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The War on Drugs in the American States: Variations in Sentencing Policies Over Time

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THE WAR ON DRUGS IN THE AMERICAN STATES:
VARIATIONS IN SENTENCING POLICIES OVER TIME

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ABSTRACT

Since the 1970s US drug policy has focused on harsh punishments for drug offenders. A wealth of research indicates that the social and political context of the drug policy discourse is a greater factor in determining drug policy than rising rates of drug use or drug-related crime. While considerable research has examined the factors driving federal drug policy, fewer studies have examined drug policy at the state level. This dissertation studies state drug sentencing policy to determine what factors may explain variation across states. By focusing on the period from 1975 to 2002, this study concentrates on policies passed during the War on Drugs era, which began in 1971 and has only recently shown signs of abating. A policy design framework is used to argue that the social constructions of drug offenders—the way in which they are perceived in society—determines the policies directed towards them, and that negative perceptions are likely to result in more punitive policy. This research also hypothesizes that several other factors are likely to influence punitive drug policy, including the desire to control threatening populations, a conservative political environment, and bureaucratic incentives to pursue drug crimes. Using panel data analysis, this study finds partial support for the premises that negative social constructions of drug offenders and bureaucratic incentives affect state drug sentencing policy.
DEDICATION

To my parents, Anne and Thomas Neill, who shared with me their passion for learning at an early age, and who continue to support my intellectual pursuits.

To my husband Michael Harris, who has supported me through this long journey and has patiently tended to my computer-related meltdowns.
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In 1972 the US incarceration rate stood at 93 per 100,000 residents, the lowest rate since 1925 (Zimring, 2001). A slow decline in incarceration, coupled with the popularity of rehabilitative efforts, led some criminal justice policy scholars to speculate the end of the widespread use of incarceration (See Wacquant, 2005). At the end of 2011, 492 out of 100,000 residents, or more than 2 million citizens, were incarcerated (Carson & Sabol, 2012). Why the dramatic change? One explanation is that the rise in incarceration is a response to an increase in crime. But while the incarceration rate has increased exponentially and continuously since the initial uptick in 1973, crime rates have intermittently increased, stabilized, and declined, with the latter characterizing more recent trends. For example, from 1984 to 1991, the crime rate increased 17 percent while the incarceration rate increased 65 percent, but from 1991 to 1998, there was a 22 percent decrease in the crime rate, and yet the incarceration rate still rose by 47 percent (King, Mauer, & Young, 2005).

The incarceration-crime rate divergence has led many scholars to question what other forces may explain the increase in incarceration rates. While crime is part of the answer, numerous studies provide evidence of other factors that have contributed to the rise in incarceration (Schneider, 2006; Tonry, 2007). One explanation is the changes in sentencing policies and approaches towards crime control among governments. Prior to the start of the prison boom, the dominant philosophy towards crime emphasized
indeterminate sentencing, a focus on the individual offender and his rehabilitation, and the structural causes of crime in society (Garland, 2001a). Since that time governments have changed how they deal with law breakers; in recent decades the prevailing trend has been to focus on the personal responsibility of the offender, to isolate the offender from society, and to punish the offender. Nowhere is this "law and order" philosophy more evident than in the treatment of drug offenders.

Since the official War on Drugs began in 1971, drug crimes have been an especially popular target of tough anti-crime measures. Changes in sentencing laws have resulted in more drug offenders going to prison for longer periods of time, even in instances of nonviolent offenses. Mauer and King (2007a) find there has been an 1100 percent increase in the number of drug offenders serving time in jail or prison since 1980, and almost 60 percent of those in state prison have no history of violence. Blumstein and Beck (1999) find that drug offenses account for 33 percent of the overall growth in incarceration rates from 1980 to 1996, indicating that the War on Drugs has contributed significantly to mass incarceration.

The War on Drugs: A Policy Failure

The War on Drugs began in 1971 when President Nixon declared drug addiction to be a "national emergency" (Scott, 1971). Under President Reagan the war intensified; Reagan cited drugs as a threat to national security in 1982 and during his presidency signed into law several waves of anti-drug legislation (Glass, 2010). State governments have followed suit, and in 2010 people with drug convictions accounted for 17 percent
of males and 26 percent of females incarcerated in state facilities (Guerino, Harrison, & Sabol, 2012). The majority of drug offenders are not violent; for example, a 2002 report found that 75 percent of drug offenders in state prison have been convicted of non-violent crimes. That same report also found that 43 percent of convicted drug offenders are drug users or low level dealers (King & Mauer, 2002).

Despite the popularity anti-drug legislation has enjoyed among politicians, the public, and the media, it also has been subject to a number of criticisms. Surveys conducted by the National Institute on Drug Abuse show that rates of drug use were declining before the War on Drugs began (Tonry, 1994), calling into question whether the war was necessary. From a policy effectiveness standpoint, the most damaging criticism of the War on Drugs is that it has failed. Governments at all levels in the US have chosen to respond to claims of the existence of a drug problem by reducing the supply of drugs rather than lowering demand (i.e., through education campaigns and addiction treatment). Thus one indicator of policy effectiveness is the change in the street price for drugs, as a significant reduction in supply should increase the price. However, from 1981 to 1995, a period of very tough drug enforcement, heroin and cocaine prices fell steadily, and there was no difference in the street price for crack cocaine and powder cocaine, despite the special attention given to crack cocaine (MacCoun & Reuter, 1998). Similarly, Meier (1994) finds that enforcement has little effect on drug policies, and also does little to deter people from using drugs, except in the case of marijuana. In more recent years the idea that the War on Drugs is a failure
has become more mainstream and has received greater coverage in the news media (For example, Branson, 2012; The Economist, 2013; Porter, 2012).

The drug war can be understood as a punitive approach to drug crime because its predominant focus has been on punishing offenders and isolating them from society rather than attempting to treat them. It also has resulted in the loss of individual freedom for a large segment of the population, many of whom did not inflict harm on others. From a social justice perspective, this punitive approach has contributed to significant injustices against minority populations in the criminal justice system. The Justice Policy Institute (2007, p.7) reports that “in 2002, African Americans were admitted to state prisons for drug offenses at almost 10 times the rate of whites.”

African Americans, particularly young black men, have been the target of many anti-drug policies. For example, the laws passed in the 1980s that established sentencing disparities for crack and cocaine possession, in which the punishment for five grams of crack was equal to the punishment for 500 grams of cocaine, have been criticized for their adverse effects on African Americans, who tend to use the cheaper crack-cocaine derivative. Indeed, blacks are the dominant group sentenced for crack cocaine offenses; a 2002 report by the Substance Abuse and Health Services Administration finds that while only 24 percent of crack cocaine users were black, they accounted for 80 percent of crack cocaine defendants (Justice Policy Institute, 2007). While an

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1 The federal cocaine-crack sentencing statutes, found in the Anti-Drug Abuse Acts of 1986 and 1988, are the most widely publicized of the sentencing disparities, with the 100 to 1 ratio. Many states enacted their own sentencing disparities following the federal legislation, although the exact ratio differs across state. For example, as of 2002 the disparity in Arizona was 12 to 1, in Missouri it was 75 to 1, and in Iowa it was 100 to 1. Several states, including Massachusetts, New York, Mississippi, Kentucky, Pennsylvania, and Oregon, did not have a legislative distinction between crack and powder cocaine (Hinojosa, et al., 2002).
argument can be made that the initial passage of such laws was a good faith attempt among lawmakers to protect minority neighborhoods that were suffering from drug related violence, that officials continued to support the laws after evidence surfaced that demonstrated their ineffectiveness and detrimental consequences calls into question legislator motives and has led to substantial charges of racism (Provine, 2007).

The cocaine-crack sentencing disparities are one of the more visible instances of how War on Drug policies have adversely impacted minorities, but examples abound. Disparities are also present in the implementation of the laws and their indirect consequences, and in the rhetoric used to advance such policy. For example, Meier (1994) finds that for all racial groups except blacks, higher drug arrest rates are associated with higher rates of drug use. For blacks however, drug arrest and drug use rates are not related, indicating that something else is driving the arrests of black individuals. Drugs are often associated with minorities in appeals for public support of drug and crime policy; several scholars have noted the racial symbolism evoked by elected officials and the media when calling for tougher punishments for drug offenders (Beckett, 1994; Provine, 2007).

More broadly, the rise of mass incarceration has coincided with the decline of the welfare state (Beckett, 1994). The last few decades have been marked by a growing opposition to government spending on welfare programs (Gilens, 1999), while at the same time large sums of taxpayer money have been spent on law and order expansions across the country, indicating a larger shift in societal understandings of the functions of
government and public responsibility for marginal populations (Beckett, 1994; Benoit, 2003; Wacquant, 2005).

Policy Weapons in the War on Drugs Arsenal

Mandatory sentences are one of the more infamous policy tools of the War on Drugs. Mandatory sentencing policies were popular in the “tough on crime” movement, and have been applied not only to drugs but also to sex offenses, drunk driving offenses, weapons offenses, and repeat offenders. A related policy tool, mandatory minimum sentences prescribe judges from sentencing convicted offenders to a sentence that is less than the minimum required by legislation (Frost, 2008). Mandatory sentences may also be designed to take effect in the case of certain “trigger” events, such as selling drugs in a designated school zone. “Between 1975 and 2002, every state adopted some form of mandatory sentencing law” (Stemen, Rengifo, & Wilson, 2006, p.26). The minimum terms stipulated in the 1986 Anti-Drug Abuse Act for possession of five grams of crack (five years) and ten grams of crack (50 years) are examples of mandatory minimum sentences. Initially intended to limit judicial discretion, reduce sentencing disparities, and act as a more effective deterrent against criminal behavior, mandatory sentencing policies have been regarded as unsuccessful on all three fronts (Frost, 2008; Tonry, 2001). They are an easy target for criticism because they fail to account for individual circumstances and because their use often results in long punishments for drug users and low level dealers, rather than drug traffickers (King & Mauer, 2002). Like other policies associated with the War on Drugs, mandatory drug sentences have been
associated with high costs, low effectiveness, and racial disparities (Frost, 2008; Tonry, 1994).

While mandatory sentences are one of the more visible policies of the War on Drugs, there are several other policy tools that have resulted in lengthy sentences for drug offenders. One example is sentencing enhancements, which increase the punishment for certain crimes. In the context of drugs, states have applied sentencing enhancements to repeat drug offenders, to drug offenders arrested in school zones, to drug offenders who are also in the possession of a firearm, and to other crimes where drugs are involved. States have also increased the penalties attached to different amounts of drugs. Other punishments include denying convicted drug felons access to social or educational financial assistance.

Even though all states have toughened their approach to drug crimes and crime generally in the last few decades, considerable variation still exists. State incarceration rates are indicative of this variation: the rate at which states imprison their citizens ranges from 147 prisoners per 100,000 state residents in Maine to a rate of 865 in Louisiana (The Sentencing Project, 2013). While some of this variation can be attributed to differences in crime rates, variations in sentencing policies also are an important factor. Simply put, states differ in how they choose to address crime. This makes them a useful unit of analysis for trying to understand what factors—besides crime rates, which, it is assumed here based on prior research, can explain only some of the variation in drug policy—explain these policy decisions. The state is also ideal for this analysis
because of the ability to compare easily other variables, including crime rates. Therefore this research examines the factors that drive state drug policy decisions.

The primary focus of this study is to understand why some states have embraced punitive drug crime policies more readily than others. It should be said that the concept of punitiveness is often defined broadly and has been used to refer to many different kinds of practices. Typically it has been described as involving excessive punishment (Matthews, 2005), harshness and severity (Lynch, 2011; Lynch, 1988; Roberts, Stalans, Indermaur, & Hough, 2003; Whitman, 2003), cruelty (Simon, 2001), and penal harm (Clear, 1994). In the context of this study, a state’s actions may be defined as punitive when 1) their aim is retaliatory harm rather than correction of the wrongdoing and the wrongdoer; 2) the penalties are more than less painful but also underserved or not required to correct the problem; 3) there is an overwhelming focus on the use of coercive authority and indifference to human needs and tasks of shared responsibility.

**Recent Developments**

The discussion to this point has centered on the increasing punitiveness of drug policy across the federal and state governments over the last few decades. While a very general view of US state drug policy can be characterized as punitive, the reality is much more complex. As consensus has grown that the War on Drugs has failed, and in the face of more recent economic troubles, several states have started to change the way they deal with drug offenders. For example, in 2012 seven states—Alabama, California, Missouri, Massachusetts, Kansas, Louisiana, and Pennsylvania—reduced their
mandatory sentences for crack cocaine as well as the sentencing enhancements that accompany all drug offenses more generally (Porter, 2013). Lynch (2012, p.190) notes the “sustained pushback by the electorate” with regards to punishments for drug offenses, which has been particularly notable in western states, where the medical marijuana movement first took off and where voters in two states (Colorado and Washington) supported the legalization of marijuana in the 2012 elections. And while the cost of tough enforcement of drug laws and imprisoning more people for drug crimes was downplayed or hidden in the past, more recently the expense of these practices has come to the attention of elected officials and taxpayers (Fernandez, 2011).

An examination of incarceration rates also suggests that a shift in penal trends may be underway. While the US prison population (including both state and federal inmates) grew in the 2000s, the average growth rate (1.8 percent per year) was significantly less than the average growth rate in the 1990s (6.5 percent per year) (Fernandez, 2011). More recently the incarceration rate in prisons has actually declined—by 1.7 percent in 2010 and by .9 percent in 2011 (Carson & Sabol, 2012). A significant amount of this decrease can be attributed to efforts by California, which was court-ordered to reduce its prison population, to divert nonviolent offenders from prison.2 In addition to California, 25 other states also had decreases in their prison populations. Still, prison populations increased in the other 24 states, from less than ten in Illinois and Minnesota to more than 1,000 in Tennessee and Kentucky (Carson &

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2 While some of this diversion has occurred in the form of releasing more offenders for parole or probationary supervisions, it has also involved shifting the prison population to jails or to private prisons or to prisons in other states (Adcock, 2014; Lagos, 2010).
Sabol, 2012), indicating that, to the extent that incarceration trends do exist, considerable variation across states remains.

While some evidence suggests that the drug war is waning, the sentencing policies of this time will continue to impact state criminal justice systems. It is still too early to declare an end to the War on Drugs or the tough on crime movement. As the incarceration trends mentioned above demonstrate, some change may be taking place, but it is small and by no means uniform across states. It is important to understand what factors contributed to the current situation. This requires an examination of drug sentencing policies over time. Specifically, what state level factors drive variation in drug crime sentencing policies from 1975 to 2002? The focus on this time period situates the study in the heart of the War on Drugs era and therefore should shed light on the decisions that contributed to the escalation of the drug war in the states.

**Why this Research Matters**

Examining variation in state drug sentencing policies over time is an important line of research for several reasons. As mentioned above, drug offenders make up a sizable portion of the prison population. This has been expensive; eight billion dollars are spent per year incarcerating drug offenders in the US (Justice Policy Institute, 2007). As states grapple with budget crises, the unsustainability of locking up so many people is becoming more apparent. Moreover, the War on Drugs has not been effective in reducing the prevalence of drug use or sales (Justice Policy Institute, 2007).
Of particular concern are the disparate effects of drug laws on different parts of the population. More blacks are incarcerated for drug offenses than whites even though they have similar rates of drug use and sale. The Justice Policy Institute (2007, p.2) notes that “as of 2003, twice as many African Americans as whites were incarcerated for drug offenses in state prisons in the US. African Americans made up 13 percent of the US population but accounted for 53 percent of sentenced drug offenders in state prisons in 2003.” Thus drug sentencing policies are an issue of social justice in so far as they single out a particular group with their adverse effects.

The effects of punitive drug laws on the poor and minorities go beyond high rates of incarceration. These disparities challenge the democratic ideals of this country and breed government distrust among minority populations (Simon, 2007). Citizens that have greater contact with the criminal justice system tend to have decreased levels of citizen participation and voter turnout, and higher levels of distrust of government (Weaver & Lermen, 2010). The often cited statistic that roughly one in three black males will spend some part of their life in the custody of the state means that incarceration becomes a normal part of life in some communities, particularly disadvantaged ones, and that imprisonment “becomes a shaping institution for whole sectors of the population” (Garland, 2001b, p.6). In the same article Garland also notes that the intensity with which poor and minority communities experience the criminal justice system is coupled with “economic and racial exclusion, ensuring that social divisions are deepened, and that a criminalized underclass is brought into existence and systematically perpetuated” (p.7). Garland is speaking of the effects of mass
incarceration more generally, and to be sure the normalization of the penal experience for the poor and minorities is not a product of War on Drug policies alone, but the incarceration of drug offenders that has occurred as the result of tougher sanctions has contributed to the current incarceration problem, making these policies an important line of research for those concerned with the social injustices of the criminal justice system.

**Plan of Dissertation**

To better understand the factors that explain variations in state drug policy, this dissertation examines several drug policies, including the sentences for marijuana, cocaine, and heroin possession and sale, and the sentencing enhancements and severity levels attached to drug offenses at the state level. Chapter 2 provides a discussion of the theories underlying this research. This study draws heavily on research and theory in the public policy and criminal justice literatures, as well as the state comparative policy literature. The policy design perspective provides a useful framework for understanding how decisions are made in the area of drug policy. This framework is concerned with the social construction of various target groups; perceptions of groups can differ in terms of whether they are viewed positively or negatively and in terms of how much power they are perceived to have. “Criminals” are a negatively constructed target group with little political power. Thus, it may be politically advantageous to support policy that adversely affects this group, and conversely, politically unpopular to pass legislation that may be seen as benefitting this group. The policy design framework also is helpful in advancing
the concerns of social justice because it can be used to explore how the negative constructions of targeted groups impact them in ways that raise concerns for social equality and democracy.

In the criminology literature, social control theories grounded in a critical approach have been prevalent in explanations of why states have punitive policies and high incarceration rates (Beckett & Western, 2001). The criminology literature also compliments the policy design approach and reinforces themes of social justice. The racial injustices of the War on Drugs and the threat such policies pose to the American ideals of justice and equality before the law are common themes throughout the literature (for example, Bobo & Thompson, 2006).

The theoretical discussion is followed by an analysis of the history of drug policy in the US that situates this history in the context of the social construction and social control frameworks. The focus here is on the cultural and political economies of punishment. Many different social, political, economic, and cultural trends contributed to modern drug policy. Identifying these trends and understanding how they have interacted with each other is essential to gaining a more in depth and complete perspective of current drug policy.

The chapter then presents the model and hypotheses that are tested. In addition to social construction and social control, this study draws on the state comparative policy literature, which focuses a great deal on the diffusion of policies across states. Many of the political and socioeconomic variables that are used in this study are used frequently in state comparative research as internal explanations of state policy
innovation (see Berry, 1994; Foster, 1978). The state comparative literature also recognizes the importance of federal influence on state policy choices, a factor that is explored here. A testable model is developed from the relevant theories from each body of literature and builds on prior research that is discussed in further detail in the second chapter.

Chapter 3 presents the research design that will be used to test the model developed in Chapter 2. This is a quantitative research project that explores the factors driving state decisions in drug sentencing policy from 1975 to 2002. Data comes from a data set compiled by Don Stemen, Andres Rengifo, and James Wilson for the National Institute of Justice (2007). The advantage of this study is that it allows for comparison of all fifty states, and by using data that spans 27 years it is more inclusive as it accounts for long term trends and change over time. While including data for policy changes that have occurred over the past decade would be ideal, difficulties in collecting detailed policy data that is comparable across all fifty states restrict the ability to do so. Quantitative analysis also limits the ability to include variables that do not lend themselves easily to statistical analysis. For example, forms of citizen participation other than voting that may have an impact on legislative decisions are difficult to measure for all 50 states. A case study of a few selected states would be an ideal supplement to this research. Nevertheless, the research presented here makes an important contribution on its own as well.

Chapter 4 tests the model laid out in Chapters 2 and 3. The hypotheses presented in Chapter 3 are tested using pooled time-series cross-sectional analysis.
Drug policy is measured in two ways. First, a drug policy index is created out of several drug policy variables to capture an overall picture of drug policy. The same drug policy variables are then analyzed using principal component analysis, which yields four dimensions of drug policy that are tested separately using the same model as for the drug policy index. While the drug policy index provides a broad representation of state drug policy, the use of the different drug policy dimensions allows for a more nuanced understanding of state drug policy. Chapter 4 discusses the development of the drug policy dimensions and presents the findings from the different models. Chapter 5 summarizes the findings and focuses on their implications in terms of what they suggest for state drug policy decisions and for the future of state drug policy. It also discusses their importance in the broader context of public policy making and social justice in a democratic society.
CHAPTER 2

THEORETICAL DEVELOPMENT AND HISTORICAL OVERVIEW

Public policies allocate resources in society. The goals of a particular policy are not objective but are shaped by individual and group preferences about what goals are desirable and what the best means are for achieving these goals. As Schneider and Ingram (1997, p.3) state, “Policy design is inherently a purposeful and normative enterprise through which the elements of policy are arranged to serve particular values, purposes, and interests.” In the study of public policy then, it is critical to recognize the subjective nature of the policy enterprise. The following section provides a discussion of the theoretical framework that is used to analyze state drug policy. This framework draws on the policy design concept of social constructions and theories of macro-level social control. The basic premise of this research is that the way in which drug offenders are perceived has a significant impact on the types of policies that are used to deal with them. To the extent that drug offenders are perceived negatively, underserving of assistance, and deserving of punishment, drug policies are likely to reflect (and perpetuate) these sentiments. Moreover, in so far as populations associated with drug use—such as racial minorities and people living in poverty—are viewed as a threat to the social order or to the interests of elite and powerful groups, this will provide further incentive to adopt punitive policies directed towards these populations and to continue the negative constructions of these groups.
The development of drug policy in the US is discussed next. This presents the political, social, and cultural trends that have helped shape drug policy from the past to the present. The history of US drug policy is analyzed within the social construction and social control framework in order to demonstrate how negative social constructions and the desire for social control have shaped drug policy in this country. This is followed by a discussion of the model that is tested. The model is informed by past research on drug and crime policy and draws from the social construction and social control literature as well as state comparative research.

**Values, Interests, and Power in the Policy Process**

Public policy is a normative endeavor in which action is taken to address an identified problem. Identifying the problem and the policy solution are both subjective processes. Many conditions exist that society may or may not choose to see as problems, and issues that today are defined as problems, such as American eating habits, were not always viewed that way (Edelman, 1988; Kingdon, 1995). In the political world, problem definition can be understood as “the strategic representation of situations,” in which symbols, images, and narratives are used to construct a problem definition that will gain traction with the public and elected officials (Stone 2002, p.133). How problems are defined is critical to the policy outcome because not only does it set the context for what solutions are acceptable, but it also helps determine which actors will be given power over the policy process (Fischer, 2003). Public policy also is based on values; “it symbolizes what, and who, society values” (Smith & Larimer, 2009, p.182). To
gain support for a policy, policymakers will appeal to those values perceived as
important to the public, and while facts are considered in the policymaking process,
they often take a back seat to values, or are used only to the extent that they boost the
argument in favor of the policy in question (Edelman, 1988; Fischer, 2003).

Policy Design

Assuming that policymaking is a process in which policies are “sold” to the public
via an appeal to values and emotion, and resources are distributed across society based
not solely on fact but on the value preferences of some individuals, then traditional
pluralist theories that consider public policy to be “good” so long as it is produced
through a democratic process are inadequate for understanding and evaluating public
policy (Schneider & Ingram, 1997). Schneider and Ingram (1997) are critical of pluralism
and other policy theories that claim to be value-neutral, that replace a consideration for
the public interest with a focus on self-interest, and that do not evaluate policy as it
relates to democratic ideals. According to the authors, policies that claim to be fact-
based, objective, and in the general public interest, but which rely on imagery and
rhetoric to conceal their true intent, are detrimental to democracy in so far as they may
damage the public good and prevent the formation of an informed and empowered
citizenry.

Policy design, which is concerned with the content of policy, addresses the role
of values in policymaking. Recent work on policy design can be traced to Dahl and
Lindblom (1953), who argue for the importance of understanding the normative
element of policy content and point to several normative criteria that can be used to
evaluate policy content (such as equality and efficiency). Schneider and Ingram (1997, p.2) developed a more systematic approach to understanding policy content by defining several empirical elements to policy: “target populations (the recipients of policy benefits or burdens), goals or problems to be solved (the values to be distributed), rules (that guide or constrain action), rationales (that explain or legitimate policy), and assumptions (logical connections that tie the other elements together)” (emphasis in original). Policy designs are situated within a given context and, once created, alter that context. No understanding of a policy can occur in a vacuum; the way a policy is described and the way we perceive that policy necessarily influence how we view the outcomes of that policy (Fischer, 2003; Majone, 1989). Schneider and Ingram (1997) present a theory of policy design in which the larger societal context, through interpretations of events, knowledge, and societal conditions, shapes an issue context comprised of social constructions, political power, and institutional cultures. Actors in the policy process act on this setting to frame an issue and design a policy solution in such a way that their version of the problem and proposed solution appear the only feasible options. The policy design that is eventually created generates a message regarding what is of value in society, and this in turn shapes the societal context. Together this creates a feedback loop in which the policy is an input and an output, shaping and being shaped by the other elements of the process. The process is dynamic in so far as the information and actors involved are socially constructed and interpretations of these elements may change at any time (Schneider & Ingram, 1997).
A policy context characterized by negative constructions of target populations and unequal political power between socially constructed deserving and undeserving groups leads to a degenerative policy-making process, characterized by a divisive policy culture in which issues are used to further the interests of powerful groups with little regard for how these choices affect the public. Figure 1 adapts the model of degenerative policymaking developed by Schneider and Ingram (1993, p.103) and applies it to the drug policy context.
Figure 2.1. Drug policy: A degenerative policymaking system

**Societal Context**
- Racial and socioeconomic inequalities
- Increased incarceration; minorities overrepresented
- Questionable legitimacy of justice system
- Restricted voting rights, decline in participation among target population
- Have negative impact on democracy

**Translation Dynamics**
- Message sent to target population that they are underserving, do not have political influence
- Target population distrustful of government; decline in civic participation
- Message to public that target population is deviant and underserving

**Policy Designs**
- Target population of drug policy constructed as deviants
- Goals of policy to contain/control population
- Policy tools based on coercive power of government; sanctions and force

**Framing Dynamics**
- Negative construction of drug offenders by:
  - Politicians seeking reelection
  - Law enforcement seeking power and resources
  - Media seeking high ratings

**Designing Dynamics**
- Burdensome policy types copied by others seeking political gain
- Burdensome policies continued
- Politically risky to reverse course

**Issue Context**
- Solidified negative construction of target population (drug offenders)
- Unequal distribution of political power
- Lack of representation for target populations
- Dominance of law and order culture
The social construction of target populations. In the context of criminal justice policy, it is the social and political meanings of crime that are important, regardless of the actual causes and consequences. This emphasis on subjective understanding makes social constructions particularly relevant for the present study of state drug policy. Originating in the field of the sociology of knowledge, social construction “refers to the varying ways in which the social realities of the world are shaped and perceived” (Fischer, 2003, p.53; also see Berger & Luckmann, 1966). A variety of forces contribute to social constructions of reality, and many constructions are so ingrained in our understanding of the social world that we do not recognize them as constructions but accept them as the reality. But social constructions are ongoing projects and can be the subject of contention; groups will vie to gain acceptance of the social construction most suitable to their interests (Fischer, 2003; Schneider & Ingram, 1997). The types of social construction on which Schneider and Ingram focus, and which are the focus of this discussion, are the social construction of knowledge and of target groups. Knowledge construction “refers to the way facts, experiences, beliefs, and events are constructed and certified as ‘true’” (p.75). The social construction of target groups is concerned with creating an image or identity of a social group that will inform whether they are deserving or undeserving in the context of public policy designs. There are four primary types of target populations. Advantaged groups are viewed in a positive way and have high levels of power. Contenders have a high degree of power but are viewed more
negatively. Dependents are viewed positively and worthy of some assistance, but have little power. Deviants are viewed negatively and have little power (Schneider & Ingram, 1997). The social constructions are created and perpetuated through a feedback loop between policies that define target populations in a particular way and public perceptions of those target populations (Smith & Larimer, 2009, p.194). Elected officials can gain politically by distributing benefits or gains to powerful and/or positively constructed groups and allocating burdens or costs to weak and/or negatively constructed groups, creating a situation of “path dependency” in which politicians have an interest in continuing the current dispersion of benefits as it boosts them politically (Schneider, 2006, p.457). The policy context, however, is dynamic, and group constructions can change—disrupting the political gains made by the current policy approach—for various reasons; for example, an advantaged group may become embroiled in a scandal that damages its image or overly harsh treatment of negative groups may trigger a backlash in public sentiment (Schneider, 2006).

The focus of policy design on social construction of knowledge and target groups has made it especially useful in studying public policies that affect marginalized groups, and several studies of criminal justice policy have made use of the social construction framework (for example, Beckett & Sasson, 2000; Nicholson-Crotty & Nicholson-Crotty, 2004). According to Rochefort and Cobb (1994, p.66), the discursive characteristics of the “problem population” play a decisive role in political determination to act. Problem populations that are viewed as deviants, as threatening to “good” citizens and deserving of blame for their own troubles, are considered unworthy of assistance. Citizens who
violate the law generally are viewed in this way. Not only are they viewed negatively, as
individually responsible for their current predicament and therefore underserving of any
assistance, but they have little to no political power and few supporters advocating on
their behalf. From a political standpoint dispensing burdens on this group can yield
political opportunities and benefits, while allocating benefits can be quite risky.

The selection of policy tools to deal with the problems of this target population
“may have more to do with the political power and social status of the target population
than with the behavior” in question (Schneider & Ingram, 1990, p.517). The policy tools
of choice tend to be legal sanctions to punish undesirable behavior rather than
incentives for behaving in a socially desirable way (Schneider & Ingram, 1997). This is
based on the assumption of deterrence theory that people are rational actors who,
when punishment is severe, certain, and quick, will respond by abstaining from the
proscribed behavior. According to this view, the punishment incentive supersedes any
other values or interests for the decision maker (Schneider & Ingram, 1990). Not only do
deviants not deserve much beyond punishment for their criminal behavior (as opposed
to, for example, addressing the underlying structural causes of crime), but punishment
is seen as one of the few incentives to which they will respond; they cannot be trusted
to use more beneficial incentives appropriately. The punishment directed at these
groups is likely to be more severe than what is necessary to achieve state policy goals,
and burdens may continue to be distributed to this population even when they are not
conducive to effective policymaking (Schneider & Ingram, 1993). Even when this group
is the recipient of more beneficial policy, such as in the form of rehabilitation for drug
offenders, the coercive power of the state remains the primary policy tool, for example, through the threat of sanctions for not complying with the requirements of the program.

Through the feedback loop created in the design and implementation of public policy, the social constructions of target populations that are reinforced by public policies send messages to the public and to the targets themselves about their worth and relevance in society. How a target population views its relationship with government and society influences that population's attitudes towards government and their level of civic participation. The way in which some individuals are socially constructed as “bad” people who will be punished by a system which appears (to them) as inconsistent in its ability to both apprehend and punish offenders leads this group to distrust government and avoid contact with the system whenever possible. Negatively constructed groups then have little interest in voting or other forms of participation as they do not believe the government cares about their well-being or is representative of their interests (Schneider & Ingram, 1993). Their lack of participation in turn gives elected officials little incentive to address their needs or problems.

Traditional policy theories are inadequate to explain the highly politicized and symbolic environment of drug policy. As the discussion further below demonstrates, drug policy historically has been the product of political motivations and opportunity, while factual evidence about how best to combat drug abuse has been of secondary importance. A social constructionist framework takes account of the subjective nature
of the policy environment and the powerful role image plays in determining policy outcomes.

Social Control

Theories of social control prominent in the criminology literature complement the social construction framework as it relates to criminal justice policy. A critical component of social control is law. While one purpose of the law is to ensure justice and equality among citizens, that is not its only purpose. In addition to maintaining order, laws are intended to protect the values a society deems important and to encourage conformity around those values. The relationship between the law and society is reciprocal. According to Durkheim, a society can be understood by studying its laws, for these will reveal the values held by the majority of that society, while simultaneously those laws are shaping society, teaching people what is good and what is bad, who has power and who does not (Chambers, 2011; Melossi, 2008). As Tonry (1994, p.41) states, “If laws exist to underscore norms about the boundaries of legitimate behavior, legitimacy and hence criminality will depend on what groups’ values are ascendant.” As these values change over time, so does the law; slavery was once legal and now it is not.

From a functionalist perspective, laws in the US are often assumed to be legitimate because they are law—they have been enacted by democratically elected representatives and so they embody the dominant values and beliefs in society. While this may be an accurate portrayal of many laws, it is incomplete. From a Marxist perspective of social control, the law is a social political tool to organize and structure society in ways deemed efficient and preferable to those in power. Social control, as
Smith (2004, p.926) explains, is the idea that “those who control the coercive power of the state use that power to impose their values on others or to advance one’s constituency’s interests by damaging the interests of another.” Under such conditions, those that suffer typically are part of society’s “underclass,” a status which may be based on race, poverty, unemployment, or wealth inequality (Smith, 2004). According to Rusche and Kirchheimer (1939), punishment is a key part of social control, in which the criminal law targets society’s lower classes and reinforces the power of the economic elite. As the lower class grows its perceived threat to the dominant class or order grows too, necessitating greater control of that population and by extension a greater need for crime control measures (Liska, 1992). Social control measures directed at populations that are perceived as threatening are further reinforced by the lack of political or economic power among these populations, making them unable to resist the imposition of social controls (McCarthy, 1991).

These arguments are consistent with policy design theory in that marginalized members of society typically are constructed as deviants and are the recipients of coercive or negative policies. In the policy design context, negatively constructed groups are not necessarily targeted for the threat they pose so much as they are used as a means for other parties to gain politically. However, elected officials may also benefit from promoting the idea that the existence of an underclass is acceptable. Crutchfield and Pettinicchio (2009) argue that compared to other Western countries the US has a high tolerance for inequality, characterized by a retrenched welfare state, the conviction that failure is a product of poor work ethic alone, and the belief that racism is a relic of
the past. In this environment, politicians have been able to gain by encouraging this “culture of inequality,” which in turn can lead individuals to have more negative attitudes towards others (Crutchfield & Pettinicchio, 2009, p.137). Thus to the extent that negative constructions of target groups foster public acceptance of these constructions and preferences for burdensome policies directed towards these groups, they allow for policies of social control, whether they are for that purpose specifically or are a means to another end.

Theories of racial threat may be seen as part of the larger category of social control arguments, in which control mechanisms are needed to restrict the threat posed by a certain population, where the threat is based specifically on race. There are three main hypotheses regarding the effect of racial threat. The political threat hypothesis maintains that an increase in the black population is viewed as a threat to the political dominance of whites and so social control mechanisms are employed to preserve white political dominance. This relationship may be limited, however; as the size of the black population exceeds the size of the white population, blacks may be able to then exert enough political force to resist attempts at social control (Eitle, D’Alessio, & Stolzenberg, 2002). The economic threat hypothesis holds that as whites have to compete more with blacks for jobs and other economic resources, the perceived threat of the black population grows. This then may spark efforts to make changes in the labor market to prevent blacks from superseding whites economically (Eitle et al., 2002; Parker & Maggard, 2005). The third racial threat hypothesis, related specifically to criminal justice, is that blacks are seen as a greater threat as their population increases and as
the incidence of black-on-white crime increases. However, this relationship also may be limited because as the black population continues to increase, the rate of black-on-black crime will grow larger than the black-on-white crime rate, and the former is less of a concern to government (Eitle et al., 2002). While all three of these hypotheses revolve around the need for the dominant white population to control what is perceived to be a threatening black underclass, they make important distinctions regarding how perceptions of racial threat are manifested.

Several scholars have shown how social control and racial threat theories explain punitive criminal justice policies and high incarceration rates in the US (Tonry, 1994; Waquant, 2009). Law and state authority are inherently coercive. Statistical evidence demonstrates that blacks and the poor are disproportionately incarcerated. Given these findings it is important not to ignore social control factors in the drug policy context.

