PARTY AND PUNISHMENT: HOW PARTY CONTROL

AFFECTS THE ADOPTION OF DRUG SENTENCING

REFORMS AT THE STATE LEVEL

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Title of Study: PARTY AND PUNISHMENT: HOW PARTY CONTROL AFFECTS THE ADOPTION OF DRUG SENTENING REFORMS AT THE STATE LEVEL

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Abstract: How does state party control affect the adoption of drug sentencing reforms? Historically, both elected Democrats and Republicans have supported harsh sentencing policies and tough-on crime policy attitudes. Recently, there has been a refocus and change in rhetoric regarding criminal justice policy by the Democratic and Republican National Committees. Using the theoretical framework of polarization and party control I argue that state governments with unified party control are more likely to act in accordance with their respective national parties. In doing so, I am able to move the conversation presented in previous literature from the national and judicial level to the state level. I am also able to address and test the assumed behavior of the Democratic Party untested in previous literature. I posit that states with unified Republican control are less likely to adopt drug sentencing reforms and that states with unified Democratic Party control will be more likely to adopt drug sentencing reforms after 2008 when Democratic policy attitudes shifted from more punitive to rehabilitative. I collect panel data from all 50 states over the span of 30 years, from 1990-2020. Using two-way fixed effects, I find support for my hypotheses that unified party control affects the adoption of drug sentencing reforms in the directions I predict.

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CHAPTER I

INTRODUCTION

How do state parties affect the adoption of drug sentencing reforms? Through an

examination of the literature I address how drug sentencing has changed in states over time, and

how party and influenced these decisions. I create a theoretical framework that tie the polarization

between Democrats and Republicans to party control of the state government and how the two

work in tandem to affect the legislative agenda and adopt drug sentencing policy. I posit that

states with unified party control are able to adopt reforms that align with the rhetoric of their

respective national committees. Finally, to test my hypotheses, I conduct a quantitative analysis

on an extensive dataset that I compiled.

Historically, both Democrats and Republicans have passed tough-on crime policies,

including harsh sentencing requirements for drug offenses. The War on Drugs era started in

rhetoric alone while Richard Nixon was serving as President in the 1970s, but first saw policy

under Ronald Reagan, policy which was further pushed by Bill Clinton in the 1990s. The War on

Drugs era involved a large amount of harsh drug policing and policy under the theory that if low-

level crimes involving drugs, property, or other non-violent offenses that would be categorized as

misdemeanors, were heavily policed and harshly punished than there would be a decrease in

violent crimes, felonies, and overall crime rates (Tonry 1992; 2014). U.S. sentencing guidelines for drug offenses established in the late 1980s were not only designed to harshly punish non-violent drug offenders but also to eliminate any bias of the prosecutor or judge in sentencing (Fishman and Schanzenbach 2012; Phelps and Pager 2016; Tonry 2014; Ulmer et al. 2007). Mandatory minimum sentencing guidelines are not unique to violations of federal law or drug crimes. These sentencing guidelines are used for all crimes as a way to provide transparency and fairness in sentencing at the federal level as well as the state level.

It has become clear over the years that the War on Drugs era policy attitudes were not only ineffective in their goal of lowering overall crime rates and eliminating bias but have instead had the negative unintended consequences of increasing crime rates, disproportionately affecting minorities, and creating the uniquely American problem of mass incarceration (Ficshman and Schanzenbach 2012). Despite the rise in crime rates, rise in incarceration rates, and the recognition of failed policy attitudes and practices, sentencing policy remains largely punitive (Phelps and Pager 2016). There has been public interest in the reformation of sentencing within the scope of drug offenses. Interest groups such as Families Against Mandatory Minimums have been fighting to pass legislation that would reform mandatory minimum sentencing at the federal level (FAMM). Other concerns amongst interest groups, such as the Brennan Center for Justice and Prison Policy Initiative, believe that mandatory minimum sentencing should be reformed but not eliminated altogether (Seigler 2021; Subramanian and Delaney 2014). Mandatory minimums have received criticism in that they are too harsh, they do also provide consistency transparency, and a certain degree of fairness that would be lost if left only to judicial discretion (Bagaric 2020).[1] These groups tend to focus on the racial disparities that occur at the federal level, as Black Americans are more likely to receive mandatory minimum sentencing that their white

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[1] Mandatory minimum sentencing is used in all of the United States and is applied to different types of crime (Kebodeux 2017; Tonry 1992), but for the purpose of my research I will focus on its use in sentencing drug offenses.

counterparts (Rehavi and Starr 2014; Siegler 2021). Their desire to reform the current sentencing practices stems from a desire to lessen the effects of mass incarceration on communities and provide justice to those effected. Longer prison sentencing increases the rise of future crime and they urge law makers to rethink sentencing policy as a way to lower recidivism rate sand reduce overall crime rates (Bargaric 2020; Kebodeeux 2017; Siegler 2021; Tonry 1992). There have been a number of policy initiatives that have made their way into Congress and passed at the federal level in regards to cocaine related offenses (Siegler 2021). As the United States continues to move further away from the War on Drugs era that created a large amount of harsh sentencing policy are states creating or adopting policies that rectify the earlier policies?

In this paper, I examine the impact of political party control of the state government on sentencing reforms. Sentencing reforms are policies that restructure the system in which offenders receive jail or prison sentences. The goal of sentencing reforms is to reduce the amount of people entering jails and prisons, reduce the amount of laws that produce harsh or long prison terms, and to provide justice to those who have served long sentences unbalanced with their offense. Most of the literature on sentencing reforms focuses on mandatory minimums - which are predetermined lengths of imprisonment created by legislation which judges are bound by law to adhere to unless their state has created legislation that allows deviation. In the context of drug offenses, mandatory minimums are the minimum sentence in which an offender can receive based on the weight or amount of drugs they had on their person or in their possession at the time of the arrest or found while the investigation is taking place. I expand the scope of my research to include a larger variety of drug sentencing reforms such as sentencing schemes, penalty reforms, community or participation-based reforms, and collateral consequences.

I argue that state governments with unified party control are more likely to act according to the sentiments of their respective national party. Meaning that states where the majority of legislative branch is of the same party as their governor. I argue that states with unified

Republican party control will be less likely to adopt these reforms and that states with unified

Democratic control will be more likely to adopt reforms after 2008 when Democratic policy

attitudes shifted from punitive to more rehabilitative. This theory builds from the literature that

posits that party influences policy attitudes and adoption of policy, while bringing the

conversation to a new level of analysis by looking at policy created by state government. It also

fits into the narrative that policy attitudes on criminal justice and drug sentencing are shifting

from hard-on-crime policing to more lenient and rehabilitative policy. I collect panel data of all

50 states over the 30 year period of 1990-2020. Using two-way fixed effects linear regression to

analyze the relationship between state-year, party control, and the adoption of sentencing reforms

I find support for my hypotheses that unified party control affects the adoption of drug sentencing

reforms in the directions I predict.

