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2013

The Paradox of Probation: Understanding the Expansion of an "Alternative" to Incarceration during the Prison Boom

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Princeton, NJ : Princeton University

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THE PARADOX OF PROBATION:
UNDERSTANDING THE EXPANSION OF AN "ALTERNATIVE" TO INCARCERATION DURING THE PRISON BOOM

Michelle Suzanne Phelps

A DISSERTATION
PRESENTED TO THE FACULTY
OF PRINCETON UNIVERSITY
IN CANDIDACY FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE BY
THE DEPARTMENT OF SOCIOLOGY
AND
THE JOINT DEGREE PROGRAM IN SOCIAL POLICY
ADVISOR: DEVAH PAGER

September 2013

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Abstract

Over the past four decades, the United States embarked on an unparalleled expansion of the criminal justice system. While scholarly and public attention has primarily focused on prison populations, the number under probation supervision is even larger: by 2011, there were nearly 4 million U.S. adults on probation, compared to the 2.2 million incarcerated in jails and prisons. While not as restrictive to liberty, supervision through probation involves limitations and requirements, including regular reporting, drug testing, fines, and barriers on housing and employment, that can reproduce and exacerbate patterns of inequality.

This dissertation provides a sociological analysis of the rise of what I title "mass probation" and its importance for understanding criminal justice policy, spatial variation in punishment, and penal theory. In Chapter 2, I focus on the relationship between probation and imprisonment rates at the state level. Using time-series data from 1980 to 2010, I show that probation can contribute either to expansions or reductions in prison populations depending on how it is implemented. Chapter 3 documents that scholars' understanding of variation in the scale of punishment across states is radically reconfigured when probation rates are considered alongside imprisonment rates and proposes a new theoretical typology of state control regimes. Chapter 4 turns to a historical case study of the expansion of mass probation in one state (Michigan). The results suggest that probation flourished during the prison boom because administrators continually reinvented it as the solution to whatever problem the department faced, molding the rhetoric and practices of probation to match prevailing discourses. The analyses reveal new insights on the nature of penal power and the relationship between public rhetoric and on-the-ground practices. Together, this dissertation begins a new sociological conversation about probation and its import for public policy and penal theory.

Acknowledgements

As with all dissertators, I owe debts of gratitude to a number of persons and institutions. Most directly, this dissertation was made possible by the continual guidance and support of my Chair, Devah Pager. Her advice, starting when I was a clueless new student, has profoundly influenced my sociological perspective and orientation toward research. I am deeply grateful to have benefited from Devah's mentorship and the opportunity to learn the craft of research through intensive collaboration. The other members of my committee have similarly provided wonderful support and extensive feedback. Kim Lane Scheppele taught my first Sociology of Law graduate course and has been an indefatigable mentor and supporter throughout my years at Princeton. Amy Lerman deserves special thanks for being an insightful critic and a fount of research ideas, methodological advice, and practical suggestions. Miguel Centeno and Sara McLanahan deserve thanks for volunteering to serve as outside readers for this dissertation. Both Miguel and Sara also were central to my graduate training. Sara taught my first methods class, where she helped me to work through a plan for my first research project, and a class on inequality and social policy (co-taught with Devah) that shaped much of my general orientation to the field. Miguel taught a historical sociology seminar that helped me to start thinking about this model of research and led to the ideas that you will find in Chapter 4. Miguel also provided extensive feedback on the paper that began this project, despite professing to know next to nothing about the criminal justice system.

Beyond my committee, I have a number of colleagues at Princeton and elsewhere who have provided intellectual stimulation, emotional support, and a fun time at home and at conferences. Though I'm sure to cut this list too short, I would particularly like to thank the following Princeton graduate students who were as central to my training as the formal

coursework: Matthew Incantalupo, David Pedulla, Rourke O'Brien, Erik Vickstrom, Meredith Sadin, Ann Marie Russell, Audrey Dorélien, Wendy Sheldon, Jayanti Owens, Laura Blue, Kevin O'Neil, Daniel Schneider, LaTonya Trotter, Sarah Brayne, Michael Schlossman, Naomie Sugie, Elaine Enriquez, and Jeffrey Lane. In the course of graduate school, I've also been fortunate to cross paths with other junior scholars interested in crime and punishment throughout the country, including Alexandra Cox, Keramet Reiter, Christopher Muller, Joshua Kaiser, Issa Kohler-Hausmann, Meredith Rountree, and Reuben Miller. Meeting all of you has made conference-going a much more charming experience and continues to benefit my work tremendously.