This discussion has provided an overview of the essential concepts of social construction and social control theories that are relevant to the present study. Social construction and social control both assume the law is used to support the values and achieve the goals of those in power, and that public policies occur in a feedback loop in which they shape and are shaped by public perceptions and values. Coercive, authority-based policies are the tools of choice in both contexts. There is little separation between groups that are negatively constructed and groups that are perceived as threatening. The desire for control of a particular group can fuel negative constructions of this group as a way to legitimate social control policies. Even when the goal of creating burdensome policies for targeted groups is secondary to other goals (such as reelection
or boosting law enforcement agency resources), constructing an image of the targeted
group as underserving or threatening can help gain acceptance for policies that
otherwise would be unpopular.

In the drug policy context, there is considerable overlap between drug offenders,
who are depicted as an underserving and threatening group, and the more typical
threatening populations of minorities and the poor. Negative constructions of drug
offenders can be based on the argument that this population presents a threat to
society and needs to be controlled through coercive means. As will be discussed in the
following section, depictions of drug offenders often are tied closely to themes of race
and class in the political discourse and the media. While it is no longer acceptable to
single out minorities or the poor as a threatening or underserving group based solely on
these characteristics, connecting this status (implicitly or explicitly) to drug offenses can
be used to gain support for social control policies that negatively impact these groups.

Together social construction and social control theories provide the basic
framework for analyzing state drug policy. Negative constructions of targeted
populations and the desire for control of threatening populations create an
environment in which punitive drug policies have several advantages: they burden drug
offenders, minorities, and the poor, they are popular politically, and they benefit
powerful interests in other areas, such as law enforcement. However, this framework is
incomplete without situating it in its historical and political context. The following
section presents an overview of the history of drug policy in the United States and
identifies political factors and the interactions between the political and social environments that have led to the modern drug policy environment.

The Development of US Drug Policy

Early Years

Criminal justice in the 19th century United States was decentralized. The federal government took little action until after the Civil War, and criminal justice policies were primarily a local matter, designed to maintain order and respond to the norms and values of community residents (Dale, 2011). While prior to the Revolution laws emphasized punishing immorality, after the Revolution state governments began to focus more on property crimes such as theft (Dale, 2011). Poverty itself was viewed as something deviant, and the criminal and the poor together made up a class of undesirables that posed a threat to social order (Friedman, 1993). Prisons in the South were reserved primarily for poor whites, while in the North the prison population was comprised of freed blacks and immigrants (Melossi, 2008). While states did have anti-drug laws, they were scattered, not always enforced, and typically classified drug crimes as misdemeanors only (Belenko, 2000; Friedman, 1993).

Drugs became more of a concern in the states in the 1870s. In the West, opium use, which was associated with Chinese immigrants, was the primary focus. Economic problems and racial tensions led to state laws that targeted Chinese opium users. Opium was also used by whites, particularly white women, but forms of opium use other than smoking, which was commonly associated with Chinese immigrants,
remained legal (Meier, 1994). Similarly, in the South, whites began to express fears of cocaine use among blacks as slavery ended (Chambers, 2011).

While more states criminalized the use of drugs in the 1870s, drugs remained largely out of the purview of the national government. The national government did however become more involved in criminal justice and made efforts to expand formalized law after the Civil War, during which time several “Force Acts” were passed in an effort to protect newly freed blacks from white animosity in the South. Despite these actions, public lynching remained popular across the country, with the exception of the New England area. Roughly 80 percent of lynch mob victims were black (Dale, 2011). The South, like the North before, turned to prisons as a means to control the newly freed black population; by 1870 blacks in the South were incarcerated three times as often as whites, and the black incarceration rate was 15 times higher than it was before the Civil War (Melossi, 2008).

Several themes characterize 19th century American justice. Racial and economic tensions played an important role in the structure and implementation of criminal laws. Laws were used by states to control citizens and curb behavior regarded as immoral, while prisons were primarily reserved for undesirable and threatening populations, mainly blacks but also other minorities and the poor. Drug use and sale were not a high priority for any government, except as they pertained to broader issues of race and economics. The perceived threat posed by minority groups and the poor to the

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3 These include the Force Act of 1870, which made it a crime to try to prevent people from voting; the Force Act of 1871, which criminalized attacks on blacks; and the Civil Rights Act of 1875, which criminalized any attempt to deprive people of access to basic amenities based on race.
dominant racial and economic orders was a fundamental part of determining what kind of behavior was illegal. While local preferences dominated criminal justice for the first part of the century, after the Civil War the national government began to assert itself in local affairs and tensions between federal and state sovereignty became more apparent.

1900s-1970s: The Rise of Anti-Drug Policy

The Harrison Narcotic Drug Act of 1914 marks the beginning of national drug regulation. A revenue act, the Harrison Act required those selling opium, cocaine, and any of their derivatives to register with the federal government and pay a tax. Support for the act came from both foreign pressures to reign in the international drug trade as well as interest groups in the US mobilized around the issue of drug use and addiction. That opium and cocaine use were associated with the Chinese and blacks likely boosted congressional support for the bill (Friedman, 1993; Meier, 1994).

In the 19th and 20th century opiates were often prescribed to patients by physicians for various maladies, including addiction. Enforcement of the Harrison Act reduced the frequency with which physicians prescribed opiates and cocaine to addicts. This was due largely to the intense enforcement of the law taken on by the Treasury Department’s Bureau of Internal Revenue, which was responsible for enforcing revenue acts. The Bureau viewed the law as an opportunity to expand its power, and with that goal in mind it used the media to convey the serious threat posed by drugs to the public and aggressively went after physicians and pharmacists who assisted drug users in addiction maintenance. The net effect of the bureau’s forceful implementation was to construct an image of drug addiction as something criminal, rather than a medical condition, which needed to be confronted by law enforcement (Friedman,
Another consequence of the bureau's crackdown on physicians and pharmacists was that people were forced to find drugs elsewhere, creating an expanded black market in opium, cocaine, and heroin (Belenko, 2000). The enforcement approach to the Harrison Act also provided a "blueprint" for other law enforcement agencies for how to enforce legislation in such a way as to increase agency power (Meier, 1994, p.31). The negative construction of drug users and the expanded black market propagated by the Harrison Act likely aided future law enforcement agencies in their desire for greater power.

The Marijuana Tax Act of 1937. Like the Harrison Act, the Marijuana Tax Act was technically a revenue act, in which there was a tax of one dollar per ounce of marijuana transferred by a physician or other registered person and a tax of one hundred dollars per ounce for transfers carried out by non-registered individuals (Meier, 1994). Although this law increased the federal government's enforcement activities against marijuana, the original goal of the Federal Bureau of Narcotics (FBN) and its commissioner, Henry Aslinger, was to get states to enforce laws against marijuana. The FBN wanted control over all drug policy, but it did not want the blame for implementation failure, so it tried to devolve this function to the states (Meier, 1994).

The passage of anti-marijuana laws had been popular in the West and South, where racial tensions were high and marijuana use was associate with criminal activity among the large black and Hispanic populations (Meier, 1994; Tonry, 1994). However, other states were less interested in passing anti-marijuana laws, leading Aslinger and the FBN to launch a public relations campaign vilifying marijuana as a highly addictive
drug that made young people turn into dangerous criminals. The success of this campaign led to all 48 states adopting anti-marijuana laws by 1936, all but two of which followed the guidelines laid out by the FBN. But the marijuana scare created by the FBN led to further calls for federal legislation. Aslinger and the FBN responded by dominating congressional hearings with testimony supporting the proposed legislation and restricting evidence from scientific studies on the effects of marijuana. A review of the congressional record reveals that no scientific evidence was presented and that lawmakers relied heavily on information from newspapers about the dangers of marijuana—newspapers that had gotten their information from the propaganda dispensed by the FBN (Meier, 1994; Provine, 2011). While race seemed to play a role in the passage of state laws criminalizing marijuana, the congressional record showed only a few instances in which marijuana use was connected to race in official statements (Chambers, 2011). Instead, the drug itself was portrayed as the villain. In the interest of furthering its own power the FBN, with the help of the media, constructed an intensely negative image of marijuana use that was not based on fact but on sensational stories of the destruction created by marijuana and the threat it posed to society.

1950s-1970s: Punishment vs. treatment. In the 1940s and 1950s drug use and trafficking were increasingly associated with young addicts, communism, and organized crime. In 1951 the Boggs Act was passed, establishing the first federal mandatory minimum sentence for drug violations—two years in prison for breaking any federal drug trafficking law (Belenko, 2000). The law also encouraged states to toughen laws
against drug possession and sale. By 1912, most states had laws regulating cocaine and opiates, but there was great variation regarding what was legal and what was not, and within states enforcement of laws was sporadic (Belenko, 2000). Most drug violations were viewed as minor offenses, typically treated as misdemeanors and resulting in fines and maybe short jail sentences. By 1928, only ten states considered violations of anti-drug laws to be felonies (Belenko, 2000). Some federal officials called for more uniform and tougher state anti-drug laws; Henry Aslinger was one of these advocates and after the passage of the Boggs Act he urged states to adopt versions of the act (Belenko, 2000). By 1953 seventeen states enacted legislation similar to the federal Boggs act, and another eleven did so by 1956 (Meier, 1994).

Despite the Boggs Act’s enhanced effort at controlling drug use, addiction was still viewed as a major problem by the media and public. Congressional hearings on the drug problem in the United States also increased focus on the connection between drugs and crime (Meier, 1994). The next major federal legislation was the Narcotic Control Act of 1956, which increased the maximum penalties allowed by the Boggs Act. Along with increasing maximum penalties for possession offenses (from five to 10 years for first offenses and from 10 to 20 years for second offenses), the Act also allowed for use of the death penalty against anyone convicted of selling heroin to a person under 18. The focus on heroin was a result of the particular concern over that drug during that time (Belenko, 2000). States also toughened drug penalties, per the support of the federal government (Meier, 1994).
As laws regulating drugs grew tougher, a debate emerged over whether the new laws were too punitive. The New York Academy of Medicine and the American Bar Association were critical of the Boggs Act for its focus on punishment and its neglect of the medical view of addiction as a disease needing treatment. The Narcotics Control Act was similarly criticized for being too punitive and not devoting enough resources to treatment (Belenko, 2000). This concern for substance abuse treatment continued into the 1960s, a decade where there was a pull back from the punitive trends of the 1950s.

In 1962 the Supreme Court issued an important ruling in which it struck down California’s law that made it a crime to be an addict, even if the person had not used drugs in that state (Belenko, 2000; *Robinson v. California* 1962). States also moved to reduce penalties for drug possession; by 1970 32 states had done so, and by 1978 11 states had passed decriminalization statutes for marijuana (Meier, 1994).

While selling drugs was still viewed negatively, the popularity of recreational drug use with middle-class, college, and white youth, made more people question the image of drug use as deviant behavior. As veterans came back from Vietnam addicted to drugs, acceptance of addiction as a disease needing treatment also increased. Federal spending on prevention and treatment rose from $59 million in 1970 to $462 million in 1974 (Musto, 1987). These trends suggest that during the 1960s and 1970s the social construction of drug users was in contention. Still, drug policy trends during this era did not uniformly lean toward acceptance, and several actions were taken that set the stage for the revival of punitive trends in the 1980s. At the federal level, President Nixon created the Drug Enforcement Administration in 1973 to streamline federal drug control
efforts, as well as the Law Enforcement Assistance Administration which was fundamental in providing aid to local law enforcement efforts (Meier, 1994). For the Nixon administration, the focus on illegal drug use was seen as a way to further capitalize on the broader anti-crime, law and order rhetoric that was becoming popular, to appeal to middle-class voters, and to turn public attention away from economic and international problems and toward the threat posed by drug use. Moreover, the language of the anti-crime/anti-drug rhetoric was becoming synonymous with racial stereotypes and resentment (Provine, 2007). The Nixon administration understood and perpetuated this symbolism, encouraging the construction of drugs and crime as problems of the urban poor and minorities.

At the state level, even as several states had decriminalized marijuana possession, other states took a much harsher approach; for example in Texas there were 700 people serving sentences of 10 or more years for possession (Meier, 1994). States also escalated penalties for other drugs. Nelson Rockefeller, governor of New York, proposed new drug laws including life sentences for major drug dealers, life sentences for violent crimes committed by addicts, and removal of protections for juvenile offenders (Rockefeller, 1973). In 1973 New York, a state which had decriminalized marijuana, passed what became known as the Rockefeller Drug Laws, instituting mandatory minimum sentences of 15 years for individuals possessing four ounces of illegal drugs or selling two ounces. That such punitive laws were passed in a traditionally liberal state like New York can be attributed partly to politics. Rockefeller was a liberal Republican with national aspirations; advocating for harsh penalties
allowed him to prove his law and order credentials, an increasingly important criterion for politicians (Schlosser, 1998). This move also set the stage for the revival of mandatory minimum statutes in other states and at the federal level.

Another popular trend among states in the 1960s was the passage of civil commitment laws. Under some of these laws, individuals could be committed to state facilities even if they had not been convicted of a crime. In New Jersey, convicted addicts could choose between treatment and prison. In California and New York, civil commitment laws allowed for individuals convicted of misdemeanors and non-violent felonies to spend some of their sentence in drug treatment. The federal government followed the states’ lead in 1966 when it passed the Narcotic Addict Rehabilitation Act, creating a system to commit federal offenders to treatment as a substitute for prosecution (Belenko, 2000). While these measures appeared to stress medical treatment of addicts rather than punishment, they nevertheless represented an increase in government control over individuals’ lives and contributed to the image of drug users as people less than capable of making their own decisions. Lindesmith (1965, p.269) warned that one of the most concerning aspects of civil commitment laws was their “pretense of being something other than punitive,” for offenders were still subject to having their liberties taken away, except perhaps for longer periods of time.

The 1970 Controlled Substance Act. The 1970 Controlled Substance Act made significant changes to federal drug policy and the relationship between the states and the federal government regarding responsibility for drug control. It created a new
classification system for drugs based on their abuse potential and medical benefits, increased resources for law enforcement, removed federal mandatory minimum sentences, and increased funding for drug treatment and research (Courtwright, 2004).

Prior to the Controlled Substance Act, different law enforcement agencies had different classification systems and penalty structures for the same drugs, making enforcement complicated. The new law was intended to streamline this process by designing a scheduling system for drugs. Schedule I drugs were those deemed highly abusive and medically useless, including heroin, LSD, and marijuana. Schedule II drugs, such as cocaine and morphine, were still considered highly abusive but also had recognized medical uses. Schedules III-V related to prescription drugs (Courtwright, 2004; Comprehensive Drug Abuse Prevention and Control Act, 1970). Sentences were attached to the different drug schedules, but penalties were much lighter compared with earlier legislation. For example, under the 1970 act the maximum sentence for possession of any drug was one year, compared to a 2-10 year sentence for first time possession under the 1956 Narcotic Control Act (Courtwright, 2004). However, it contained other features that suggested a tougher stance towards drugs, including expanded law enforcement funding and permission to execute no-knock search warrants⁴ (Courtwright, 2004; Comprehensive Drug Abuse Prevention and Control Act, 1970). The classification system created by the 1970 law was implemented by many states, and it remained the primary federal drug legislation until 1986 (Belenko, 2000).

⁴ A no-knock search warrant gives law enforcement officers permission to enter a property without notifying residents.
Compared to past and future legislation, the 1970 Act was relatively reasonable in its approach to drugs.

**The 1980s: Reagan and the War on Drugs**

The 1980s was a landmark decade for punitive drug laws. Building on the drug war launched by President Nixon, the Reagan administration escalated the anti-drug rhetoric, and Congress and many of the states enacted harsh sentences for drug offenders, increased law enforcement spending, and decreased funding for drug treatment and prevention.

The 1980s drug war can be understood as part of a larger conservative effort dating back to the civil rights era. Conservative Southern politicians worked diligently to construct civil disobedience as an act synonymous with crime and disorder; for example, integration was opposed based on the argument that it would lead to crime (Gottschalk, 2008). Politicians on the right saw an opportunity in the law and order theme to create a new coalition of Southern conservatives and the white working class in the North and Midwest states. While the blue collar workers in these areas traditionally voted for democratic candidates, largely because of the party’s support for unions, the focus of the Democratic party in the 1960s on civil rights and minority issues left the white manufacturing class feeling alienated from the left at a time when employment opportunities in this sector were declining and there was increasing pressure to expand diversity in the workplace (Beckett & Sasson, 2000; Connolly, 1995). The right took
advantage of this, often invoking images of hypermasculinity or latent feelings of racism to attract supporters, which is particularly apparent in the associations between the civil rights movement and increased minority crime. These efforts by conservatives helped to solidify divisions among the disadvantaged majority, particularly between the middle and white working classes and the poor and minority classes. They also greatly aided in the larger conservative goal of shrinking the welfare state, and the authoritative law and order approach to social unrest has come to replace welfare initiatives targeted at reducing structural inequalities (Beckett & Sasson, 2000; Benoit, 2003; Wacquant, 2005). The confluence of political conservatism, law and order rhetoric, and resentment for the welfare state is important in understanding race and class as the substructure of the drug war. These features of the drug war also are integral to understanding the social construction of drugs and drug users that has dominated in the last three decades and are discussed in further detail below.

Punishing drug offenders: Legislative efforts. The media and political hype surrounding the drug war put pressure on elected officials from both parties to appear tough on crime. This pressure culminated in several waves of legislation in the 1980s aimed to increase punishment for drug-related crimes. The pressure on politicians on both sides of the aisle to appear tough on crime culminated in several waves of legislation in the 1980s aimed to increase punishment for drug-related crimes. The Comprehensive Crime Act of 1984 significantly increased penalties for crimes related to drug manufacturing and sale, and gave federal prosecutors power to seize assists from
drug traffickers (Meier, 1994). The 1984 legislation had a significant impact on state and local law enforcement efforts. One provision in the law allowed for local law enforcement agencies that cooperated with federal drug enforcement efforts to share the assets seized in drug cases. This was a big incentive for state and local law enforcement agencies, which increased funding for drug enforcement and would often circumvent state laws that prohibited the type of asset confiscation allowed in the federal law in order to reap the benefits of the seizures (Benson & Rasmussen, 1996). The revenue potential of the drug-related seizure laws also gave law enforcement agencies an incentive to lobby for tougher legislation at the state and national level. These lobbying efforts included dispensing information regarding the dangers of drugs and their role in increasing non-drug related crime; exaggerations, inaccurate information, and unsubstantiated claims were not uncommon (Benson & Rasmussen, 1996). The 1984 act thus fostered greater involvement at the state and local level in the War on Drugs and provided strong incentives to the law enforcement bureaucracy at all levels to institutionalize the drug war as a permanent part of the law enforcement apparatus.

The Anti-Drug Abuse Acts of 1986 and 1988 further escalated the War on Drugs, but with greater focus on drug users. The 1986 law increased federal prison sentences and fines for drug sale and possession, established mandatory minimum sentences for repeat offenders convicted of large-scale drug offenses and established a grant program to fund local and state law enforcement efforts in the drug war (Anti-Drug Abuse Act, 1986; Belenko, 2000; Meier, 1994). The emphasis was overwhelmingly on law
enforcement; $1.7 billion was allotted for the drug war, of which only $232 million was for treatment and prevention (Belenko; 2000).

The law also established a five-year mandatory minimum sentence for anyone convicted of possession of five grams of crack with intent to sell and a ten year minimum for 10 grams; the trigger amount for cocaine remained unchanged, at 500 grams (Provine, 2011). The legislation that followed two years later, the Anti-Drug Abuse Act of 1988 intensified this disparity, making the mandatory minimum applicable to simple possession of five grams of crack. The trigger amounts for second (three grams) and third (one gram) offenses were even lower, and drug offenders with three convictions could be sentenced to life in prison (Belenko, 2000; Meier, 1994). Crack, a derivative of cocaine, was singled out due to the intense media coverage of the addictiveness of the drug and the violence surrounding its sale; that it was widely recognized as a drug used by inner-city poor blacks while cocaine was seen more as an upper-class white drug led observers to question whether the law was intended to focus punitive efforts on minority drug offenders (Provine, 2011). However, at the time of the legislation, there were many black legislators who supported the disparities (Gottschalk, 2007), either out of political calculation, a belief that the laws could help minority neighborhoods that were suffering from the crack drug trade, or both. This support, however, waned as the ramifications of the law for minority communities became apparent (Gottschalk, 2007).

The 1988 legislation also included a number of other provisions. To achieve its stated goal of creating a “Drug Free America” by 1995, more money was provided for
law enforcement, prisons, drug treatment, and education; the death penalty was authorized for individuals convicted of murder as part of an ongoing drug enterprise; and drug users were supposedly held accountable for their drug use through civil penalties, including the denial of federal grants and loans and public housing, and through drug testing requirements for employees of organizations that received more than $25,000 in federal grant money (Anti-Drug Abuse Act, 1988; Belenko, 2000; Meier, 1994). The law also required the president to send an annual plan for dealing with the drug problem to Congress; this yearly requirement of attention to the drug war “institutionalized the politics of drug abuse,” creating a situation in which the president and the congressional opposition would compete with each other to appear the toughest on drugs, which continued until economic problems superseded the drug focus (Meier, 1994, p.54).

The political popularity of the drug war and the monetary incentives for state and local law enforcement agencies that participated in anti-drug efforts led states to pass their own harsh drug legislation. In 1988 New York made it a felony “to possess 500 milligrams or more (gross weight) of a substance containing crack (about five or six vials, or 1/50 ounce)” (Belenko, 2000, p.322). The previous trigger for a felony was about 30 vials. In 1989 Minnesota amended its law to provide for harsher penalties for crack than cocaine—three grams or 30 vials of crack triggered a mandatory four year prison sentence for first offenders, while a conviction for possessing the same amount of cocaine subjected offenders to probation (Belenko, 2000). However, in 1990 a Minnesota judge declared the law unconstitutional, citing the lack of scientific evidence
of significantly different effects between crack and cocaine and the way the law
discriminated against black defendants. When the ruling was upheld by the state
Supreme Court, the Minnesota legislature responded by amending the law to increase
penalties for cocaine as well (Belenko, 2000). In the 1990s, half the states passed or
considered similar anti-crack measures. As of 2007, 14 states had laws containing
sentencing disparities between crack and cocaine (Hinojosa et al., 2007).

By the early 1990s, political and media attention to crack subsided. The
popularity of crack among drug users had been declining even as the war on crack had
escalated (Belenko 2000; Tonry 1994), and when the impending crack epidemic that
threatened to ravage the suburbs did not come, elected officials were able to argue that
the drug war was working and media and public attention diminished. There was also
the realization that the War on Drugs was expensive, leading some policy makers and
law enforcement officials to reconsider the benefits of treatment and prevention
strategies (Belenko, 2000). However, the tough on crime rhetoric remained popular and
drug abuse was still characterized as a serious national problem. At the national level,
Congress refused to consider revising the crack-cocaine sentencing disparities even
when they were strongly advised to do by the U.S. Sentencing Commission based on the
discriminatory impact of the laws (Provine, 2011). Among states, laws punishing drug
offenders continued as well as other tough on crime measures, such as the popular
“three strikes” laws, which mandated very harsh, sometimes life long sentences for
individuals convicted of a third felony offense. Between 1991 and 1999, at least 20
states increased penalties for drug possession offenses and at least 22 increased
penalties for drug sale, manufacturing, and delivery offenses. States also toughened penalties for the use of safehouses and for selling drugs in drug free zones. During that same time period some states also reduced some sentences, usually for offenses related to small possessions of marijuana (National Criminal Justice Association, 1999).

Consequences of the War on Drugs. The drug war failed to achieve its goal of a drug-free America. From 1979 to 1987 the street price for cocaine decreased while the average purity increased. Heroin prices remained stable and purity increased, indicating that the drug war did little to restrict the drug supply (Meier, 1994). The National Institute on Drug Abuse (2012) estimates that in 2011 22.5 million Americans over the age of 12 (8.7 percent of the population) had tried an illegal drug in the past month. This reflects a slight increase since 2002, mainly due to the rise in marijuana use; use of other illicit drugs has remained stable or declined. The Office of National Drug Control Policy (2012) estimates that in 2006 Americans spent over $100 billion on cocaine, heroin, methamphetamine, and marijuana. The illicit drug trade remains a thriving business. To the extent that use of drugs besides marijuana has declined, it is unclear if this is an effect of the drug war; evidence suggests that use of some drugs such as crack cocaine was declining before the war escalated (Belenko, 1993; Tonry 1994).

However, the anti-drug policies popularized in the 1980s have had significant consequences. From 1980 to 2005, drug arrests more than tripled, from 581,000 to over 1.8 million. More people convicted of drug offenses are sent to prison than before. In 1988 79 percent of drug convictions led to incarceration; in 2004 93 percent of drug convictions did. The average sentence for drug convictions during that same time period
also increased by 17 percent, compared to eight percent for other crimes (Mauer & King, 2007a). In 1980 convicted drug offenders accounted for six percent of the state inmate population, but by 2003 they made up 20 percent of the inmate population. Almost 60 percent of the individuals serving time in state prisons for drug offenses have no record of violence or high level drug activity (Mauer & King, 2007a). Blacks have been particularly hard hit; while they make up 14 percent of the drug user population, they account for 37 percent of drug arrests and 56 percent of the state inmate population convicted of a drug offense. At the federal level, blacks serve nearly as much time for drug offenses as whites do for violent offenses (Mauer & King, 2007b).

The drug war has cost a lot of money. According to some estimates, $1 trillion has been spent since Nixon first declared a war on drugs in 1971, and the Cato Institute suggests that legalizing drugs would result in an annual savings of $41 billion in law enforcement expenditures (Branson, 2012). It has also taken law enforcement attention away from other problems. One Florida study found that for every drug arrest there was an increase of .7 serious Index crimes. Asset seizure laws, which allow law enforcement agencies to confiscate assets from drug related arrests and use them for agency budgets, are a strong incentive to law enforcement to pursue drug crimes over other types of crime (Mauer & King, 2007a).

The policies of the drug war have been damaging to community structures, particularly for minorities. Mandatory sentencing schemes that emphasize the amount of drugs in possession effectively rule out consideration of individual circumstances, and

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5 Index crimes are those which Federal Bureau of Investigation uses to create its crime index. They include homicide, rape, robbery, burglary, aggravated assault, motor vehicle theft, arson, and larceny over $50.
do not allow judges to consider any extenuating circumstances, such as the offender’s
ties to the community, job status, or rehabilitation potential, in the sentencing process
(Beckett & Sasson, 2000). Mauer and King (2007a) find that among state inmates
convicted of drug-related crimes, 61 percent had jobs in the month prior to their arrest,
and 78 percent of those who reported having jobs also stated that they were employed
full time, indicating that despite their illegal activity they were active members of
society. Once out of prison, obtaining employment becomes much more difficult. For
black communities high male incarceration rates have resulted in greater concentration
of poverty and disadvantage, as families are separated, divorce becomes more common,
and employment and education become further out of reach (Gottschalk, 2008).

**Social constructions in the modern drug war.** The rhetoric characteristic of the
drug and crime debate that began in the 1970s and took off in the 1980s deserves
special attention for the dominance it enjoyed in politics and the media and for the
harsh and lasting impact it has had on the black community and society. The period of
interest in this study is 1975-2002, making a focus on the social construction of the
“drug problem” during this time particularly relevant.

Prior to the Civil Rights era, Southern states were strongly democratic. But when
national democratic candidates came out in support of the civil rights movement, many
Southerners began to leave the party. When conservative Republican Barry Goldwater
ran for president in 1964 and came out in opposition to the Civil Rights Act, he won the
electoral votes of the Deep South, the first Republican candidate to do so since
Reconstruction. Goldwater lost the election because his conservatism was not popular in other parts of the country. But when Richard Nixon ran for president in 1968 he adopted the strategy of trying to appeal to Southern conservative voters who historically had voted democratic. The “Southern Strategy,” which was popularized by Nixon’s campaign strategist Kevin Phillips and helped Nixon win the presidency, was intended to galvanize Southern support for the Republican Party by appealing to racist sentiments (Beckett & Sasson, 2000).

Nixon did not use overtly racist language to appeal to the animus of Southern and white voters but relied instead on symbols to invoke racial hostilities. Campaigning on issues of “states’ rights” and “law and order,” Nixon signaled his allegiance with Southern states being forced to integrate by the federal government, and encouraged and reinforced fears that greater civil rights for blacks posed a threat to social order. Drug use was an “urban” (poor/black/minority) problem that threatened to spread to “suburban” areas (white/middle class). As Provine (2007, p.101) writes, “When Vice President Agnew spoke of ‘preserving the American way of life,’ for example, he made no apology for locating the greatest danger in the spread of drugs beyond the ghetto. He was articulating an approach that takes for granted that poor urban areas are hopeless places whose potential for corrupting the entire society must be contained.” In order to gain the support of white voters, Nixon and other conservatives constructed an image of drugs and drug users as dangerous threats to social order that needed to be controlled in order to keep the rest of America safe. This construction has succeeded in
shaping the discourse on drugs, so that it is often taken for granted that drugs are a law and order problem rather than a health issue.

This law and order rhetoric continued and intensified under Reagan. While drug-related activities of all kinds were subject to greater intervention, crack cocaine became the target of choice in the 1980s. The emphasis on crack is apparent in the media coverage of the drug problem, as well as the rhetoric used by government law enforcement agencies and elected officials. Crack cocaine first hit the national media in 1984, in an article about the use of crack cocaine among the poor in Los Angeles. The coverage of crack cocaine then increased exponentially, driven in part by the very public deaths of two black sports stars, Len Bias and Don Rogers, who both overdosed on cocaine (Belenko, 2000). A 1989 Gallup poll showed that 64 percent of the public thought drug abuse was the number one problem in the country (Provine, 2011). Yet evidence of actual drug use suggests that public fears may have been overblown. Surveys from the National Institute on Drug Abuse, which conducts separate polls on household and high school drug users, showed that crack use among high school students declined from 5.4 percent in 1987 to 3.1 percent in 1991, and that cocaine related deaths and emergency room visits were only a small minority of drug related problems (Belenko, 1993).

From the beginning, crack-cocaine was associated with urban black youth. The language surrounding the 1980s drug war often was apocalyptic in its description of the threat drugs posed to the country, and frequently insinuated that it was white America
that was being threatened. The 1988 White House Conference for a Drug-Free America
discussed the drug problem in the following ways:

“Drugs threaten to destroy the United States as we know it...”

“The way in which we face the threat of drugs today may well determine the
success or failure of our country in the future...”

“We want the resources of the United States mobilized to restore our freedom,
safety, health, defense, economic stability, and moral values.
Mobilization must take priority over all other issues.” (Cited in Belenko,
2000, p.314)

The 1989 White House Conference continued the same themes:

“[Crack] is, in fact, the most dangerous and quickly addictive drug known to
man.”

“And crack use is spreading—like a plague.”

“Almost every week, our newspapers report a new first sighting of crack.” (Cited in Belenko,

Clearly intended to mobilize support for the drug war, the language conjures images of a
frightening epidemic, one that cannot be understood or treated through any means
other than force. The White House report’s reliance on media coverage of crack as
evidence of its true dangers was typical of the discourse surrounding drugs. Factual
arguments were secondary to emotional and moralizing rhetoric, and newspaper
articles were often referred to as proof of the drug problem among elected officials
(Chambers, 2011; Provine, 2007).

For its part, the media took advantage of the crack issue, capitalizing on and
perpetuating the fascination with the drug among the public and politicians. Much of
what the media reported was not based on scientific evidence but came from often
unsubstantiated claims made by law enforcement officials who had an incentive to play up the drug war for financial and bureaucratic gain (Belenko 1993; Benson & Rasmussen, 1996). Examples of some of the media coverage highlight the sensationalism that characterized the reporting:

"[The] enormous spread of crack is creating a spiral of violence that places both police officers and civilian bystanders at risk." (Newsweek 3/14/88)


"Crack’s destructive sprint across America" (New York Times, 10/1/89). (Cited in Belenko, 1993, p.27)

Crack was also frequently associated with minority gang violence, and the implicit message broadcast to the public was that crack was not just an inner city problem anymore, but was a disease spreading to the rest of the country and needed to be confronted (Belenko, 1993). This overstated media coverage was also favorable to drug enforcement agencies that had strong incentive to maintain the image of drugs as a serious national threat in order to ensure increased resources for themselves (Meier, 1994).

Research suggests that public opinion on drugs was driven by media coverage and government policies and rhetoric (Benson & Rasmussen, 1996). In their study of crime and public opinion, Beckett and Sasson (2000, p.126) find that “when it comes to concern about crime (and drugs), it appears that the public is following the leadership of politicians and the media, not the other way around.” Belenko (1993) argues that when the media coverage of crack lessened in 1987, public concern over the drug also dropped. The media’s tendency to cover crime with a frequency that is disproportionate
to its actual occurrence (Beckett & Sasson, 2000) misleads people as to what the true incidence of crime is. While the public has tended to favor punitive laws such as the death penalty and three strikes initiatives, it also has little knowledge of the criminal justice system and "consistently overestimates the proportion of violent crime and the recidivism rate" (Gottschalk, 2008, p.251). An absence of fact-based education on the realities of drugs and crimes means there is a strong likelihood that the public will continue to accept social constructions of these issues that may have little bearing on reality. In what Melossi (2008, p.154) describes as a "communicative Panopticon," discourse is effectively eliminated so that individuals passively receive messages and their "direct experience is completely devalued in favor of an imaginary sphere recreated by the mass media that certify even what one should be able to know directly."

At the national level, the debate over the Anti-Drug Acts of 1986 and 1988 mirrored the media and law enforcement depictions of the problem. Chambers' (2011) analysis of congressional testimony finds that members of Congress used emotional language to describe the "evilness" of crack and cocaine, a plague that turned children into violent addicts and threatened to destroy the American way of life. Race rarely was mentioned explicitly; instead the discussion was couched in terms of "urban" and "inner city" drug use that was spreading to other parts of the country. The most overt reference to race came from an insertion into the record from a Florida Congressman, who added to his statement news articles stating that "most of the dealers, as with past trends, are Black or Hispanic" and which described the situation in Florida as such: "Less
than a block from where unsuspecting white retirees play tennis, bands of young black men push their rocks on passing motorists, interested or not” (Chambers, 2011, p.178). The Congressman’s inclusion of these articles in his statement implies that he agreed with what they said, but that he did not read them aloud suggests he did not find the language “politically smart” (Chambers, 2011, p.179). The reliance on newspapers and other news articles for evidence of the crack epidemic was typical; only a few references were made to statistical evidence of addiction or clinical studies of crack and cocaine. The heavy reliance on symbolic and emotional rhetoric rather than scientific evidence suggests that the public image of the drug problem was the key factor in the adoption of national drug policy.

While race was not implicated directly in the drug war, many observers are skeptical of Congressional intent, arguing that legislators, who associated crack with the inner city and cocaine with a more advantaged user base, were aware that the mandatory sentences for drug offenses would be targeting poor and usually black individuals (Provine, 2007, 2011; Wacquant, 2008). This argument is complicated by the support of some black members of Congress for the mandatory minimums, although this support dissipated once the effects of the laws were made clear, and as Gottschalk (2007, p.676) argues, some blacks may have been hesitant to show support for black offenders out of fear that “this will reflect unfavorably on blacks as a whole and impede black leaders’ efforts to identify with what they perceive to be the middle-class moral values of the mainstream.” But when the adverse impact of the laws on blacks and minority communities became clear and the U.S. Sentencing Commission recommended
that Congress remove the mandatory minimums and crack-cocaine sentencing disparities, Congress refused, denying that the laws were racist. The apparent refusal to entertain the idea that the laws themselves could be racist demonstrates "the narrowness of contemporary racial discourse in the United States" (Provine, 2011, p.52).