CHAPTER II

LITERATURE REVIEW

While both Democrats and Republicans have historically passed punitive policies and tough-on-crime policy attitudes, Republicans are known to be the more punitive of the two (Phelps and Pager 2017; Silveria 2017; Tonry 2014). Starting in 2012 and continuing to the most recent election cycle in 2020, both national party platforms addressed criminal justice reforms as a national priority (DNCC 2012; 2020; RNC 2012; 2020). As policy attitudes have shifted Democratic rhetoric has shifted to a more rehabilitative tone, while Republicans still generally hold more punitive attitudes. Some of the reforms listed by both the Democratic Party platform and the Republican Platform addressed the need for more leniency in the sentencing of drug offenses. The difference between the two platforms is that Democrats call for federal law to be changed regarding the legalization of marijuana whereas the Republican Party calls for federal courts to be an example to the state courts (DNCC 2020; RNC 2020). This could mean that Republicans favor a top-down approach to sentencing reforms, preferring that states follow the rulings of federal courts as a way to gage how drug crimes should be punished, rather than relying on the preferences of voters or rulings of local judges. While both are talking about criminal justice reforms and the relationship, they hold with drugs, the party platforms discuss it differently. Take mandatory minimums as an example once again. Democrats believe mandatory minimums should be reformed as they are detrimental to non-violent criminals (DNCC 2020).

The Republican Party urges the use of mandatory minimums as the alternative to judicial discretion, as judges are influenced by racial biases and stereotypes and may increase racial disparities or be more lenient to dangerous criminals (RNC 2020).

Some states have created their own guidelines. Minnesota, Washington, Oregon, and North Carolina have all created policies that made sentencing standards easier for the public to review, which has reduced racial disparities (Fichman and Schanzenbach; Phelps and Pager 2017; Tonry 2014). This contrasts with a federal policy that allowed prosecutors to withhold information during negotiations which was later reversed by policy passed in 2017 (Walker and Mezuk 2018). Drug courts across the United States have loosely used mandatory minimums and other harsher sentencing practices as negotiation tactics that disproportionately affect minorities, and often result in longer punishments than what was earned by the offense (Fischman and Schanzenbach 2012; Phelps and Prager 2016; Tonry 2014). While all states follow the sentencing guidelines for drug offenses, such as mandatory minimums, federalism allows for some flexibility in sentencing (Phelps and Prager 2016; Tonry 2014). Some of this flexibility stems from the judges and prosecutors but it is also the result of different demographics within the states. Federalism allows for the states to create their own drug laws, resulting in the legalization of certain drugs in some states but not in others. Due to this difference, a blanket sentencing guideline like the one still practiced by many states are not as purposeful.

While drug courts operate at the local and federal level, most literature on the topic of passing and enforcing sentencing practices for drug offenses does not stray far from federal judges in federal drug courts. When political party influence is considered, it usually addresses how characteristics of the judges, party, and personal biases, affect the sentencing of drug offenders (Ficshman and Schanzebach 2012; Ulmer et al 2007). When considering the above in the context of state government, the literature addresses how sentencing policies affect states' incarceration rates, which states have the highest incarceration rates, and the characteristics of

these states. Within this broader literature there is a disagreement on the effects of party on the national level rather than the state level. The two main conclusions for party effects have been that there is no polarization in criminal justice reforms due to inconsistences in party control and partisanship, and that Republicans are associated with harsher policies (Coughey 2016; Silveria 2017; Phelps and Prager 2016).

In this paper, I review the literature regarding sentencing of drug crimes, how they are used in the states, and what has changed over time. I then move on to how party affects policy, both in general and relating specifically to criminal justice reforms. The literature may hold insights as which states are passing harsher sentencing policies to look at each of the states. Are Republican-led states passing harsher sentencing policies, enforcing sentencing guidelines, or addressing the problems that arise within their states? Are Democratic-led states pass more lenient policies, enforcing sentencing guidelines, or just changing the rhetoric around the topic of criminal justice reform?

Sentencing of Drug Crimes

In the past both the American public and policy makers largely believed that offenders should be punished according to the seriousness of their crime and that more punitive sentences reduced the amount of crime (Enns 2014; Tonry 2014; Phelps and Pager 2016). The Anti-Drug Abuse Act of 1986 laid out harsh sentencing practices for cocaine and other drug offenses that the states were to follow. While at first, all states followed these mandatory minimum guidelines federal laws do not keep up with individual state practices and state began diverging from the federal norms (Malone 2018; Phelps and Pager 2016). While all sentences affect the incarceration rate of the state, state sentencing practices for drug offenses have a bigger impact than federal guidelines do. This is due to the large number of offenders committing low-level non-violent drug crimes typically prosecuted in local drug courts rather than federal courts.

There has been a change over the years in support for punitive laws regarding drug offenses (Enns 2014; Malone 2018; Phelps and Pager 2016). The change is thought to be due to the crisis of mass incarceration that has occurred as a result of harsher sentencing practices and increasingly worsens as time goes on (Barbaric et al. 2020). However, this change in support is not unified amongst different demographics. Gaps in support exist both at the state level and amongst the public. Some of the states only followed mandatory minimums for a brief time then enacted sentencing policies that were more lenient toward the offender (Malone 2018). There are also states that still use federal mandatory minimums set by the federal government for flexibility in sentencing (Phelps and Prager 2016; Silveria 2017). Minnesota, Washington, Oregon, and North Carolina have all made sentencing standards public and reviewable which reduced racial disparities (Phelps and Pager 2017; Tonry 2014). These changes in sentencing have also resulted in a reduction in incarceration rates in the states (Phelps and Pager 2016; Tonry 2014).

Flexibility in sentencing does not always reduce incarceration rates. Some drug courts allow mandatory minimums to be used in negotiations. Those who are accused and do not see trial are less likely to experience Mandatory Minimums as those who do (Gaskins 2004; Silveria 2017). Negotiating a guilty plea before trial is often perceived as remorse for the offense — a promising step towards rehabilitation — while a public trial in a front of a jury of peers can be perceived as the defendant being noncooperative and lacking remorse for the crime. (Gaskins 2004; NAASUSA 2015; Ulmer, Kurlychek and Kramer 2007). The eliminations of negotiations in non-violent rimes would result in each offender being convicted, or acquitted, according to the facts of the case rather than their perceived remorse or cooperation (Silveira 2017). While mandatory minimums were intended to be used at a base level sentencing for crimes as a way to eliminate prejudice and get drug dealers off the street they are often used to reel in bigger fish or expedite the sentencing process. Sometimes resulting in injustice for those who had very little to do with the crime.

Judicial discretion can be impacted by racial and gender biases and stereotypes held by the judge (Phelps and Pager 2016; Tonry 2014; NAAUSA 2015). Racial minorities are more likely to receive mandatory minimums than white men (Fischman and Schanzenbach 2012; Tonry 2014; Phelps and Pager 2016; Ulmer, Kurlychek and Kramer 2007). Prosecutors often bring harsher sentences and mandatory minimums against black defendants 65% more often than white men (Rehavi and Starr 2014). Men are more likely to receive mandatory minimum sentences than women (Gaskins 2004; Fischman and Schanzenbach 2012; Tonry 2014; Ulmer, Kurlychek, and Kramer 2007), though women receive similar treatment as men in cases where they do not negotiate, indicating to the prosecution that the woman is untruthful or unremorseful like her male counterpart. Women are typically seen as more innocent and less dangerous by prosecutors and typically receive shorter sentences than their counterparts (Gaskins 2004; Silveira 2017; Ulmer, Kurlychek, and Kramer 2007). This is not always the case, in study conducted looking at women in Oklahoma, the state with the highest female incarceration rate, it was found that women receive harsher sentences for simple possession than their male counterparts (Wynn 2012). These harsher sentences often had a larger sentences on the families of these women as most of them were mothers to minor children or were financially responsible for other family members (Wynn 2012). These are all examples of how mandatory minimums are used to further prejudice rather than eliminate them, which could be seen as evidence that mandatory minimum sentencing practices are being misused in order to reinforce biases.

