offered, instead, to funnel more money into police departments—including Democratic President Biden (Blake 2022; Nickeas 2022). This speaks directly to the boundaries of noncongruence—there are limits that politicians are willing to burden advantaged groups and benefit deviants. Future studies should test for any variance in innovation and diffusion caused by the degree to which advantaged groups would be burdened (or deviants benefitted) by noncongruent policies.

Noncongruent policies can also result in backlash—not only from the electorate or from the countermobilization of advantaged groups but from policymakers themselves. States may work to re-entrench congruent policies in response to the small deviation into noncongruent policymaking. This was certainly the case with the BLM movement. Mass arrests and incarceration were the general response to largely peaceful, constitutional protests. Several states enacted “blue lives matter” hate crime laws that, ironically enough, created protections for police as a “targeted minority group” being threatened by *Black* citizens (Mason 2022). Others implemented policies designed to surveil and criminalize BLM protesters, enhance charges to felonies, and even allow citizens to physically harm protesters (Quinton 2021). A number of states actually passed laws protecting motorists who run over protesters with their vehicles (Andone 2017). Scholars interested in policy cultures should investigate the re-entrenchment of congruent policies *in response to* noncongruent policy ventures.

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Notes

¹ Thresholding is a common practice in social network analysis routinely used to derive reasonably dense networks (Fowler 2006a; Cranmer and Desmarais 2011). By “reasonably dense,” I mean that the resulting network is not likely to overestimate the likelihood of a path of influence between two states. The “reasonably dense” threshold also arises out of necessity—overly-dense networks complicate social network analysis. Many of the common modeling applications are sensitive to model fit and are prone to degeneracy, which is often caused by dense networks. Thresholding eases those concerns and allows for a better model fit. It is possible under more lax thresholds for the *NetworkInference* package to infer networks where nearly every state influences every other state—a phenomenon that is likely not the case in real world diffusion cycles. This is particularly likely when there are large numbers of cascades over large periods of time.

- 2 This lower threshold is the function of two factors. There are significantly fewer policies (twelve compared to hundreds) and a shorter window of time (six years compared to twenty) available to identify ties.
- 3 At lower thresholds, the networks were extremely dense to the point that they either (1) failed to converge in analytical models or (2) created poorly fitting models.

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