Less research exists on the nature of the debate surrounding state drug policy decisions. Miller's (2008) case study of crime and justice policymaking in Pennsylvania finds that criminal justice agencies and organizations were the most often heard witnesses in crime hearings from 1965 to 2004. Miller argues that the institutionalization of these actors at the decision making stage of the policy process makes it difficult for other groups to exert influence; she finds that citizen groups were largely absent from the policy process. Groups representing poor and minority interests were not a part of the process, and crime victims were typically portrayed as white women. Much of the discussion surrounding law and order policies focused on the suffering of the victims, with little dialogue on the rights or status of offenders, and there was almost a complete absence of any groups arguing for alternatives to the tough on crime policy model at the local level. These findings depict an environment similar to the national one, in which discourse on state drug and crime policy is dominated by the law and order, punishment oriented policy model with little concern for the effects of these policies on the populations they are likely to impact the most.

The heightened punitiveness of drug laws in the 1980s can be understood as part of a long-term historical trend characterized by increased periods of intolerance for drug use, but it is also unique in the intensity with which various forces came together to
propel the movement forward: the law and order rhetoric successfully harnessed by the Republican party, increased distrust for the welfare state among large segments of the citizenry, the power and resource driven motivations of law enforcement agencies to entrench the drug war, the media emphasis on the drug threat, the pressure on all politicians to appear tough on crime and tap into the growing penal populism. These events did not occur in a vacuum; while studies suggest that public opinion on crime was shaped by political and media coverage of the issue (Beckett & Sasson, 2000), the positive public response, which likely is based on ingrained cultural beliefs in individualism and personal responsibility and, for some, racial hostility, provided further incentive to the media and political establishment to continue down the path of demonizing drug offenders. The laws that created incentives for law enforcement to push the drug issue and the ideological motivations of conservative politicians also fed into this cycle, creating a climate favorable to punitive drug laws.

**Priority Shift? 2000s to Present**

In the last 15 years there has been a notable change in drug policy. At the national level, Congress in 2010 passed the Fair Sentencing Act, raising the amount of crack that triggers the mandatory sentences and thereby reducing the sentencing disparity for crack and cocaine to a ratio of 18 to one (Provine, 2011). Several states also have been reforming their drug laws, eliminating mandatory sentences and developing alternatives to incarceration. Many state reforms have involved marijuana. In 1996 California voters legalized medical marijuana and since then several states have passed
legislation legalizing medical marijuana, decriminalizing marijuana possession, and, most recently, fully legalizing the drug in Colorado and Washington. States have decided to opt out of federal welfare bans on former drug offenders, either partially (Arkansas, Colorado, Florida, Hawaii, Illinois, Minnesota, Iowa, Louisiana, Maryland, among others) or totally (including Connecticut, Michigan, New Hampshire, Oklahoma, and New York) (Piper, Briggs, Huffman, & Lubot-Conk, 2003). States have also looked to drug treatment as an alternative to incarceration; Indiana expanded its treatment options in 2001 and in 2002 Colorado diverted money from drug sentencing to fund treatment (Piper et al., 2003). Kansas mandated drug treatment and probation for nonviolent drug possession offenders instead of incarceration in 2003 and in 2009 Kentucky allowed judges to require drug treatment as a condition of pretrial release (Austin, 2010).

Other sentencing reforms have focused on reducing or eliminating mandatory minimums. Michigan reformed its “650” lifer law in 1998, a provision that mandated life without parole for possession or sale of 650 grams or more of heroin or cocaine (Piper et al., 2003). New York reformed its Rockefeller drug laws in 2009, eliminating mandatory minimums and restoring judicial discretion as well as investing more money in drug treatment (Austin, 2010). In 2001 Montana eliminated mandatory minimums for first time drug possession (Piper et al., 2003) and Rhode Island did so in 2009 (Porter, 2010). States have also eliminated the crack-powder disparity—South Carolina did so in 2010 (Porter, 2011) and in 2012 Missouri lowered the ratio from 75 to one to 18 to one to be consistent with the Federal Fair Sentencing Act (Porter, 2013). Some states have also appointed commissions to evaluate the effectiveness of drug sentencing policy
(Nevada in 2007) and to deal specifically with the issue of racial disparities in sentencing (Arkansas in 2001) (King, 2008; Piper et al., 2003). In 2008 Connecticut and Iowa authorized racial and ethnic impact statements to accompany criminal justice legislation (King, 2008).

Many of these reforms hold promise for the future of state drug policy. However, there are still reasons to remain cautious. The primary driver of state reforms has been fiscal stress (Fernandez, 2011; Gottschalk, 2007; Provine, 2011). In an issue brief put out by the National Governors Association’s Center for Best Practices on state sentencing and corrections reform, the ability of states to save money while still preserving public safety was the dominant theme (see McLeod, 2011). While an important goal for states, saving money as the primary motivator behind sentencing reform is tenuous because it makes the trend subject to reversal and because some of the cost savings reforms may be aimed at reducing the quality of life for prisoners through cutting prison programs, rather than trying to reduce the incarceration rate (Gottschalk, 2007). Incarceration rates have declined slightly in the past few years but so far the reforms have had little impact on incarceration (Gottschalk, 2007), although it may still be too early to evaluate the impact of some of the more recent reforms. Some question also remains about how the public feels about drug law reform. While there appears to be growing support for easing restrictions on marijuana, for other drugs support may be less so. Provine (2011, p.48) argues that “while the war on drugs is generally perceived as a failure, there is little support for abandoning it.” McLeod (2011), in discussing how states can gain public support for corrections reform, suggests
appealing to citizens’ desire to save taxpayer money. Although a desirable goal, framing the need for sentencing reform in monetary terms obscures the larger issue of the inequities and long-term damage surrounding punitive drug laws.

It is also important to note that some of the alternatives to incarceration, such as mandatory drug treatment, while ostensibly less punitive, often do not decrease the role of government in individual lives and may actually increase it. Several scholars have noted the “net-widening” effect of treatment programs and drug courts, which tend to expand the reach of government by bringing more people under the authority of the state for longer periods of time, even if that time is spent in the community instead of jail or prison (Jacobs, 2007; Lynch, 2012). Drug courts, which have become a popular alternative to incarceration and require participants, usually low-level offenders, to plead guilty and then participate in a variety of programs and counseling to avoid incarceration, have been criticized because their presence tends to increase the number of drug arrests in a jurisdiction and because of the stringent requirements to get in to the drug court that benefit white and more privileged individuals (Lynch, 2012). The rigid requirements for succeeding in the drug court require time, money, and transportation, making it difficult for poor and minority participants to succeed, and failure may result in a greater chance of being incarcerated or being incarcerated for a longer time than if they had not participated in the program at all (Lynch, 2012). This is not to say that such reforms are not an improvement, but it is important not to assume that just because a program is offered as an alternative to incarceration that it is necessarily a step toward more practical and equitable drug policy.
Current trends in drug laws indicate that states recognize a need to reform punitive policies. Fiscal concerns seem to be one of the primary motivators behind this shift. To the extent that states are also concerned with the racial disparities and detrimental effects of current practices on minority communities is unclear; it is quite probable that this may be a concern for some states, but more research is needed to determine the motivations behind reforms. More research is also needed to evaluate the impact of recent reforms on state incarceration rates as well as other indicators such as successful reintegration of offenders into society and recidivism rates.

**Summary of Historical Developments**

A summary of the history of drug laws in the United States is provided in Table 2.1. Attitudes towards drugs in the United State have undergone periodic shifts between greater and lesser tolerance. The two dominant constructions of drugs have been the law and order model, in which drugs are associated with crime, perceived as a threat to society, and requiring government force to be controlled, and the mental health model, in which drug addiction is viewed as a disease requiring treatment. The construction that dominates has been dependent largely on the characteristics of the drug users in question, i.e., whether they are white and affluent or part of a minority group and poor. As the review above indicates, many of the debates over drugs revolved at least to some extent around issues of race and class. However, in either circumstance, drug users and offenders were still typically constructed as individuals that were irresponsible and therefore needing some kind of state intervention.
Table 2.1.
Summary of Drug Law History in U.S.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Social/Political Context</th>
<th>Laws</th>
<th>Consequences</th>
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| 1900s-1950s | • Expanding role of federal gov’t  
• Racism toward Chinese in West and blacks in South | • 1914 Harrison Act: taxed sale of opiates and cocaine  
• 1937 Marijuana Tax Act: taxed sale of marijuana | • Cracked down on physicians selling to addicts  
• Expanded illicit market for drugs  
• Expanded power of federal law enforcement  
• Marked beginning of law enforcement efforts to use media for anti-drug propaganda |
| 1950s-1960s | • Increased use of marijuana and other drugs among middle class white youth  
• Civil disobedience, desegregation  
• Vietnam War  
• Competing constructions of drug problem: health vs. law enforcement issue | • 1951 Boggs Act: first federal mandatory minimums  
• 1956 Narcotic Control Act: increased minimums set under Boggs Act | • Increased federal law enforcement power  
• Funding for both law enforcement and treatment efforts |
| 1970s | • Veterans coming back addicted to heroin and other drugs  
• Competing constructions of drug problem: health vs. law enforcement issue  
• Blue-collar alienation from Democratic Party  
• Law and order politics equating crime with race and civil disobedience | • War on Drugs launched  
• 1970 Controlled Substance Act: new classification system for drugs based on abuse and benefits potential  
• Competing trends among states: marijuana decriminalization, increased penalties for other drugs, civil commitment laws | • Control over drug scheduling shifted from Surgeon General to Attorney General  
• Streamlining of drug classification and sentencing systems between federal government and states  
• Created Drug Enforcement Administration and Law Enforcement Assistance Association |
<table>
<thead>
<tr>
<th>Time Period</th>
<th>Social/Political Context</th>
<th>Laws</th>
<th>Consequences</th>
</tr>
</thead>
</table>
| 1980s       | • Continuation of law and order politics  
              • Decline of welfare state  
              • Media sensationalization of crime/drugs  
              • Politicians and law enforcement use of media to disseminate misinformation about drugs and crime  
              • Increased public fear of crime | • 1984 Comprehensive Crime Act: mandatory minimums, asset seizure sharing betw. local and federal law enforcement  
              • 1986 and 1988 Anti-Drug Abuse Acts: 100:1 sentencing disparity for crack vs. cocaine, civil penalties for drug offenders  
              • Several states passed laws mirroring federal legislation | • Racial disparities in drug sentencing  
              • Expanded powers of law enforcement  
              • Increased incentives for law enforcement to pursue drug crimes  
              • Solidified negative constructions of drug offenders |
| 1990s       | • Crack epidemic did not materialize  
              • Drug War declared success by government  
              • Continuation of negative constructions  
              • Media and public moved to other issues  
              • Victim rights’ movement | • Congress did not reconsider crack/cocaine disparities despite Sentencing Commission recommendations  
              • At least 20 states increased penalties for drug possession  
              • Reduction of sentences in some states, usually for marijuana | • Millions spent on drug war  
              • Increased incarceration rates  
              • Drug use and sale continued  
              • Racial disparities in proportion of people sentenced and length of time served  
              • Minority communities disrupted |
| 2000s-present | • Growing recognition of Drug War failures  
              • Fiscal stress on states and federal government  
              • Popularization of marijuana use  
              • Growing recognition of addiction as disease | • 2010 Fair Sentencing Act: reduced crack/cocaine disparity to 18:1  
              • States reduced or eliminated mandatory minimums  
              • Rise in use of drug treatment courts as incarceration alternative | • Incarceration rates remain largely unchanged  
              • Net-widening effect of incarceration alternatives  
              • Gradual increase in treatment focus |
Moreover, while there were periods in which the mental health framework was popular, the law and order model appears to have always maintained some amount of dominance, at least in the modern era. Before the national government became involved in anti-drug policy, drug use and addiction were of little concern to government, except to the extent that they offended local preferences. With the involvement of the national government also came the steady progression of the state’s reach into citizens’ lives. As noted above, this can be attributed in part to the expansion of law enforcement bureaucracy, and the motivations of greater power and resources that led these agencies to advance the anti-drug movement. Law enforcement agencies early on made good use of the media and propaganda to dispense their message to the public; politicians also took advantage of this and together the government and the media, intentionally or not, fostered and perpetuated public fears of drugs and crime.

The intent of this historical review has been to make clear that a variety of forces and events have shaped the drug policy environment. The exact impact of these forces and how they interact with each other to influence drug policy decisions remains unclear, particularly at the state level. The next section focuses on the various factors that may affect state drug policy decisions in an attempt to shed light on this issue.

**Building a Model of State Drug Policy Decisions**

The purpose of this study is to explain what factors affect state drug policy choices. While several studies have looked at why certain drug policies have been adopted at the national level, much less research of this kind has been done at the state
level. The variation across states in their policy choices makes them an ideal unit of analysis for understanding the factors that drive policy decisions. As discussed above, the theoretical framework for this model is grounded in social construction and social control theories. As a state comparative study, this model also draws from the methodological perspectives of the state comparative literature, which emphasize political factors as explanations for state policy variation. This model integrates the social construction/social control framework with the state comparative policy literature by examining factors that are considered important in both areas of research.

The state comparative literature is rife with studies that attempt to explain why states vary in their policy choices. Variations in the adoption of policy have been a major focus of state comparative research, with varying emphasis on internal determinants, such as state resources, willingness to innovate, and political and socioeconomic resources, and external factors, such as national influence and geographic proximity to other state that follow a particular policy model (Berry & Berry, 2007). There is now a general consensus that states' policy decisions are guided by a host of factors, including influence from the national government, the actions of neighboring or regional states, and unique political, socioeconomic, and cultural characteristics (Allen, Pettus, & Haider-Markel 2004; Berry, 1994; Foster, 1978), and the role of individual policy entrepreneurs or interest group presence (variables that lend themselves less well to quantitative methods).

Much of the research in state comparative policy is concerned with understanding differences between states in particular policy areas. For example,
research has been done to explain state choices in welfare policies (Soss, Schram, Vartanian, & O’Brien, 2001), differences in state incarceration rates (Jacobs & Carmichael, 2001; Yates & Fording, 2005), differences in states’ treatment of marginal populations (Beckett & Western, 2001), and variations in environmental policy (Breaux, Emison, Morris, & Travis, 2010). Much of this work borrows from research in the specific policy field of interest, as well as from models comparing states in different policy areas. It also borrows from different traditional theoretical traditions; for example, Soss et al. (2001) incorporate theories about controlling the poor into their model.

State comparative policy thus far has determined that political systems and culture, socioeconomic factors, ideology, characteristics of influential actors, interactions between actors and state agencies, and interactions between states and the national government may all play a role in explaining policy variations across states. To what extent any of these factors will have an impact depends on the policy area in question, environmental factors (for example, crisis situations), and interactions between the different variables. Regarding crime policy, and more specifically, drug policy, some of the variables that are popular in the state comparative literature may not apply to this policy area. For example, Bergin’s (2011) review of the state criminal justice policy literature finds that while regional geographic proximity (operationalized as states sharing the same U.S. Census region) predicted criminal justice policy diffusion reasonably well, this was not the case for sentencing policy, and when geographic proximity was operationalized as contiguous or border sharing states it was not a good predictor of any criminal justice policy adoption. Conversely, a factor such as the social
construction of target populations, which it has been argued here is likely to impact
criminal justice policy decisions, may have less impact on a different state policy area,
such as the adoption of highway technologies. The model described here draws from
the state comparative policy literature as well as the policy design, social control, and
criminal justice literatures discussed above. An initial model is presented in Figure 2.2.
The following sections discuss the specific hypotheses that are tested.

Figure 2.2. Factors Affecting State Drug Policy

Social Constructions of Target Population

Social Control Factors

Political Factors

Bureaucratic Forces

State Drug Policy

Social Construction of Target Populations

People who break the law typically are socially constructed as deviants. Negative
constructions can affect the type of policy that is geared towards the target population
(Schneider & Ingram, 1997). The basic proposition of this research is that the more
negatively constructed a particular group, the more burdensome or punitive the policies
targeted at that group. Beckett's (1994) analysis of political and media treatment of
drug use finds that the social construction of drug users impacted public concern about drugs. Schneider (2006) finds that the incarceration surge that began in the 1970s is associated with a major change in the social construction of criminals. The national mood toward criminals was a more significant predictor of state incarceration rates than crime rates or ideology, and annual changes in public opinion towards criminals were not significant predictors of state incarceration rates. Schneider suggests that the "pervasiveness of a particular image" (p.465) may have greater policy implications than short-term changes in opinion. The political advantages of placing burdens on negatively constructed populations increase the likelihood that elected officials will continue to do so, rather than offer alternative policy solutions that could be characterized as being soft on crime. The "stickiness" of the negative construction of criminals, the political gains associated with punishing this population, and the risks of appearing complacent may explain in part the entrenched punitiveness of the state.

Nicholson-Crotty and Nicholson Crotty (2004) find that the negative construction of criminals impedes the implementation of HIV/AIDS and tuberculosis treatment and prevention programs in prison. They develop a measure of social construction of criminals that includes elite perceptions and political power of criminals. Political power is measured by state felon disenfranchisement laws and black representation in state legislatures. Perceptions of criminals are measured by the level of guaranteed AFDC benefits and incarceration rates controlled for crime. States in which criminals have a more negative social construction spend less on inmate health care needs; this is a
and the modern-era War on Drugs. While Schneider (2006) finds that a national mood
guided state incarceration rates, much of the variance was still unexplained, and
Nicholson-Crotty and Nicholson-Crotty (2004) find that the social construction of
criminals did vary considerably across states and affected policy decisions. Thus while
there may have been a prevailing national sentiment that led states to change in the
same direction, it seems that states also have maintained differences in their attitudes
towards deviant populations, suggesting that variations in state policy toward this group
deserve further attention. The measure developed by Nicholson-Crotty and Nicholosn-
Crotty (2004) to capture the social construction of the offender population is used in
this study and is discussed in further detail in Chapter 3. This measure of social
construction is used to test the premise that negative social constructions of target
populations lead to more punitive policies directed towards those target populations.

H1: States with more negative constructions of drug offenders are more likely to
have harsher drug laws.

**Drug Policy as a Tool for Social Control**

Theories of social control view the law as a means for controlling undesirable
populations. Laws designed to criminalize and punish behavior that undesirable groups
engage in provides an officially legitimate means for controlling these groups. Typically
the undesirability of a group is based on race, ethnicity, or socioeconomic status.
Numerous studies have examined the relationship between the presence of threatening
populations and the propensity to incarcerate or contain these populations (Beckett &
Western, 2001; Greenberg & West, 2001). In the context of crime policy, and more specifically drug policy, race and social class have been the primary focus. This study tests the proposition that states with larger threatening populations—where threat is based on race, poverty, and/or levels of inequality—have more punitive policies that are likely to affect these populations.

Several studies have found relationships between the size of a state’s black population and incarceration rates, after controlling for crime (Greenberg & West, 2001; Jacobs & Carmichael, 2001; Smith, 2004; Yates & Fording, 2005). Other studies have found that police focus more on drug crime in black communities than white communities (Tonry, 1994; Snyder, 2011). Myers (1989) finds that enforcement of punitive symbolic sentences against drug traffickers were more frequently imposed against black offenders than white offenders. In one of the few studies of state drug policy, Meier (1992) finds that while race has little effect on state legislation, it has a significant impact on arrest rates (more blacks are arrested for drug crimes) and that in states with legislation that targets dealers, more blacks are arrested.

Scholars have also found that racial prejudice significantly affects white public opinion on crime and law enforcement issues (Bobo & Johnson, 2004), as well as attitudes towards poverty and welfare (Soss et al., 2001). Yates and Fording (2005, p. 1114) suggest that white voters living in states with larger black populations “may be more receptive to conservative campaigns that rely on punitive law and order rhetoric, especially if they believe that the targets of punitive policies are likely to be black.” This suggests an interaction effect between racist populism and political calculations,
reiterating the idea that elected officials have exploited racial hostilities for political gain.

Larger black populations are also associated with more punitive welfare polices (Soss et al., 2001). Welfare politics may be similar to crime politics in that both deal with marginalized populations but confront the issue in different ways, i.e., greater assistance to alleviate structural inequalities or greater social control via law enforcement. That larger black populations are associated with more stringent welfare policy is consistent with the idea that blacks are regarded as an underserving class warranting punishment and control rather than benefits.

Eitle et al. (2002) employ three measures of racial threat based on (1) the political threat posed by blacks, measured as black voter turnout; (2) the economic threat, measured as the ration of white-to-black unemployment rates; and (3) the crime threat, measured as the percent of black-on-white violent felony offenses, to determine the effects of race on arrest rates. They find support only for the black crime threat measure: as the percentage of black-on-white crime increases so does a black person’s chances of being arrested for a violent crime. However, the rate of black-on-black violent crime had no effect on black arrests, providing support for the claim that white victims are regarded as more important or worthy than black victims by the criminal justice system.

Parker and Maggard (2005) also use different measures for racial threat and find mixed results. Increases in the black population in urban areas over time had a negative impact on black drug arrest rates. They suggest that this may be more in line with the
benign neglect argument; that is, that as the black population increases the rate of black-on-black crime increases, which puts less pressure on police to control crime in these areas. They also find that as inequality between blacks and whites increases so do black drug arrest rates. Support for the racial threat argument would have found an inverse relationship, that as blacks become more equal to whites they are perceived as a greater threat and need to be controlled. Instead, this finding suggests that deprivation is a bigger driver of arrests. However, increases in police presence were positively associated with black drug arrests, providing support for the social control argument.

The findings of Eitle et al. (2002) and Parker and Maggard (2005) that different measures of racial threat affect different outcomes suggests that a more nuanced measure of racial threat than the size of the black population may be warranted. While the studies discussed above examine the relationship between race and the criminal justice system in the context of incarceration and arrest rates, fewer studies have looked at the impact of the race on the adoption of criminal justice policy, as this study intends to do. It is not clear that the same factors affecting implementation of law enforcement policies will also affect policymaking, but the research on different types of black threat does suggest that a more nuanced measure of the black threat may be warranted. Unfortunately, data limitations do not permit the testing of the hypotheses discussed above about the relationship between black-on-white crime rates or the differences in inequality between whites and blacks. Therefore, black threat is still conceived as the size of the black population in a state, although future studies of a smaller scale may look at other measures.
H2: States with larger black populations are more likely to have more punitive drug policies.

Another variant of the social control hypothesis is that the threat posed by lower socioeconomic classes is the basis for determining the degree of social control imposed by the state. This is a broader argument than racial threat although the two often intertwine, as black poverty rates tend to be higher than those for whites, and racial hostilities have been shown to affect individual attitudes towards the poor and public assistance (Sears, Sidanius, & Bobo, 2000). Prison has been identified as a social control mechanism used to control the poor and manipulate the surplus labor market (Soss et al., 2001). However, empirical support for the idea of punishment as a mechanism for control of the poor has mixed results, which seems to some extent to be dependent on the way poverty or the threat of the poor is measured. Rusche and Kirchheimer’s (1939) thesis that high levels of labor surplus provide greater motivation for crime as well as a greater need for state control of this population has been studied extensively. A review of existing studies by Chiricos and Delone (1992) finds mixed results; some studies find a positive and significant relationship between unemployment and incarceration. This relationship tends to be stronger for blacks and males, but it is not supported at the state level. Greenberg and West (2001) argue that the use of the unemployment rate as a measure of poverty is problematic as a measure of a group threat because it includes people who are not considered dangerous, such as students who will likely be employed in the future. Several studies have not found a relationship between unemployment and
incarceration rates (Greenberg & West, 2001; Jacobs & Carmichael, 2001; Yates & Fording, 2005).

Other measures of socioeconomic inequality may more adequately capture this dimension of social control than unemployment rates. While unemployment may exert influence on overall crime and incarceration rates, given the tenuousness of this relationship it seems less likely that labor surplus would drive a more targeted policy area such as drug policy. However, given the associations between drugs, crime, and urban poverty that have characterized much of the political law and order rhetoric and the media coverage of drug issues, other dimensions of inequality may be relevant. The poverty rate has been found to have a positive effect on state incarceration rates (Yates & Fording, 2005), but it was found to have a negative effect on state punitiveness, when punitiveness was measured across several dimensions of state action, including arrest and incarceration rates and various sentencing policies (Neill, Yusuf, & Morris, 2012). Other studies have tried to measure inequality more specifically by using the Gini coefficient. A large poor population does not necessarily constitute a threat, particularly if most people in the state are not especially wealthy, but as the level of inequality increases, so might tensions between upper and lower classes and thus the perception that the poor are a greater threat. However, studies that have used this measure as a determinant of state incarceration rates have not found it to be significant (Greenberg & West, 2001; Jacobs & Carmichael, 2001). Other measures of inequality have attempted to account for the interaction effects between poverty and race by looking at the disparities between white and black poverty rates (Yates & Fording, 2005) and
unemployment rates (Eitle et al., 2002; Yates & Fording, 2005). Yates and Fording (2005) find that an increase in white-to-black poverty rates was positively associated with larger disparities in white and black incarceration rates, but unemployment disparities did not have any effect.

The focus on measures of poverty and inequality is based on the premise that these are characteristics of groups that are perceived as threatening by the state and/or the elite, and thus that the greater the presence of these characteristics, the more punitive the policies directed at threatening populations. The various measures that have been used to determine the relationship between poverty and inequality and state crime policy have yielded mixed results and warrant further research. This is especially true in the case of drug policy, where there is a lack of research into the effects of socioeconomic inequality on policy decisions. Given the popular characterization of drugs as a problem of the urban poor, this is an important line of inquiry. Furthermore, the conflation of poor and black that has characterized much of the anti-drug rhetoric, the reality that more black people live in poverty than whites, and the possibility that the degree to which blacks are perceived as a threatening population is based to some extent on the extent of inequality in a state, suggests it is also important to test the interaction effects of race and inequality. Testing for these interaction effects may also capture some of the more nuanced effects that race may have on drug policy, as indicated above. Based on this review, the following hypotheses are proposed:

H3: States with higher rates of poverty are more likely to have more punitive drug laws.
H4: States with greater levels of inequality (as defined by Gini coefficient) are more likely to have more punitive drug laws.

H5: States with higher poverty rates and larger black populations are more likely to have more punitive drug laws.

H6: States with greater levels of inequality and large black populations are more likely to have more punitive drug laws.

A slightly different take on the social control argument as it relates to poverty has been to look at the relationship between state welfare generosity and punitiveness. Beckett and Western (2001) and Greenberg and West (2001) find a significant negative relationship between state welfare spending and incarceration, Stucky, Heimer, and Lang (2007) find that states that spend less on public welfare spend more on corrections, and Neill et al. (2012) also find a significant and negative relationship between state welfare generosity and overall state punitiveness. These findings suggest that states make a choice in terms of how to govern marginalized populations. Beckett and Western’s (2001, p.55) examination of changes in incarceration rates over time suggests that since the 1980s, “penal and welfare institutions have come to form a single policy regime aimed at the governance of social marginality.” However, a specific variable for welfare generosity is not tested in this model because it is already captured by the social construction variable.

Political Explanations

A large body of state comparative literature focuses on political variables to explain state policy variation. Party control and political ideology are two of the more
common variables of interest in state comparative policy generally and have been used to explain variations in criminal justice policy. While hypotheses abound regarding the relationship between political factors and state policy, one of the more basic premises, and the one proposed here, is that in general states dominated by conservative politics, a conservative citizenry, and/or a conservative culture, are more likely to support authoritarian policies that adversely affect disadvantaged populations. While research conducted in the 1960s found the criminal justice policy environment to be dominated by subject matter experts and relatively unaffected by political parties, elections concerns, or the public, in the last few decades criminal law has become a symbolic policy area and a much more visible part of the political agenda (Williams, 2003). Prior research has found party control of state legislatures to impact state incarceration rates (Jacobs & Carmichael, 2001; Smith, 2004; Yates & Fording, 2005) and state spending on corrections (Stucky et al., 2007). It is also important to consider the party of the governor. As with state legislatures, a Republican governor may be more likely to support punitive crime policy because of ideology or political calculations. Jacobs and Carmichael (2001, p.82) suggest that one reason for Republicans’ greater support of a tough on crime agenda is that, in order to attract low income supporters who do not benefit from conservative economic policies, they choose to “stress social issues like law and order to capture increased support from working and lower middle class voters who have greater reasons than the affluent to resent street crime.”

H7: States with a majority Republican legislature are more likely to have harsher drug policies.
H8: States with a Republican governor are more likely to have harsher drug policies.

While party control is important to consider, its effect may be diminished by the fact that since the escalation of the drug war tough anti-drug rhetoric has been popular among both parties and support for less severe sentences can be politically risky for Democrats (Raphael, 2009). At the federal level politicians from both parties supported the passage of the harsh drug and crime legislation in the 1980s and 1990s (Beckett & Sasson, 2000; Greenberg & West, 2001). Thus it may be that, depending on the extent of their reelection concerns, Republicans and Democrats may compete to appear the toughest on crime. Greater degrees of competition then may pressure officials from both parties to support tough sentencing policies.

Party competition has been identified as an important factor in determining state policy variation. Early studies of state policy found that states with high levels of interparty competition were more likely to have policies that were more generous towards the “have-not” population (Cnudde & McCrone, 1969; Hill, Leighley, & Hinton-Anderson, 1995; Sharkansky & Hofferbert, 1969). The importance of interparty competition seems to depend on the policy area of interest and the nature of the party system within a state. For example, Dye (1984) finds that some state party systems develop around policy issues while others do not.

However, while prior research has found interparty competition to have a positive impact on policies that benefit low income populations, this relationship does not seem to hold in the context of criminal justice policy, despite the fact that punitive criminal laws tend to have greater significance for the poor than the affluent. For
example, Williams (2003) finds that states with more competitive legislative races were more likely to adopt truth-in-sentencing laws. District level competition has also been tied to higher spending on corrections (Stucky et al., 2007). This relationship may be explained by what Smith (2004) refers to as the electoral cycle hypothesis; that is, that the political benefits of appearing tough on crime extend to both parties. The greater the level of competition a candidate for office or an incumbent faces, the more likely they may be to push for harsh crime policies to win public support. Smith (2004) finds that gubernatorial election years are strongly and positively associated with state incarceration rates, suggesting that appearing tough on crime is viewed as an important part of electoral success. Given that this study is concerned with legislative decision making, which elected officials have greater control over than incarceration rates, interparty competition may be especially important, as officials running for highly contested seats may be eager to fulfill their law and order credentials.

H9: States with higher levels of district-level electoral competition are more likely to have more punitive drug policies.

However, Barrileaux, Holbrook, and Langer (2002) argue that fierce electoral competition pressures candidates to appeal to the demands of their base in order to ensure high turnout among supporters. If this is the case, then policy outcomes depend not only on electoral competition but also on the party that has institutional dominance. Barrileaux et al. (2002, p.424) find that “high levels of competition are only associated with greater welfare spending when Democrats control the legislature.” This suggests
that the relationship between policy outcomes and party competition is conditioned by party dominance at the institutional level. Regarding drug policy then,

H10: States with higher levels of district-level competition and Republican institutional dominance are more likely to have more punitive drug policies.

The ideology of elected officials is another factor that warrants consideration. Ideology is different from party affiliation. Political ideology can encompass an individual's beliefs about how the world works and how government should function within that world. Individuals subscribe to a particular political party because they view that party as sharing similar ideas and goals. Typically ideological conservatives subscribe to the Republican Party and liberals to the Democratic Party. But ideology is more complex than party affiliation and tends to be more stable over time. For example, prior to the political shift that occurred during the civil rights movement, the South was dominated politically by Democrats with very conservative beliefs. When the goals of the Democratic Party went against these deeply ingrained values Southern Democrats switched parties. Moreover, ideological leanings within a party are likely to vary by region; elected officials in the Northeast are traditionally more liberal than their Southern counterparts regardless of party affiliation. This suggests that the ideology of elected officials, or government ideology, is separate from party affiliation and should be treated as such. Given the support among conservatives for the law and order approach to crime and their general emphasis on personal responsibility and skepticism of government assistance, the expected relationship is that:
H11: States with a more ideologically conservative government are more likely to have more punitive drug legislation.

Another variable to consider is citizen ideology, which may be less sensitive to the electoral cycle and better capture public preferences. Some research has found support for a relationship between citizen conservatism and criminal justice policy, with more conservative states being more punitive (Jacobs & Carmichael, 2001; Neill et al., 2012). Williams (2003) finds that while citizen ideology had an impact on state adoption of boot camps and juvenile transfer provisions, it was not significant in explaining the adoption of “Three Strikes” laws and truth-in-sentencing provisions. Similarly, Bergin’s (2011) review of the criminal justice literature finds that no studies supported a connection between ideology and sentencing policies. However, Meier’s (1994, p.54) analysis of state controlled substance laws finds that “states with more liberal voters are less likely to adopt stringent controlled substance laws.”

H12: States with a more conservative citizenry are more likely to have harsher drug legislation.

State political culture also may be an important factor in understanding state policy variations. Elazar (1984) traced the migration patterns of immigrant groups to the US to argue that there are three distinct political cultures in the US—traditionalistic, moralistic, and individualistic. The individualistic political culture is characterized by a belief that government serves a utilitarian economic purpose and should be limited in the extent to which it interferes with the lives of private citizens. The moralistic culture emphasizes the importance of the community and views government as an important
entity that can and should work to improve the lives of all citizens. The traditionalistic political culture is characterized by a belief in a limited and conservative government that serves the interest of the people in power and preserves the status quo. Dominant in the South, the traditionalistic culture also emphasizes social and family values. These groupings are not mutually exclusive, and most states show a combination of two different cultures. However, since Elazar's work, political culture has been noted as an important variable to include in state comparative studies (Sharkansky, 1969). Williams (2003) finds that moralistic states are less likely to have the death penalty and more likely to have shorter prison sentences, although moralistic culture did not affect the adoption of other crime policies. In the context of drug policy, focusing on the traditionalistic political culture may be more appropriate given its moral conservatism and social control characteristics.

H13: States with a predominantly traditionalistic political culture are more likely to have more stringent drug policies.

Bureaucratic Forces

When Max Weber described bureaucracy as the most efficient form of administrative organization, he also warned of the tendency of the bureaucracy and its agents to further their own power (Gerth & Mills, 1946). Since the passage of the Harrison Act in 1914, enforcing laws against drug related activities has been a lucrative endeavor for law enforcement agencies (Meier, 1992). Federal laws passed during the modern era drug war that allow law enforcement agencies to seize drug related assets
have provided even more incentive for law enforcement to pursue drug crimes (Benson & Rasmussen, 1996). Benson, Rasmussen, and Sollars (1995) find that state and local law enforcement agencies diverted more resources to drug enforcement in response to the 1984 Comprehensive Crime Control Act that called for federal authorities to share asset seizures with state and local authorities. Allen et al. (2004) find that states were more likely to adopt truth-in-sentencing laws after the passage of the 1994 Violent Crime Control and Law Enforcement Act, which provided financial incentives to states that passed such laws. These findings suggest that federal incentives are a factor in state policy decisions.

H14: States will be more likely to have more punitive drug policies following the passage of federal laws that provide incentives to do so.

Within the state, the police bureaucracy may also exercise influence over state crime policy decisions. Miller's (2008) analysis of criminal justice policymaking in Pennsylvania finds that criminal justice agencies and organizations, including police, prosecutors, corrections officers, and judges, were the most frequent witnesses in legislative crime hearings from 1965 to 2004. Miller argues that at the state level politics is largely absent from the crime policymaking process; instead the focus is on using resources “to identify worthy victims and punish offenders” (p.172). The institutionalization of well-organized criminal justice organizations narrows the scope of debate so that few alternatives to the law and order punishment orientation are considered. Meier (1992) finds that states with larger law enforcement bureaucracies, measured as the number of local and state law enforcement employees per 100,000
persons, had more punitive laws directed towards drug users and dealers. These
findings suggest that law enforcement agencies may exert influence over state drug
policy decisions.

H15: States with larger law enforcement bureaucracies are more likely to have
more punitive drug laws.