Party and Policy Attitudes

Unsurprisingly, Democrats and Republicans have different views on crime, criminal justice reforms, and how to deal with offenders within their states. Democratic leaders view crime as an institutional failing and enact welfare policies and other policies that address disadvantaged

communities as a response (Caughey et al. 2016; Malone 2018; Phelps and Prager 2016; Weinberg 2010). Republican leaders tend to view crime as a moral failing rather than institutional failing and enact more punitive crime laws (Ewald 2019; Malone 2018; Weinberg 2010). The gender gap in public opinion mirrors that gap between Democratic and Republican leaders. Public opinion studies show that women show less support for punitive measures and more support for policies that address disadvantaged communities (Applegate et al. 2002; Hansen and Navarro 2021; Malone 2018), while men are more likely to support more punitive crime policy and see crime and punishment as a moral failing of an individual (Appelgate et al. 2002; Hansen and Navarro 2021). If the state boasts a harsh-on-crime approach there follows a growth of imprisonment (Phelps and Prager 2016; Silver 2017; Tonry 2014). States such as Louisiana, Mississippi, Texas, and Oklahoma not only have higher incarceration rates than the national average but also incarcerate more than most other countries (Phelps and Prager 2016). States that offer public sentencing, or hold more rehabilitative ideas toward crime, attitudes typically held by Democratic policy makers, there is a decrease in imprisonment (Silveira 2017; Phelps and Prager 2016).

This difference in policy attitudes in parties in general is reflected in the policy attitudes of newly elected governors. Before the 1990s change in Democratic to Republican governors, and vice versa, had very little effect on the policy enacted within the states, but party control has had a larger effect on policy in more recent years (Caughey et al. 2016). Data collected on contemporary policy attitudes posit that states that elect a Republican Governor directly after a Democratic Governor saw in increase in harsh drug laws (Malone 2018). The severity of these drug laws increased by the increased representation of Black Americans within the state's population, especially in the South (Hansen and Navarro 2021; Helms and Jacobs 2002; Malone 2018). Those who are members of minority groups or in close proximity to minority groups show less support for punitive sentencing measures (Appelgate et al. 2002, Chirocos et al. 2004; Ewald

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2009; Kebodeaux 2017). Black Americans receive longer sentences in local courts that are in conservative environments where the conservative, tough-on-crime presidential candidate received more votes (Helms and Jacobs 2002).

These results of party control on harsh drug policies can be inconsistent from state to state. The aforementioned effects of party control and minority population on harsh drug laws is more significant in the South than in the other regions of the United States (Malone 2018). The strength of partisanship both politicians and their consistency differ greatly in different regions of the United States. Republican-led states in the South are historically more conservative that Republican-led states in other regions (Caughey 2016). This would result in different levels of harshness in crime policy despite states carrying the same party identification for both Republican-led states and Democratic-led states. The policy attitudes of the state's executive and legislative branch have a cyclical relationship with the policy attitudes of the citizens of the state. States that have unified party control of the executive and legislative branch have citizens who attitudes and partisanship lean toward the direction of that control; leftward for Democratic Party control and rightward for Republican Party control (Caughey 2016; Kebodeaux 2017).

The literature also shows inconsistencies within the party effects because of the differences in party control and partisanship at the state level. This could be an explanation as to why literature appears to focus on the affects of party at the federal level. The focus on the federal level may be result on the perceived slowness of sentencing reform compared to the speed at which states are moving (Zunkel and Sigler, 2020). It is clear from the literature that sentencing reform for drug offenses is not a new idea. However, it appears that scholars have been suggesting solutions that some policy makers, both at the federal level and the state level, have been slower in taking up the initiative of producing reforms.

The literature shows that the Democratic party supports more lenient sentencing practices, but it is unclear if this is in rhetoric alone or if Democratic-led states are passing more lenient policy. I am interested in seeing if the change in policy attitudes is reflected in policy adoption with in the states. The upcoming sections of the paper will discuss the theory I develop based on the literature and will include an examination of reforms created at the state level in regards to drug sentencing reforms and if party control is the primary affecting variable on this relationship.

CHAPTER III

THEORY

Party Control and Polarization

My theoretical framework is based on polarization between the Democrats and

Republicans. From the 1960s to the 1990s there was distinguishable differences in policy

preferences but as politics moved into the 21st century a large division became apparent with the

American electorate (Mason 2018). Rather than simply having different views and solutions for

policy issues Democrats and Republicans have a strong desire to ensure that their opponents do

not become elected, they desire assurance that their opponents are unable to pass policies

(Caughey et al. 2017; Grumbach 2022; Mason 2018). As polarization has increased amongst the

electorate it has also reinforced polarization amongst party elites (Caughey et al. 2017). This

makes it harder for divided governments to pass polarized policies. With a unified government

the party is able to pass its policy agenda, but in favor of reinforcing the polarization found in

elites, could pass over the preferences of the median voter. Without a unified government neither

the Democrat or Republican Party can pass its agenda but the policy that is passed may be more

in line with the median voters' preferences.

Presently there is a difference in criminal justice policies adopted by Democrats and Republicans. Research shows that transitioning from a Democrat governor to a Republican governor results in an increase in restrictive drug sentencing policies (Malone 2018), and that Democratic governors are associated with higher levels of policy liberalism (Caughey and Warshaw 2017). However, most research that looks at party effects on drug sentencing policy has only looked at the effects Republican Party control has on drug sentencing reforms. Without explicitly saying so, past scholars have essentially assumed that the Democratic Party would have the opposite effect on drug sentencing policy. This makes the assumption that the Democratic and Republican parties are foils of one another and will only act in opposite interest of the other. However, the Democrat Party and Republican Party have different motivations, ideological principals, and ultimately seek different goals through policy (Grossman and Hopkins 2016). The Democratic party coalition has changed over time to become more racially and ethically diverse than Republicans and a result has become a coalition of intense policy demanders, where as Republicans are more homogenous and ideological (Grossman and Hopkins 2016). In the past, Democrats were just as punitive as Republicans in drug sentencing policy, which can be seen in the 1994 Crime Bill that made sure that low-level drug offenders were punished as harshly as the law would allow. More recently, Democrats in most policy areas, have left established ideological norms established by the party in favor of policies that may have more success once adopted (Grossman and Hopkins 2016). While untested by past research, this could hold true for drug sentencing reform. The change in policy attitudes would indicate that rather than having the opposite effect on drug sentencing reforms the Democratic Party has had different effects over time.