I am also thankful for a number of "big brothers and sisters" and senior faculty at other institutions who reached out to me at conferences, included me in their discussions, answered my endless questions, and inspired me with their own work. Particularly in deserve of thanks are Christopher Wildeman, Philip Goodman, Joshua Guetzkow, David Greenberg, Kelly Hannah-Moffat, Mona Lynch, Jonathan Simon, Christopher Uggen, Katherine Beckett, Bruce Western, and David Garland. In addition, Joshua Page deserves a special note of thanks; beyond having taught my first sociology class in crime and punishment (while a graduate student at Berkeley), Josh provided critical help at key junctures in my career, providing gracious mentoring on the myriad practical concerns of graduate school and the research process. In the past year, I've also been fortunate enough to collaborate with Josh and Philip Goodman on a book project that helped me to focus the theoretical insights of my own work. A special thanks also go to Malcolm Feeley, who introduced me to the field of law and society during my undergraduate years, helped me find work in New York at the Center for Court Innovation after graduation, advised me on where and how to apply to graduate school, and continued to be a mentor throughout graduate

school. It is safe to say that this dissertation might not have existed had I not crossed paths with Malcolm and Josh at Berkeley.

During the final two years of graduate school, I was a visiting scholar at the Population Studies Center at the University of Michigan. Many of the people I knew during my time at Michigan deserve thanks. I owe a special debt to Pamela Smock, the Director of Population Studies Center, who went above and beyond the call of duty to make sure I felt welcome at the University of Michigan. Jeffrey Morenoff and David Harding also graciously included me in Sociology department activities and broader conversations about punishment and inequality. Kim McDonald, a student in the University of Michigan's law school, provided excellent research assistance for the case study analysis in Chapter 4. Finally, my writing group, "Soc of Awesome," at Michigan is in large part responsible for the fact that this dissertation was finished on time. Dan Hirschman, Katherine Lin, Emily Bosk, Jonah Douglas-Siegel, Rachael Pierotti, and Elizabeth Young, you all are truly awesome and I'm grateful to have been your friend and colleague.

In addition, my research has benefited tremendously from suggestions and critiques provided by colleagues across the country (and the world) at conferences and during the journal review process. A version of Chapter 2 was published as an article in *Law & Policy* this past March (Phelps 2013) and very much benefited from the generous comments of the anonymous reviewers and the editor, Nancy Reichman. Portions of the dissertation were presented at the American Sociological Association (2011, 2013), Law and Society Association (2011, 2012, 2013), and Population Association of America (2011) annual meetings as well as the 2012 Midwest Law and Society Retreat and seminars in 2013 at the Scottish Centre for Crime and Justice Research and the Sociology Department at the University of Glasgow, the Edinburgh

Legal Theory Research Group at the University of Edinburgh School of Law, and the Offender Supervision in Europe Network Launch Conference. My thanks to the many sociologists, legal scholars, and practitioners who have helped to make this work stronger.

None of this research would have been possible without the profound support of several institutions and their wonderful faculty and staff. Princeton University provided the funding for my initial year of graduate studies and I was lucky to benefit from the resources of the Sociology department, Office of Population Research (OPR), Joint Degree Program in Social Policy, and Law and Public Affairs program. Donna Defrancisco, Cindy Gibson, Amanda Rowe, Joyce Lopah, Wayne Appleton, Jennifer Curatola, Lynne Johnson, Judith Tilton, Nancy Cannuli, Mary Lou Delaney, Robyn Pispecky, and Nancy Turco all made the day-to-day realities of life at Princeton immeasurably easier and more productive. The statistical support team, particularly Dawn Koffman, was also a tremendous support in times of methodological trouble. German Rodriguez also deserves special thanks for leading both my demography and generalized linear models courses and having a tremendously useful “open door policy.” Scott Lynch, similarly, taught a course on longitudinal data analysis and provided generous advice on the methods utilized in Chapter 2. My other years of graduate study were supported by grants from the National Science Foundation Graduate Research Fellowship (Grant No. DGE-0646086) and the Jacobs K. Javits Fellowship from the Department of Education. My time as a visiting scholar at the University of Michigan was supported by the Population Studies Center at the Institute for Social Research.