Summary

The primary goals of this chapter were to provide a theoretical and historical
context for understanding modern US drug policy and to lay out a testable model to
understand drug policy variation across states. This analysis is informed by social
construction and social control theories, and the state comparative literature’s
emphasis on political and socioeconomic explanations of state policy variation. Couching
state drug policy in the social construction and social control framework, punitive drug
policies are viewed as the result of a politically and socially constructed negative image
of drug users and dealers, one which invites burdensome policies and makes less
punitive alternatives politically risky. As drug offenders are perceived as a threat to
society, and to the extent that this perception overlaps with negative constructions of
other groups—particularly blacks—the political impetus to get tough on drugs may be
even greater. The overlap between groups that are typically viewed as threatening and
the most visible of drug offenders is beneficial to those in power who want to target
these groups with burdensome policies, either for ideological reasons or for the political
or financial gain of themselves or other more powerful or positively constructed groups.
The historical review of federal and state drug policy reveals that race and poverty have been recurring themes in this policy arena. This review also highlights the political element of drug policy and reveals how political debates have catered to and reinforced racial hostilities and public fears. The media also played an important role in the development of modern era drug policy by choosing to focus on sensationalistic news stories of drugs, increasing public concern and putting pressure on elected officials to act. The law enforcement bureaucracy, which has benefitted from the drug war, also was instrumental in the development of drug policy.

While the development of punitive drug policy at the federal level has been well researched, less is known about why states have chosen to pursue particular policies. An exhaustive review of the state drug policy literature found only one study (Meier, 1992; 1994) that dealt specifically with state drug policy variation across all states. Prior research suggests that state drug policy decisions are at least to some extent affected by the factors mentioned above, including negative social constructions, the desire for social control, and media and bureaucratic pressure, the significance of which may vary considerably across states. The political environment, that is, party dominance, party competition, political culture, and government and citizen ideology, also vary frequently across states and may impact policy decisions, especially in a highly symbolic and politicized area such as drug policy. States may also be influenced by policy decisions of the national government, particularly to the extent that the federal government provides incentives for states to adopt certain policies. Finally, state resources and the severity of drug use and drug-related violence may also impact state policy decisions.
(These factors were not discussed in this chapter because they are considered controls for the purposes of analysis but they are discussed in Chapter 3). Figure 3.2 presents the model of factors thought to affect state drug policy. It is likely that the degree to which any one variable has an impact on state decisions varies depending on the state and depending on how it interacts with other variables, some of which are not easily measured in a 50-state analysis. For example, Meier (1994) argues that the role of a policy entrepreneur can be important in a policy area such as drug use, where both parties face pressure to be against drugs. The presence of policy entrepreneurs quite likely has an impact on state drug policy that would vary depending on the state, as all states may not have a policy entrepreneur in this area or may have one that is more or less effective. While this is an important variable to consider, it is not feasible in this type of analysis. However, this study does attempt to account for a host of other factors that have theoretical and empirical links to drug and crime policy.
Figure 2.3. Model of Factors Affecting State Drug Policy

- **Social Construction**
  - Elite perceptions & political power of target population

- **Social Control**
  - Black population size
  - Poverty rate
  - Black X Poverty
  - Inequality
  - Black X Inequality

- **Political Variables**
  - Republican governor
  - Republican legislature strength
  - Electoral competition
  - Electoral competition X Rep legislature strength
  - Political culture
  - Government ideology
  - Citizen ideology

- **Bureaucratic Forces**
  - Size of police force
  - Federal drug legislation

**State Drug Policy**
CHAPTER 3

DATA AND METHODS

Chapter 2 presented a model to explain variation in state drug policy based on theories of social construction, social control, and state policy variation. A historical review of the drug policy environment indicates that laws concerning the legality of drugs have been affected by issues other than the prevalence of drug abuse. This is particularly true of the modern era War on Drugs, in which political rhetoric and symbolic imagery have been powerful forces in shaping drug legislation. While the bulk of empirical work on this issue has examined drug policy at the national level, it is assumed here that state drug policy also has been shaped by concerns other than drug-related crime and abuse alone, and the few studies that have looked at this relationship have found that to be the case (for example, Meier, 1992; 1994).

The theoretical framework outlined in Chapter 2 posits that the severity of state drug laws will be determined in part by the social construction of the marginalized population, the perceived need to control threatening populations, and the socioeconomic and political environment of the state. This chapter discusses the data used for the study, the variables of interest, and the methods used to analyze the data.

Data and Data Collection

This study uses secondary data obtained from the Interuniversity Consortium for Political and Social Research (ICPSR). The study, “Impact of State Sentencing Policies on Incarceration Rates in the United States, 1975-2002” (Stemen, Rengifo, & Wilson, 2006)
provides data on several state-level sentencing and correction policies to determine the effects of these policies on state incarceration rates from 1975 to 2002. Funding for the study was provided by the U.S. Department of Justice.

This dataset is ideal for analysis for several reasons. Through an exhaustive reading of state criminal codes for each year between 1975 and 2002, the data provide detailed accounts of state drug laws and changes in those laws over time. The time period of study is also ideal because it coincides roughly with the beginning of the modern era drug war. Longitudinal data are advantageous as they permit a more complete understanding of how the social and political environment may affect drug laws and allow for comparison of state changes over time. The data contain several relevant drug policy variables, including sentence lengths for minimum and maximum quantities of cocaine, heroin, and marijuana, the number of sentencing enhancements for drug offenses, and the number of severity levels for different drug offenses. By distinguishing between laws for different drugs the data allow for a comparison of factors affecting different drug laws. This may be especially important as it relates to differences in treatment for marijuana offenses and other drug offenses, as past research finds that marijuana laws are affected by different factors than those that drive other drug policy (Meier, 1992; 1994). The dataset also contains several relevant independent and control variables that are used in this study.

One limitation of this data set is that it is over ten years old. As discussed in the Introduction, there have been significant changes to drug policies in some states in the last decade. This data set does not capture those changes. However, the time frame
does cover a very critical time in the history of US drug policy, and the policies of the War on Drug era continue to have effects today—many of these laws are still in place and many people are still incarcerated under these policies. Moreover, to the extent that the factors studied here do have an impact on state drug policy decisions, they are likely to continue to affect drug policy decisions, even if the policies themselves change. Thus, despite the lack of current data, findings from this study should still be relevant to understanding the drug policy environment of today.

Between 1975 and 2002, there are ten data points per state that occur in three-year intervals. The study years of interest are: 1975, 1978, 1981, 1984, 1987, 1990, 1993, 1996, 1999, and 2002. Three year intervals were used in the original study that examined the impact of sentencing policies on incarceration rates because the average time of incarceration for offenders is three years and because the time intervals were necessary to comply with some of the assumptions of time series cross-sectional analysis (Stemen et al., 2006).

**Dependent Variables**

This study uses several dependent variables to understand the factors that affect state drug policy. The variables capture various aspects of drug policy, including the minimum and maximum penalties for cocaine, heroin, and marijuana possession and sale, the number of sentencing severity levels for each drug offense, and the presence of drug-related mandatory sentences and sentencing enhancements. The choice of laws for which to collect data was based on an initial analysis that determined the types of
sentencing policies that were in use for the period of study (Stemen et al., 2006). A full list and description of the dependent variables is provided in Appendix 2.

**Habitual offender laws.** Habitual offender laws are used to require additional punishment for offenders who have broken the law multiple times. These laws can differ in terms of how many offenses are required to trigger the habitual offender punishment and whether they pertain to only one offense or regard different offenses as indicating a habitual offender pattern. One habitual offender law is included in this study, for the presence of a habitual offender law for drug offenders. This variable is coded dichotomously, where a 1 indicates the presence of the law.

**Severity levels.** There are six variables that refer to severity levels for drug offenses. The number of severity levels related to cocaine, heroin, and marijuana are coded separately, and these are further broken down by whether the offense is sale or possession related. Severity levels refer to the number of quantity thresholds associated with each drug and whether those thresholds are related to possession or sale of the drug.

**Maximum and minimum sentences for drug offenses.** Maximum and minimum sentences for cocaine possession and sale were coded separately, yielding four variables related to cocaine offenses. Specifically, two variables measure sentences for cocaine possession: for the maximum sentence for the minimum quantity specified by
legislation and for the minimum sentence for possession of 28oz or a similar quantity. The two variables related to cocaine sale measure the maximum sentence for the smallest quantity of sale detailed in the legislation, and the minimum sentence for the sale of 28oz or a similar quantity. The 28oz threshold was set by Stemen et al. (2006). Although Stemen et al. (2006) do not mention specifically how they determined this amount, the description of their data collection process suggests that it is likely that the amount was based on an informed review of state legislation and was chosen because it was commonly identified in state statutes.

Minimum sentences for heroin possession and sale were also coded separately, yielding two variables. Penalties for heroin possession were measured as the minimum sentence for possession of one ounce or a similar quantity and penalties for heroin sale were measured as the minimum sentence for the sale of one ounce or a similar quantity. These amounts were also determined by Stemen et al. (2006).

Minimum sentences for marijuana possession and sale were coded into two variables. Possession sentences were measured as the minimum sentence for possession of one pound or an equivalent amount and sale-related sentences were measured as the minimum sentence for the sale of one pound or an equivalent amount. As with the cocaine and heroin variables, the one pound threshold amount was set by Stemen et al. (2006).

All maximum and minimum sentencing variables were measured in months. When applicable, life sentences were coded as a sentence of 600 months. In the
absence of an established minimum sentence, the variable was given a score of zero (Stemen et al., 2006).

Sentencing enhancement variables. Sentencing enhancements refer to greater penalties that may be incurred during sentencing if an offender is found guilty of a certain offense. In total, four variables measure sentencing enhancements: one each for cocaine, marijuana, and other drugs, and another variable measuring the total number of sentencing enhancements where selling/possessing large quantities of drugs is the trigger offense.

Drug policy index. The original dataset includes 19 dependent variables related to state drug policy. The majority of these variables represent very specific laws. While this level of specificity can be informative, the inclusion of 19 separate variables is less helpful in gaining a broad understanding of the factors that affect state drug policy. The implicit assumption in the hypotheses enumerated in Chapter 2 is that drug policy is a single policy area, in which the same factors will affect different types of drug policy. Therefore, an index was created to include the 19 drug policy variables discussed above. Because the variables are measured differently, the index was created using the z-scores of each variable. The z-scores standardize the individual measures, which is important in order to ensure that each variable contributes an equal weight to the index (O’Sullivan, Rassel, & Berner, 2007). This index is the dependent variable of interest in the study. Table 3.1 contains the descriptive statistics for the index. A drug policy index score was
not possible for all states for all years due to data limitations. Virginia does not have a
drug policy index score for 1975 and Ohio does not have one for 1996, 1999, and 2002.
Notably, Iowa does not have a drug policy index score for any of the years because,
while there is some sentencing policy data for Iowa, there is not enough to create an
index score comparable to that created for other states.

Table 3.1.
Descriptive Statistics for Drug Policy Index

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>Mean</th>
<th>Std.Dev</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Index</td>
<td>487</td>
<td>.16</td>
<td>10.63</td>
<td>-15.21</td>
<td>36.55</td>
</tr>
</tbody>
</table>

**Independent Variables**

The independent variables included in this study test several hypotheses
regarding the factors that may affect state drug sentencing policies. The model
presented in Chapter 2 posits that several types of factors are relevant to understanding
state drug policy, including the social construction of the target population, the desire
for social control, political factors, and bureaucratic forces. Table 3.2 provides a list of
independent variables. All variables included in the study are discussed in further detail
below.
<table>
<thead>
<tr>
<th>Variable Name</th>
<th>Data Source</th>
<th>Lag Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felon Disenfranchisement Laws</td>
<td>Christopher Uggen; Behrens, Uggen, &amp; Manza (2003)</td>
<td>3yrs</td>
</tr>
<tr>
<td>Proportion of black elected officials relative to state population</td>
<td>Joint Center for Political and Economic Studies</td>
<td>3yrs</td>
</tr>
<tr>
<td>State Incarceration Rates</td>
<td>Stemen et al. (2006) dataset</td>
<td>3yrs</td>
</tr>
<tr>
<td>State Violent Crime Rates</td>
<td>FBI, Uniform Crime Reporting Statistics</td>
<td>3yrs</td>
</tr>
<tr>
<td>Law Enforcement Expenditures</td>
<td>US Census</td>
<td>3yrs</td>
</tr>
<tr>
<td>Maximum guaranteed AFDC benefit to a family of three</td>
<td>US House Ways and Means Committees Green Books</td>
<td>3yrs</td>
</tr>
<tr>
<td>State black population</td>
<td>Stemen et al. (2006) data set for all years except 1972; US Census Statistical Abstracts</td>
<td>3yrs</td>
</tr>
<tr>
<td>State poverty rate</td>
<td>Stemen et al. (2006) dataset for all years except 1972; US Census Statistical Abstracts</td>
<td>3yrs</td>
</tr>
<tr>
<td>Gini coefficient</td>
<td>Stemen et al. (2006) dataset</td>
<td>3yrs</td>
</tr>
<tr>
<td>Party of governor</td>
<td>US Census Statistical Abstracts</td>
<td>2yrs</td>
</tr>
<tr>
<td>Government Ideology</td>
<td>William D. Berry; Evan J. Ringquist; Richard C. Fording; Russell L. Hanson, 2007, &quot;Replication data for: Measuring Citizen and Government Ideology in the American States, 1960-93&quot;, <a href="http://hdl.handle.net/1902.1/10570">http://hdl.handle.net/1902.1/10570</a></td>
<td>2yrs</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>William D. Berry; Evan J. Ringquist; Richard C. Fording; Russell L. Hanson, 2007, &quot;Replication data for: Measuring Citizen and Government Ideology in the American States, 1960-93&quot;, <a href="http://hdl.handle.net/1902.1/10570">http://hdl.handle.net/1902.1/10570</a></td>
<td>2yrs</td>
</tr>
<tr>
<td>Political Culture</td>
<td>Elazar (1984)</td>
<td>N/A</td>
</tr>
<tr>
<td>Interparty Competition—Holbrook &amp; Van Dunk Index</td>
<td>Shufeldt &amp; Flavin (2011)</td>
<td>N/A</td>
</tr>
<tr>
<td>Interparty Competition—Ranney Index</td>
<td>Shufeldt &amp; Flavin (2011)</td>
<td>N/A</td>
</tr>
<tr>
<td>Police per 100,000 state population</td>
<td>Stemen et al. (2006)</td>
<td>3yrs</td>
</tr>
<tr>
<td>State drug arrests—3 year average lags</td>
<td>Stemen et al. (2006)</td>
<td>3yrs</td>
</tr>
<tr>
<td>Percentage of state population living in metropolitan area</td>
<td>US Census Statistical Abstract</td>
<td>3yrs</td>
</tr>
<tr>
<td>State Gross Domestic Product</td>
<td>Bureau of Economic Analysis</td>
<td>3yrs</td>
</tr>
</tbody>
</table>
This study employs a distributed lag model. This lag is used to allow time for the relevant factors to affect policy decisions. Because a considerable amount of time can pass before environmental conditions can affect policy adoption decisions, a three year lag is used to ensure that this time is accounted for. The state comparative policy literature does not indicate an ideal lag time for policy adoption research. Some studies do not use any lag (Allen et al. 2004; Hill et al., 1995; Owens & Smith, 2012), while others use a one year lag for variables related to socioeconomic conditions (Berry & Berry, 1990; Stucky et al., 2007). However, it is not clear that a one year lag is sufficient to account for the time passed between socioeconomic conditions and the policy response to them. The three year lag ensures that enough time has passed between socioeconomic conditions and policy outputs to establish a cause-effect relationship. At the same time, because most indicators that capture a state's socioeconomic conditions change little over short periods of time, there is little risk that the three year lag is too long. Due to data limitations, a three year lag is not possible for all environmental variables. For example, data on the percentage of state population living in a metropolitan area is not available for several years of interest, including 1972, 1981, 1993, and 1999. In these instances, data from the closest year that still preceded the dependent variable year is used instead. When a three-year lag was not an option, all efforts were made to keep substitutions as consistent as possible.

While a three year lag is sufficient for socioeconomic variables, it is less so for political variables. This is because political cycles in some states are only two years; a three year lag could inappropriately assign policy decisions to a legislative body that was
not in office at the time of those decisions. And because political variables are subject
greater fluctuation than environmental variables, it is important to account properly for
the time passed between elections and policy adoption decisions. Therefore, a two year
lag is used for political variables. Table 3.2 provides the lag time for all variables. While
the use of two different time lags may complicate the model, it is not unwarranted,
especially when political variables are involved, and is preferable to a blanket lag time to
the extent that it better captures the temporal relationship between variables (See
Stucky et al., 2007; Tucker, 1982).

Social construction of the target population. To test the hypothesis that states with
negative constructions of the target population are more likely to adopt more stringent
drug policies, this study uses a quantitative measure developed by Nicholson-Crotty and
Nicholson-Crotty (2004) to capture the social construction of the target group of prison
inmate health policies in the states. Based on Schneider and Ingram’s (1993) theory of
social construction, the measure is a factor score that accounts for both the elite
perceptions of the target group and the political power of the target group. To
determine the political power of those that come into contact with the criminal justice
system, a measure for whether a state permanently disenfranchises felons and a
measure of black representation in the state legislature are used. The use of felon
disenfranchisement laws captures the voting power (or lack thereof) of the felon
population as well as elite perceptions regarding whether this population is entitled to
this most basic form of political expression. The use of black representation in state
legislatures assumes that these elected officials will be more likely to represent black interests than other elected officials, an assumption for which there is some support (Bratton & Haynie, 1999). And while blacks are not the only targets of criminal justice policy, they are significantly over-represented in the prison population, particularly for drug crimes (King & Mauer, 2002), making a focus on their representation a reasonable measure of the political strength of the target population.

To account for elite perceptions of the target population, Nicholson-Crotty and Nicholson-Crotty (2004) use the state incarceration rate controlled for crime rates and law enforcement expenditures and the state’s minimum guaranteed AFDC benefit to families of three. The incarceration rate, when controlled for crime and expenditures, is intended to capture the punitiveness of the state. States that have higher incarceration rates relative to crime rates are regarded as more punitive, and thus are assumed to perceive the population of convicted offenders more negatively and more deserving of punishment. The measure of AFDC generosity is intended to capture the perceived deservedness of the poor, who tend to make up the majority of individuals that come into contact with the criminal justice system.

Nicholson-Crotty and Nicholson-Crotty (2004) employ their measure to determine the impact of negative social constructions on the implementation of inmate health programs in state prisons. They find that, more than inmate needs or financial capacity, social constructions play a significant role in determining state legislators’ decisions to fund HIV/AIDS and tuberculosis treatment and prevention programs. While this study examines a different issue (drug policy) at a different stage in the policy
process (policymaking), the measure of social construction captures the target population of the criminal justice system generally, making it relevant to this study as well. Moreover, by replicating and expanding Nicholson-Crotty and Nicholson-Crotty's measure, this study contributes to the literature on social construction and may lend further support to the use of a quantitative measure of social construction in the criminal justice context.

The specific variables that are used to construct this measure of social construction include a dummy variable for whether the state permanently disenfranchises felons, the proportion of black state legislators relative to the state black population size, the state incarceration rate controlled for crime rates and law enforcement expenditures, and the state's guaranteed monthly Aid to Families with Dependent Children payment for a family of three. Data on state disenfranchisement laws were obtained by contacting Christopher Uggen, who has done extensive historical work on these laws (see Behrens et al., 2003). Data for state felon disenfranchisement were missing for the year 1972. However, data was available for state laws in 1960, as well as the years of major changes to state legislation. Therefore, the 1960 data were used for 1972 except when a major revision occurred between 1960 and 1972 that affected whether the state permanently disenfranchised felons. Data on state black elected officials were obtained from the Joint Center for Political and Economic Studies. Data on incarceration rates were obtained from Stemen et al. (2006). Data on crime rates came from the Bureau of Justice Statistics, National Prisoner Statistics Series. Law enforcement expenditures were available in the U.S. Census. The maximum guaranteed
AFDC benefit for a family of three is provided in the U.S. House Ways and Means Committee’s Green Books. Data on benefits for three-person families were not reported prior to 1975; for the year 1970 the Ways and Means Committee derived the measure by “reducing the reported 4-person maximum benefit amount by the proportional difference between 3- and 4-person AFDC maximum benefit as shown in the July 1975 DHEW reports” (House Ways and Means Committee, 1991, p.605). Data for 1972 were not available so the 1970 data were used as a substitute. In 1997 states switched from the AFDC system to the Temporary Assistance for Needy Families (TANF) program. For the year 1999 then, the maximum TANF benefit for a family of three is used in place of the AFDC benefit measure. While the switch from AFDC to TANF resulted in considerable changes in the generosity of welfare benefits, all states made the change and so using this as a substitute measure to compare states for the final year of the study should not be problematic.

Following Nicholson-Crotty and Nicholson-Crotty (2004), principal component analysis was used to create a social construction component. However, unlike the author’s findings, in this instance the four variables created two components instead of one. The KMO Measure of Sampling Adequacy yielded a score of .480 and the Bartlett’s Test of Sphericity is significant at the .000 level. Together the two components explain 64.59 percent of the variance. The first component, which is called Elite Perceptions, has an Eigenvalue of 1.44 and includes the variables for felon disenfranchisement laws and
AFDC payments. The second component, which is called Black Threat Potential, has an Eigenvalue of 1.15 and includes the variables for the incarceration residual and the proportion of black representation in the state legislature. That the four variables did not create one component is probably attributable to the long time period of study. In other words, there was likely too much variation among the variables over the years to indicate the presence of one phenomenon. Interestingly, the variables did not load together as would be expected. That is, felon disenfranchisement laws and black legislative representation are considered measures of political power of the target population, but rather than loading together they loaded with AFDC payments and the measure for overall punitiveness respectively, which were intended to capture elite perceptions of the target population.

Felon disenfranchisement laws, while they may indicate the political power (or lack thereof) of the target population, are also indicative of how the state thinks law breakers should be treated (Nicholson-Crotty & Nicholson-Crotty, 2004). To permanently remove a felon’s ability to vote is an additional form of punishment that suggests the state does not believe this population deserves to exercise this basic civic right. In that sense then, it may be capturing a similar underlying concept as stringent social assistance policies that regard the poor as undeserving of public assistance. This component of the social construction measurement is called Elite Perceptions because

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6 The coding for felon disenfranchisement was reversed (1=not permanently disenfranchised) so that it would be in same direction as AFDC payments. This did not alter component loadings, only the sign for the felon disenfranchisement variable, and helps improve the interpretation of this variable in the model.
both policy measures indicate the perceived deservedness of marginalized populations among policy makers.

The rationale behind the loading of the incarceration residual and black representation is less clear. Black representation and the incarceration residual are both positively and significantly correlated with black population size, although in both cases the correlation is low ($r=.14$, $p<.01$ for black population and black representation; $r=.22$, $p<.01$ for black population and incarceration residual). It is possible that greater black representation, while possibly favorable to the black population, may also indicate that the black population is a greater threat to the elite because of this political potential. Similarly, because blacks are incarcerated at higher rates than whites, greater use of incarceration may suggest that the black population is perceived as a greater potential threat to the social order. That neither of these variables is correlated highly with black population size ($r < .3$) supports the argument that the potential threat posed by the black population is not necessarily a function of its size as much as it is a function of its political power or visibility in society.

**Social control variables.** In Chapter 2 it was argued that the law can be used as a mechanism for controlling undesirable or threatening populations. Social control arguments are compatible with the social construction framework because the groups typically perceived as threatening or undesirable also tend to have negative social constructions. To test the hypotheses that states with larger black populations and higher rates of poverty are more likely to pass stringent anti-drug policy, the percentage
of blacks living in a state and the state poverty rate are used. Data on these variables were collected from Stemen et al. (2006). For the percent of the state population that is black, Census data was not available for the early years of the study. The data from Stemen et al. (2006) were gathered for 1970, 1973, 1975, and 1976 and values for the missing years from 1970 to 1976 were interpolated from this data.

It is likely that these variables are related in important ways, given that black poverty rates tend to be higher than those for whites. Moreover, it may be the case that high rates of poverty alone do not create a perceived threat but instead do so when there is a large black population that is also poor. Given the long time period of study, it was not possible to find data on the different poverty rates for whites and blacks for all fifty states for all years in question. Instead, the interaction of a large black population and high poverty rates are tested by multiplying the variables. This does not capture the same concept as race-specific poverty rates, which would also indicate comparative levels of inequality, but it does at least account for the overlap between race and poverty that is common in the United States.

While the poverty rate can capture the frequency of poverty in a state, it does not necessarily capture the degree of inequality. A state could have a high poverty rate and a high rate of average-income citizens, indicating relatively moderate levels of inequality, or it could have a high poverty rate and a large wealthy population, suggesting greater inequality. Conversely, a state could have a low poverty rate but high inequality as a result of both a very wealthy and a more middle class citizenry. The Gini coefficient can be used to test for state inequality. Data for this variable came from
Stemen et al. (2006). Stemen et al. used Gini coefficient data from the U.S. Census, which was only available during the Census years, and interpolated the remaining years. As with poverty rates, it is important to test for any interaction effects between black population size and levels of inequality, as the degree to which the black population presents a threat to society may be affected by the level of inequality already present in a state.

Another relevant test for social control in this context is state welfare generosity, which has been found to be a significant predictor of state punitiveness (Beckett & Western, 2001). However, this variable is captured by the measure for the social construction of the target population. Felon disenfranchisement laws and state incarceration rates arguably could also be used as measures of social control in this context because they indicate a state’s propensity to limit the freedom and political rights of the offender population. These variables are included in the study as part of the measure for social construction, but their applicability to the social control context further indicates the overlap between these theoretical concepts.

Political variables. Political explanations for state policy differences are prominent in the state comparative literature (Bratton & Haynie, 1999; Jacobs & Carmichael, 2001; Soss et al., 2001). The highly politicized environment characteristic of the drug policy arena demands an examination of the role political forces have played in shaping drug policy. As discussed in Chapter 2, the Republican Party viewed the law and order movement as an opportunity to strengthen its electoral power. To test the effect of
Republican control at the state level, dummy variables are created for whether the state has a Republican governor (1=yes). This data were obtained from Stemen et al. (2006) and the U.S. Census. A variable for Republican control of the state legislature is not included because this is sufficiently captured by the Ranney interparty competition index which is discussed below.

The success of the War on Drugs also put pressure on Democrats to appear tough on crime, meaning that supporting harsh legislation was advantageous—and opposing such legislation carried political risks—to both parties. This suggests the possibility that political opponents competed to be seen as the greater adversary against drug offenders, leading to the hypothesis (stated in Chapter 2) that states with higher levels of interparty competition are more likely to pass more punitive drug laws. Smith (2004), Stucky et al. (2007), and Williams (2003) all find evidence supporting the notion that states with more competitive legislative races are more punitive towards crime. The Holbrook and Van Dunk index is used to measure this aspect of interparty competition. The index captures the level of electoral competition in the state by measuring the average margin of victory in state elections at the district level and the number of uncontested legislative seats (Shufeldt & Flavin, 2011).

One aspect of interparty competition is party institutional strength. The Ranney index captures interparty competition in terms of dominance of one party in state government. This index includes “the proportion of seats won in the state House and Senate elections, the Democratic percentage in the gubernatorial election, and the percentage of the time the governorship and state legislature were controlled by the
Democratic party” (Shufeldt & Flavin, 2011, p.2). Partisan control of government and electoral competition are two distinct features of interparty competition and should be treated as such. Shufeldt & Flavin (2011) show that while the measures are correlated in the 1970s and 1980s, in the 1990s they diverge, providing support for the notion that they are measuring different aspects of interparty competition. The value for the Ranney index ranges from 0 to 1, where a 0 indicates complete Republican control, a 1 indicates perfect Democratic control, and a .5 indicates perfect competition. Therefore, this measure also captures the degree of Republican institutional dominance in the state. Studies more concerned with interparty competition at the institutional level transform the measure to capture perfect competition by “folding” the measure so that values range from .5 for one party dominance to 1 for equal competition between parties (Shufeldt & Flavin, 2011). However, it is not clear that competition at the institutional level in and of itself leads to more punitive policies (Meier, 1994). Therefore, this measure is used in its original form to capture Republican institutional strength. This is preferable to just measuring state legislative control because it is a more encompassing measure of institutional strength, and because it allows for testing the interaction effect between partisan control of state governing bodies and electoral competition.

Barrilleaux et al. (2002) find strong evidence supporting the idea that electoral competition and party control interact to determine the generosity of redistributive policies. Specifically, strong electoral competition only leads to more liberal welfare policies when the state legislature is controlled by Democrats; strong electoral
competition and Republican institutional dominance have the opposite effect. In the context of drug policy, this leads to the hypothesis that strong electoral competition combined with a Republican dominated government will lead to more punitive drug policy.

To test for the effects of the two dimensions of interparty competition on state drug policy, this study uses the Ranney index and Holbrook and Van Dunk index measures updated by Shufeldt and Flavin (2011). Both indices are updated using four-year moving averages for the time periods 1970-1973, 1974-1977, 1978-1981, 1982-1985, 1986-1989, 1990-1993, 1994-1997, and 1998-2001. Because of the use of four-year averages, a two-year lag time is not possible. In order to establish the proper cause-effect relationship, the time period chosen for each year of study is that in which all of the years precede the study year or where the study year is the last year in the time period. For example, for the year 1975, the interparty competition measures for 1970-1973 are used. For the year 1981, the measures for 1978-1981 are used. While this method has limitations due to the variability in time separation between the independent and dependent variable across study years, it is the best available option for studying the effects of interparty competition.

Political ideology is another important political variable to consider in explaining variation in state drug policy. While party control and political ideology may overlap, they are separate concepts. Ideology is distinct from political affiliation, as the latter is more indicative of one’s loyalties to a particular political party than of one’s base values about the proper role of government and views of the world. This is particularly the case
given the time frame of this study, which spans three decades, and during which time there have been significant shifts in party alignment. For instance, until recently, much of the state government in the South has been controlled by the Democratic Party. However, one cannot reasonably assume that the Democratic Party of the South is comparable to the Democratic Party of the Northeast, making the test for political influence on state drug policy based on party affiliation alone problematic. Testing for the effects of government ideology has the advantage of accounting for the real differences in ideology across state governments, rather than party label preferences.

This study uses the measure developed by Berry, Ringquist, Fording, and Hanson (1998) to test government ideology. The government ideology measure, which “is intended to measure the ideological ‘center of gravity’ of a state government’s elected institutions,” combines the ideology scores of a state’s governor and the Republican and Democratic delegations in the state house and senate into a weighted average score for institutional ideology (Berry, Fording, Ringquist, Hanson, & Klarner, 2013, p.2). The critical assumption in this measurement is that “in each year, the mean ideology of each party delegation in a state legislative chamber and the ideology of each governor equal the mean ideology of the state’s congressional delegation from the same party” (Berry et al., 2013, p.2).

The assumption that the ideology of state legislators will be similar to the ideology of Congress members from that same state is a limitation of the measure, particularly given the unique nature of state politics vs. national politics, especially in the South. More recently, a measure of government ideology was created by Shor and
McCarty (2011) that measures state ideology based on state and congressional roll call data and state and national candidate respondents to Project Votesmart’s National Political Awareness Test. This test is superior to Berry et al.’s because it does not rely on national official information to infer ideological attitudes of state officials. However, currently this measure is only available for years 1995-2008, and no year has the measure for all fifty states. Acknowledging the advantages of Shor and McCarty’s (2011) measure, Berry et al. (2013) test their measure against the newer measure. They find high correlations between the two indicators, and that when the newer measure is substituted for the older, the conclusions regarding the significance of government ideology are almost identical. They therefore suggest using the Shor and McCarty measure when available but maintain the validity of the Berry et al. measure when the circumstances require otherwise. Given the longitudinal nature of this study and the inclusion of all fifty states, I employ the original Berry et al. measure to test for the effects of government ideology, despite its limitations.

This study also tests for the effects of citizen ideology on state drug policy. Citizen ideology is measured using the indicator developed by Berry et al. (1998). This measure uses the ideological scores given to members of Congress by political interest groups, which are based on member voting records, and the distribution of votes for congressional incumbents and challengers within each congressional district. The assumption here is that citizens will vote for the candidate who most closely represents their own ideological positions. This measure has been used in several studies (for example, Jacobs & Carmichael, 2001; Soss et al., 2001). However, there have been
critiques of this measure, most notably from Brace, Arceneaux, Johnson, and Ulbig (2004), who argue that the Berry et al. measure does not control for national trends that affect all states and that their measure is more an indicator of elite preferences than citizen ideology. Brace et al. (2004) offer an alternative measure, which does control for national trends and which draws on longitudinal opinion data from election surveys. However, one limitation of this method is that the small sample size makes it difficult to generalize. The measure to be used depends on the nature of the study. As the Berry et al. measure may better capture public mood at a given time, in contrast to the Brace et al. measure which may indicate "ideological self-identification," a more stable phenomenon, then the Berry et al. measure may be more appropriate for studies which are trying to determine the influence of citizen preferences on elected officials' decisions regarding different policy areas (Berry et al. 2007, p.127; also see Norrander 2007), as this study is trying to do.

The final political variable tested in the model is state political culture. This study focuses on traditionalistic culture. As discussed in Chapter 2, states with a traditionalistic political culture tend to have a conservative government, a focus on maintaining the status quo, and an emphasis on social and family values. This suggests that, more than individualistic or moralistic states, states dominated by this culture will be more likely to take a more punitive attitude towards drugs. Based on Elazar's (1984) map, states in which the traditionalistic political culture is the sole or dominant culture are coded as a 1 and other states are coded as a 0. Given the stability of political culture over time, this value is held constant for all states in all years of study.
**Bureaucratic forces.** Prior research suggests that law enforcement agencies play an important role in the adoption of crime policy (Meier, 1992; 1994; Miller, 2008). To the extent that tougher laws require greater enforcement efforts and therefore more resources for law enforcement, police departments and other state law enforcement agencies may have an interest in seeing such legislation passed. Following Meier (1992; 1994), this study accounts for the effect of the police bureaucracy by measuring the number of local and state full-time equivalent police employees per 100,000 persons. This data were obtained from Stemen et al. (2006), who relied on the Sourcebook of Criminal Justice Statistics from the Bureau of Justice Statistics.

One reason that anti-drug initiatives are of such interest to law enforcement agencies is that the federal government has provided financial incentives to states for pursuing drug related crimes. For example, the 1984 Comprehensive Crime Control Act provided for the sharing of drug related asset seizures between federal and state and local law enforcement agencies, and this led subsequently to a greater focus of law enforcement resources on drug enforcement activities (Benson et al., 1995). Drug legislation passed in 1986 and 1988 also included stipulations that may have encouraged states to pass their own punitive drug laws. The 1994 Violent Crime Control and Law Enforcement Act, while focusing less on drug offenses than other types of crime, offered incentives to states for pursuing more punitive crime legislation and so may have been significant as well. Possible effects of these federal statutes are captured in the model by creating dummy variables for the years 1984, 1986, 1988, and 1994. For
the years 1984 and 1986, a dummy variable is used only for the year in question. The dummy variable for the year 1988 applies to that year and all subsequent years of study. The reasoning here is that the drug legislation of the 1984 Comprehensive Crime Control Act was superseded by the 1986 Anti-Drug Abuse Act, which was then replaced with the 1988 Anti-Drug Abuse Act. From 1988 to 2002 there was no significant federal drug legislation that replaced the 1988 legislation. The 1994 Violent Crime Control Act was not as focused on drug offenses, and so this law is not considered to have replaced the 1988 law. The dummy variable for the 1994 legislation applies to that year and all subsequent years of study because the federal government did not pass a major crime bill replacing that bill during the period of study.

**Control variables.** Because the official rationale behind most drug policy is that it is needed in order to address a drug problem, it is important to control for drug abuse in the state. It is challenging to gather reliable data on the population of drug users and abusers because drug use typically is an under-reported activity. The National Survey on Drug Use and Health surveys drug use among household members aged 12 years and older and can capture the prevalence of drug use in the country reasonably well, but data is not available by state for the years of study. Meier (1992) captures the amount of drug usage by including drug abuse treatment admission rates. Unfortunately, this data also is not available for the years of study. Instead, this study uses two proxy measures for drug usage, one of which is the percent of the state population living in a metropolitan area. As the use and abuse of drugs is more prevalent in urban areas, this
serves as an indirect measure of a state’s drug use (See Meier 1992). Data on the size of a state’s metropolitan population were obtained from the U.S. Census.