Republicans and Reforms

Since the 1960s Republicans have branded themselves the "tough on crime" party, most famously by Richard Nixon's emphasis on law and order, echoed in later years by Ronald Reagan, as part of the "Southern Strategy" to realign white Southern Democrats with the Republican Party. This culminated in significant Republican support for the 1994 Crime Bill under the Clinton administration, which created third strike laws. Today, Republicans in national and state politics continue to champion restrictive sentencing policies in the context that these restrictive sentencing policies increase public safety. This echoes the policies made in the height of the War on Drugs era like the 1986 Anti-Drug Abuse Act, which was created in hopes of reducing crime and increasing the safety of the public. Literature on the punitiveness of federal policy and state policy indicate that Republican adopt restrictive drug sentencing policies (Malone 2018). At the federal level, Republicans have acknowledged the disparities within the criminal justice system and call for reform, while still stressing the need form mandatory minimum sentencing in drug offenses in order to keep dangerous and violent offenders off the streets and away from the general public (RNC 2020). While both of the party platforms limit the discussion of sentencing reforms to mandatory minimums, I believe that their attitudes for one sentencing policy or sentencing policy reform would be the same as their attitudes for other sentencing policies and reforms. This leads me to my first hypothesis;

H1a: State Governments with Unified Republican Party control are less likely to adopt drug sentencing reform policies.

Figure 1: Flow chart of Hypothesis 1a.
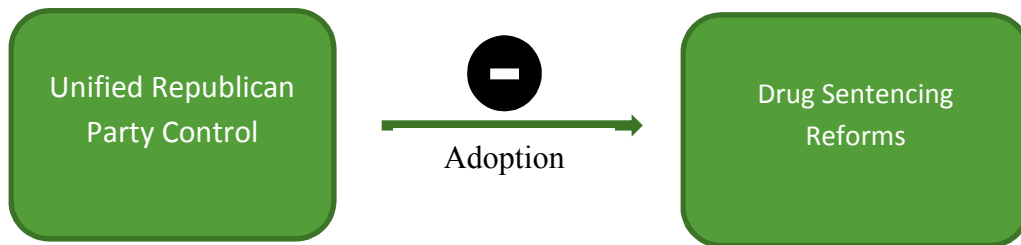
Literature shows that Republican policymakers are responding to an increasingly racially homogenous coalition in their pursuit of restrictive voting policy (Grumbach 2022). The lack of diversity both in elected officials and their constituency could lead to like-mindedness in policy attitudes. However, in Republican-led states with more heterogeneous population there could be less restrictive voting policies being adopted. Earlier I stated that attitudes towards mandatory minimums would be reflected in attitudes for other drug sentencing reforms. In this instance I hypothesize that the response to a more diverse population in relation voting laws will have a similar effect in Republican response to drug sentencing reforms.

H1b: *State governments with a unified Republican Party control and a more diverse population are more likely to adopt drug sentencing reform policies*.

Figure 2: Hypothesis 1b.
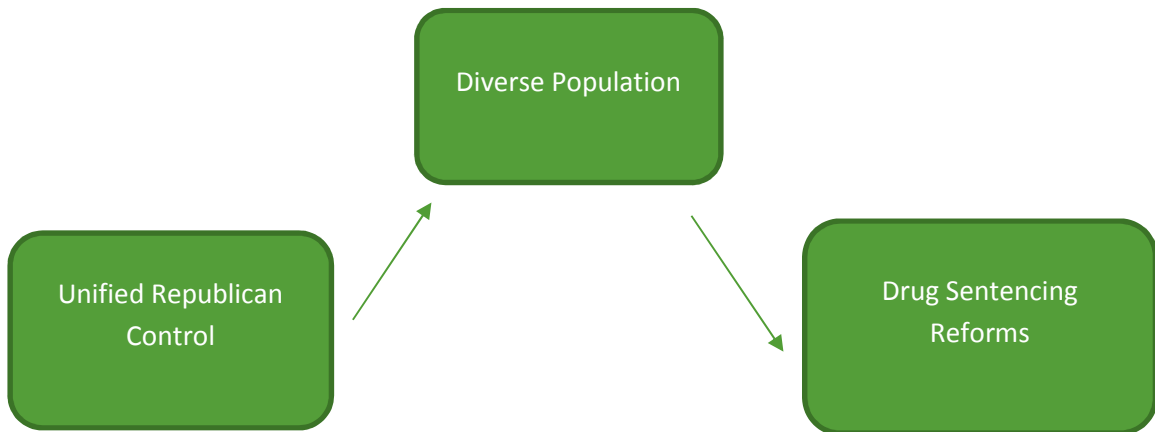
Democrats and Reforms

Like their Republican counterparts, Democratic lawmakers are able to operate with less negative pushback when they unified party control. In research analyzing drug sentencing policy that Democrats are assumed to have the opposite relationship with the harsh drug sentencing. However, this relationship is not directly tested in previous literature. In criminal justice, Democrats have had a very similar past to their Republican counterparts. The Anti-Drug Abuse Act of 1986 set harsh penalties for drug offense had bipartisan supporters of enforcing harsh drug related policies both Republicans and Democrats were supporters of enforcing harsh drug related policies in hope of lowering crime rates and lowering drug usage rates. This continued into the 1990s as the 1994 Crime Bill was passed under the Clinton administration. This bill that created three strike laws and harshly punished drug offenders was created under the belief that it would improve public safety, and received bipartisan support like the policies created before it.

Democratic criminal justice policy attitudes began to shift around 2008 which diverged from their Republican counterparts. In 2008, the Democratic Party platform focused more police accountability and preventative drug abuse programs than it has in the past (DNC 2008). Moving further into the 21st century Democratic leadership is associated with more liberal policy than their Republican counterparts (Caughey et al. 2017). Democratic leaders at the federal level have made it clear that their intentions are to lessen the harshness of drug sentencing. In the Democratic national party platform, they push the idea of a top down approach, focusing on education, policing, and support programs that would help those who use drugs (DNC 2020, p. 36). They believe that sentencing should be based on the facts of the case and that federal mandatory minimums are too harsh and should be repealed, encouraging states to move in the same direction (36). Again, I am more interested in how unified control of the state influences policy adoption rather than just a simple majority of the elected officials for that state. Past research shows that even with a Democratic majority in the state house and Democratic governor policy liberalism is increased compared to a Republican majority or a Republican governor (Caughey et al. 2018). Based on this shift in policy attitudes toward drug offenses I make the following hypotheses about the relationship between unified Democratic Party control and sentencing reform, which are expressed visually in **Figures 3**.

H2: States with Unified Democratic control will be more likely to adopt sentencing reforms after 2008.