Any dissertation that relies on primary data sources also relies heavily on the work of the individuals and institutions collaborating on the data collection process. Thanks go to Tracy Snell at the Bureau of Justice Statistics for helping to assemble some of the corrections data used

in Chapters 2 and 3. For Chapter 4, I owe a large debt of gratitude to the wonderful staff at the Michigan Department of Corrections, who graciously answered countless questions and opened their library and files to me. Particularly important was Douglas Kosinski, who facilitated all of my contact with the department. John Cordell, Kenneth Brzozowski, and Denise Allsberry all deserve special thanks for tracking down important documents and graciously donating their time. I also would like to thank Stephen DeBor and Deputy Director Sinclair for their support of the project.

Lastly, beyond the intellectual and practical support I've received during my training, there are a number of friends and family who provided the emotional support and daily cheer that makes it possible to write a dissertation. While there is not the space thank everyone, Julia Gelatt, Amelia Gravagno, Andrea Weinstein, and Yana Chernobilsky deserve special recognition. These women are all a part of my heart and took me into their homes when I was traveling—both when I couldn't stay in Princeton one more minute and when I needed to come back to visit. I also owe much gratitude to my parents. My mother, Yvonne Phelps, has the kindest spirit of anyone I know; she has buoyed me for every one of life's challenges and cheered from the sidelines when things were going well. My father, Les Phelps, inspired my own intellectual curiosity and is probably to blame for my interest in law, given his early and persistent belief that I would make an excellent lawyer. My parents-in-law, Chuck and Julia Myers, have also been wonderful sources of support, encouragement, and advice during graduate school. I am supremely lucky to have married into both a very happy family and one with deep wisdom about academia. Finally, loving thanks go to my husband, Dan Myers, who I met at Princeton early in graduate school. Life—and graduate school—would have been so much less joyful without you by my side. In Dan's dissertation, he thanked me for following him to the

“frozen north,” so it seems fitting that I end these acknowledgments by thanking him for moving deeper into the Midwest with me this summer. I hope that in our years there we will continue to find the wonderful friends and colleagues that make our daily lives such a pleasure.

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Chapter 1

The Expansion of an "Alternative" to Incarceration during the Prison Boom

The Paradox of Probation

Over the past 4 decades, the United States embarked on an unparalleled expansion of imprisonment, earning a dubious reputation as the world's leader in incarceration. As depicted in Figure 1.1, between 1980 and 2011, the number of individuals incarcerated in state and federal prisons increased from 320,000 to 1.5 million adults.[1] As this expansion of "mass incarceration" developed, scholars took note, describing the causes and consequences of this profound shift.

However, scholars have paid relatively little attention to the even larger expansion of probation, a form of community supervision that allows individuals convicted of crimes to serve their sentence while remaining in their home communities.[2] In fact, the development of mass incarceration paled in comparison to the enormous increase in what I term "mass probation." Between 1980 and 2011, the number of adults under probation supervision in the U.S. grew from 1.1 to 3.9 million. By that point, nearly 60 percent of the 7 million adults under criminal justice supervision in the U.S. were on probation. This means that about 1 in every 60 adults in the U.S. are currently under probation supervision (Glaze & Parks 2012).