The other indirect measure is the drug arrest rate proportionate to the overall arrest rate in the state (Stemen et al., 2006). By measuring drug arrests as a proportion of all arrests, this measure accounts for variations in overall arrest rates across states. It is important to note that the drug arrest rate does not necessarily capture the drug problem but instead the effectiveness of the police at enforcing current drug laws. However, it may capture how the drug problem is perceived in the state. That is, some states may have higher drug arrest rates because law enforcement in that state chooses to focus more resources on drug arrests, either because they have the budget to do so or because they have made drugs a greater priority than other states (or both). High drug arrest rates may also indicate to lawmakers that the state has a drug problem that requires greater attention. On the other hand, high rates of drug arrest could also suggest that current laws and police efforts are effective and that further legislative action therefore is not necessary.

The final control variable is the state Gross Domestic Product, obtained from the Bureau of Economic Analysis. This measure captures state resources which are important to control for as they can affect the funds available to lawmakers to pursue legislation that requires more resources. It can also affect the resources states have to deal with drug use in other ways, such as education, treatment, and prevention.
Method of Analysis

The goal of this research is to identify factors that affect states’ decisions to adopt certain drug policies and factors that account for variance across states. Given these objectives, this study employs pooled time-series cross-sectional (TSCS) analysis. TSCS analysis allows for the examination of state drug policy across space and over time. The pooled analysis looks at “repeated observations (most frequently years) on fixed units (most frequently states and nations)” (Podesta, 2000, p.6). By incorporating time and space, TSCS analysis is able to capture state variation on these dimensions simultaneously. In this way it is superior to standard cross-sectional research, which cannot measure changes in variables over time and is less suitable for identifying causal relationships, and longitudinal analysis of one case, which is not generalizable to the population. Moreover, while cross-sectional state comparative studies suffer from the “small N” problem—having too many variables and not enough cases to comply with the assumptions of statistical analysis—the use of pooled data significantly increases the sample size by counting each year for each state as one case (Podesta, 2000). Also, TSCS analysis can be more effective for studying variables that do not vary significantly over short periods of time (Podesta, 2000). The dataset used in this study contains data for 50 states for ten points in time that are spread over a period of 27 years, making it ideal for TSCS analysis.

TSCS analysis has some challenges. One complication that comes with TSCS analysis is that its error terms violate the assumptions of OLS regression. For example, OLS regression assumes that errors are independent of each other, but in TSCS analysis
the error terms are often correlated across time periods. Errors may also be heteroskedastic, as states may have different levels of variance across observations (Podesta, 2000). There are different ways to address these issues. The most common ways to deal with panel data are with either a fixed effects model or a random effects model. The method for addressing the error term complications will be decided based on an initial analysis of the data.

**Model Specification**

Figure 3.1 depicts the model for the relationship between state drug policy and the factors discussed above. Specifically, state drug policy, or variable Y, is a function of social construction, social control, political factors, bureaucratic forces, and controls where

\[ Y = f(\text{elite perceptions, black threat potential, black population size, poverty rate, black X poverty, Gini coefficient, black X gini, party of governor, Republican institutional strength, electoral competition, electoral competition X Republican institutional strength, government ideology, citizen ideology, political culture, size of police force, state drug arrest rates, size of metropolitan population, state GDP}) \]

and Y is the Drug Policy Index.
Figure 3.1. Model of Factors Affecting State Drug Policy

Social Construction
- Elite Perceptions
- Black Threat Potential

Social Control
- Black population size
- Poverty rate
- Black X Poverty
- Gini coefficient
- Black X Gini

Political Variables
- Republican governor
- Republican institutional strength
- Electoral competition
- Electoral competition X Rep institutional strength
- Political culture
- Government ideology
- Citizen ideology

Bureaucratic Forces
- Size of police force
- Federal drug legislation

Controls
- Size of metropolitan population
- Drug arrest rates
- State GDP

State Drug Policy
Index of drug policy variables
Summary

This chapter discussed the dependent and independent variables that are used in this study and the data sources. It also described the methods used to create the drug policy index that is used as the dependent variable and the measures for social construction that are used as independent variables. This study employs a distributed lag model to capture the cause-effect relationship between the independent and dependent variables; the lag is two years for political variables and three years for all other variables except those which are constant over time (i.e., political culture), or for which the lag is not possible (i.e., interparty competition measures). The analytical technique, time-series cross-sectional analysis, is also discussed briefly. Chapter 4 provides a more detailed discussion of the methods, as well as descriptive information for all variables and findings from the analysis.
CHAPTER 4
ANALYSIS AND RESULTS

Chapter 3 described the data collection methods, the dependent and independent variables used in the study, the data reduction process for the dependent variable, the analytical approach, and the model specification. This chapter reports the descriptive statistics for the data used in the study and the results of the panel data analysis that tests the relationships between drug policy and the independent variables. Specifically, this chapter addresses the research question, what factors drive state level drug sentencing policies? The chapter begins with a discussion of the data, followed by a description of the analytic technique and the findings. The software package Stata/SE 12.0 was used for all statistical procedures.

Descriptive Results

Dependent Variable

As discussed in Chapter 3, a drug policy index variable was created to capture state drug policy. This index is comprised of variables measuring minimum and maximum sentence lengths for cocaine, heroin, and marijuana possession and sale, the number of sentencing enhancements related to offenses for cocaine, heroin, marijuana, and other drugs, and the number of punishment severity levels associated with cocaine, heroin, and marijuana related offenses. The average index score for each state for the
years of study is reported in Table 4.1. The states are ranked from most to least punitive.

Table 4.1. Descriptive Statistics for Drug Policy Index by State, Mean(Std.Dev)
Table 4.1 continued

<table>
<thead>
<tr>
<th>State</th>
<th>Mean (Std.Dev.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky</td>
<td>-7.04 (.91)</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>-7.11 (6.76)</td>
</tr>
<tr>
<td>West Virginia</td>
<td>-7.11 (.46)</td>
</tr>
<tr>
<td>Nebraska</td>
<td>-7.27 (5.57)</td>
</tr>
<tr>
<td>Alaska</td>
<td>-7.34 (1.87)</td>
</tr>
<tr>
<td>California</td>
<td>-8.012 (2.63)</td>
</tr>
<tr>
<td>Wyoming</td>
<td>-8.15 (1.71)</td>
</tr>
<tr>
<td>Kansas</td>
<td>-8.304 (3.05)</td>
</tr>
<tr>
<td>Washington</td>
<td>-8.40 (1.39)</td>
</tr>
<tr>
<td>Maryland</td>
<td>-8.47 (4.39)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>-8.65 (5.54)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>-8.65 (2.85)</td>
</tr>
<tr>
<td>Montana</td>
<td>-8.66 (.71)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>-9.51 (2.83)</td>
</tr>
<tr>
<td>Oregon</td>
<td>-9.59 (4.96)</td>
</tr>
<tr>
<td>Maine</td>
<td>-11.60 (.72)</td>
</tr>
<tr>
<td>Iowa*</td>
<td>N/A</td>
</tr>
</tbody>
</table>

*As discussed in Chapter 3, a drug policy index score is not available for Iowa because there was not enough data for this state.

Table 4.2 provides the average index score for each year, across all states. From this table it is clear that average drug punitiveness increased steadily during the period of study. This supports the argument made in the historical review in Chapter 2 that punitiveness towards drugs has increased during the War on Drugs era.

Table 4.2.
Descriptive Statistics for Drug Policy Index by Year, Mean(Std.Dev)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-6.74</td>
<td>-6.61</td>
<td>-3.48</td>
<td>-2.28</td>
<td>-41</td>
<td>2.66</td>
<td>4.07</td>
<td>4.11</td>
<td>5.09</td>
<td>5.46</td>
</tr>
<tr>
<td></td>
<td>(6.86)</td>
<td>(6.45)</td>
<td>(9.08)</td>
<td>(9.96)</td>
<td>(10.28)</td>
<td>(10.34)</td>
<td>(10.81)</td>
<td>(10.39)</td>
<td>(10.76)</td>
<td>(11.09)</td>
</tr>
</tbody>
</table>
Independent Variables

The first step in analyzing the independent variables was to assess the normality of the data. The Kolmogorov-Smirnov tests for normality indicated that several variables violated the assumptions of normality. These variables were positively skewed and leptokurtic, indicating peaked distributions clustered to the left. Table 4.3 provides information on these variables prior to their transformation.

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Min</th>
<th>Max</th>
<th>Mean</th>
<th>Std.Dev</th>
<th>Skewness</th>
<th>Kurtosis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Representation</td>
<td>550</td>
<td>0</td>
<td>3.67</td>
<td>.56</td>
<td>.52</td>
<td>2.08</td>
<td>7.74</td>
</tr>
<tr>
<td>Incarceration Rate</td>
<td>546</td>
<td>21.00</td>
<td>776.00</td>
<td>190.54</td>
<td>134.56</td>
<td>1.23</td>
<td>1.39</td>
</tr>
<tr>
<td>Law Enforcement Expenditures</td>
<td>550</td>
<td>240.00</td>
<td>932482.00</td>
<td>67344.62</td>
<td>104058.95</td>
<td>4.31</td>
<td>25.55</td>
</tr>
<tr>
<td>Black Population</td>
<td>550</td>
<td>.20</td>
<td>36.80</td>
<td>9.38</td>
<td>9.21</td>
<td>1.13</td>
<td>.43</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>550</td>
<td>2.90</td>
<td>35.40</td>
<td>13.07</td>
<td>4.38</td>
<td>1.04</td>
<td>1.44</td>
</tr>
<tr>
<td>Drug Arrest Rate</td>
<td>546</td>
<td>.02</td>
<td>.25</td>
<td>.06</td>
<td>.03</td>
<td>1.57</td>
<td>4.52</td>
</tr>
<tr>
<td>GDP</td>
<td>550</td>
<td>1798.00</td>
<td>1211851.00</td>
<td>84396.43</td>
<td>127760.87</td>
<td>3.89</td>
<td>21.19</td>
</tr>
</tbody>
</table>

In order to correct for these violations, the data were transformed by taking the natural log. All data were transformed in the same way to retain consistency. The variable for black representation contains zero values. Because the natural log of zero is undefined, this variable was transformed using the formula ln(X+1). The transformations improved the normality of the variables. While black representation and black population size are still skewed, the transformation is still an improvement from the

---

7 Although the variable for black representation, incarceration rate, and law enforcement expenditures were not included individually in the analysis, they were transformed prior to the regression and principal component analysis that created the social construction variables. This was done because component analysis may be sensitive to non-normal data (Treiblmaier & Filzmoser, 2009).
original skewness. Table 4.4 provides descriptive statistics for the transformed variables
and all other independent variables. For purposes of inclusiveness, the individual
variables that comprise the social construction components are included here, even
though they are not tested separately in the analysis.

Table 4.4.
Descriptive Statistics for Independent Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Min</th>
<th>Max</th>
<th>Mean</th>
<th>Std.Dev</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite Perceptions (component)</td>
<td>545</td>
<td>-2.14</td>
<td>2.82</td>
<td>0</td>
<td>1.00</td>
</tr>
<tr>
<td>AFDC Payments</td>
<td>550</td>
<td>48</td>
<td>923</td>
<td>315.81</td>
<td>147.41</td>
</tr>
<tr>
<td>Felon Voting laws</td>
<td>550</td>
<td>0</td>
<td>1</td>
<td>.31</td>
<td>.46</td>
</tr>
<tr>
<td>Black Threat Potential (component)</td>
<td>545</td>
<td>-1.89</td>
<td>3.43</td>
<td>0</td>
<td>1.00</td>
</tr>
<tr>
<td>Black Reps (In)</td>
<td>550</td>
<td>0</td>
<td>1.54</td>
<td>.40</td>
<td>.30</td>
</tr>
<tr>
<td>Incarceration Residual</td>
<td>550</td>
<td>-.370</td>
<td>4.397</td>
<td>0</td>
<td>.998</td>
</tr>
<tr>
<td>Inc Rate (In)</td>
<td>550</td>
<td>3.04</td>
<td>6.65</td>
<td>5.00</td>
<td>.73</td>
</tr>
<tr>
<td>Violent Crime Rate</td>
<td>550</td>
<td>34.20</td>
<td>1244.30</td>
<td>425.81</td>
<td>237.61</td>
</tr>
<tr>
<td>Law Enforcement Expenditures (In)</td>
<td>550</td>
<td>5.48</td>
<td>13.75</td>
<td>10.37</td>
<td>1.29</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>550</td>
<td>.32</td>
<td>.47</td>
<td>.38</td>
<td>.03</td>
</tr>
<tr>
<td>Poverty Rate(ln)</td>
<td>550</td>
<td>1.06</td>
<td>3.57</td>
<td>2.52</td>
<td>.32</td>
</tr>
<tr>
<td>Black Pop (ln)</td>
<td>550</td>
<td>-1.61</td>
<td>3.61</td>
<td>1.54</td>
<td>1.41</td>
</tr>
<tr>
<td>Republican Governor</td>
<td>550</td>
<td>0</td>
<td>1</td>
<td>.39</td>
<td>.49</td>
</tr>
<tr>
<td>HVD Index</td>
<td>543</td>
<td>14.96</td>
<td>79.17</td>
<td>45.61</td>
<td>11.88</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>550</td>
<td>.52</td>
<td>1.00</td>
<td>.82</td>
<td>.10</td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>549</td>
<td>1.67</td>
<td>95.04</td>
<td>48.07</td>
<td>22.50</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>550</td>
<td>9.14</td>
<td>93.91</td>
<td>46.35</td>
<td>16.09</td>
</tr>
<tr>
<td>Political Culture</td>
<td>550</td>
<td>0</td>
<td>1</td>
<td>.32</td>
<td>.47</td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>550</td>
<td>122.22</td>
<td>445.78</td>
<td>255.02</td>
<td>60.23</td>
</tr>
<tr>
<td>Drug Arrests (In)</td>
<td>550</td>
<td>-4.07</td>
<td>-1.41</td>
<td>-2.82</td>
<td>.41</td>
</tr>
<tr>
<td>Urban Population</td>
<td>550</td>
<td>15.30</td>
<td>100.00</td>
<td>63.37</td>
<td>22.25</td>
</tr>
<tr>
<td>GDP (ln)</td>
<td>550</td>
<td>7.49</td>
<td>14.01</td>
<td>10.58</td>
<td>1.27</td>
</tr>
</tbody>
</table>
Correlations between Variables

Table 4.5 provides the correlations between the dependent and independent variables. Most of the variables are significantly correlated with the drug policy index at the .05 level. The strengths of the correlations are modest, ranging from -0.11 for citizen ideology to 0.46 for the Gini coefficient. Variables for government ideology, the presence of a Republican governor, the Ranney interparty competition index, felon voting laws, black representation, and elite perceptions are not significantly correlated with the drug policy index.

**Table 4.5.**
Correlations between Drug Policy Index and Independent Variables

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Drug Policy Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite Perceptions</td>
<td>-0.08</td>
</tr>
<tr>
<td>AFDC Payments</td>
<td>0.09**</td>
</tr>
<tr>
<td>Felon Voting laws</td>
<td>0.02</td>
</tr>
<tr>
<td>Poverty Rate (ln)</td>
<td>0.23**</td>
</tr>
<tr>
<td>Black Threat Potential</td>
<td>0.33**</td>
</tr>
<tr>
<td>Inc Rate (ln)</td>
<td>0.56**</td>
</tr>
<tr>
<td>Violent Crime Rate</td>
<td>0.42**</td>
</tr>
<tr>
<td>Law Enforcement Expenditures (ln)</td>
<td>0.17**</td>
</tr>
<tr>
<td>Incarceration Residual</td>
<td>0.41**</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>0.46**</td>
</tr>
<tr>
<td>Black Pop (ln)</td>
<td>0.42**</td>
</tr>
<tr>
<td>Black Reps (ln)</td>
<td>0.04</td>
</tr>
<tr>
<td>Republican Governor</td>
<td>0.04</td>
</tr>
<tr>
<td>HVD Index</td>
<td>-0.30**</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>0.01</td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>-0.06</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>-0.11*</td>
</tr>
<tr>
<td>Political Culture</td>
<td>0.31**</td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>0.36**</td>
</tr>
<tr>
<td>Drug Arrests (ln)</td>
<td>0.25**</td>
</tr>
<tr>
<td>Urban Population</td>
<td>0.28**</td>
</tr>
<tr>
<td>GDP (In)</td>
<td>0.25**</td>
</tr>
</tbody>
</table>

*p<.05, **p<.001
Several of the independent variables are correlated significantly with each other. While many of these correlations also are low and therefore do not raise concerns about collinearity, some of the correlations could be problematic. Table 4.6 provides correlations for those independent variables with correlations $r > .3$. Variables were not omitted due to high correlations; collinearity was assessed post-analysis using the variance inflation factor (VIF) score. The models include several interaction variables, which by definition have collinearity. Excluding these variables, the mean VIF is 3.08. No variable other than those that are part of interaction terms have a VIF higher than six, safely below the cutoff of 10 (Hair et al., 2010).
Table 4.6.
Select Correlations between Independent Variables

<table>
<thead>
<tr>
<th></th>
<th>Inc. Residual</th>
<th>Police</th>
<th>Felon Laws</th>
<th>Black Pop (In)</th>
<th>Poverty (In)</th>
<th>AFDC</th>
<th>Elite Perceptions</th>
<th>Black Threat</th>
<th>HVD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inc. Residual</td>
<td></td>
<td></td>
<td></td>
<td></td>
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Data Analysis

This analysis combines features of time-series and cross-sectional data sets to construct a data set with multiple observations for several cases over time. Also known as panel data, this type of data is often used in econometric studies and has several advantages over data sets that are only cross-sectional or time-series. The inclusion of multiple cases addresses generalizability issues related to time-series analyses that focus on only one case and the longitudinal quality of the data improves interpretations of how variables of interest change over time. By pooling temporal and spatial variables, this method also increases sample size—a common problem in state comparative studies—by counting each observation for each case as one data point, which can also reduce collinearity between independent variables (Hsiao, 1986). The pooled method is also useful because by incorporating time and space dimensions into the analyses, it is better able to control for the issue of missing or unobserved variables (Hsiao, 1986). Panel data are also able to control for individual heterogeneity. The current analysis is cross-sectionally dominant, as opposed to temporally dominant, because there are more cross-sectional units (49) than time units (10) (Podesta, 2000). The only missing case is Iowa. While there is data for Iowa, there is not enough for the drug policy index, and so Iowa is dropped from this part of the analysis. Still data exists for all other states for all years, making the panel strongly balanced and thus improving model interpretation (Park, 2011).

Despite the advantages, certain characteristics of panel data can also increase the complexity of analysis. Several potential issues can cause biased standard errors and
inefficient coefficient estimates. One type of issue arises from error correlations, either among cross-sectional or time-series units. Contemporaneous correlation can occur across units when an event affects all units simultaneously. The other type of correlation that is especially likely in this type of study is autocorrelation across time units. This is because the conditions present at time $T$ are very likely to affect the conditions present at time $T+1$.

Another potential issue involves the heterogeneity of the data. One of the theoretical assumptions behind panel data analysis is that the “outcomes are random variables with a probability distribution that is a smooth function of the various variables describing the conditions of the experiment” (Hsiao, 1986, p.5). But in state comparative studies, it is more likely that heterogeneity exists across units which, if not accounted for, can lead to biased model estimates. States differ in their history and characteristics and so not only do they differ across the observed variables, but there may also be some unobserved variance that leads them to differ systematically across the dependent and independent variables. The variance of the error terms may also be heteroskedastic across units because some states may vary on some variables more than others (Podesta, 2000). The autocorrelations and potential unit effect issues must be accounted for in the analysis. Different models are tested to determine which one best addresses these issues.

There are three primary models for analyzing panel data. The most basic is pooled OLS. This assumes that individual effects across time and cross-section units are constant (Park, 2011). When heterogeneity exists, as it likely does in the current study,
pooled OLS is not an efficient model. Moreover, when autocorrelation between error terms exists, as it often does in time-series data, the assumptions of OLS regression are violated, producing biased or inefficient regression estimates (Podesta, 2000). However, pooled OLS remains a useful starting point for analysis because of its simplicity and because it is used to compare the efficiency and accuracy of the other model types, fixed effects and random effects models (Park, 2011; also see Kebhaj, Shahidinia, Testa, & Williams, 2013).

A fixed effects model looks at whether the independent variables vary across unit, time period, or both. Dummy variables are used to account for either time or individual effects. This model assumes there is some correlation between individuals (in this case, states) and the intercepts or time and the intercepts, or both. In contrast, a random effects model assumes that variation across intercepts is random and instead looks at variations in the error component of the model (Park, 2011). The most thorough way to determine which model is best is to compare all three. The fixed effects model is compared to the OLS model using the F statistic; a larger F statistic indicates a superior model.

The random effects model is compared to the pooled OLS using the Bruesch-Pagan Lagrange multiplier test (LM). In the random effects comparison, the null hypothesis is that the error variance components for individuals and/or time are zero. If this hypothesis is rejected then the random effects model is preferred over the pooled OLS. To determine whether a fixed or random effects model is better, the two are compared using the Hausman test. In this case the null hypothesis is that individual
and/or time effects are not correlated with any of the independent variables. If the null is accepted, the random effects model is better but if it is rejected then the fixed effects model is optimal (Park, 2011).

**Choosing between Models**

Pooled OLS, fixed effects, and random effects models were estimated for the drug policy index variable. The F test indicated that the fixed effects model is superior to the pooled OLS regression. The F statistic for the fixed effects model is 1199.85, compared to 16.41 for the pooled OLS model. This supports the premise that the data for the study is heterogeneous. The LM test indicated the presence of random effects, so random effects models were performed. The Hausman test was used to compare the fixed effects and random effects models. The test resulted in a negative Chi-squared value, which is inconclusive. However it has also been determined that in instances of a negative Chi-squared value, the null hypothesis should be rejected (Schreiber, 2008). This is because, in the Hausman test, the robust (fixed effects) model is compared to the efficient (random effects) model. The null hypothesis that the random effects model is more efficient than the fixed effects is true if the standard errors and confidence intervals for the random effects model are smaller. In the Hausman test, the variance covariance matrix of the random effects model is subtracted from the variance covariance matrix of the fixed effects model. If the random effects model is more efficient, then all parts of its variance covariance matrix should be smaller than all elements of the fixed effects model’s variance covariance matrix, yielding a positive
matrix and a positive Chi-squared value (although a positive Chi-squared value does not
by itself mean the null hypothesis should be accepted). When elements in the matrix are
negative, this demonstrates that the standard errors of the random model are not
smaller and so this model is not more efficient and therefore is not preferable to the
more robust fixed effects model (Buis, 2005).

There are also theoretical reasons for choosing the fixed effects model. The
model in this study includes several variables for the social, political, cultural, and
economic characteristics of the states. It is unlikely that these variables do not correlate
with unobserved state or time characteristics, which is the assumption of the random
effects models. Prior research that has used portions of the same dataset as the current
study, including several of the same independent variables, has also found the fixed
effects model to be preferable to the random effects, lending further support to this
decision (See Stemen & Rengifo, 2010; Kebhaj et al., 2013).

Two fixed effects models were tested, one controlling for state effects and the
other for year effects. The state fixed effects model indicated a better goodness of fit.
The use of state dummy variables accounts for latent state characteristics not included
in the model, and so reduces the possibility of omitted variable bias (Stemen & Rengifo,
2010). The time fixed effects model is not significantly different from the state effects
model in terms of the relationships found between the independent variables and the
dependent variable. However, the $R^2$ value of the time effects model ($R^2 = .42$) is
considerably lower than for the state fixed effects model ($R^2 = .82$). While this indicates
the superior goodness of fit of the state fixed effects model, it also suggests that the
unique characteristics of the states captured in the states fixed effects model explain a significant portion of the variance in drug policy across the states. Moreover, the state fixed effects model likely gives a more conservative estimate of the effects of the independent variables because including the state dummy variables absorb some of the significance of these other variables. Table 4.7 presents the drug policy index model using state fixed effects. Heteroskedasticity and serial autocorrelation were present in the model; therefore the results reported have been corrected for both of these issues.\footnote{This was performed using the "xtscc" command in Stata.}
Table 4.7.
State Fixed Effects Model for Drug Policy Indexa

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*p < .05, **p < .01, ***p < .001
° 36 states significant

**Social Construction Explanations**

The model explains just over 80 percent of the variance ($R^2 = 0.82$), indicating strong goodness of fit. Both of the social construction variables are significant and in the expected direction. Elite perceptions, a component which includes variables for whether a state permanently disenfranchises felons and the size of AFDC payments, is negatively and statistically significant ($p < .01$). States with more negative perceptions of deviant or marginalized populations are more likely to be more punitive towards drugs, supporting the social construction hypothesis that negative perceptions influence more burdensome policy. The other social construction component, black threat potential, is positive and significant ($p < .001$). In states where blacks are perceived as a greater threat, drug policy is more likely to be more punitive relative to other states. This component includes measures for black representation in the state legislature and high rates of incarceration relative to the state's need and ability to pay. That greater black representation and greater propensity to incarcerate are measuring a single concept may seem counterintuitive given that excessive use of incarceration tends to affect blacks more than whites. However, as discussed in Chapter 3, greater black representation and greater propensity to incarcerate may both be indicators that the
black population is perceived as a greater threat in a state. This perception in turn encourages burdensome policies that often affect this group.

**Social Control Variables**

The only significant social control variable is the Gini coefficient, which is negatively related to drug policy ($p<.05$). A larger Gini coefficient reflects greater inequality, so the negative relationship indicates that states with greater inequality are likely to be less punitive towards drug offenders. This contradicts the hypothesis that states with greater inequality would be more likely to have more punitive drug laws. This could be because in states where inequality is high, populations that are traditionally perceived as threatening—in this case blacks and the poor—are regarded as less of a threat because the socioeconomic distance between them and the elite is much greater. It may also be the case that in states with greater inequality there is also the presence of benign neglect; that is, drugs are seen as a lower class problem not important enough to address with more punitive policy.

The size of the black population, the poverty rate, and the interaction between black population and poverty and between black population and the Gini coefficient have no statistically significant effect on state drug policy. This may suggest that the mere presence of minority and poor populations is not enough to trigger punitive drug policy. Rather, it is the perceptions of these groups—perhaps better captured by the social construction variables discussed above—that have greater influence. While the interaction variables were intended to capture the overlap between black and poor
populations and between black population size and inequality, it may again be the case that the presence of this population does not matter as much as the perceptions of them. It may also be that these interaction terms do not sufficiently capture the presence of a threatening population that would facilitate social control mechanisms.

**Political Explanations**

Of the political variables, political culture and the interaction between the Holbrook and Van Dunk (HVD) and Ranney indexes are significant. Political culture is negatively and statistically significant ($p<.001$), indicating that states with a traditionalistic political culture are less likely to have more punitive drug policy. This contradicts the hypothesis that a traditionalistic culture would likely support greater punitiveness towards drug offenders. This is surprising because the major elements of the traditionalistic culture—an emphasis on morality and family values and support for the status quo—would seem to also favor forceful opposition to drug use and drug related crimes that may threaten the current social structure.

Regarding the interparty competition indexes, neither the HVD index, which measures the level of state electoral competition at the district level, nor the Ranney index, which measures the degree of single party institutional dominance, are significant alone. However, the variable capturing the interaction between these variable is positively and statistically significant ($p=.01$). This indicates that states with greater electoral competition and political institutions with greater Democrat control are more likely to have more punitive drug policy. While this finding supports the idea that it is
the combination of electoral and institutional competitiveness that affects policy, that majority Democrat institutions are associated with greater punitiveness is unexpected. This finding could be a function of the power of the drug war era to pressure politicians to be tough on drugs. In states with high levels of competition for legislative seats, Democrats may have felt compelled to appear especially tough on drugs in order to beat their opponents. Variables for the presence of a Republican governor and government and citizen ideology are not statistically significant predictors of drug policy. This further supports the argument that ideology and partisanship were less significant factors in determining drug policy in the drug war era than the need to appear tough on drugs to win elections.

**Bureaucratic Forces**

The bureaucratic variables in the model include the size of the police force and dummy variables for years in which the federal government passed significant drug legislation. The relationship between the size of the police force and state drug policy is positively and statistically significant (p<.001), supporting the hypothesis that states with a greater law enforcement bureaucracy are more likely to have more punitive drug policy. Law enforcement officers may have a greater ideological opposition to drugs or have a material interest in tougher laws that would bring more resources to their agencies. Larger law enforcement agencies may also have greater resources to publicly support punitive drug policy or to lobby their legislature for tougher drug laws.
Regarding the effect of federal legislation, the only significant year is 1988 (p<.001), in which the Second Anti-Drug Abuse Act was passed. The 1988 law toughened laws directed towards drug users and low level dealers and provided incentives to states to do the same. Therefore the significant and positive finding for this variable supports the hypothesis that states react to incentives provided by the federal government.

However, none of the other years were significant. The Violent Crime Control and Law Enforcement Act of 1994 did not focus so much on drugs as it did other crime, with provisions for extending the death penalty to more crimes, eliminating postsecondary inmate education, and increasing law enforcement resources. Thus, while it was a tough-on-crime bill, it did little to target drug offenses specifically, and so the lack of findings here is not particularly surprising.

However, the Comprehensive Crime Act of 1984 offered incentives to states by allowing them to share seized assets in drug cases with federal agencies (Benson & Rasmussen, 1996) and the Anti-Drug Abuse Act of 1986 also put great emphasis on punishing drug users and dealers, so it is somewhat surprising that these policies are not significant, but this may be because states were not able to respond immediately to federal legislation, either because of political or budget-related barriers.

**Controls**

The only significant control variable is state GDP, which is positively related to drug policy (p<.001). This suggests that a state’s decision to respond punitively to drug offenses is in some part a function of their ability to pay for the consequences of more
stringent laws (i.e., need for greater enforcement resources, higher incarceration rates, etc.). The size of the urban population and the rate of drug arrests relative to other types of arrest are not significant. These variables are intended to capture the presence of a drug “problem” in a state, so the lack of significant findings here suggests that a state’s drug policy decisions are not a function of the drug problem in that state.

State Effects

Thirty-six states are significant in the drug policy index model (p<.05). New Jersey and Oklahoma are significant in the positive direction, suggesting there is something particular to these states beyond the characteristics captured in the model that make them more punitive than expected. Alaska, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming are all significant in the negative direction, indicating that these states have characteristics not captured by the model that make them less punitive than expected.9 However, this significance does not necessarily equate with how punitive states are in relation to other states. That so many state dummy variables are significant also suggests there are sizable state effects not accounted for in the model. The nature of the state effects that

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9 Arizona is the reference category chosen by Stata.
are having an impact on state drug policy is not clear from the model and warrants further research.

**Model Summary**

The state fixed effects model discussed above used a drug policy index created out of z-scores for 19 drug policy variables as the dependent variable to determine what factors explain variation in state drug policy from 1975 to 2002. Findings provide support for the social construction hypothesis but not the social control hypotheses. While the constructions of the target population seem to affect policy directed toward that population, the mere presence of the target population is not enough to influence policy. The findings also provide partial support for the political hypotheses, although the more general finding here is that ideology and party politics were not great policy drivers during the drug war era. There is also partial support for the hypothesis that bureaucratic incentives for tougher drug policy impact drug legislation.

While the drug policy index variable appears to work well in capturing state drug policy, it may also be the case that it obscures important differences or patterns in drug policy types. Some of the policy variables may be stronger indicators than others of a state’s attitude towards drugs but this is not known because the index assigns equal weight to all variables. The variables included in the index also vary widely in scope and address different types of punishments for different types of drugs. For instance, marijuana is often considered a less serious drug than heroin and cocaine, and so it is possible that marijuana policy is not affected by the same factors as other drug policy.
Because of the policy variation, it is possible that the variables that comprise the drug policy index are actually capturing different dimensions of drug policy. To determine if this is the case, principal component analysis was used on the original 19 variables. The next section discusses this analysis.

**Drug Policy Components**

In the index, the 19 drug policy variables were assigned equal weight to create an indicator of state drug policy. While this index is helpful in gaining a broad understanding of state drug policy, if the variables are also measuring different dimensions of drug policy, then analyzing these dimensions separately would add greater depth to our understanding of this issue. To determine if the variables are capturing different dimensions, principal component analysis (PCA) was performed on the 19 policy variables. Because PCA does not require standardized variables, the original variables were used for the analysis, rather than their z-score as in the drug policy index. PCA is preferable to confirmatory factor analysis because this attempt to determine whether there are underlying structural differences between different drug policies is exploratory in nature (Mertler & Vannatta, 2005). Because all of the variables of interest are related to drug policy, they are likely to be correlated, so PCA with promax (oblique) rotation was used. The KMO Measure of Sampling Adequacy yielded a score of .72, and the Bartlett’s Test of Sphericity was significant at the p<.001 level, indicating that the variables are correlated enough to warrant the factor analysis (Pett,
Lackey, & Sullivan 2003). The analysis extracted four components that together explain 70.72 percent of the variance.

**Component One: Severity Levels for Drug Offenses**

The first component includes seven variables: the number of severity levels for possession and sale of marijuana, cocaine, and heroin, and the total number of sentencing enhancements where drugs are the trigger offense. This component has an Eigenvalue of 6.73 and explains 35.44 percent of the variance. Reliability analysis with Chronbach’s alpha was used to determine whether removing any of these items would improve the component’s internal reliability (Knoke, Bohrnstedt, & Mee, 2002). This test indicated that removal of the variable for sentencing enhancements would improve the internal reliability of the component. Table 4.8 provides this information.

After performing the reliability test, a new variable was computed to include the six remaining variables. This component makes theoretical sense in that it includes all variables for the number of severity levels for drug possession and sale offenses. This suggests that the process for determining how and what to set for drug severity levels is guided by a similar process.
Table 4.8.
Component One: Severity Levels for Drug Offenses

<table>
<thead>
<tr>
<th>Variable</th>
<th>Component Score</th>
<th>Chronbach's Alpha if Item Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td># Severity Levels for Cocaine Sale</td>
<td>.90</td>
<td>.63</td>
</tr>
<tr>
<td># Severity Levels for Heroin Sale</td>
<td>.89</td>
<td>.63</td>
</tr>
<tr>
<td># Severity Levels for Heroin Possession</td>
<td>.83</td>
<td>.63</td>
</tr>
<tr>
<td># Severity Levels for Marijuana Sale</td>
<td>.82</td>
<td>.63</td>
</tr>
<tr>
<td># Severity Levels for Cocaine Possession</td>
<td>.80</td>
<td>.65</td>
</tr>
<tr>
<td>Total Sentencing Enhancements with Drugs as Trigger</td>
<td>.67</td>
<td>.92</td>
</tr>
<tr>
<td># Severity Levels for Marijuana Possession</td>
<td>.57</td>
<td>.62</td>
</tr>
<tr>
<td>Analysis N</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>Chronbach's Alpha</td>
<td>.68</td>
<td></td>
</tr>
<tr>
<td>Eigen Value</td>
<td>6.73</td>
<td></td>
</tr>
<tr>
<td>Percent of Variance</td>
<td>35.44</td>
<td></td>
</tr>
</tbody>
</table>

Component Two: Sentences for Cocaine and Heroin

The second component extracted from the analysis included variables for the minimum sentences for cocaine possession and sale, the minimum sentences for heroin possession and sale, and the presence of habitual offender laws for repeat drug offenders. This component has an Eigenvalue of 2.79 and explains 14.71 percent of the variance. After performing the test of reliability using Chronbach's alpha, the variable capturing the presence of habitual offender laws was removed to improve the internal reliability of the component. This information is provided in Table 4.9.

A new variable was created to include the four variables measuring the minimum sentences for cocaine and heroin possession and sale. This grouping is consistent with the idea that cocaine and heroin typically are regarded as more serious
drugs, making it more likely that lawmakers follow similar patterns of decision making regarding sentences for these substances.