Figure 3: Hypothesis 2.
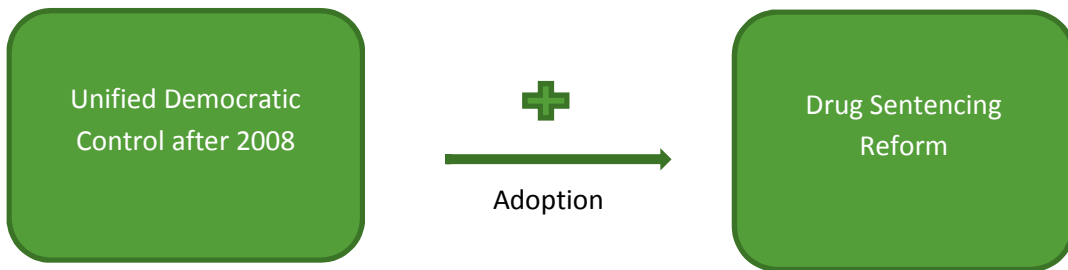
Alternatively, I could find that there is no change in Democratic-led states and that this is just be a change in rhetoric. Democrats with unified party control of the state government could be responding to research and their constituency by relying on judicial discretion more so changing the policies currently in place. Depending on the judge, judicial discretion could act with similar effects on sentencing that a reform could have. Most of my theory looks at a top-down passage of policy attitudes, as in state governments reflecting the behavior and or policy attitudes of elected officials in Congress and the national party committees. When Congress creates policy states have the options to follow guidelines and adopt similar policies or they can choose to deviate where they feel pertinent. This is evident in case of marijuana legalization in the states. Federally marijuana is illegal, but some states have legalized marijuana. Rather than a top-down diffusion of policy we see a bottom-up diffusion of policy as these states legalize marijuana through ballot initiatives and state questions, allowing citizens of the state to make the choice rather than it just being a decision of the state government. Similarly, state governments may not adopt certain sentencing reforms because they are aware that judges are using their judicial discretion in order to lessen the harshness of some sentencing practices. I discuss this in greater detail while describing my dependent variable in the next section of my paper.

CHAPTER IV

METHODOLOGY

State Party Control

      I will be conducting a quantitative analysis looking at panel data from all 50 states from

the years 1990 to 2020. My unit of analysis will be state-year because my independent variable

state party control varies over time. State party control is subject to change according to the

voters within the state. Each observation will have a corresponding score that represents which

party was in control while drug sentencing reforms were adopted. This is a categorical variable

that is coded according to which party, Democrat or Republican, has unified control or if the state

in that particular year is experiencing divided government. I will code unified Republican Party

control as 2, divided party control as 1, and Democratic Party control as 0. In order for a state-

year to get a 0 or 2 the party affiliation of both chambers of the state legislature and the party

affiliation of the governor must be the same. If the party affiliation of the majority of the state

legislature and the party affiliation of the governor are different the state will receive a value of 1.

Figure 4: Party Control From 1990-2020
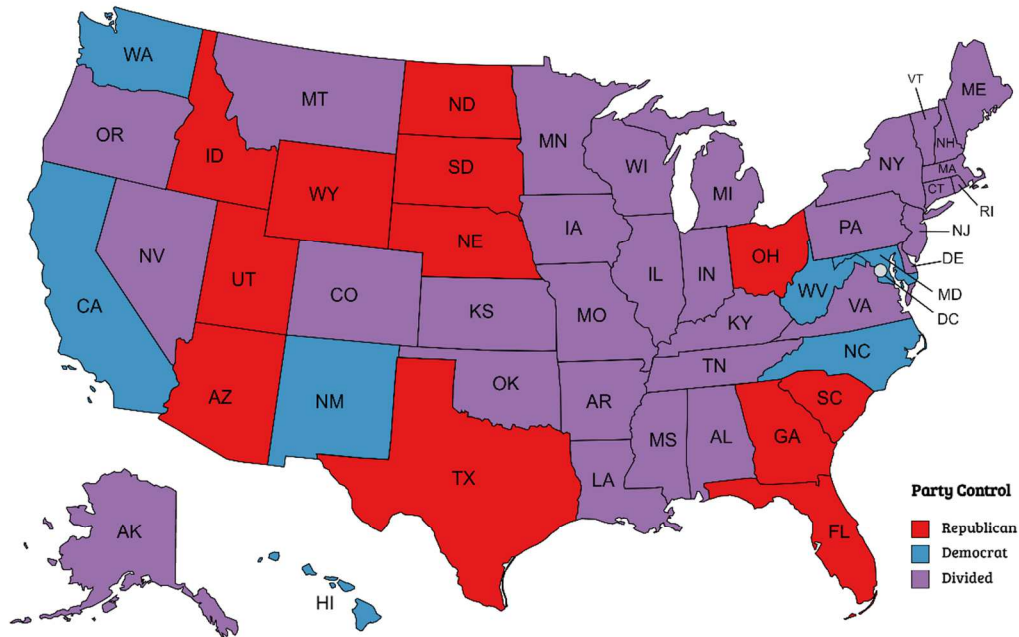
Created with mapchart.net

Using the variable of *state party control* I am able to create **Figure 4**, a map chart that visually represents the party control of each state from 1990-2020. From this we can see that most of the states spent a majority of 1990-2020 with a divided government. Utah is the only state on this chart that experienced unified government control for the complete span of 1990-2020. Not able to be visualized in this map chart are the amount of states that spent many years flip flopping between divided government and unified party control. The states that changed the most often are Colorado, Michigan, Missouri, North Carolina, New Jersey, Washington, and Wisconsin.

Drug Sentencing Reform

While it is possible that states have passed more restrictive or harsher drug sentencing policy than what is laid out by the federal drug sentencing policies, the rhetoric from both national parties on the topic of drug sentencing reforms leads me to believe that states will either adhere to federal guidelines or challenge them by adopting more lenient practices rather than adopted harsher restrictions (DNC 2020; RNC 2020).

To compose my dependent variable *sentencing reform*, I compiled a list of all drug sentencing reforms that have been passed from 1990 to 2020 which I obtained from the National Conference of State Legislatures and a policy report conducted by The Vera Institute for Change (Subramanian and Delaney 2014). These sentencing reforms fall into four distinct categories; mandatory penalties, sentencing schemes, participatory or community-based sanctions, and collateral consequences. There are 105 reforms represented in my dataset that were adopted across the 50 states from 1990-2020.

Mandatory penalty reforms either repeal or shorten mandatory minimum sentencing guidelines or limit sentence enhancements that are typically added when drug offenses are committed within school zones and other designated areas. There are 30 mandatory penalty reforms adopted represented in my dataset.

States that pass drug sentencing schemes are changing penalty levels of drug offenses or altering the amount or weight of drugs associated with each penalty level. Some states have adopted drug sentencing schemes by repealing three strike laws or reclassifying drug offenses from felonies to misdemeanors. There are 34 sentencing schemes represented in my dataset. Most of the states that have adopted sentencing schemes have also legalized marijuana and this reclassification came afterwards so that offenders serving their sentences would retroactively serve the appropriate sentence for their crime. Other states adopted reclassification before legalization. For example, Oklhoma State Question 780 which reclassified some drug and

property crime from felonies to misdemeanors passed before the state legalized the medical use of marijuana.

Participatory or Community based sanctions are reforms that alter the length of the offender's sentence contingent on good behavior, community service, or participation in drug treatment programs. There are only 9 of these reforms represented in my dataset. This is quite a small number compared to the other categories. I believe this is due to judicial discretion. Briefly mentioned in my literature review were a few cases in which states had passed policy that allowed for greater judicial discretion in sentencing than the state had previously allowed. With judicial discretion the judge is allowed to sentence the offender to what the judge decides is appropriate. In cases in which the offender commits a low-level non-violent drug crime the judge may use judicial discretion to sentence the offender to mandatory drug treatment or community service and failure to do so would result in a jail sentence. I believe that there are less of these reforms adopted because judges are already practicing this.