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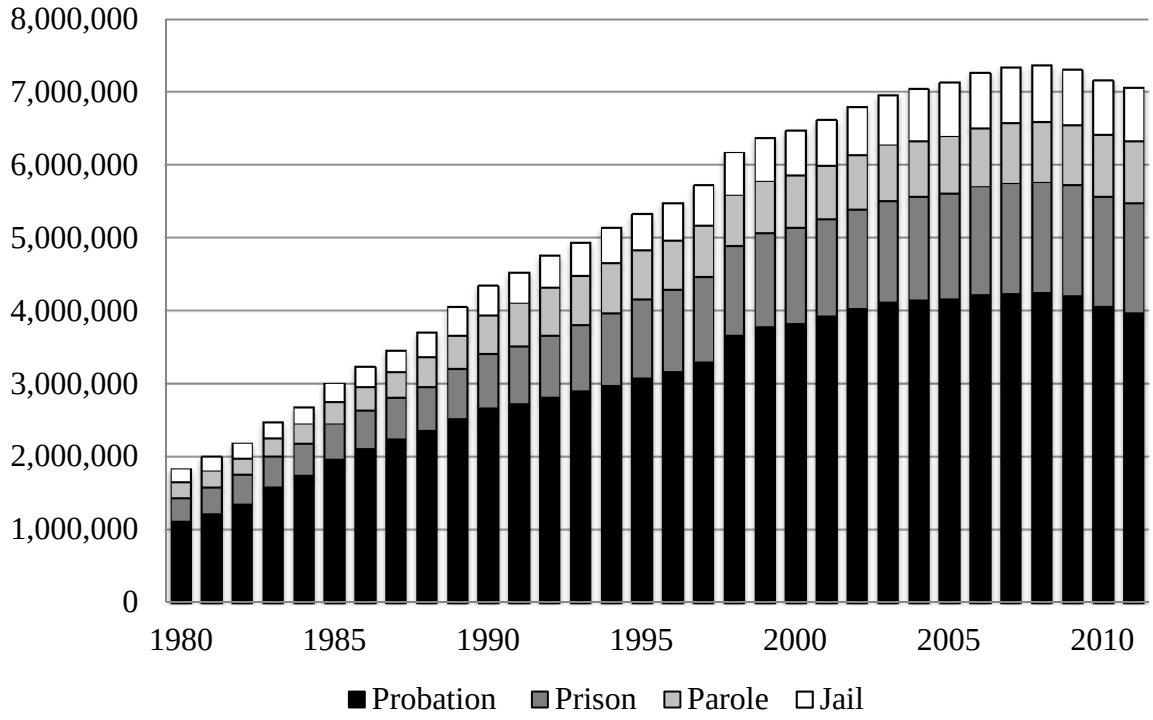
[1] Author's calculations using data from Bureau of Justice Statistics. For more details, see "Data and Methodology" section of Chapter 2.

[2] This dissertation focuses exclusively on adult probation services and adult prisons. Juvenile probation and imprisonment have a distinct system of adjudication and punishment and may function quite differently.

Figure 1.1: Number of Adults under Correctional Supervision 1980-2011



Surprisingly, scholars have largely neglected this expansion, leaving unanswered many questions about the rise of mass probation and its meaning for understanding contemporary punishment. The dissertation focuses on two key paradoxes around probation:

1) **Does the expansion of probation help to reduce—or expand—incarceration rates?** Much of the public policy talk around probation defines it as an "alternative" to prison that diverts cases away from incarceration and toward imprisonment. Advocates for expanding probation have consistently argued that probation is a more cost-effective form of supervision that provides a better chance for rehabilitation. However, a more critical tradition from sociology suggests that while probation may intend to divert individuals from prison, in

practice, it serves as a "net-widener" that increases punishment for low-level offenses. Further, once inside of this net, critics argue that probationers become more susceptible to future imprisonment due to increased monitoring and restrictions. Thus, it is unclear whether probation is a possible panacea for mass incarceration—or if expansions in probation were one of the drivers of mass incarceration.

2) How do we understand the expansion of an "alternative" sanction during the prison boom?

As mass incarceration ballooned, the overall tenor of crime and punishment rhetoric shifted dramatically, with the political and bureaucratic rhetoric growing increasingly punitive. Rather than rehabilitate individual offenders, the official goals of the criminal justice system in many respects shifted to deterrence, incapacitation, and retribution. In contrast, probation emerged out of the Progressive Era reforms and is still considered the "exemplary penal form" of the older penal-welfarist model of corrections (Garland 1985; Simon 2012). Thus, how do we explain what scholars have dubbed the "improbable persistence" of probation (Robinson, McNeill, & Maruna 2012)? As punishment increasingly became about retribution and incapacitation, how did this more open, traditionally rehabilitative, institution remain the most prevalent form of penal supervision?

In answer to both riddles, I argue that we must understand probation as a complex institution, occupying a liminal space between rehabilitative and punitive ideologies and practices. Using quantitative national data and case studies of probation in individual states, I argue that probation *both* embodies the rehabilitative impulse to provide a more lenient,

progressive, and supportive form of criminal justice supervision and the punitive impulse to surveil vast swaths of the population. Similarly, probation can both divert individual cases away from prison and expand the net of carceral control, depending on how it is implemented. Probation, in other words, serves different purposes and has varied meanings across both time and place. Rather than trying to answer the question of punitive versus rehabilitative, or net-wider versus prison alternative, researchers must instead interrogate when, where, and how probation serves these diverse ends.