Table 4.9.
Component Two: Sentences for Cocaine and Heroin

<table>
<thead>
<tr>
<th>Variable</th>
<th>Component Score</th>
<th>Chronbach's Alpha if Item Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocaine Possession: Min Sentence for 28oz</td>
<td>.87</td>
<td>.79</td>
</tr>
<tr>
<td>Presence of Habitual Offender Laws for Drug Offenders</td>
<td>.85</td>
<td>.91</td>
</tr>
<tr>
<td>Cocaine Sale: Min Sentence for 28oz</td>
<td>.83</td>
<td>.79</td>
</tr>
<tr>
<td>Heroin Sale: Min Sentence for 1oz</td>
<td>.78</td>
<td>.78</td>
</tr>
<tr>
<td>Heroin Possession: Min Sentence for 1oz</td>
<td>.72</td>
<td>.77</td>
</tr>
<tr>
<td>Analysis N</td>
<td>498</td>
<td></td>
</tr>
<tr>
<td>Chronbach's Alpha</td>
<td>.85</td>
<td></td>
</tr>
<tr>
<td>Eigen Value</td>
<td>2.79</td>
<td></td>
</tr>
<tr>
<td>Percent of Variance</td>
<td>14.71</td>
<td></td>
</tr>
</tbody>
</table>

Component Three: Drug Sentencing Enhancements

The third component extracted from the analysis includes the three variables for sentencing enhancements, for marijuana, cocaine, and other drugs. The component has an Eigenvalue of 2.43 and explains 12.76 percent of the variance. The reliability test indicated very high reliability, with an initial Chronbach’s alpha of .98. As Table 4.10 indicates, removing the variable for the number of sentencing enhancements for marijuana would improve the Chronbach’s score slightly, to .99. However, because the improvement is minimal and the Chronbach’s alpha is already high, the variable was not removed. A new variable was created to include the three measures for sentencing enhancements. Like the component for severity levels, this component includes all
variables for sentencing enhancements. In both cases, the same type of policy is being applied to different types of drugs. The findings from the PCA suggest that decisions made regarding a particular type of drug policy are similar, despite the drug in question.

Table 4.10. Component Three: Drug Sentencing Enhancements

<table>
<thead>
<tr>
<th>Variable</th>
<th>Component Score</th>
<th>Chronbach's Alpha if Item Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td># Sentencing Enhancements for Marijuana</td>
<td>.96</td>
<td>.99</td>
</tr>
<tr>
<td># Sentencing Enhancements for Cocaine</td>
<td>.95</td>
<td>.97</td>
</tr>
<tr>
<td># Sentencing Enhancements for Other Drugs</td>
<td>.95</td>
<td>.97</td>
</tr>
<tr>
<td>Analysis N</td>
<td>501</td>
<td></td>
</tr>
<tr>
<td>Chronbach's Alpha</td>
<td>.98</td>
<td></td>
</tr>
<tr>
<td>Eigen Value</td>
<td>2.43</td>
<td></td>
</tr>
<tr>
<td>Percent of Variance</td>
<td>12.76</td>
<td></td>
</tr>
</tbody>
</table>

Component Four: Sentences for Marijuana and Cocaine

The final component extracted in the analysis includes four variables: the minimum sentence for marijuana possession, the minimum sentence for marijuana sale, the maximum sentence for possession of a minimum quantity of cocaine, and the maximum sentence for sale of the minimum quantity of cocaine. This component has an Eigen value of 1.49 and explains 7.82 percent of the variance. The test for internal reliability revealed a low Chronbach's alpha of .23. Removal of the variable for cocaine sale improved the score to .41. While removal of the variable for marijuana possession would have improved the Chronbach's alpha, it would have done so only slightly, and so
it was kept in the component. A new variable was created to reflect these findings.

Table 4.11 provides information on the component.

Table 4.11.
Component Four: Marijuana and Cocaine Sentences

<table>
<thead>
<tr>
<th>Variable</th>
<th>Component Score</th>
<th>Chronbach's Alpha if Item Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocaine Possession: Max Sentence for Smallest Quantity</td>
<td>.77</td>
<td>.07</td>
</tr>
<tr>
<td>Marijuana Sale: Min Sentence for 16oz</td>
<td>.75</td>
<td>.21</td>
</tr>
<tr>
<td>Cocaine Sale: Max Sentence for Smallest Quantity</td>
<td>.70</td>
<td>.41</td>
</tr>
<tr>
<td>Marijuana Possession: Min Sentence for 16oz</td>
<td>.55</td>
<td>.25</td>
</tr>
<tr>
<td>Analysis N</td>
<td>491</td>
<td></td>
</tr>
<tr>
<td>Chronbach's Alpha</td>
<td>.23</td>
<td></td>
</tr>
<tr>
<td>Eigen Value</td>
<td>1.49</td>
<td></td>
</tr>
<tr>
<td>Percent of Variance</td>
<td>7.82</td>
<td></td>
</tr>
</tbody>
</table>

Of the four components, this is the weakest. It explains the least amount of variance and has the lowest level of internal reliability. Moreover, the inclusion of variables for both maximum and minimum sentences is confusing in terms of practical interpretation. However, the argument can be made that this grouping still makes theoretical sense. Sometimes marijuana is treated differently from other drugs, perhaps because it is seen as a less serious drug or because of the difference in user populations for marijuana and other drugs (See Meier, 1994). At the same time, possession of small amounts of other drugs also may be treated less seriously. The variable for cocaine included in this component is for the maximum sentence for possession of the smallest quantity listed for cocaine. This differs from the cocaine sentence variables included in Component Two, which were for larger amounts of the drug. In this case, it may be that
lawmakers regard small amounts of cocaine possession as a less serious offense (perhaps because of the population associated with this type of use, which may include suburban, white, and/or college kids, as well as more occasional users or addicts, rather than people involved in the drug trade), one that is more commensurate with marijuana offenses than offenses involving more serious drugs (such as heroin) or larger quantities of drugs.

**Dimensions of Drug Policy**

The PCA reduced the 19 dependent variables to four components. The four major dimensions of state drug policy that are analyzed are severity levels for drug offenses, sentences for heroin and large amounts of cocaine, drug sentencing enhancements, and sentences for marijuana and small amounts of cocaine. Figure 4.1 displays the conceptual model for the four dimensions of state drug policy. Although the PCA indicated there are different types of drug policy, the theoretical assumption is that the same factors will have similar effects on each area of drug policy. Therefore, the same independent variables used in the drug policy index model are also used in the models for each drug policy component.
Figure 4.1. Dimensions of State Drug Policy

State Drug Policy

Severity Levels for Drug Offenses

# Severity Levels for Cocaine Sale
# Severity Levels for Heroin Sale
# Severity Levels for Heroin Possession
# Severity Levels for Marijuana Sale
# Severity Levels for Cocaine Possession

Sentences for Heroin and Large Amts of Cocaine

Cocaine Possession: Min Sentence for 28oz
Cocaine Sale: Min Sentence for 28oz
Heroin Sale: Min Sentence for 1oz
Heroin Possession: Min Sentence for 1oz

Sentencing Enhancements for Drug Offenses

# Sentencing Enhancements for Marijuana
# Sentencing Enhancements for Cocaine
# Sentencing Enhancements for Other Drugs

Sentences for Marijuana & Small Amts of Cocaine

Cocaine Possession: Max Sentence for Smallest Quantity
Marijuana Sale: Min Sentence for 16oz
Marijuana Possession: MinSentence for 16oz
Table 4.12 shows the correlations between the four components and the original drug policy index. All correlations between the drug index and the components are significant (p<.01). However, the correlation between the drug index and the component for marijuana and small cocaine offenses is considerably smaller (r = .33) than the correlations between the index and the other components. Each component is more highly correlated with the drug policy index than it is with any of the other components. Severity levels for drug offenses and heroin and large cocaine sentences are the most highly correlated (r = .51), followed by severity levels and sentencing enhancements (r = .41). Sentences for heroin and large amounts of cocaine are also significantly correlated with sentences for marijuana and small amounts of cocaine (r = .24), and sentencing enhancements (r = .17), but less so than the other variables. The component for marijuana and small cocaine sentences is the least correlated with the other variables. While the high correlations between the drug index and the components indicates similarities between the index and each component, that the components are less correlated with each other suggests there are important differences between different types of drug policy.
Table 4.12.
Correlations between Drug Policy Index and Component Variables

<table>
<thead>
<tr>
<th></th>
<th>Drug Index</th>
<th>Severity Levels for Drug Offenses</th>
<th>Sentences for Heroin &amp; Large Amts. Cocaine</th>
<th>Sentencing Enhancements</th>
<th>Sentences for Marijuana &amp; Small Amts. Cocaine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Index</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Severity Levels for Drug Offenses</td>
<td>.82*</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentences for Heroin &amp; Large Amts. Cocaine</td>
<td>.76*</td>
<td>.51*</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentencing Enhancements</td>
<td>.62*</td>
<td>.41*</td>
<td>.17*</td>
<td>1</td>
<td>.09</td>
</tr>
<tr>
<td>Sentences for Marijuana &amp; Small Amts. Cocaine</td>
<td>.33*</td>
<td>-.04</td>
<td>.24*</td>
<td>.09</td>
<td>1</td>
</tr>
</tbody>
</table>

*p<.01

Descriptive Statistics for Drug Policy Components

Table 4.13 provides the descriptive statistics for the four components. The components for sentence lengths are measured in months, while the drug severity levels and sentencing enhancements are count variables. The descriptive statistics indicate that variation exists across all components.

Table 4.13.
Descriptive Statistics for Dependent Variables

<table>
<thead>
<tr>
<th>Variable Name</th>
<th>N</th>
<th>Min</th>
<th>Max</th>
<th>Mean</th>
<th>Std. Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity Levels for Drug Offenses</td>
<td>501</td>
<td>0</td>
<td>35</td>
<td>11.06</td>
<td>9.16</td>
</tr>
<tr>
<td>Sentences for Heroin and Large Amounts of Cocaine</td>
<td>498</td>
<td>0</td>
<td>960</td>
<td>147.69</td>
<td>194.32</td>
</tr>
<tr>
<td>Drug Sentencing Enhancements</td>
<td>501</td>
<td>0</td>
<td>54</td>
<td>15.12</td>
<td>10.11</td>
</tr>
<tr>
<td>Sentences for Marijuana and Small Amounts of Cocaine</td>
<td>491</td>
<td>6</td>
<td>300</td>
<td>81.36</td>
<td>66.57</td>
</tr>
</tbody>
</table>
Table 4.14 provides the mean and standard deviation for the dependent variables by state. The rank for each state on the drug policy index is also included (for more information on state drug policy index scores please refer to Table 4.1) to allow for a comparison of states’ overall punitiveness to their punitiveness in the different areas of drug policy. States that have a higher overall drug policy punitiveness score also tend to have higher averages for the drug policy components, and vice versa. However, this is not always the case. For example, South Carolina is ranked fourth on the drug policy index, but its average sentence length for marijuana and small cocaine sentences is 24 months, which is significantly lower than the majority of states.
### Table 4.14.
Descriptive Statistics for Dependent Variables by State, Mean (Std.Dev)

<table>
<thead>
<tr>
<th>State</th>
<th>Severity Levels for Drug Offenses</th>
<th>Sentences for Heroin &amp; Lg Amts of Cocaine (months)</th>
<th>Drug Sentencing Enhancements</th>
<th>Sentences for Marijuana &amp; Sm Amts of Cocaine (months)</th>
<th>Drug Policy Index Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>24.0 (9.80)</td>
<td>270.0 (88.54)</td>
<td>21.70 (7.62)</td>
<td>177.60 (43.38)</td>
<td>3</td>
</tr>
<tr>
<td>Alaska</td>
<td>3.80 (2.66)</td>
<td>49.80 (31.88)</td>
<td>17.40 (5.80)</td>
<td>78.0 (28.98)</td>
<td>38</td>
</tr>
<tr>
<td>Arizona</td>
<td>3.0 (2.58)</td>
<td>160.80 (19.96)</td>
<td>17.10 (9.46)</td>
<td>114.60 (37.04)</td>
<td>20</td>
</tr>
<tr>
<td>Arkansas</td>
<td>6.90 (5.36)</td>
<td>345.60 (119.84)</td>
<td>11.0 (6.63)</td>
<td>153.60 (37.86)</td>
<td>16</td>
</tr>
<tr>
<td>California</td>
<td>4.0 (0)</td>
<td>110.40 (20.24)</td>
<td>6.0 (0)</td>
<td>72.0 (37.95)</td>
<td>39</td>
</tr>
<tr>
<td>Colorado</td>
<td>8.90 (6.92)</td>
<td>184.80 (11.59)</td>
<td>24.0 (8.78)</td>
<td>172.80 (46.72)</td>
<td>15</td>
</tr>
<tr>
<td>Connecticut</td>
<td>6.90 (.32)</td>
<td>52.80 (15.18)</td>
<td>24.60 (10.84)</td>
<td>105.60 (7.59)</td>
<td>22</td>
</tr>
<tr>
<td>Delaware</td>
<td>20.40 (7.59)</td>
<td>240.0 (138.56)</td>
<td>25.20 (13.94)</td>
<td>36.0 (25.30)</td>
<td>8</td>
</tr>
<tr>
<td>Florida</td>
<td>22.10 (8.60)</td>
<td>238.80 (172.74)</td>
<td>15.60 (7.97)</td>
<td>60.0 (0)</td>
<td>13</td>
</tr>
<tr>
<td>Georgia</td>
<td>22.0 (6.32)</td>
<td>441.60 (80.95)</td>
<td>21.0 (8.12)</td>
<td>204.0 (0)</td>
<td>2</td>
</tr>
<tr>
<td>Hawaii</td>
<td>16.20 (1.03)</td>
<td>768.0 (404.77)</td>
<td>4.50 (1.58)</td>
<td>60.0 (0)</td>
<td>5</td>
</tr>
<tr>
<td>Idaho</td>
<td>11.20 (11.88)</td>
<td>196.80 (263.34)</td>
<td>16.80 (6.20)</td>
<td>55.20 (24.79)</td>
<td>19</td>
</tr>
<tr>
<td>Illinois</td>
<td>25.80 (7.45)</td>
<td>123.60 (39.72)</td>
<td>17.40 (3.95)</td>
<td>81.60 (23.19)</td>
<td>10</td>
</tr>
<tr>
<td>Indiana</td>
<td>12.80 (.42)</td>
<td>366.0 (18.97)</td>
<td>17.30 (10.20)</td>
<td>92.40 (18.80)</td>
<td>9</td>
</tr>
<tr>
<td>Iowa</td>
<td>6.50 (4.74)</td>
<td>0 (0)</td>
<td>17.10 (12.09)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Kansas</td>
<td>0 (0)</td>
<td>72.80 (49.33)</td>
<td>9.30 (2.98)</td>
<td>180.80 (107.86)</td>
<td>41</td>
</tr>
<tr>
<td>Kentucky</td>
<td>8.0 (0)</td>
<td>110.40 (43.38)</td>
<td>4.20 (5.51)</td>
<td>120.0 (0)</td>
<td>34</td>
</tr>
<tr>
<td>Louisiana</td>
<td>6.60 (4.22)</td>
<td>254.70 (47.67)</td>
<td>27.0 (16.17)</td>
<td>96.0 (30.98)</td>
<td>17</td>
</tr>
<tr>
<td>Maine</td>
<td>7.70 (.67)</td>
<td>0 (0)</td>
<td>9.0 (3.2)</td>
<td>36.0 (25.30)</td>
<td>49</td>
</tr>
<tr>
<td>Maryland</td>
<td>3.0 (3.16)</td>
<td>30.0 (31.62)</td>
<td>13.80 (4.52)</td>
<td>48.0 (0)</td>
<td>43</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>11.40 (6.06)</td>
<td>98.40 (55.94)</td>
<td>15.70 (6.43)</td>
<td>12.0 (0)</td>
<td>27</td>
</tr>
<tr>
<td>Michigan</td>
<td>16.30 (6.13)</td>
<td>24.0 (25.30)</td>
<td>15.90 (9.90)</td>
<td>45.60 (7.59)</td>
<td>23</td>
</tr>
<tr>
<td>Minnesota</td>
<td>13.30 (10.50)</td>
<td>0 (0)</td>
<td>22.80 (7.98)</td>
<td>60.0 (0)</td>
<td>21</td>
</tr>
<tr>
<td>Mississippi</td>
<td>13.60 (5.30)</td>
<td>9.60 (20.24)</td>
<td>22.60 (11.81)</td>
<td>39.60 (11.38)</td>
<td>24</td>
</tr>
<tr>
<td>Missouri</td>
<td>12.0 (8.43)</td>
<td>144.0 (25.30)</td>
<td>17.70 (9.21)</td>
<td>234.0 (69.57)</td>
<td>11</td>
</tr>
<tr>
<td>Montana</td>
<td>2.0 (0)</td>
<td>66.0 (6.32)</td>
<td>2.80 (2.04)</td>
<td>72.0 (0)</td>
<td>46</td>
</tr>
<tr>
<td>Nebraska</td>
<td>5.70 (4.03)</td>
<td>50.40 (32.89)</td>
<td>6.90 (5.97)</td>
<td>66.0 (15.23)</td>
<td>37</td>
</tr>
<tr>
<td>Nevada</td>
<td>6.80 (.42)</td>
<td>48.0 (0)</td>
<td>17.40 (6.45)</td>
<td>88.80 (11.59)</td>
<td>28</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>5.50 (3.69)</td>
<td>0 (0)</td>
<td>9.0 (3.16)</td>
<td>84.0 (0)</td>
<td>47</td>
</tr>
<tr>
<td>New Jersey</td>
<td>11.0 (1.15)</td>
<td>115.20 (99.15)</td>
<td>14.60 (3.10)</td>
<td>81.60 (18.59)</td>
<td>26</td>
</tr>
<tr>
<td>New Mexico</td>
<td>5.0 (0)</td>
<td>187.20 (40.48)</td>
<td>9.0 (3.16)</td>
<td>55.20 (15.18)</td>
<td>30</td>
</tr>
<tr>
<td>New York</td>
<td>26.10 (1.20)</td>
<td>175.20 (166.97)</td>
<td>14.40 (2.37)</td>
<td>12.0 (0)</td>
<td>7</td>
</tr>
<tr>
<td>North Carolina</td>
<td>23.30 (10.18)</td>
<td>375.0 (254.13)</td>
<td>12.0 (5.10)</td>
<td>28.50 (17.10)</td>
<td>12</td>
</tr>
<tr>
<td>North Dakota</td>
<td>8.0 (5.96)</td>
<td>0 (0)</td>
<td>7.50 (7.91)</td>
<td>60.0 (0)</td>
<td>44</td>
</tr>
<tr>
<td>Ohio</td>
<td>24.90 (8.91)</td>
<td>156.0 (164.83)</td>
<td>14.50 (5.02)</td>
<td>89.40 (55.96)</td>
<td>14</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>13.20 (6.20)</td>
<td>321.60 (167.12)</td>
<td>29.70 (18.35)</td>
<td>184.80 (35.87)</td>
<td>1</td>
</tr>
<tr>
<td>Oregon</td>
<td>6.40 (5.68)</td>
<td>12.80 (16.52)</td>
<td>8.10 (6.01)</td>
<td>39.40 (22.23)</td>
<td>48</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>6.90 (6.47)</td>
<td>19.50 (20.55)</td>
<td>15.80 (3.77)</td>
<td>12.0 (0)</td>
<td>33</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>9.30 (9.21)</td>
<td>240.0 (252.98)</td>
<td>13.50 (1.58)</td>
<td>36.0 (0)</td>
<td>25</td>
</tr>
<tr>
<td>South Carolina</td>
<td>26.0 (10.03)</td>
<td>578.40 (324.85)</td>
<td>19.80 (6.03)</td>
<td>24.0 (0)</td>
<td>4</td>
</tr>
<tr>
<td>South Dakota</td>
<td>7.70 (1.25)</td>
<td>12.40 (12.25)</td>
<td>7.50 (4.06)</td>
<td>58.30 (37.31)</td>
<td>45</td>
</tr>
<tr>
<td>Tennessee</td>
<td>10.60 (3.69)</td>
<td>310.80 (69.15)</td>
<td>14.60 (4.09)</td>
<td>153.60 (12.39)</td>
<td>18</td>
</tr>
<tr>
<td>Texas</td>
<td>21.40 (12.76)</td>
<td>196.80 (37.18)</td>
<td>20.10 (6.17)</td>
<td>212.40 (121.73)</td>
<td>6</td>
</tr>
<tr>
<td>Utah</td>
<td>2.30 (2.00)</td>
<td>14.40 (12.39)</td>
<td>32.40 (21.30)</td>
<td>38.40 (27.89)</td>
<td>31</td>
</tr>
</tbody>
</table>
Table 4.14 continued

<table>
<thead>
<tr>
<th>State</th>
<th>Severity Levels for Drug Offenses</th>
<th>Sentences for Heroin &amp; Lg Amts of Cocaine (months)</th>
<th>Drug Sentencing Enhancements</th>
<th>Sentences for Marijuana &amp; Sm Amts of Cocaine (months)</th>
<th>Drug Policy Index Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>2.90 (2.18)</td>
<td>144.0 (0)</td>
<td>7.10 (2.96)</td>
<td>141.60 (20.24)</td>
<td>32</td>
</tr>
<tr>
<td>Washington</td>
<td>4.0 (0)</td>
<td>24.0 (0)</td>
<td>16.50 (4.74)</td>
<td>60.0 (0)</td>
<td>42</td>
</tr>
<tr>
<td>West Virginia</td>
<td>7.0 (0)</td>
<td>27.0 (0)</td>
<td>13.50 (1.58)</td>
<td>21.0 (0)</td>
<td>36</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>8.30 (6.75)</td>
<td>23.40 (22.71)</td>
<td>15.30 (8.54)</td>
<td>12.0 (0)</td>
<td>35</td>
</tr>
<tr>
<td>Wyoming</td>
<td>6.90 (1.45)</td>
<td>1.20 (3.79)</td>
<td>14.40 (3.10)</td>
<td>7.80 (2.90)</td>
<td>40</td>
</tr>
</tbody>
</table>

The components allow for greater nuance in determining how a state is punitive towards drugs. Moreover, there is enough data for Iowa for all of the components except for sentences for marijuana and small amounts of cocaine, so testing the four components separately also allows for the inclusion of Iowa in the analysis.

Looking at the averages across states, it is clear that there is significant variation in punitiveness. For example, while several states (including Arizona, California, Kansas, Kentucky, Montana, and West Virginia) average less than ten severity levels for drug offenses during the years of study, several other states average more than twenty (including Alabama, Delaware, Florida, Illinois, North Carolina, and New York).

This variation exists across the other components as well. For example, regarding sentences for heroin and large amounts of cocaine, while some states, such as Vermont, North Dakota, Minnesota, New Hampshire, and Maine, have not had any required minimum sentences, several states call for sentences of more than 100 months (Arizona, California, Idaho, Illinois, New Jersey, Texas), and several others require sentences of more than 300 months (Arkansas, Georgia, Indiana, North Carolina, Oklahoma).
A similar pattern exists for sentences involving marijuana and small amounts of cocaine. While in this case every state stipulated either a minimum sentence for marijuana or a maximum sentence for possession of a small amount of cocaine, the average ranged from just under eight months in Wyoming to over 212 months (almost 18 years) in Texas. There is also variability with regards to the number of sentence enhancements associated with drug offenses. While Maine averaged less than one sentencing enhancement, several states averaged more than twenty, including Alabama, Colorado, Delaware, Minnesota, Oklahoma, and Utah.

The standard deviations provided in Table 4.14 indicate that states also differ considerably in terms of how much variation they exhibited during the period of study. For instance, while some states such as California, Kentucky, Montana, and New Mexico, maintained the same number of severity levels for the years of study, the standard deviations suggest that other states, such as Idaho, Minnesota, Texas, North Carolina, and South Carolina, changed their laws significantly during the years of study. Such differences in variation also exist for the other dependent variables. The variation across states—both in average sentences and in the variance within states across time—demonstrates that states have made different decisions in how to punish drug offenders.

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10 The inclusion of two measures for the minimum sentences for marijuana (sale and possession) and one measure for the maximum sentence for cocaine complicates the interpretation somewhat because it less clear whether the averages are affected by high maximum sentences or low minimum sentences, or vice versa.
Correlations between Drug Policy Components and Independent Variables

Correlations between the drug policy components and the independent variables were determined using Pearson’s r test for statistical significance. All variables except that for Republican governor are significantly correlated with at least one of the dependent variables at the .05 level. All significant correlations are rather low, ranging from a correlation of .02 between sentencing enhancements and felon disenfranchisement laws\textsuperscript{11}, to .49 for the relationship between sentencing enhancements and black threat potential. Table 4.15 provides information on the correlations between the drug policy components and independent variables.

\textsuperscript{11} As discussed above, felon disenfranchisements is not included separately in the analysis but is instead a part of the component variable for elite perceptions. For purposes of inclusiveness, it is included in correlations data.
Table 4.15. Correlations between Drug Policy Components and Independent Variables

<table>
<thead>
<tr>
<th>Drug Policy Component</th>
<th>Severity Levels for Drug Offenses</th>
<th>Sentences for Heroin &amp; Lg Amts of Cocaine (months)</th>
<th>Drug Sentencing Enhancements</th>
<th>Sentences for Marijuana &amp; Sm Amts of Cocaine (months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite Perceptions (component)</td>
<td>.03</td>
<td>-.12*</td>
<td>.03</td>
<td>-.28***</td>
</tr>
<tr>
<td>Felon Disenfranchisement Laws</td>
<td>.02</td>
<td>-.03</td>
<td>.02**</td>
<td>.14</td>
</tr>
<tr>
<td>AFDC Payments</td>
<td>-.29***</td>
<td>-.15**</td>
<td>-.28***</td>
<td>-.30***</td>
</tr>
<tr>
<td>Black Threat Potential (component)</td>
<td>.26***</td>
<td>.10*</td>
<td>.49***</td>
<td>.08</td>
</tr>
<tr>
<td>Black Representation</td>
<td>-.18***</td>
<td>-.09*</td>
<td>-.18***</td>
<td>-.17***</td>
</tr>
<tr>
<td>Incarceration Residual</td>
<td>.24***</td>
<td>-.13**</td>
<td>-.11**</td>
<td>-.14***</td>
</tr>
<tr>
<td>Incarceration Rate</td>
<td>-.23***</td>
<td>.32***</td>
<td>-.23**</td>
<td>-.23***</td>
</tr>
<tr>
<td>Violent Crime Rate</td>
<td>-.20***</td>
<td>.27***</td>
<td>-.20**</td>
<td>-.23***</td>
</tr>
<tr>
<td>Law Enforcement Expenditures</td>
<td>-.15***</td>
<td>.03</td>
<td>-.16***</td>
<td>-.18***</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td>.14***</td>
<td>.22***</td>
<td>.14**</td>
<td>.12**</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>-.18***</td>
<td>.27***</td>
<td>-.18**</td>
<td>-.18***</td>
</tr>
<tr>
<td>Black Population</td>
<td>-.00</td>
<td>.34***</td>
<td>-.01</td>
<td>-.02</td>
</tr>
<tr>
<td>Republican Governor</td>
<td>-.00</td>
<td>-.08</td>
<td>.00</td>
<td>.03</td>
</tr>
<tr>
<td>HVD Index</td>
<td>.09*</td>
<td>-.29***</td>
<td>.09**</td>
<td>.06</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>.00</td>
<td>-.14**</td>
<td>.00</td>
<td>.01</td>
</tr>
<tr>
<td>Gov’t Ideology</td>
<td>-.18***</td>
<td>.03</td>
<td>-.18**</td>
<td>-.22***</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>-.04</td>
<td>-.09*</td>
<td>-.04</td>
<td>-.09*</td>
</tr>
<tr>
<td>Political Culture</td>
<td>.01</td>
<td>.36***</td>
<td>.01</td>
<td>.03</td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>-.34***</td>
<td>.19***</td>
<td>-.34**</td>
<td>-.37***</td>
</tr>
<tr>
<td>Drug Arrests</td>
<td>-.08</td>
<td>.09*</td>
<td>-.08</td>
<td>-.12**</td>
</tr>
<tr>
<td>Urban Population</td>
<td>-.05</td>
<td>.16***</td>
<td>-.05</td>
<td>-.09*</td>
</tr>
<tr>
<td>GDP</td>
<td>.02</td>
<td>.05</td>
<td>-.15***</td>
<td>-.17***</td>
</tr>
</tbody>
</table>

*p<.05, **p<.01, ***p<.001

State Fixed Effects Models

Each drug policy component model was analyzed in the same way as the drug policy index model. Figure 4.2 depicts the model that is tested for the four components.

All four of the drug policy components are regressed on the same categories of
independent variables, including social construction, social control, political factors, bureaucratic forces, and control variables. The same independent variables are used for all component models because there is no theoretical reason to assume that different factors would affect the components differently.

Figure 4.2. Model of Factors Affecting State Drug Policy Components
For all component models, OLS regression was performed first. A comparison of F statistics between the OLS and fixed effects models indicated the superiority of the fixed effects model. The LM test indicated the presence of random effects so random effects models were also performed. As with the drug policy index model, the Hausman Test that was used to compare the fixed and random effects models yielded negative Chi-square values. However, the same theoretical justifications for using the fixed effects models stands—there is reason to believe that the independent variables included in the model are correlated with unobserved variance. The state fixed effects models are also superior to the time fixed effects models in all cases. This section presents the state fixed effects models for each dependent variable. Heteroskedasticity and serial autocorrelation were present in all models; therefore the results reported have been corrected for both of these issues.\textsuperscript{12}

**Severity Levels for Drug Offenses**

The first component includes the number of severity levels related to different drug offenses. While the other drug policy components are relatively easy to interpret, the severity levels component presents some difficulty. A greater number of severity levels for drug offenses indicate that a state has established more distinctions between different amounts of drug possession/sale. States with a greater number of severity levels are more likely to acknowledge that possession of, for example, five grams of cocaine, is different from possession of 50 grams of cocaine. If the state treats the five

\textsuperscript{12} This was performed using the “xtscc” command in Stata.
gram offender with leniency, this could indicate a lesser degree of punitiveness because the state recognizes an important difference between users and low level dealers and large scale traffickers. However, whether this is the case is impossible to determine without knowing the sentences attached to the severity levels. A state with fewer severity levels might not make such a distinction and instead apply the same punishment to the five gram offender as the 50 gram offender, but the sentence applied may be more typical of a five gram offense. In this instance then the state would be less punitive compared to states with longer sentences for the larger offense. A state could also have many severity levels but attach harsher punishments to all of those severity levels relative to other states.

The positive and significant correlations between the drug severity levels component and the components for sentencing enhancements and sentences for heroin and large amounts of cocaine (see Table 4.12) suggest that more severity levels may equate with greater punitiveness, as more sentencing enhancements and longer sentences are clearly more punitive. Therefore higher values for the severity level are interpreted to mean greater punitiveness, but because the punishments associated with the severity levels are unknown, this interpretation is made with caution. Table 4.16 presents the model for the drug severity levels component. Figure 4.2 (above) provides a depiction of the model that was tested.
Table 4.16.  
State Fixed Effects Models for Number of Drug Severity Levels*

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Severity Levels</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social Construction</strong></td>
<td></td>
</tr>
<tr>
<td>Elite Perceptions</td>
<td>-.47</td>
</tr>
<tr>
<td></td>
<td>(.86)</td>
</tr>
<tr>
<td>Black Threat Potential</td>
<td>.91**</td>
</tr>
<tr>
<td></td>
<td>(.26)</td>
</tr>
<tr>
<td><strong>Social Control</strong></td>
<td></td>
</tr>
<tr>
<td>Black Pop (ln)</td>
<td>-2.28</td>
</tr>
<tr>
<td></td>
<td>(5.34)</td>
</tr>
<tr>
<td>Poverty Rate (ln)</td>
<td>-3.19</td>
</tr>
<tr>
<td></td>
<td>(1.71)</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>-37.07</td>
</tr>
<tr>
<td></td>
<td>(22.32)</td>
</tr>
<tr>
<td>Black Pop X Poverty Rate</td>
<td>1.30</td>
</tr>
<tr>
<td></td>
<td>(.92)</td>
</tr>
<tr>
<td>Black Pop X Gini</td>
<td>8.61</td>
</tr>
<tr>
<td></td>
<td>(7.78)</td>
</tr>
<tr>
<td><strong>Political Characteristics</strong></td>
<td></td>
</tr>
<tr>
<td>Republican Governor</td>
<td>-.27</td>
</tr>
<tr>
<td></td>
<td>(.36)</td>
</tr>
<tr>
<td>HVD Index</td>
<td>-.03</td>
</tr>
<tr>
<td></td>
<td>(.09)</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>-4.11</td>
</tr>
<tr>
<td></td>
<td>(3.60)</td>
</tr>
<tr>
<td>Political Culture</td>
<td>-4.19</td>
</tr>
<tr>
<td></td>
<td>(9.87)</td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>-.02</td>
</tr>
<tr>
<td></td>
<td>(.01)</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>.05</td>
</tr>
<tr>
<td></td>
<td>(.04)</td>
</tr>
<tr>
<td>HVD X Ranney</td>
<td>.08</td>
</tr>
<tr>
<td></td>
<td>(.10)</td>
</tr>
<tr>
<td><strong>Bureaucratic Forces</strong></td>
<td></td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>.03**</td>
</tr>
<tr>
<td></td>
<td>(.01)</td>
</tr>
<tr>
<td>Fed Year 1984</td>
<td>1.15</td>
</tr>
<tr>
<td></td>
<td>(.71)</td>
</tr>
<tr>
<td>Fed Year 1986</td>
<td>1.47</td>
</tr>
<tr>
<td></td>
<td>(.99)</td>
</tr>
<tr>
<td>Fed Year 1988</td>
<td>3.00**</td>
</tr>
<tr>
<td></td>
<td>(.92)</td>
</tr>
<tr>
<td>Fed Year 1994</td>
<td>-.67</td>
</tr>
<tr>
<td></td>
<td>(.63)</td>
</tr>
<tr>
<td><strong>Controls</strong></td>
<td></td>
</tr>
<tr>
<td>GDP (ln)</td>
<td>2.03***</td>
</tr>
<tr>
<td></td>
<td>(.42)</td>
</tr>
<tr>
<td>Urban Population</td>
<td>.04</td>
</tr>
<tr>
<td></td>
<td>(.05)</td>
</tr>
</tbody>
</table>
Table 4.16 continued

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Number of Severity Levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Arrests (In)</td>
<td>.36 (.61)</td>
</tr>
<tr>
<td>R²</td>
<td>.81</td>
</tr>
<tr>
<td>F</td>
<td>79.01, prob &gt; F = .000</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01, ***p < .001, *Nine states significant

The model for drug severity levels has an $R^2$ value of .81, which means the model explains 81 percent of variance in state drug severity levels. Only four of the independent variables are significant in this model. Black threat potential, the size of the police force, the year 1988, and state GDP are all positively associated with severity levels. If we assume that more severity levels indicates greater punitiveness as discussed above, then these findings support the hypotheses regarding the effects of these factors on state drug policy.

Of the social construction variables, only black threat potential is significant (p<.01). States where the black population presents a greater threat to established interests are more likely to have more drug severity levels. This provides partial support for the social construction hypothesis that negative perceptions of the target population impact the policies directed toward that group. Elite perceptions are not significant in the model, although they were significant in the drug index model. This could be because the measure for elite perceptions is inappropriate. It could also indicate that severity level policies are in some way different from other types of drug policy.

The lack of significant findings between the drug severity variable and the social control and political factors are similar to the findings in the drug policy index. Regarding the social control factors, this lack of findings further supports the idea that
the presence of possibly threatening populations is alone not enough to influence state drug policy. That none of the political variables in this model are significant supports the idea that partisan politics and ideology were secondary considerations in drug policy decisions during the drug war era. It may also indicate that policies related to severity levels are not a very salient political issue.

Another possibility is that the number of severity levels a state has for drug offenses is a byproduct of other drug policy decisions. For example, the year 1988 has a positive relationship with severity levels (p<.01). The 1988 legislation focused heavily on drug users and low-level dealers. It may be that further targeting smaller amounts of drugs led to greater differentiation between drug offenses by the amount of the drug. If this is the case, this also supports the idea that more severity levels are associated with greater punitiveness, as they would be a consequence of increasing penalties for lower level offenders. The other dummy variables for federal legislation are not significant in the model. As with the drug policy index, the lack of significance for the year 1994 is unsurprising because this legislation had little to do with drug policy, but the insignificance of the 1984 and 1986 years is more surprising. One reason for this may again be the delayed reaction of state legislatures to respond to federal legislation.