Collateral Consequences are legal restrictions that affect the reentry of offenders back into the community. Reforms in this category include sealing and expunging records so that the offender can access housing, employment, voting, education, and other rights that would otherwise limited by the offender's criminal record. There are 32 of these reforms represented in my dataset.

I used a dichotomous measure to code the variables. Each state-year received a value of 1 if a state adopted reform in that category and a value of 0 if the state did not. I then created the variable *sentencing reform* that combined the four separate categories together for the total sentencing reforms passed in that state-year. This variable allows me to measure the affect that party control has on the adoption of reforms.

Figure 5: Total Number of Drug Sentencing Reforms Adopted from 1990-2020
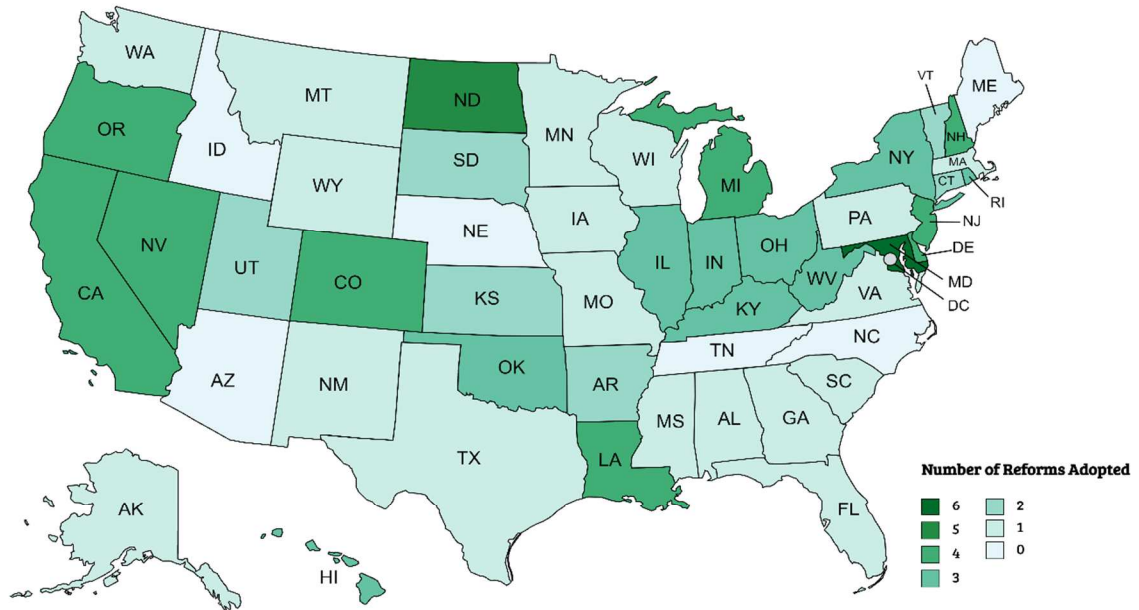
Created with mapchart.net

Figure 5, above, is a map chart that shows the total amount of drug sentencing reforms adopted from 1990-2020. This is a visualization of my dependent variable after all of the categories for sentencing reform have been combined into the variable I use for my analysis. While the map does not show what types of reforms are being adopted or if more than one reform from each category is adopted. Most states have adopted at least one reform. With this we can see that Maryland and North Dakota have adopted the most drug sentencing reforms, 6 and 5 respectively. We can also see that 7 states – Arizona, Idaho, Maine, North Carolina, Nebraska, and Tennessee – have not adopted any drug sentencing reforms.

Controls

Crime Rates

The rhetoric around criminal justice reforms and drug sentencing reforms has historically been centered around an idea of public safety. The harsh drug sentencing policies during the 80s and 90s were enforced for the purpose of keeping crime rates down and criminals off the street. Even today, the Republican National Committee holds to this idea in their party platform that they would like to keep dangerous criminals off the streets which would require that they keep practicing mandatory minimums (RNC 2020). Crime rates are a reflection of the government's ability to keep criminals away from civilians and maintain domestic order (Malone 2018). States with high crime rates may not adopt sentencing reforms in order to reduce these crime rates and maintain domestic order. The variable *total crime* will include both violent and non-violent crime rates. While non-violent drug crimes typically fall under the purview of drug sentencing reforms I include violent crimes as the harsh drug sentencing policies had an effect on both violent and non-violent crime rates. Using the Bureau of Justice Statistics' existing datasheets on crime totals in each state in the United States I was able to obtain the total crime index from the datasheets which combine the violent crime rate per 100,000 residents of the state and the property crime rate per 100,000 residents.

Incarceration Rates

With the introduction of harsh sentencing policies, the War on Drugs era also introduced mass incarceration to the states. While the United States boasts higher incarceration rates than most countries, even some of individual states have higher incarceration rates than most countries. However, incarceration rates are not extremely high across all states. While higher

crime rates may be a predictor of fewer sentencing reforms as a precaution for public safety, high

incarceration rates may be a predictor of sentencing reforms (Ends 2014). High incarceration

rates may lead to overcrowding of prisons or overspending on prisons which may lead to state

legislatures adopting sentencing reforms to alleviate the burden on the state government despite

state party or whether the state government is under unified party control or not (Enns 2014;

Phelps and Prager 2016). I collected the incarceration rates from the Year-end Prisoners Statistics

Report published by the Bureau of Justice Statistics from the years 1990-2020. The rate is

individuals incarcerated per 100,000 in the population for each state.

Public Opinion and Citizen Ideology

In my theory of unified party control, I mention that there is a possibility for polarized

legislatures to leapfrog over median citizen preferences (Caughey et al. 2018). Rather than

leapfrogging over the preferences of the median voter preferences, there is the opportunity for the

legislature to be responsive to the voters. In states that either have more independent voters or

states with less polarization amongst the elites and voters the electorate could be more responsive

to the median voter because they would not benefit from a polarized policy. The citizens, despite

their party's typical preferences, could harbor attitudes more or less punitive attitudes toward

crime and criminal justice than their elected officials (Enns 2014). Their attitudes could be their

response to crime and incarceration rates, racial tensions, or personal beliefs about crime and

punishment. Their attitudes toward criminal justice reforms, and more specifically drug

sentencing reforms, could affect the saliency of adopting sentencing reform. For the variable

citizen ideology, I use the Caughey and Warshaw (2020) measure of aggregate public opinion on

social issues for each state from the years 1990-2020. The data employs dynamic estimates to

measure the conservatism and liberalism using a scale from −1 to 1. Negative scores indicate that

the mass ideology of the state is conservative, the lower the number the more conservative. Positive scores indicate that the mass ideology of the state is liberal, the higher the number the more liberal.

Black Population

Black men are disproportionately impacted by harsh sentencing practices (Fischman and Shanzenbach 2012). Past research has shown that racial threat or the increase in minority population that threatens white culture or political dominance greatly impacts the restrictiveness of drug policy (Malone 2018). The percentage of black people within the population has a consistent effect on the restrictiveness of drug policy across the states (Malone 2018) which is why I choose to measure it as a control variable. For the variable *black population*, I will use data collected by the United States Census Bureau which measures the percentage of individuals who identify as black or African American in their respective states. The Census is conducted once every ten years, so I repeat the observation from the previous Census as an estimate of the percentage of the black population in the years between each Census.