The other significant bureaucratic variable is the size of the police force (p<.01). This supports the hypothesis that states with a larger police presence are more likely to have more punitive drug laws. A large police presence may pressure elected officials to take a tougher stance towards low level drug offenders. The only significant control
variable is state GDP, which has a positive impact on severity levels (p<.001), supporting the idea that financial health is a factor in drug policy decisions.

Nine states were significant in the model for severity levels (p<.05), which is considerably less compared to the drug policy index model (36 significant states). Vermont and South Carolina are the only state dummy variables that are significant in the positive direction. This indicates that there are unique characteristics not captured in the model that makes these states have more drug severity levels than expected. Dummy variables for Arizona, Arkansas, California, Louisiana, Maryland, Tennessee, and Virginia are all negative and statistically significant, indicating features unique to these states that lead them to have fewer drug severity levels than expected. Still, it is not clear what the latent factors are, and more research is needed to determine what other unique state characteristics may affect the severity levels for drug offenses.

**Sentences for Heroin and Large Amounts of Cocaine**

The model for sentences for heroin and large amounts of cocaine is depicted in Figure 4.2. The assumption is that heroin and cocaine sentences are influenced by the same set of factors as drug severity levels because both are forms of drug policy.

However, the state fixed effects model for this component of drug policy indicates that severity levels and sentences for heroin and large amounts of cocaine are not affected in the same way. Table 4.17 presents the model. The model explains 75 percent of the variance in heroin and large cocaine sentences ($R^2 = .75$). Thirty-two state
dummy variables are significant, suggesting latent state characteristics account for a large portion of variance.

Table 4.17.
State Fixed Effects Models for Sentences for Heroin and Large Amounts of Cocaine

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Sentences for Heroin and Large Amounts of Cocaine</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social Construction</strong></td>
<td></td>
</tr>
<tr>
<td>Elite Perceptions</td>
<td>-45.10***</td>
</tr>
<tr>
<td></td>
<td>(11.42)</td>
</tr>
<tr>
<td>Black threat potential</td>
<td>32.88**</td>
</tr>
<tr>
<td></td>
<td>(11.26)</td>
</tr>
<tr>
<td><strong>Social Control</strong></td>
<td></td>
</tr>
<tr>
<td>Black Pop (In)</td>
<td>186.33**</td>
</tr>
<tr>
<td></td>
<td>(61.06)</td>
</tr>
<tr>
<td>Poverty Rate (In)</td>
<td>13.49</td>
</tr>
<tr>
<td></td>
<td>(55.14)</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>-701.41</td>
</tr>
<tr>
<td></td>
<td>(554.48)</td>
</tr>
<tr>
<td>Black Pop X Poverty Rate</td>
<td>-18.70</td>
</tr>
<tr>
<td></td>
<td>(27.53)</td>
</tr>
<tr>
<td>Black Pop X Gini</td>
<td>-28.51</td>
</tr>
<tr>
<td></td>
<td>(115.59)</td>
</tr>
<tr>
<td><strong>Political Characteristics</strong></td>
<td></td>
</tr>
<tr>
<td>Republican Governor</td>
<td>-3.96</td>
</tr>
<tr>
<td></td>
<td>(3.31)</td>
</tr>
<tr>
<td>HVD Index</td>
<td>-2.59</td>
</tr>
<tr>
<td></td>
<td>(3.24)</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>-217.12</td>
</tr>
<tr>
<td></td>
<td>(137.20)</td>
</tr>
<tr>
<td>Political Culture</td>
<td>-356.49**</td>
</tr>
<tr>
<td></td>
<td>(99.69)</td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>-.42*</td>
</tr>
<tr>
<td></td>
<td>(.18)</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>2.27</td>
</tr>
<tr>
<td></td>
<td>(1.18)</td>
</tr>
<tr>
<td>HVD X Ranney</td>
<td>4.67</td>
</tr>
<tr>
<td></td>
<td>(3.29)</td>
</tr>
<tr>
<td><strong>Bureaucratic Forces</strong></td>
<td></td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>.82**</td>
</tr>
<tr>
<td></td>
<td>(.24)</td>
</tr>
<tr>
<td>Fed Year 1984</td>
<td>8.25</td>
</tr>
<tr>
<td></td>
<td>(12.50)</td>
</tr>
<tr>
<td>Fed Year 1986</td>
<td>-4.62</td>
</tr>
<tr>
<td></td>
<td>(19.54)</td>
</tr>
<tr>
<td>Fed Year 1988</td>
<td>2.33</td>
</tr>
<tr>
<td></td>
<td>(18.97)</td>
</tr>
</tbody>
</table>
Both social construction variables are significant and in the expected direction. States in which elite perceptions are more positive are more likely to have shorter sentences for heroin and large amounts of cocaine ($p<.001$). States where the black population presents a greater or more visible threat are more likely to have longer sentences for these offenses ($p<.01$). These findings mirror the findings in the drug policy index model and support the social construction hypothesis that the perceptions of the target population affect policies directed towards that population.

The only significant social control variable is black population size, which was in the expected direction ($p<.01$). States with a larger black population are more likely to have longer sentences for heroin and large amounts of cocaine. This supports the hypothesis that states with larger black populations are more likely to take a tougher stance towards drug offenders. The poverty rate and the Gini coefficient are not significant, so the hypotheses that states with high rates of poverty and inequality are tougher on drugs are not supported by this model. The interaction terms for black
population size and the poverty rate and the Gini coefficient also are not significant. This could indicate that race is a greater factor than class in drug policy decisions that are focused on sentence lengths.

The significant political variables are political culture (p<.01) and government ideology (p<.05). Political culture has a negative effect on heroin and large cocaine sentences. This is unexpected because it means that states with a traditionalistic culture are likely to have shorter sentences for heroin and large amounts of cocaine. Government ideology is in the expected direction; states with a more ideologically conservative government are likely to have longer sentences for these drug offenses. This supports the idea that conservative states are likely to exert greater toughness towards drug offenders. However, the unexpected relationship between traditionalistic political culture and heroin and large cocaine sentences confounds this idea, making it difficult to draw conclusions about the relationship between conservatism and drug policy. The political variables for Republican governor, interparty competition, and citizen ideology are not significant. These findings may suggest that while ideology still played some role in determining policy during the drug war era, party loyalties or influences were less of a factor.

The size of the police forces is positive and significant (p<.01), which supports the hypothesis that states with a larger law enforcement bureaucracy are likely to have more punitive drug policies. This variable is also significant in the drug policy index and drug severity models, adding further support to this hypothesis. The only significant year for federal legislation is 1994 (p<.05). This year has a negative effect on heroin and large
cocaine sentences, meaning that shorter sentences are associated with this year. Drugs were not the predominant focus of the Violent Crime Control and Law Enforcement Act of 1994 which had provisions for extending the death penalty to more crimes, including drug trafficking, eliminating postsecondary inmate education, and increasing law enforcement resources. Thus, while it was a tough-on-crime bill, it did little to target drug offenses specifically. The negative association in this case may be an indication of a shifting focus from drug offenses to other crime issues, such as gang violence, sex crimes, and terrorism.

The only significant control variable in the model is for state GDP (p<.05). States with a larger GDP are likely to have longer sentences for heroin and large amounts of cocaine. This finding and the lack of findings for a relationship between urban population size and the drug arrest rate mirror the results from the drug index and drug severity models. Together this suggests that state resources play a role drug policy decisions, but a drug “problem” does not.

Thirty-two state dummy variables are significant in this model (p<.05). Dummy variables for Alaska, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Mississippi, Minnesota, Michigan, Missouri, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming are all significant and negative, suggesting there are unique state characteristics that lead these states to have shorter sentences for heroin and cocaine offenses than would be expected. Dummy variables for Arkansas, Hawaii, New Jersey, and Oklahoma are positive and significant, suggesting
there is something unique to them that leads them to have longer sentences for these offenses than expected.\textsuperscript{13} While the significant state dummy variables indicate unique characteristics that make these states have shorter or longer sentences than expected, it does not speak to their sentencing policies relative to other states. That a majority of states are significant in the model also suggests there are important state characteristics not present in the model.

**Sentencing Enhancements**

The third drug policy component that is tested is for the number of sentencing enhancements associated with drug offenses (see Figure 4.2). The model explains almost 78 percent of the variance (see Table 4.18). While this model is almost identical to the model for drug severity levels, it differs from the models for the drug policy index and heroin and large cocaine sentences, although there are some similarities here as well, such as significant findings for black threat potential, size of the police force, and GDP. Eight state dummy variables are statistically significant, indicating a similar pattern to the model for drug severity levels, in which nine states are significant.

\textsuperscript{13} Arizona was selected as reference category by Stata.
### Table 4.18.
**State Fixed Effects Models for Sentencing Enhancements**

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Sentencing Enhancements</th>
</tr>
</thead>
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</tr>
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</tr>
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<td></td>
<td>(1.59)</td>
</tr>
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<td>Black threat potential</td>
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</tr>
<tr>
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</tr>
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<td>Black Pop (In)</td>
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</tr>
<tr>
<td></td>
<td>(1.43)</td>
</tr>
<tr>
<td>Gini Coefficient</td>
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</tr>
<tr>
<td></td>
<td>(29.90)</td>
</tr>
<tr>
<td>Black Pop X Poverty Rate</td>
<td>.30</td>
</tr>
<tr>
<td></td>
<td>(.35)</td>
</tr>
<tr>
<td>Black Pop X Gini</td>
<td>7.68</td>
</tr>
<tr>
<td></td>
<td>(6.06)</td>
</tr>
<tr>
<td><strong>Political Characteristics</strong></td>
<td></td>
</tr>
<tr>
<td>Republican Governor</td>
<td>.32</td>
</tr>
<tr>
<td></td>
<td>(.50)</td>
</tr>
<tr>
<td>HVD Index</td>
<td>.08</td>
</tr>
<tr>
<td></td>
<td>(.18)</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>4.98</td>
</tr>
<tr>
<td></td>
<td>(7.45)</td>
</tr>
<tr>
<td>Political Culture</td>
<td>-13.63</td>
</tr>
<tr>
<td></td>
<td>(11.76)</td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>.01</td>
</tr>
<tr>
<td></td>
<td>(.02)</td>
</tr>
<tr>
<td>Citizen Ideology</td>
<td>-.05</td>
</tr>
<tr>
<td></td>
<td>(.05)</td>
</tr>
<tr>
<td>HVD X Ranney</td>
<td>-.04</td>
</tr>
<tr>
<td></td>
<td>(.19)</td>
</tr>
<tr>
<td><strong>Bureaucratic Forces</strong></td>
<td></td>
</tr>
<tr>
<td>Police per 100,000</td>
<td>.02*</td>
</tr>
<tr>
<td></td>
<td>(.01)</td>
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<tr>
<td>Fed Year 1984</td>
<td>-.22</td>
</tr>
<tr>
<td></td>
<td>(.30)</td>
</tr>
<tr>
<td>Fed Year 1986</td>
<td>1.22</td>
</tr>
<tr>
<td></td>
<td>(.75)</td>
</tr>
<tr>
<td>Fed Year 1988</td>
<td>7.11***</td>
</tr>
<tr>
<td></td>
<td>(.51)</td>
</tr>
<tr>
<td>Fed Year 1994</td>
<td>1.10</td>
</tr>
<tr>
<td></td>
<td>(.74)</td>
</tr>
<tr>
<td><strong>Controls</strong></td>
<td></td>
</tr>
<tr>
<td>GDP (ln)</td>
<td>3.69**</td>
</tr>
<tr>
<td></td>
<td>(1.10)</td>
</tr>
<tr>
<td>Urban Population</td>
<td>-.02</td>
</tr>
<tr>
<td></td>
<td>(.04)</td>
</tr>
</tbody>
</table>
Table 4.18 continued

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Sentencing Enhancements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Arrests (In)</td>
<td>.13</td>
</tr>
<tr>
<td></td>
<td>(.67)</td>
</tr>
<tr>
<td>R²</td>
<td>.78</td>
</tr>
<tr>
<td>F</td>
<td>22.18, prob &gt; F = .000</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01, ***p < .001, *Eight states significant

Black threat potential is positive and significant (p<.05). States where blacks present a greater potential threat to elite interests are likely to have more sentencing enhancements associated with drug offenses. This lends further support to the hypothesis that the perceived strength of the black population affects more punitive drug policy. While the variable for elite perceptions is not significant, it is barely so (p = .06) and in the expected direction.

This model follows a similar pattern to that for severity levels in that none of the social control or political variables is significant. The lack of findings for the social control variables could again support the idea that it is not the presence of threatening or target populations that trigger burdensome policy but the perceptions of these populations that do so. That none of the political variables are significant may further support the notion that partisanship and ideology were not primary players in the drug war. It may also be that, like severity levels, sentencing enhancements are a less politically salient issue than, for example, sentence lengths.

The size of the police force has a significant and positive impact on the number of drug related sentencing enhancements in a state (p<.05). This further supports the hypothesis that the size of the law enforcement bureaucracy is influential in
determining state drug policy. The year 1988 is also positive and significant (p<.001).
This is the year in which the Second Anti-Drug Abuse Act was passed, a statute that included many provisions for drug users and dealers. As in the other models, the 1984, 1986, and 1994 years for federal legislation are not significant. State GDP is the only significant control variable, following the pattern of the models discussed above.

Only eight states have significant effects in the sentencing enhancement model (p<.05). Dummy variables for Georgia, Louisiana, Oklahoma, South Carolina, and West Virginia are positive and significant and dummy variables for Florida, Kentucky, and Virginia are negative and significant. The dummy variables that are significant in the positive direction indicate that these states have unique characteristics not captured in the model that lead them to have more sentencing enhancements than expected. The dummy variables that are significant in the negative direction indicate that these states have unique characteristics that lead them to have fewer sentencing enhancements than expected. That fewer state dummy variables are significant in this model compared with the drug policy index model and the model for heroin and large amounts of cocaine sentences suggests that this model explains a greater portion of the variance across states.

Sentences for Marijuana and Small Amounts of Cocaine

The final drug policy component includes sentences for marijuana and small amounts of cocaine (see Figure 4.2 for a depiction of the model). The results of the

\[^{14}\] New Jersey selected as reference category by Stata.
model are presented in Table 4.19. The model explains 80 percent of the variance ($R^2 = .80$). Twenty-three state dummy variables are significant, which is similar to the model for heroin and large cocaine sentences that had 32 significant state dummy variables. That almost half of the states are significant suggests that latent state characteristics may be capturing a large portion of the variance.

Table 4.19.
State Fixed Effects Models for Sentences for Marijuana and Small Amounts of Cocaine

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Sentences for Marijuana and Small Amounts of Cocaine</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social Construction</strong></td>
<td></td>
</tr>
<tr>
<td>Elite Perceptions</td>
<td>-2.36 (3.20)</td>
</tr>
<tr>
<td>Black threat potential</td>
<td>-3.79 (1.97)</td>
</tr>
<tr>
<td><strong>Social Control</strong></td>
<td></td>
</tr>
<tr>
<td>Black Pop (In)</td>
<td>80.19*** (15.67)</td>
</tr>
<tr>
<td>Poverty Rate (In)</td>
<td>-7.03 (5.01)</td>
</tr>
<tr>
<td>Gini Coefficient</td>
<td>21.57 (84.07)</td>
</tr>
<tr>
<td>Black Pop X Poverty Rate</td>
<td>-1.59 (3.22)</td>
</tr>
<tr>
<td>Black Pop X Gini</td>
<td>-105.31* (50.47)</td>
</tr>
<tr>
<td><strong>Political Characteristics</strong></td>
<td></td>
</tr>
<tr>
<td>Republican Governor</td>
<td>-.85 (3.92)</td>
</tr>
<tr>
<td>HVD Index</td>
<td>.31 (.69)</td>
</tr>
<tr>
<td>Ranney Index</td>
<td>26.08 (35.51)</td>
</tr>
<tr>
<td>Political Culture</td>
<td>130.78** (44.09)</td>
</tr>
<tr>
<td>Gov’t Ideology</td>
<td>-.09 (.11)</td>
</tr>
<tr>
<td>Citizen ideology</td>
<td>.05 (.23)</td>
</tr>
<tr>
<td>HVD X Ranney</td>
<td>-.09 (.71)</td>
</tr>
</tbody>
</table>
Neither social construction variable is significant in the model for marijuana and small cocaine sentences. One possible reason for the lack of significance is that the population of marijuana and small cocaine offenders is—or is perceived to be—different from other drug offenders. Marijuana in particular is often associated with college youth, who are less likely to be perceived as threatening or underserving than other populations typically associated with drug activity. Small scale cocaine possession offenses may also be seen as including a different or less threatening population. That these drug-related offenses include a larger part of the general population that is not typically regarded as deviant may make the social construction of the regularly targeted marginalized populations less of a consideration.
However, the variable for black population size is positive and significant (p<.001), indicating that states with larger black populations are likely to have longer sentences for marijuana and small amounts of cocaine. One explanation consistent with the reasoning for the lack of significance for the social construction variables is that in states with large black populations, this group becomes the dominant one associated with drug use, and because blacks are perceived as a threatening population, policies thought to affect this group are harsher.

At the same time, the interaction variable for black population size and the Gini coefficient is negative, which contradicts the hypothesis that states with a larger black population and greater inequality would likely be more punitive towards drugs. This may reflect the benign neglect argument, that states with significant inequality and a sizable minority population are not concerned with issues involving these populations, such as drugs, because the great socioeconomic distance between these groups and the status quo in society is greater. This sentiment could also be reflected in the lack of significance for the interaction between black population size and poverty rates. That poverty rate by itself is not significant may suggest that class is not as important as race in determining drug policy.

The only significant political variable is political culture, which is in the expected direction (p < .01). States with a traditionalistic political culture are likely to have longer sentences for marijuana and small cocaine offenses. This finding supports the hypothesis that traditionalistic states, which favor the status quo and emphasize morality more so than other political cultures, are likely to be more punitive towards
drugs. None of the other political variables are significant. Again, this supports the idea that partisanship and ideology were not major factors in determining drug policy during the War on Drugs era.

The significant bureaucratic factors include the dummy variables for the years 1986, 1988, and 1994. The years 1986 ($p<.001$) and 1988 ($p<.05$) are both positively associated with marijuana and small cocaine sentences, indicating that states were more likely to have longer sentences during these years. The federal legislation in 1986 and 1988 was concerned with increasing penalties for drug offenders, especially drug users, so this relationship makes sense and supports the hypothesis that states are influenced by policy action at the national level. The year 1994 is negative and significant ($p<.001$), which may be because the 1994 crime bill focused more on other crimes, and states decided to redirect some resources away from drugs and towards some of the offenses targeted in the federal bill. The lack of significance for the year 1984 may be a product of the time lag between federal and state legislation. The variable for the size of the police force is not significant in the model.

The size of a state’s GDP is the only significant control variable ($p<.01$), but in the negative direction. States with a smaller GDP are likely to have longer sentences for marijuana and small cocaine offenses. This is unexpected and surprising, especially because GDP is positive and significant in every other model. The reason behind this relationship is not clear, but it may be evidence that sentences for marijuana and small amounts of cocaine are especially different from other types of drug policy.
The model for marijuana and small cocaine sentences also has 23 significant state effects. The majority of these state dummy variables have positive effects, including Alaska, Colorado, Hawaii, Idaho, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Utah, and Vermont, indicating the presence of latent state characteristics leading these states to have longer sentence lengths than expected. Dummy variables for Florida, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, and West Virginia all have negative effects, indicating the presence of state characteristics not captured in the model that lead these states to have shorter sentence lengths than expected.

**Model Comparison**

The previous sections discussed the models for the drug policy index and the four drug policy components that were extracted from the drug index. All dependent variables were tested using state fixed effects models. The same independent variables were used in all models based on the assumption that different drug policies are affected by the same factors because they all fall under the drug policy umbrella. Table 4.20 provides a comparison of the models. Significant variables are indicated with asterisks and negative and positive signs to indicate the direction of significance.

---

15 Arizona omitted as reference category.
Table 4.20.
Comparison of Significant Variables for All Models

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Drug Policy Index</th>
<th>Severity Levels</th>
<th>Sentences for Heroin &amp; Lg Amts of Cocaine</th>
<th>Sentencing Enhancements</th>
<th>Sentences for Marijuana &amp; Sm Amts of Cocaine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Construction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elite Perceptions</td>
<td>-***</td>
<td>-***</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Black threat potential</td>
<td>+***</td>
<td>+**</td>
<td></td>
<td>+*</td>
<td></td>
</tr>
<tr>
<td>Social Control</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black Pop (In)</td>
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<td>+**</td>
<td>+***</td>
<td></td>
</tr>
<tr>
<td>Poverty Rate (In)</td>
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<td></td>
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<tr>
<td>Gini Coefficient</td>
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<tr>
<td>Black Pop X Poverty Rate</td>
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<tr>
<td>Black Pop X Gini</td>
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<tr>
<td>Political Characteristics</td>
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<td>Republican Governor</td>
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<tr>
<td>HVD Index</td>
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<td></td>
</tr>
<tr>
<td>Ranney Index</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political Culture</td>
<td>-***</td>
<td>-**</td>
<td></td>
<td>+**</td>
<td></td>
</tr>
<tr>
<td>Gov't Ideology</td>
<td>+*</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Citizen Ideology</td>
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</tr>
<tr>
<td>HVD X Ranney</td>
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<td>Bureaucratic Forces</td>
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</tr>
<tr>
<td>Police per 100,000</td>
<td>+***</td>
<td>+**</td>
<td>+**</td>
<td>+*</td>
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<tr>
<td>Fed Year 1984</td>
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<td>Fed Year 1986</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Fed Year 1988</td>
<td>+***</td>
<td>+**</td>
<td></td>
<td>+***</td>
<td>+*</td>
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<td>Fed Year 1994</td>
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<td>-***</td>
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<tr>
<td>Controls</td>
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</tr>
<tr>
<td>GDP (In)</td>
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<td>+**</td>
<td>+*</td>
<td>+**</td>
<td>-**</td>
</tr>
<tr>
<td>Urban Population</td>
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<td>Drug Arrests</td>
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<td>23</td>
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<td>485</td>
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<td>.80</td>
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<tr>
<td>$F$</td>
<td>1199.85***</td>
<td>79.01***</td>
<td>139.98***</td>
<td>22.18***</td>
<td>224.90***</td>
</tr>
</tbody>
</table>

*p < .05, **p < .01, ***p < .001
The table shows that different factors affect different types of drug policy. The only variable significant across all models is state GDP, which is positive and statistically significant for all models except marijuana and small cocaine sentences. Black threat potential and the size of the police force are significant and positive for all models except marijuana and small cocaine sentences and the dummy variable for the year 1988 is positive and significant for all models except sentences for heroin and large amounts of cocaine. The rest of the variables are significant in three or fewer of the models. The following sections compare the models as they relate to each group of independent variables.

**Social Construction Variables**

The variable for black threat potential is positive and significant in all models except marijuana and small cocaine sentences. This variable is a component including measures for black representation in the state legislature and the propensity to incarcerate after controlling for crime rates and resources. The theoretical assumption behind this component is that in states where blacks have a larger political presence, they are also seen as a greater potential threat. States in which blacks are perceived as more threatening to elite interests may exercise greater use of incarceration as a mechanism of control. The findings that states with a greater black threat potential are more likely to have more drug severity levels and sentencing enhancements, longer sentences for heroin and large amounts of cocaine, and more punitive drug policy overall supports the social construction hypothesis that perceptions of target
populations affect policies directed toward those populations. Where the black population is perceived as posing a greater threat, more punitive drug policy may be one tool to direct burdensome policies toward this group.

The variable for black threat potential is not significant in the model for marijuana and small cocaine sentences. Because sentences for these offenses are more likely targeting users and low level dealers, different considerations may affect policy in this area. For example, less severity in this area may be warranted for pragmatic reasons, such as budget or prison overcrowding concerns. It may also be that lawmakers recognize that the population targeted by marijuana laws and policies concerning small amounts of cocaine includes a broader segment of society than other types of drug policies. In this case, the potential for a threatening black population may be less relevant.

The other social construction variable, elite perceptions, is significant only in the drug policy index model and the model for heroin and large cocaine sentences, although it approaches significance in the sentencing enhancements model (p = .062). In both significant models the variable is in the expected direction, so that more negative elite perceptions (as measured by welfare generosity and permanently disenfranchising ex-felons) are associated with more punitive drug policies. This lends partial support to the hypothesis that in states where lawbreakers and the poor are seen as deserving of punishment and underserving of assistance, drug policies are likely to be more punitive because they are directed towards this same population of deviant or marginalized individuals.
The elite perceptions variable is not significant in the models for severity levels, sentencing enhancements, or marijuana and small cocaine sentences. Elite perceptions of the target population may be insignificant in the marijuana and small cocaine model for the same reason that black threat potential may not be significant—the target population of these policies is different and more encompassing than other drug policy areas and so the same social constructions do not apply. It is less clear why the elite perceptions variable is not significant in the severity levels and sentencing enhancements models. This could suggest that the theoretical explanation for the effects of elite perceptions on drug policy is weak, or that the variables used to capture elite perceptions are inappropriate. It may also be because severity levels and sentencing enhancements are less salient or straightforward policy issues—or in the case of severity levels may be the consequence of other drug policies—and so they do not necessarily trigger the same considerations as drug sentence lengths. The inconsistency in findings for elite perceptions warrants further research into the impact of social constructions on drug policy. It also suggests that there are important distinctions between different types of drug policy.

**Social Control Variables**

Few of the social control variables are significant, and only black population size is significant in more than one model. Black population size is a significant and positive predictor for sentences for heroin and large amounts of cocaine and for marijuana and small amounts of cocaine. This supports the hypothesis that states with larger black
populations are more likely to have more punitive drug laws. However, black population size is not significant for the policy index, severity levels, or sentencing enhancement models. Because the policy index is comprised of the variables in all the other policy components, the lack of significance for the severity and sentencing enhancements models likely contributes to the lack of significance in the policy index model. The lack of significant findings in these models may provide some support for the social construction hypothesis, in that it suggests the presence of a target population is not as important as the perceptions of that population. It also may be that the length of punishment is a more salient form of drug legislation than severity levels or sentencing enhancements, making sentence lengths a more popular tool for sending a message about how a particular population is to be perceived.

The Gini coefficient, which measures inequality in a state, is only significant in the drug policy index model, and in the unexpected direction. The greater the inequality in a state, the less likely it is to have punitive drug policies relative to other states. This contradicts the hypothesis that greater levels of inequality would make states more likely to be more punitive as a way of controlling the marginalized population. However, this relationship may represent the presence of benign neglect. In states with greater levels of inequality, drugs may be regarded as less of a concern in so far as they are seen as a lower-class problem. The high level of inequality signifies a greater distance between the lower class and other segments of society, which makes this population less threatening and so policies directed towards them are unnecessary or not a priority.
More research is needed to determine the exact relationship between inequality and drug policy.

One of the premises proposed in Chapter 2 was that it is not only the size of the black population or the level of poverty and inequality in a state that affect its attitudes towards punishment, but the combination of both poverty and a large minority population that will have greater influence. This was tested using interaction effects between black population size and the Gini coefficient and black population size and the poverty rate. The interaction between black population and the Gini coefficient is significant and negative for the model examining sentences for marijuana and small amounts of cocaine. States with a larger black population and a greater level of inequality are more likely to have shorter sentences for heroin and cocaine offenses. This contradicts the hypothesis presented in Chapter 2 that a large black population and a high level of inequality would result in more punitive drug sentences. As with the significant negative relationship for the Gini coefficient in the drug policy index model, it is possible that the greater the black population size in the presence of high inequality, the less of a threat this population presents, because the gap between them and the rest of society is greater. On the other hand, the Gini coefficient only expresses the level of overall inequality in the state. It is possible that a better measure in this case would be the ratio of black-to-white inequality, but this data was not available for the period of study.

The interaction effect between black population size and the poverty rate is not significant in any of the models. This may offer some support for the social construction
hypothesis, because it suggests that just the presence of this population is not enough to impact policies that affect them. It could also be a function of the benign neglect argument in that a large poor and black population presents little threat to the elite and therefore is less of a policy concern. One issue also may be that the poverty rate by race is not captured here, and that may be a more accurate way to determine if the presence of a large poor and black population affects drug policy. The poverty rate by itself is not significant in any of the models, indicating that the presence of a large poor population does not influence drug policy. This may suggest that class is a less important factor than race in this policy area.

**Political Factors**

Overall the political variables are not strong predictors of drug policy. Political culture is significant in three of the models: the drug policy index, sentences for heroin and large amounts of cocaine, and sentences for marijuana and small amounts of cocaine. States with a traditional political culture are more likely to have longer sentences for marijuana and small amounts of cocaine. This provides some support for the hypothesis that traditionalistic states are more likely to have more punitive drug legislation. However, traditional culture shares a negative relationship with sentences for heroin and cocaine and overall drug punitiveness as captured by the index. This contradicts the above hypothesis. It is not clear why political culture has contradictory effects on two areas of drug policy, but it does suggest there is something distinct about the different types of policy.
Government ideology is significant and positive in the model for heroin and large cocaine sentences. This supports the hypothesis that an ideologically conservative government is likely to support more punitive drug policy. However, this variable is not significant in any of the other models. This may support the idea that each area of drug policy included in this study is unique, but it also may suggest that the relationship between government ideology and drug policy is weak.

The variable capturing the interaction between electoral competition and Republican institutional strength is a significant negative predictor in the drug policy index model. States with high levels of electoral competition and Democratic dominance in state institutions are more likely to have more punitive drug policy. That Democratic control is associated with greater punitiveness is unexpected, but may indicate the intense pressure felt by Democratic candidates to appear tough during the drug war era. That the combination of the interparty competition variables is significant while neither variable on its own is significant supports the hypothesis that the combination of competition types has a greater policy influence than either type alone. However, that it is only significant in one model suggests the relationship between this competition and drug policy may be weak, or that it only affects certain types of drug policy.

Taken together, the findings from testing the relationships between drug policy and political variables suggests that ideology and partisanship have not been strong factors in determining drug policy at the state level during most of the War on Drug era. This may be due to the intense popularity of the drug war and thus the tendency for officials of all ideological bends to support tougher drug legislation.
Bureaucratic Forces

The variables for bureaucratic forces include the size of the police force in the state and dummy variables for years of drug-related federal legislation. The variable for police force size is intended to test the hypothesis that a large law enforcement bureaucracy is positively associated with greater punitiveness towards drugs and the dummy variables are intended to capture the possible influence of federal action on state decision-making. The size of the police force is positive and significant for all models except for sentences for marijuana and small amounts of cocaine. These findings support the hypothesis that a larger law enforcement bureaucracy is likely associated with more punitive drug laws. That this variable is not significant in the model for marijuana and small cocaine sentences may provide further evidence for the idea that policies concerning these offenses have less in common with the other types of drug policies, perhaps because the offenses are considered less serious and/or because the population guilty of such offenses includes more of the general population.

The year 1988 is significant and positive in all models except sentences for heroin and large amounts of cocaine. The 1988 Anti-Drug Abuse Act encouraged states to increase penalties for drug offenses. It was particularly harsh towards drug users and low level dealers, which may explain why it is significant for marijuana and small cocaine offenses but not in the model for sentences for heroin and large cocaine offenses. The year 1994 is negative and significant in the models for sentences for heroin and large cocaine offenses and for sentences for marijuana and small cocaine offenses. This may signify a slight shift in state priorities, as the 1994 federal legislation focused less on
drug crime and much more on terrorism, sex crimes, and victims’ rights. If states decided to pursue other types of crime, they may have needed to scale back drug war efforts to conserve resources or limit prison overcrowding. However, the year 1994 is not significant for any drug policy except for sentence lengths so this conclusion is a cautious one.

The year 1986 is positive and significant only in the model for sentences for marijuana and small amounts of cocaine. This is expected because the 1986 Anti-Drug Abuse Act increased mandatory minimum sentences for drug offenses, including very small amounts of drugs, and encouraged states to follow suit. However, it is not significant in any of the other models. The year 1984 is not significant in any of the models, which is also surprising because this law encouraged states to increase drug crime control efforts by allowing for sharing in seized assets between state and federal law enforcement. The lack of significance may be due to the delayed reaction among state governments to respond to federal incentives. In this case, the dummy variable for the year 1988 may be capturing some of the incentives from the 1984 and 1986 legislation. Overall, while these findings offer some support for the hypothesis that states respond to incentives from the federal government regarding drug policy, more research is needed to understand this relationship.

**Controls**

The size of the urban population and the level of drug arrests in a state are not significant predictors in any of the models. These variables are intended to capture the
need for strict drug legislation to respond to a drug problem, as urban areas have higher
rates of drug use and the drug arrest rate captures law enforcement effectiveness in
pursuing drug offenders. That neither of these variables is significant suggests that drug
legislation is not necessarily a function of a drug problem. This lack of significance may
also be due to the failure of these control variables to capture the rate of drug use and
drug related crime at the state level, but this data was not available for the period of
study.

State GDP is positive and significant for all models except sentences for
marijuana and small amounts of cocaine, where it is a significant negative predictor.
Overall these findings support the idea that sentencing policy decisions are tied to the
state’s financial capacity to pursue and punish individuals for drug offenses, but the
negative relationship between GDP and marijuana and small cocaine sentences is
confounding. It is not clear why GDP has the opposite effect in this policy area, but one
possibility may be that richer states also have a higher percentage of the general
population engaging in recreational drug use and so they do not punish these offenses
as severely. At the very least, that GDP is negative only in the model for marijuana and
small cocaine sentences suggests that this policy area is more unique than the other
drug policy areas.

**State Effects**

All models have significant state effects. The models for severity levels and
sentencing enhancements have considerably fewer state effects than the other models,
with nine and eight significant states, respectively. There are 36 significant states in the
drug policy index model, 32 in the model for sentences for heroin and large amounts of
cocaine, and 23 in the model for marijuana and small amounts of cocaine. That state
effects are less prominent in the severity levels and sentencing enhancements models
suggests that these models do a better job of capturing the relevant state
characteristics. None of the states are significant for all models, but Florida, Oklahoma,
and Virginia are significant in four out of five models. Florida is negative and significant
in all models except for severity levels, Virginia is negative and significant in all models
except marijuana and small cocaine sentences, and Oklahoma is positive and significant
in all models except severity levels. This suggests there are characteristics unique to
Florida and Virginia that make them likely to have less punitive drug policy than
expected, and something unique about Oklahoma that leads it to have more punitive
drug policy than expected. This study does not include enough data to determine the
exact nature of the unique state effects, but these findings do provide an initial guide
for further research that focuses more on a few select states.

Summary and Conclusion

This chapter has described the data used in the study, the results from the state
fixed effects model for the drug policy index, the construction of four drug policy
components, and the results of the fixed effects analyses for these components. A state
fixed effects model was chosen for all dependent variables. This decision was based on
comparisons between the models with state fixed effects to those with time fixed
effects as well as pooled OLS regression and random effects models. There are also theoretical reasons for using state fixed effects models, primarily that the latent variables are assumed to have some correlation with the variables included in the model as well as the states themselves. That the states account for significant portions of the variance within each model further indicates the presence of unique state effects.

Findings indicate partial support for the model proposed in Chapter 2. The social construction hypothesis that negative perceptions of the target population will make states more likely to support punitive drug legislation is supported to some extent by findings that the potential threat posed by the black population is positively associated with all drug policy areas except for marijuana and small cocaine sentences. That negative elite perceptions towards the target population also predict greater overall drug punitiveness and longer heroin and large cocaine sentences also support this hypothesis.

In some respects the lack of findings for the variables used to capture social control also support the social construction hypothesis in that they suggest that the presence of potentially threatening populations is not as important as the perceptions of those populations. The negative findings for the Gini coefficient and for the interaction effects between the Gini coefficient and black population size provide some support for the benign neglect argument, which also compliments the social construction hypothesis because it indicates that punitive drug policy is not necessary when this population is a greater socioeconomic distance from other segments of society.
Regarding political explanations for drug policy, the basic premise laid out in Chapter 2 was that more politically conservative states would be more likely to have more punitive drug legislation. There is some indication of that regarding political culture, but the findings for this variable are not consistent across models. In Chapter 2 an alternative explanation for the political aspect of drug policy was raised, that is, that ideology and partisanship have had little influence on drug policy over the last few decades because of the pressure on both sides to appear tough on drugs. The lack of conclusive findings for political effects in the models supports this claim. The models also lend some support to the hypotheses that a large law enforcement bureaucracy and federal influence provide incentives and/or pressure to states to pass punitive drug legislation.

The implicit assumption underlying the model presented in Chapter 2 was that all drug policy would be influenced by the same factors. While the model using the drug policy index performs well, comparing the results of this model to the four drug policy components models demonstrates that drug policy is not monolithic. Only the variable for GDP is significant across all models, and the direction does not remain consistent. There are similarities between the models, but also important differences that require further examination.

The next chapter discusses the findings of the study within the larger context of drug and criminal justice policy. It examines whether and how this study has contributed to our understanding of the factors affecting state drug policy decisions. It also discusses
what the study’s findings may mean for drug policy moving forward. Areas for further research as well as possible avenues for reforming drug laws are explored.
CHAPTER 5

DISCUSSION AND CONCLUSION

Chapter 4 presented the findings from the data analysis for this study. Using a state fixed effects model to analyze an index of drug policies, the study tested the hypotheses related to the proposed research question asking what factors influence variation in state drug policy decisions. This model provided support for the social construction hypothesis and partial support for the hypotheses regarding the influence of bureaucratic incentives. Although the model performed reasonably well, there was some suspicion that the index may have obscured potential nuances in drug policy. To determine if this was the case, principal component analysis was used to create four components of drug policy. These components were also tested using state fixed effects models.

Findings provide partial support for the hypotheses developed in Chapter 2; however none of the models are the same, and there are some contradictory relationships. The dissimilar findings across models indicate that important distinctions exist between different types of drug policy and highlight the complexities of the relationships between drug policy and social, economic, and political factors. This chapter discusses how the findings have added to our understanding of drug policy and explores some of the issues raised by the findings, including issues related to measuring drug policy. It also situates the study in the context of current movements in drug policy, with a focus on how these findings can be used to explore drug reform possibilities. Areas for future research are also discussed.
Understanding US Drug Policy

US drug policy can be frustrating to those who study it because for the last few decades the federal and state governments have decided to deal with drug offenders in a punitive way that is ineffective and costly, and which has created considerable racial disparities. Thus one purpose of this research was to gain a better understanding of why drug policy in the US looks the way it does. Using the social construction framework to analyze the historical development of drug policy in the US contributes to this understanding by showing how elements of race and class formed much of the substructure of the discourse on drug policy and how the issue of drugs was used by politicians, the media, and law enforcement agencies to further their own interests. The model developed in Chapters 2 and 3 and tested in Chapter 4 was intended to find whether these assertions could be supported by a quantitative analysis of state drug policy during the drug war era.

As discussed in Chapter 4, some of the findings support the social construction hypothesis. There is also some support for the bureaucratic hypotheses, but less support for the social control and political arguments. The evidence from the study is further complicated by the fact that not all types of drug policy are affected by the same factors. While the drug policy index can provide a generalized picture of drug policy, the analysis of the four separate components demonstrates that drug policy is not monolithic. That said, when taken together the models do indicate support for the social construction hypothesis. The variable for black threat potential is positive and significant in all models except for marijuana and small cocaine sentences. This is a strong
indication that drug policy is more punitive in states where the black population is perceived as a greater potential threat.

The variable for elite perceptions is only significant in the drug index model and the model for heroin and large cocaine sentences. Thus only partial support is provided for the premise that negative elite perceptions of target populations affect more punitive drug policy. The lack of significance for elite perceptions in the other models may be a function of important differences between types of drug policy. For example, elite perceptions may not have been significant in the marijuana and small cocaine model because this offender population is seen as different from or more encompassing of the general population than the typical drug offender population, and so perceptions of the usual target population of drug policy do not apply. That potential threat from the black population is also insignificant in this model supports this argument.

It is less clear why elite perceptions are not a significant factor in determining severity levels or sentencing enhancements. One possibility could be that the influence of elite perceptions is tied to the political salience of a policy issue. Some drug policies, such as the number of severity levels, may translate less well into a popular sound-bite than, for example, a specific sentence length for selling heroin. Perhaps elite perceptions matter more in the context of drug policy that is itself a greater target for public focus. Overall, there is support here for the social construction argument, but this work would still benefit from further research that delves deeper into the relationship between elite perceptions and drug policy decisions.
There is little evidence from the models to support the social control argument. In some ways the general lack of significance for this group of variables adds further support to the social construction hypothesis. None of the social control variables capture the perceptions of the potentially threatening populations, only their presence. That the presence of these groups does not trigger strong reactions in drug policy suggests that the perceptions of these groups are the greater policy driver. There are some significant social control variables; black population size is positive and significant in both models for sentence lengths. This may indicate an important distinction between these types of drug policy and those captured in the other models. It may be that sentence lengths are viewed as a particularly effective policy tool for sending a message about how a particular population is perceived. It may also be that longer sentence lengths are a preferred way to control a large black population.

The other significant social control variables are the Gini coefficient in the drug index model and the interaction between the Gini coefficient and the black population size in the marijuana and small cocaine sentences model. That greater inequality and the combination of greater inequality and a larger black population are associated with less drug punitiveness contradicts the hypotheses proposed in Chapter 2. However, this negative relationship may be due to the presence of benign neglect, in which a problem that is viewed predominantly as a problem for poor minorities is not regarded as important enough to warrant a strong policy reaction. This also lends further support to the social construction hypothesis because in so far as inequality is high and there is a greater distance between marginalized populations and the rest of society, burdensome
policy targeting this group is unnecessary to send a message about their status in society. Support for this argument also may be seen in the national debates that implied that the crack epidemic was a problem because it was threatening the suburbs. Taken together, the findings for the social control variables provide some support for the importance of race in determining drug policy and also provide some support for the social construction argument, but more research is needed to determine how race and social threat may affect different types of drug policy.

Regarding the political explanations, few variables are significant. Political culture is the only variable significant for more than one model, and while traditional culture is associated with longer sentences for marijuana and cocaine, it is also associated with shorter sentences for heroin and cocaine and less overall punitiveness. This finding is surprising and requires further research to determine how political culture may affect drug policy.

Conservative government ideology is associated with longer sentences for heroin and cocaine and the interaction between strong electoral competition and greater Democratic institutional strength is associated with more overall drug punitiveness. That these variables are only significant in one model combined with the inconsistent findings for political culture provides weak support for the premise that a more conservative government is likely to be more punitive towards drugs. Instead, the more cautious conclusion to draw from the political findings—both the contradictions and the absences of significance—is that, at least during the height of the drug war, politics and ideology were not primary factors driving state drug legislation. This conclusion is also
supported by knowledge of the political and media landscape during this time that appearing “soft on crime” was a severe blow to a candidate’s electability.

The models provide some evidence for the premise that bureaucratic incentives influence drug policy decisions. The size of the police force in a state is associated with greater punitiveness for all types of drug policy except sentences for marijuana and small amounts of cocaine. This supports the hypothesis that larger law enforcement bureaucracies have greater influence regarding drug policy decisions. The lack of significance in the marijuana and small amounts of cocaine model may again be an indication that this type of drug policy is especially different from the others. Meier (1994) also found that different factors affected marijuana policy. The exact reason for this is not clear, although as suggested here it may be that the population of marijuana users is perceived differently from other drug user populations.

There is also some evidence to support the hypothesis that states respond to federal incentives to toughen their drug laws. The year 1988 is positive and significant in all models except heroin and large cocaine sentences. Because the federal law dealt especially with users and low level dealers, it may be that laws regarding larger amounts of drugs were not affected. It is surprising that the years 1984 and 1986 are not significant (the year 1986 is only significant in the marijuana and small cocaine model) because, like the 1988 legislation, the laws passed in these years encouraged states to adopt similarly punitive legislation. It is possible that the states took some time to respond to the federal activity; if so, the dummy variable for 1988 may be capturing influences from the 1984 and 1986 legislation as well. The year 1994 is negative and
significant for both models concerning drug sentence lengths. As suggested in Chapter 4, the 1994 legislation focused more attention on other types of crime and so the negative association could be a reflection of shifting priorities among states.

The two control variables that are used to capture the frequency of drug use or drug-related crime in a state, the urban population size and the rate of drug arrests relative to other types of arrests, are not significant in any of the models. This indicates that drug policy is not a function of the prevalence of drug use or crime in a state. That said, it is possible that these are not adequate measures of drug use and crime. While the size of the urban population is typically correlated with greater incidences of drug use and crime, the drug arrest rate does not capture the nature of the drug problem but rather police effectiveness in pursuing drug crimes. Further research may look at alternative measures for capturing the prevalence of drug use and drug related crime.

State GDP is significant in all models. This indicates that drug policy decisions are in some part a function of state resources. While in four of the models a larger GDP is associated with greater punitiveness, the opposite is the case in the model for sentences for marijuana and small amounts of cocaine. Again this points to the uniqueness of this drug policy area. It is unclear why this relationship is negative, although it could be that GDP is capturing some other factor that affects this policy area. It is important to note that GDP captures state resources, but not state wealth. Future research may look at other measures to determine how the wealth of a state may impact drug policy. One possible measure would be include tax capacity, which
measures the ability of individuals to pay taxes and the degree to which states take advantage of this ability.

**Distinctions in Drug Policy**

An important underlying assumption of the model developed in Chapters 2 and 3 is that all drug policy is affected by the same factors. While the drug policy index model is useful in capturing a general drug policy environment, the analysis of the four drug policy components indicates that drug policy is not monolithic. This analysis allows for some initial and cautious explanations for how and why these policy types are different, but more research is needed.

When comparing the four component models and the drug policy index, some patterns emerge. The models for severity levels and sentence lengths are identical in terms of significant predictors (although the strength of significance differs). These models also have considerably fewer state effects than the models concerning sentence lengths. Thus it seems that these drug policy areas are influenced by the same factors, even though they are distinct policy areas. How these policy areas are similar is unclear. In some ways severity levels may be a less distinct policy type than the other kinds of drug policy included in this study. As discussed in Chapter 4, this component is somewhat difficult to interpret because the sentences attached to different severity levels are unknown. The analysis presented in Chapter 4 supports the argument that more severity levels equates with greater punitiveness. Still, these polices are not as straightforward as the others included here. An increase or decrease in severity levels
could be a byproduct of other drug policy decisions. For example, a decision to target smaller amounts of a drug may necessitate the creation of more severity levels to distinguish between more quantities. In this case, the increase in severity levels would be described more accurately as an indirect consequence of another policy action. This may make them a less salient policy tool than the other policy components. It is possible that sentencing enhancements share this trait, although it is not clear that they do and more research is needed to determine the similarities in these policy areas.

The two models for sentence lengths—for heroin and large amounts of cocaine and for marijuana and small amounts of cocaine—also share some similarities. Intuitively it makes more sense that these components are similar than the severity levels and sentencing enhancements components because both of these policy types deal with sentence lengths. It is also possible that policies involving sentence lengths for different drugs are more salient than other types of drug policies, because they provide elected officials with a simple and numerical sound-bite. Sending people to prison for longer periods of time is fundamental to appearing tough on crime, so increasing sentence lengths for drug crimes would be an easy way to prove such toughness. That said, sentencing enhancements also increase sentence lengths, by tacking on years to a sentence if, for example, an individual is caught with drugs in a school zone or while living in public housing, and severity levels may also do this, although not necessarily.

While these models are slightly more similar to each other than either was to the models for severity levels and sentencing enhancements, there are still important differences. Indeed, the model for sentences for marijuana and small amounts of
cocaine is particularly unique compared to the other models. Neither social construction variable is significant in this model, which suggests that the population targeted by these drug policies is—or is perceived to be—different from the population targeted by other types of drug policies. They may be more likely to be nonviolent than other offenders; they also may be addicts or recreational users. It is also likely that this offender population encompasses a greater portion of the general population and is more diverse, including affluent, white, and/or college youth, as well as the poor and minority populations more typically associated with drug crime. If this is the case, then social constructions of poor and minority target populations would not play a role in policy decisions concerning these offenses because the composition of the target population is now different.

Recent policy reform efforts also support the argument that policies directed towards these offenses work differently than other drug policies. Many of the drug reforms that have taken place in the last decade have focused on decriminalizing marijuana, legalizing medical marijuana, and seeking treatment alternatives for first time or nonviolent drug users, which would include small-amount cocaine offenders. Some states made reforms to their marijuana laws in the 1990s, when the drug war was still at its height. A major reason behind the different treatment for marijuana is that it has increasingly been viewed as a substance that causes less harm than other drugs (including alcohol), and that can also have medical benefits. It is likely that greater tolerance of marijuana can be attributed to its scientific properties as well as
perceptions of its user population, which is larger and more diverse than other drug user populations.

While it seems clear that different types of drug policy are affected by different factors, why this is the case is still not well understood. Some explanations have been offered here, but this issue requires further research. An in-depth analysis of only a few states would allow for greater comparison between state laws and a better look at how states choose to pursue some types of drug policy over others.

**Measuring Drug Policy**

The variables included in this study represent specific state drug policies. Because drug policy encompasses many kinds of legislation, it is unlikely that it could be adequately represented with a single policy indicator. The use of multiple policy indicators provides a more complete picture of drug policy than could have been achieved with only one or two policy measures. At the same time, data reduction was necessary to improve manageability of the data as well as usefulness of the results. Reduction was achieved in two ways. First, an index was created that added together the standardized values for all variables and assigned equal weight to each. Because of the diversity of the policies included in the index, particularly the inclusion of punishments for marijuana as well as heroin and cocaine, there was reason to believe that different dimensions of drug policy are present in the index. Principal component analysis indicated there are four dimensions of drug policy captured by the policy variables included in the study.
In the index model, drug policy is treated as a single concept, in which different policy indicators are intended to capture an overall picture of state drug policy. The index treats drug policy as a formative construct. This assumes that each variable, or indicator, included in the index is a cause of the drug policy construct. For example, if the value of one of the drug policy variables included in the index increases—if a state increases its sentence length for cocaine possession—then the value of the index would also increase. The indicators included in the index do not need to be consistent, and it is more likely that they will be different in so far as they are contributing different attributes to the drug policy construct. In a formative measurement model, it is assumed that measurement error, which here would be the extent to which the drug policy index does not represent actual drug policy—is a function of the “inability of the measured variables to fully explain the construct” (Hair et al., 2010, p.679).

This is in contrast to a reflective measurement, in which a latent construct is assumed to cause the indicators. The four drug policy components created from the PCA are reflective indicators of drug policy. In this case, it is assumed that a change in a state’s approach to a certain drug policy type will affect all indicators used to measure that policy construct. For example, if a state with a high score on the sentencing enhancements component decides to reduce its use of sentencing enhancements, this would cause a reduction in value for all variables included in this component. Unlike formative constructs, reflective constructs assume that the indicators are similar to each other and move in the same direction. This approach assumes that measurement error occurs when the construct cannot adequately explain the variables (Hair et al., 2010).
It is possible for the same concept to be modeled as a formative or reflective construct, and for the same indicators to be used in both situations (Hair et al., 2010), as done in this study. However, it is important to understand the consequences of using a formative or reflective indicator to ensure that the phenomenon of interest is analyzed appropriately. For the index, the formative measure of drug policy, the causal arrows move from the indicators to the construct. In the case of the components, which are reflective measures of drug policy, the causal arrows move from the underlying construct being measured to the indicators.

The type of construct that is used has implications for adding or removing variables. For the formative construct, each variable in the drug policy index is presumed to measure some aspect of the construct, so adding or removing an indicator can affect the value for that construct. In this instance, indicators do not need to be correlated, and multicollinearity can actually be a problem in the model estimation (Hair et al., 2010). In contrast, adding or dropping items from the reflective constructs, the drug policy components, should not change the meaning of the latent construct being captured by each component. In this case, the indicators should be collinear, because they are measuring the same thing. One way that reflective constructs are validated is by determining that there is high internal consistency between the indicators. This was performed on the drug policy components using the Chronbach’s alpha test (see Chapter 4), and indicators that were not consistent with the other indicators were dropped from the component. This did not harm the validity of the components
because the low internal consistency suggested these dropped indicators were not representative of the same concept (Hair et al., 2010).

For formative indicators, internal consistency is not an appropriate test for validity because the indicators should not necessarily be collinear, as this could lead to model misspecification. At the same time, removing an indicator may result in an incomplete index. If the index does not include a complete set of representative indicators, the content validity—whether the indicators accurately represent the concept of interest—of the measure is compromised. The inability to verify the internal validity of formative constructs is one disadvantage of this approach (Hair et al., 2010).

This study treats drug policy as both a formative and reflective construct. The formative construct, the drug policy index, is helpful in gaining a broad, “big picture” understanding of state drug policy. However, the index is not exhaustive. There are many other drug policies that could be important to include, such as mandatory sentences or sentencing disparities between crack and cocaine, and not including them may have compromised the quality of the index in capturing drug policy. An avenue for future research is to compare this index to other drug policy indices or other measures of drug policy, or to add indicators to this index. Doing so would test the validity of the index used here, and, if the model tested here performed similarly for other policy measures, this would be more evidence that drug policy is in part a function of social constructions of target populations and bureaucratic incentives.

However, the second drug policy representation, in which drug policy is treated as a multidimensional and reflective construct that is measured by four separate
components, suggests there are important differences between policy types. The benefit of testing separately the four components is that it allows for more nuanced findings. The four component models suggest there are different latent constructs within the area of drug policy. While it is not clear what is driving the policy differences, the findings from the models as well as historical evidence do suggest that marijuana policy is unique from other drug policy areas. This has important policy implications, as seen from recent drug reforms which have focused predominantly on marijuana. It is also likely that the components studied here are not exhaustive of the latent constructs that could be found within drug policy. For example, other constructs may include attitudes toward probation/parole violators, the use of drug courts, or use of mandatory sentences. The components studied here are not compromised by not including these other measures because the reflective indicators are not intended to be exhaustive representations of drug policy as a whole; rather each component only measures that one aspect of drug policy. However, leaving these out could be an issue for the drug policy index, and in either case studying these policy areas would deepen understanding of drug policy.

Future drug policy research could focus on developing different measures of drug policy. For instance, marijuana policy could be compared to cocaine/heroin policy by looking at individual policies or by constructing an index of policy indicators for each substance. The models for these indices could then be compared. Another possibility would be to focus only on mandatory sentences or the crack/cocaine sentencing disparities. In addition, any of these policy areas could be examined with a reflective
approach by performing factor analysis on several policies that pertain to each area. In short, there are many ways to measure drug policy, and it can be treated as a formative and a reflective construct. As this study indicates, there are important differences between types of drug policies, and so continuing to measure this policy area in different ways will improve understanding of state policy decisions.

Looking to the Future

Many states have reformed drug laws in the last 15 years. Some states have followed the federal government’s 2010 decision to lower the cocaine-crack sentencing disparity from 100 to one to 18 to one. Several states have legalized medical marijuana, decriminalized marijuana possession, and most recently, fully legalized marijuana use in Colorado and Washington. Several states, including Colorado, Kentucky, Kansas, and Indiana, have turned to treatment options as alternatives to incarceration. (Piper et al., 2003; Austin, 2010). This trend has gained momentum in recent years; from 2009 to 2013 27 states have eased their drug laws (Desilver, 2014). The most obvious reason for this shift is that cost-cutting has become a state priority since the 2008 financial crisis. Prior to that time, some states also experienced fiscal stress in the early part of the 2000s, which could have exerted the same pressure. As the significant findings for GDP make clear, drug policy decisions seem to be in some part a function of the ability to divert resources to additional law enforcement efforts (with the apparent exception of marijuana and small cocaine sentences). Thus one of the most effective short-term
strategies for convincing lawmakers of the need for drug law reform is to focus on the
cost savings that it would bring.

The findings for the political explanations for drug policy indicate that party
affiliation and political ideology have not been particularly strong determinants of state
drug policy. As discussed above, this is likely because the drug war made appearing
tough on drugs a political necessity for almost all elected officials. The gradual but
growing acceptance that the drug war has been ineffective, costly, and has had
discriminatory impacts means politicians do not have this same pressure on them. The
economy is now a much greater concern for most of the country than it was during the
height of the drug war. The economic arguments for reducing drug penalties—and even
legalizing drugs, as seen in debates over legalizing marijuana that tout the fiscal payoffs
of taxing its sale and use—are now much stronger because of this. Recent efforts of
conservative political candidates to support reform of crime policy in order to save
money (Lowery, 2014) demonstrate the persuasiveness of this argument. Several states
in the South, a region with high incarceration rates, have eased their drug laws in the
last three years, including Georgia, Missouri, Oklahoma, Louisiana, and Texas. Not all
states are embracing this change. In 2012 Alabama and Virginia toughened some drug
laws and in 2013 Arkansas and Kansas did the same. The reasons behind state choices to
reduce drug penalties are not entirely clear, but anecdotal evidence suggests that it is
more out of fiscal concerns than moral ones. While the reasoning behind decisions to
ease penalties does not matter in so far as the outcome of lower incarceration rates is
the same, it does raise the possibility that this trend is reversible once the economy fully
recovers. It is also possible that cost cutting measures to reduce the number of people in prison still do not address the issue of drug addiction that has resulted in so many drug offenders being locked up in the first place.

The greatest potential for resistance to drug law reform comes from law enforcement bureaucracies. Evidence from this study suggests that the strength of law enforcement institutions and the resource incentives for pursuing drug crimes have had a positive impact on state drug policy decisions. Arguments for decriminalization and reducing penalties typically emphasize the cost savings that would result from reduced law enforcement efforts. This translates into fewer resources for those agencies, which can cause them concern. Congress is currently considering a bill entitled the Smarter Sentencing Act, which would allow judges to move away from mandatory minimum sentencing guidelines for drug offenders. Several law enforcement groups are opposing the bill, including the National Sheriffs’ Association, the National Narcotic Officers’ Associations’ Coalition, the Major County Sheriffs’ Association, and the National Association of Police Organizations. Law enforcement agencies have had success opposing reform bills in the past; for example, law enforcement opposition to the 2010 Fair Sentencing Act resulted in the reduction of the crack-cocaine disparity to 18:1 instead of its elimination (Reilly & Knafo, 2014). The rationale of those groups resisting the Smarter Sentencing Act is that the proposed reforms would put more pressure on state and local law enforcement and an increase in incarceration would ensue. This is dismissed by advocates of the bill, who argue that most drug offenders in federal prison are low-level non-violent offenders (Reilly & Knafo, 2014). Another possible reason for
these groups’ resistance to the federal legislation may be the fear that states will be encouraged to further their own reform efforts, potentially jeopardizing the resources currently devoted to pursuing drug crimes.

To be fair, several other law enforcement agencies are supportive of drug law reform, including the American Correctional Association, the International Union of Police Associations, the American Probation and Parole Association, and the Major Cities Chiefs Association (Reilly & Knafo, 2014). Still, the resistance from law enforcement could be a considerable barrier to change. There is a moral argument to be made that individuals should not be pursued or threatened with the coercive power of the state so that employees of the state can have guaranteed work. However, that argument is unlikely to ease the concerns of law enforcement agencies. One potential benefit of reducing focus on drug crimes is that it would free up resources to pursue other types of crime. For instance, human trafficking is a growing business in the US. Between 2007 and 2012 the National Human Trafficking Resource Center has found over 9000 cases of possible trafficking, and has seen an increase of 259 percent in calls made to its hotline reporting incidents of human trafficking (Lee, 2013). Thus one way to allay the concerns of law enforcement would be to increase efforts to pursue crimes that have victims.

That said, a larger issue in the resistance of some law enforcement agencies to drug reform may be how these groups perceive their relationship with the public. To the extent that an “us vs. them” mentality dominates, any reform that is perceived as favoring “them” will be resisted. The ultimate goal of public safety workers should be to
protect the public. Whether incarcerating people for offenses in which there is no victim achieves this goal is questionable. One long term strategy for drug reform—and criminal justice reform more generally—may involve changing the relationship between law enforcement and the public. This issue is not addressed in this study but it is a possible area for future research.

While this study did not examine the role of public opinion in determining state drug policy decisions, the historical review of US drug policy provided in Chapter 2 suggests that public opinion (and media coverage) on drugs matters to elected officials. Recent evidence indicates change is underway in how drug offenders are perceived by the public. While a majority of Americans still view drugs as a major problem in society, two thirds agree that government should focus more on providing treatment (Pew Research Center, 2014).

The reasons for this change are not entirely clear but several factors may play a role. The policy design framework stresses the dynamic nature of the policy context, in which social constructions can change (Schneider, 2006). This may occur when overly harsh treatment of negative groups triggers a backlash in public sentiment or when the characteristics of the negative group are shared by other segments of society that have more political power and do not perceive themselves as deviants. Changes in marijuana laws have given some legitimacy to marijuana users. Growing tolerance of marijuana use may translate to changing perceptions of drug use in general. Another factor may be the rise in addiction to prescription painkillers. Pharmaceutical drugs accounted for almost 60 percent of all overdose deaths in 2010, with opioid analgesics accounting for
75 percent of all pharmaceutical related overdose deaths (Center for Disease Control and Prevention, 2013). Millions of Americans have or know someone who has taken prescription painkillers. Perhaps this makes addiction to these drugs a more relatable experience and thus one that is considered more deserving of treatment than punishment. The recent overdose death of the actor Philip Seymour Hoffman and the outpour of public grief and calls for addiction treatment that followed is one indication of this trend. Another reason for the shift may be the growing recognition that the drug war has done little to reduce drug use but has caused large racial disparities in the justice system and has cost billions of taxpayer dollars. The perception that the drug war has been unfair may be a factor in changing public perceptions of individuals targeted by the war’s burdensome policies.

There are several reasons to be optimistic about the future of US drug policy. Recent public opinion surveys and policy reforms demonstrate growing recognition of the need to provide treatment for drug addiction instead of punishment. Stressing pragmatic reasons for drug treatment over punishment holds promise. Research has shown that treatment is cost effective. For instance, a study of California’s Substance Abuse and Crime Prevention Act, which stipulates community-based drug treatment as an alternative to incarceration for nonviolent offenders, found that the program saved the state more than $2300 per offender over a 30-month period (Longshore, Hawken, Urada, & Anglin, 2006). Treatment for incarcerated individuals has also been shown to reduce recidivism rates, but while approximately 80 percent of inmates have drug use problems, only about 20 percent receive treatment while incarcerated (Chandler,
Fletcher, & Volkow, 2009). By some estimates state and local governments spend a combined total of $51 billion per year on drug-related law enforcement efforts (Sledge, 2013), suggesting they have a lot to gain by investing in treatment options. Current fiscal crises have only added to the desire for frugality.

Despite recent changes, in 2011 the rate of federal inmates incarcerated for drug offenses hovered at just under 50 percent (Sledge, 2013). In 2013, the Obama administration’s budget asked for $25.6 billion to fight the drug war, $15 billion of which was directed towards law enforcement (Sledge, 2013). That law enforcement efforts continue to dominate drug policy highlights the need to reframe the discourse on drug use and addiction. While emphasizing the cost-saving benefits of investing in treatment is important, this should be coupled with more public conversations focusing on drug addiction as a disease requiring medical treatment, not politically-based solutions. Reframing the issue in this way should increase the likelihood that a public health approach to drug policy will be adopted for the long term.

Limitations

There are limitations to this study, some of which have been mentioned in the discussion of the results. One challenge is accurately interpreting the results. While the four component models add to our understanding of drug policy by highlighting distinct variations across policy types that were obscured by the index model, they also paint a more complicated picture of drug policy. Complication in itself is not a limitation, so long as it is part of a more accurate picture of reality, but the current study provides little
indication of why the different drug policy types are different. While some rationales have been offered to explain the reason for these differences, without further research this remains speculation.

Another limitation to the study is that it does not include measures for other important drug policies, such as the crack-cocaine sentencing disparities or mandatory minimum sentences. These policies are major features of the drug war and the validity of the drug policy index may be affected by not including them in the analysis. Still, the present study analyzes several influential policies and therefore does contribute to our understanding of drug policy decisions.

The strength of the dummy variables capturing state effects, while showcasing the importance of state distinctiveness, also suggests the models do not capture some important factors influencing state drug policy decisions. While an advantage of panel data analysis is that it allows for the study of dynamic relationships over time, it can also present data challenges. That is; some possibly important factors, such as differences in inequality between blacks and whites, the racial composition of drug arrests, or media coverage of drug issues, could not be included in the analysis because such data did not exist. This indicates the need for further qualitative analysis to examine some of the other potentially influential factors in drug policy decisions that were not captured in the present analysis.
Future Research

This study used data from all 50 states over a period of 30 years to draw conclusions about factors affecting state drug policy. This had the advantage of a large sample size and the ability to compare all 50 states over a long period of time. However, it also likely obscured some of the complexities involved in state policy decision making. A case study approach focusing on only a few states would allow for a more detailed analysis of the drug policies of those states and may offer greater insight into some of the issues raised by the present study. One way to do this would be to select two or three states based on their policy variation and look at other factors that may contribute to these differences. This would allow for consideration of factors not captured well by quantitative data, such as state and regional media coverage of drugs and drug related crime, the presence of policy entrepreneurs that may have called for more punitive action, and the level of civic engagement in a state, which Barker (2006) finds is related to lower incarceration rates. This approach could also provide greater insight into the differences between different types of drug policy. Future research could also include other independent variables, such as a measure of state tax capacity to capture state wealth.

As discussed above, drug policy has undergone some significant reforms in the last 15 years. Selecting a few states based on their policy variation in this study and then analyzing what changes, if any, have been made to their drug laws since 2002 (the last year captured in this study) is another avenue for future research. Limiting the study to only two or three states would again allow for consideration of factors not included in
this study. It would also allow for a more encompassing study of the types of changes that have been made, as it would not be limited to those laws included in the present study.

Another extension of the current study would be to compare states in terms of implementation of their drug laws. For example, how do mandatory minimums for cocaine possession affect arrest rates in a state? How do they affect incarceration rates? This type of research question could determine the extent to which legislation affects practice. Because the process of arrest, conviction, and sentencing is typically a local affair, this may also be better designed with only a few states of interest.

Other research possibilities could include different measures of drug policy, as discussed above. This could be explored with a 50 state comparative study like the one conducted here, or through a case study approach. There are many possibilities for continuing the research themes of this study. Quantitative methods are useful for drawing general comparisons across states, as well as inspiring future research areas. Given the complex findings from this study, a qualitative approach could contribute significantly to determining what effect the social construction of drug offenders may have on drug policy.

**Conclusion**

This study tested several hypotheses regarding the impact of various social construction, social control, political, and bureaucratic forces on state drug policy decisions. Findings provide some support for the premises that negative social
constructions and bureaucratic incentives are associated with more punitive drug policy. Taken together, this suggests that drug policy is a tool used to punish target populations perceived as deviant or threatening, and to benefit more positively constructed groups, such as law enforcement agencies.

In Chapter 1, a case was made for the importance of this research which rested in part on the social inequities associated with the War on Drugs. Findings that the prevalence of drug use does not drive state drug policy, but instead that drug policy is a function of, among other things, the perceived potential threat from the black population, provides evidence for critics of the War on Drugs who have argued that the racial disparities of the drug war are not accidental but are part of a structural problem in society. While the US has been referred to recently as a “post-racial” society (Bump, 2012; Weisenfeld, 2012), the disparate consequences of the drug war are one indication among many that this is not the case. As the Congressional record of the legislative debates over the 1986 and 1988 anti-drug legislation indicate, it has been politically incorrect to make overtly racist remarks for some time now. However, as this study suggests, racial tensions continue to permeate certain policy areas. The role of socioeconomic class in the drug war is less clear from this study; the measure for elite perceptions accounts for attitudes towards the poor, but this variable is not as consistent a predictor as that for potential black threat.

Recent developments provide hope that the drug war is subsiding. The federal and state governments are making reforms to drug laws to reflect the realization that incarceration has not solved the “drug problem” and that treatment may be a more cost
effective alternative. Still, most reforms have been motivated out of fiscal concerns, rather than objections to the social injustices associated with drug war policies. Many criminal justice policies continue to bestow burdens on the most disadvantaged groups; this can be seen most recently in the increasing prevalence among state justice systems to use large fines as punishment for relatively minor offenses (Shapiro, 2014). While social justice may be a concern for some reformers, it has not dominated the discourse on drug reform. This is understandable from a pragmatic standpoint in so far as an appeal to economic sense will gain more traction than charges of a racist justice system. That said, if drug offenders are still perceived as a threatening or deviant population, meaningful reform that results in reduced incarceration and less drug crime will be more difficult. On a broader level, if the potential threat from the black population to the social order is a factor in determining drug policy, there is reason to believe that it is a factor in other criminal justice policy areas and perhaps other redistributive policy areas as well. Current drug law reforms are certainly a step in the right direction, but they should be treated with cautious optimism as they relate to broader issues of race and social constructions in this country.
REFERENCES


**APPENDIX 1**

**LIST OF DEPENDENT VARIABLES**

<table>
<thead>
<tr>
<th>Variable Name</th>
<th>Description</th>
<th>N</th>
<th>Min</th>
<th>Max</th>
<th>Mean</th>
<th>Std.Dev.</th>
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<tbody>
<tr>
<td>HabitualOff</td>
<td>Presence of habitual offender law for drug offense</td>
<td>526</td>
<td>0</td>
<td>1</td>
<td>.04</td>
<td>.205</td>
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<td>SevCocPos</td>
<td>Number of severity levels for cocaine possession</td>
<td>513</td>
<td>0</td>
<td>6</td>
<td>1.48</td>
<td>1.842</td>
</tr>
<tr>
<td>SevCocSale</td>
<td>Number of severity levels for cocaine sale</td>
<td>513</td>
<td>0</td>
<td>6</td>
<td>1.71</td>
<td>1.809</td>
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<tr>
<td>SevMarPos</td>
<td>Number of severity levels for marijuana possession</td>
<td>501</td>
<td>0</td>
<td>7</td>
<td>2.50</td>
<td>1.916</td>
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<tr>
<td>SevMarSale</td>
<td>Number of severity levels for marijuana sale</td>
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<td>7</td>
<td>2.17</td>
<td>1.808</td>
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<td>SevHerPos</td>
<td>Number of severity levels for heroin possession</td>
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<tr>
<td>SevHerSale</td>
<td>Number of severity levels for heroin sale</td>
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<td>6</td>
<td>1.71</td>
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<td>CocPos_MaxMin</td>
<td>Max sentence for minimum quantity of cocaine possession (months)</td>
<td>501</td>
<td>6</td>
<td>240</td>
<td>64.71</td>
<td>53.471</td>
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<td>CocSale_MaxMin</td>
<td>Max sentence for smallest quantity of cocaine sale (months)</td>
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<td>CocPos_Min28</td>
<td>Min sentence for possession of 28oz or most similar quantity (months)</td>
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<td>0</td>
<td>240</td>
<td>24.11</td>
<td>41.148</td>
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<tr>
<td>CocSale_Min28</td>
<td>Min sentence for sale of 28oz or most similar quantity (months)</td>
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<td>HerPos_Min1</td>
<td>Minimum sentence for possession of 1oz or most similar quantity (months)</td>
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<td>0</td>
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<td>Minimum sentence for possession of 1lb or equivalent (months)</td>
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<td>Total enhancements with drug quantity as trigger (incarceration only)</td>
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<td>SE_Coc</td>
<td>Number of sentencing enhancements for cocaine (1=sale, 2=possession, 3=both)</td>
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<td>SE_Other</td>
<td>Number of sentencing enhancements for other drugs (1=sale, 2=possession, 3=both)</td>
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<td>18</td>
<td>5.09</td>
<td>3.504</td>
</tr>
</tbody>
</table>

*All dependent variables come from Stemen et al. (2006)

**Valid N=439**
VITA

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