My unit of analysis is both geographically and temporally dependent. Therefore, a two-way fixed effects (FE) regression, for state and year is appropriate. Two-way FE control for unmeasured variables that are fixed by unit or vary by year, and are important to include given I have repeated observations of the same states over time. This approach has become common approach in observational studies using panel data (Bucci and Jansa 2020; Malone 2018). A potential problem is that a fixed effects model an potentially produce inefficient estimates by estimating an additional 80 parameters, 1 for each state (50) and 1 for each year (30). A random effects regression could produce consistent estimates that may be more efficient that the fixed-effects approach, but come with assumption that specific state and year effects are uncorrelated

with model variables and can thus be treated as a constant. Since I want the regression to analyze my variables with both state effects and year effects, I chose to use a two-way fixed effects regression.

CHAPTER V

FINDINGS

Model 1

To test the relationship between party control and the drug sentencing reforms, I ran a two-way linear fixed effects regression model. The first model tests the relationship between Republican party control and sentencing reforms, which I predicted would be a negative and significant relationship. The results shown in **Table 1** show that the coefficient for *Unified Republican Party Control* is -.055 and it is statistically significant, meaning that Republicans are less likely to pass drug sentencing reforms than Democrats, which are the excluded category. These results confirm my first hypothesis that states with unified Republican Party Control are less likely to adopt drug sentencing reform policies. This also supports the findings in previous literature on Republican control and drug sentencing laws.

Model 2

I run the second model to test Hypothesis 1b, in which I predicted that states with unified Republican control that have a more diverse population would see an increase in the adoption of drug sentencing reforms. However, the model shows that what little effect that a black population has on a state is not significant. There does seem to be a significant effect of divided control

on black population. This is a result outside of the prediction of my hypotheses.

Model 3

In the third model, I ran a two-way linear fixed effects regression model to test the relationship between Democratic Party Control and drug sentencing reform if conditional on time. When interacting the year with state party control on the dependent variable, I obtain significant results in the direction I predicted in Hypothesis 2b: *Since 2008, states with unified Democratic control are more likely to adopt drug sentencing reform.* The coefficient for Democratic party control is −13.558 and is statistically significant, showing that this is a negative effect that grew in strength over time. Starting around 2007, states with Democratic Party Control are much more likely to pass drug sentencing reforms than states with Republican Party Control. **Figure 6** shows that as the year increases the effect that Democratic Party Control has on Sentencing Reforms also increases. As expected this also supports Hypothesis 2a: *From 1990-2008 states with unified Democratic control are less likely to adopt drug sentencing reforms.*

In all three models there are is no significant correlation between my dependent variable and my control variables – crime rates, incarceration rates, and mass ideology[2]. In models 1 and 3 there is also no significant correlation between my dependent variable and the control variable of black population. All three models show that there is a significant negative correlation between my dependent variable and divided government, these are interesting results as they are outside of what I predicted in my hypotheses. Unified Democratic Party Control is excluded from the first two models of analysis represented in Table 1. Unified Republican Party Control is excluded in model 3.

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[2] I also conducted a zero-inflated poisons model as a robustness check of my analysis. This is a count model that considers that most observations that are 0, which would be states that have not adopted anything in a given year. The zip model had the similar results to my models above.

Table 1: Model 1, Model 2, and Model 3 Results Side by Side

	Sentencing Reform	Sentencing Reform	Sentencing Reform
Model	(1)	(2)	(3)
Divided Control	-.021	-0.075**	-8.439*
	(.020)	(0.030)	(4.420)
Unified Republican Control	-.055**	-0.062	
	(0.027)	(0.041)	
Crime Rates	-0.000	0.000	-0.000
	(0.000)	(0.000)	(0.000)
Incarceration Rates	0.000	-0.000	0.000
	(0.000)	(0.000)	(0.000)
Black Population	.006	0.001	0.002
	(0.013)	(0.013)	(0.013)
Mass Ideology	-0.91	-0.089	-0.066
	(0.068)	(0.068)	(0.069)
Year			0.002
			(0.003)
Republican Control x Black Population		0.001	
		(0.002)	
Divided Control x Black Population		-0.005**	
		(0.003)	
Unified Democratic Control			-13.558**
			(5.102)
Year			0.004*
			(.0002)
Democratic Control x Year			0.007**
			(0.003)
cons	-0.021	0.027	-3.266
	(0.117)	(0.118)	(6.726)
N	1487	1487	1487
adj. R^2	0.111	0.116	0.114

Standard errors in parentheses

$^*p < 0.1,$ $^{**}p < 0.05$

Figure 6: Marginal Effect of Democratic Control on Sentencing Reforms Over Time
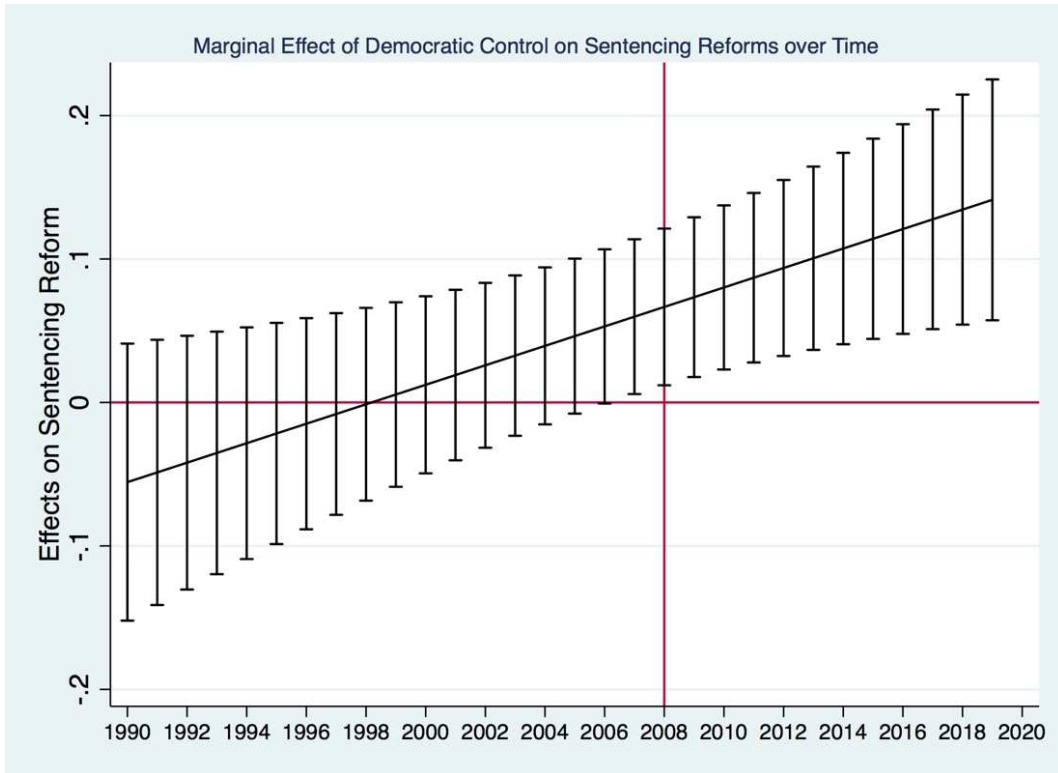
The reference line at 2008 on **Figure 6** is the cut point that I predicted in my hypothesis. The reference line at 0 shows that lines that do not intersect are significant but lines that do intersect are significant. The graph shows that just before 2008 there is an increase in Democratic legislatures adopting sentencing reforms that continues as the years increase. This supports H2a: *From 1990-2008, states with unified Democratic Party control were not adopting drug sentencing reform policies.* This also shows support for H2b: *Since 2008, states with unified Democratic Party control are more likely to adopt drug sentencing reform.*

CHAPTER VI

DISCUSSION

Through these results I can answer a few of the puzzles presented in the literature. The first was, if the Republicans are more likely to pass more restrictive drug sentencing laws when the state is transitioning from a Democratic Governor to a Republican Governor what are states with total Republican Party Control doing? Republican led states are less likely to pass drug sentencing reforms. This is not a surprising result, but it does reaffirm that the Republican led states align with the rhetoric of the National Republican Platform on the stance of drug sentencing and mandatory minimums. While there are several states that have passed drug sentencing reforms these states individually do not have a large effect on Republican led states.

The second puzzle was that while the literature addressed what Republican states have passed in the past there was no discussion on what Democratic led states were doing. My results show that starting around 2007 Democratic led states began to adopt drug sentencing reforms. The change in rhetoric regarding drug sentencing in the National Democratic Party changes in 2008. This shows unity in policy attitudes in the Democratic Party from national to state that I inquired after earlier.

Answering the puzzles presented in the literature helps understand what the states are doing in response to both a national problem and problems of each of the individual states themselves. Since the War on Drugs, there has been a long history of harsh sentencing policies that have not produced their intended results of reducing crime rates but instead have produced the unintended consequence of mass incarceration and uneven sentencing enforcements. This is an issue that both the Democratic National Committee and the Republican National Committee have addressed with a desire to resolve it. With their focuses in different arenas of criminal justice policies we can see the results of efforts on the state level based in party control.

Limitations

One of the limitations of this research was the available data and research on this topic. Missing data was one of the biggest limitations while creating my dataset for this research. A lot of the datasets that exist for incarceration rates claim to be from the same source as I found mine, The Bureau of Justice Statistics, but these datasets would often have different values presented than from individual Bureau of Justice Statistics. While compiling the incarceration rates I became aware that there were a few missing values during years in which certain states did not report the number of prisoners. This did not have a big impact on the analyses of the data because the missing data was sporadic, but it was discouraging to that these missing values will forever be missing values as I can not go back in time and collect the data myself.

Black population is only reliably measured by the Census, which is only conducted once every ten years. For my dataset I used the values for years the Census was conducted for the missing values. This also probably would not have had a significant impact on my results but the missing values would have made for a more complete data set. In the context of my Hypothesis 1b which was focused on the effects a states diversity would have on the adoption of drug sentencing laws from a state with unified Republican control, I only collected data on black

population. Hispanic men are also a demographic disproportionately affected by drug sentencing laws and therefore the Hispanic population within these states could have also been tested. Given the results of the models I believe that Hispanic population would have had a similar result to that of black population.

Finally, it was difficult to find a complete list of adopted drug sentencing reforms. My list, handwritten in a composition book, was carefully collected from multiple sources. The source with the largest amount of drug sentencing reforms adopted within the states (NCSL) was not comprehensive and did not give descriptive explanations of what each adopted reform was addressing. I had to look up each policy individually to verify it was a drug sentencing reform and that I did not already have that reform listed under a different name or category. Due to the way that I collected this list there exists a possibility that I may have missed a policy that has been adopted. However, I do not believe that any missing policy would change the results of my analysis. Through my contribution of my own dataset, which I plan to keep and continue to update as more policy is adopted within the states, I hope to shorten the time spent by other academics in efforts to make their research accurate.

While my research is able to provide incite to how policy attitudes have changed over time and how these attitudes affect reform adoption, it does not address why some Republican states adopt reforms and others do not. Most of what I controlled for proved to be not significant which means that an explanation for why some Republican-led states adopt and other Republican-led states do not. From the non-significant results, I can interpret that there exists the possibility that other factors, not identified within in this research, that have an impact on the adoption of reforms. This unknown variable, or variables, could affect the adoption of drug sentencing for both Democratic-led states and Republican-led states or just one or the other as there are both Democratic-led states and Republican-led states that have not adopted drug sentencing reforms.

CHAPTER VII

CONCLUSION

This research addresses a gap in the literature. Previous literature addresses many of the factors that live around the focus of my research; such as the biases that influence drug sentencing in the courtroom from both judges and prosecutors. The previous literature also addresses how party attitudes have changed over time in regards to drug reforms on the federal level. My research addresses the gap by looking at the effect the government has on the adoption of drug reforms at the state level rather than the federal level. It is clear from the results that unified party control is has a significant effect on the adoption of drug sentencing reform. This is important because it shows how well state government attitudes on drug sentencing reform policies reflect that of their party and of their national party.

My research fills a gap in the literature but also opens the door for future research that could dive deeper into the relationship between party and drug sentencing reform. There exists variations amongst the states. While states with unified Republican Party control are less likely to have adopted drug sentencing reforms, some of these states have adopted quite a few, especially in the last few years. Similarly, states with unified Democratic Party control are more likely to adopt sentencing reform but there are states with unified Democratic Party control that have not.

This variation is unable to be explained in my research. Future research could build off of this, and discover the reason for variation within the states of the same party control.

Through this research I have been able to accumulate a rather large collection of data points. The variables I used are often studied together to look at different relationships in the intersection of criminal justice, legal studies, policy, and politics. Despite their regular usage in political science research I was unable to find a reliable source that had a similar compilation of data. Hopefully, through the dataset I created I can contribute to future research on the subject. It might be useful to know a state's drug overdose rates, or states' drug usage rates and the effects those variables may have on drug crime. Using my dataset, there are many avenues for future research to take that I was unable to explore here in this research.

There are also non-academic avenues for my research. This paper is a jumping off point for bringing justice to those who are often overlooked in society. By knowing what policy actions are taken by which party local advocacy groups can petition their state representatives for policy change at the state level, rather than relying on state governments to take cues from Congress. A better understanding of the political environment needed for state governments to pass certain pieces of legislation an also be beneficial to those who wish to enact policy change. Research enables an advocates ability to help those affected by harsh drug sentencing policies on both an individual level and the policy level. Incarceration has always reached passed the offenders to touch the lives of families and communities. By addressing harsh sentencing policy and adopting sentencing reforms state governments not only impact incarceration rates but also impact disadvantaged communities, recidivism rates, and the amount of children entering into the foster care system because their parents or guardians are incarcerated. The harsh policy attitudes of the War on Drugs era have had a negative impact on the American public all for the purpose of lowering crime rates and promoting public safety. By adopting reforms rather than punitive

sentencing policies state governments have the opportunity to produce the results that lawmakers

in the past failed to do.

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