In the sections that follow, I provide a brief outline of the history of probation, the theoretical and empirical literature in dialogue with this work, and the plan for the following empirical chapters.

Probation Then and Now

Before presenting a brief sketch of the history of probation, it is useful to start with a technical definition. Probation is a form of community supervision whereby individuals are allowed to live in their homes while under criminal justice supervision. Probationers are required to report to their probation officers regularly and follow a set of restrictions and obligations, which often include: finding or maintaining employment, abstaining from drug use (and often alcohol use), paying supervision fines, attending required programs or classes, abiding curfews, and avoiding future arrests. Probation is often described as an "intermediate" or "alternative" sanction, in that it provides a way for the criminal justice system to monitor individuals without incarcerating them in local jails[3] or state prisons.[4] Probation is in many respects similar to parole,

[3] Jails tend to be financed and administered by local governments and usually hold prisoners awaiting trial and those sentenced to a year or less for lower-level (generally misdemeanor)

the other predominant form of community supervision, but is unique in that it is a court-ordered sanction imposed as punishment for misdemeanor or felony-level convictions.[5] In contrast, parole is usually granted by an administrative board as part of early release from prison and involves the supervision of individuals as they re-enter the community. Demographically, probationers are slightly less likely to be minority men and to have been convicted of violent or drug offenses, compared to parolees. For 2011, the Bureau of Justice Statistics estimated that 54 percent of probationers were white (compared to 41 percent of parolees), 75 percent were male (compared to 89 percent), 18 percent had been convicted of violent crimes (compared to 28 percent), and 25 percent had been convicted of drug offenses (compared to 33 percent) (Maruschak & Parks 2012).

Probation in the U.S. emerged in the mid-1800s, ensconced in the temperance reform movement, the rise of psychiatry, and the emergence of the penal-welfare system more broadly (Vanstone 2004). The initial idea, often credited to a boot-maker named John Augustus, was that respected citizens could act as trusted "bondsmen" who supervised and reformed wayward offenders through moral guidance and practical assistance in obtaining work and housing (Logan 2003; Vanstone 2004). In part due to Augustus' evangelizing, the probation model spread widely and judges in disparate parts of the U.S. began using volunteers to supervise offenders in the

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offenses. In contrast, state prisons confine individuals for longer periods, usually after a conviction for a felony-level offense, and are managed by state governments.

[4] Some probationers are required to serve a period of incarceration, usually in local jails, before the period of community supervision begins. For the roughly 50 percent of cases entering probation with this information reported, 22 percent were sanctioned with such a "split" sentence (Glaze & Bonzcar 2011).

[5] Misdemeanor offenses are generally less serious crimes which are eligible for a sentence of a year or less in local jail, while felony offenses are generally for more serious crimes and are eligible for a sentence of more than a year in state prison.

community (Gibbons & Rosecrance 2005). By the time the progressive movement began to gain steam, probation was seen as an ideal alternative to the ravages of state institutions and became a key piece of calls to reform (Blomberg & Lucken 2000). By 1930, the vast majority of states (and all of the industrialized states) had probation laws on the books and probation departments established in urban centers (Rothman 2002). Rather than being placed in institutions, individuals who showed the most "promise" of rehabilitation could instead be placed under the care of individuals in the community (Blomberg & Lucken 2000). However, despite the enthusiasm around probation, Rothman (2002) argues that throughout this period, most probation departments were woefully under-staffed and unable to provide the rehabilitative support they promised. As the twentieth century progressed, probation, like other aspects of the criminal justice system began to professionalize and incorporated aspects of modern psychology. Throughout this transition, probation remained central to a progressive vision of punishment (Blomberg & Lucken 2000; Petersilia 1997).

By social disruption of the 1960s and 1970s, probation supervision was firmly established as the leading alternative to incarceration and reformers increasingly argued that the U.S. should deinstitutionalize prisons, moving offenders—like the mentally ill—out of large institutions and into smaller neighborhood-based facilities and probation programs (Scull 1984). This movement ignited a vigorous debate among criminologists about the role of such programs in the criminal justice system and whether they truly represented a "decarceration" movement or an expansion of state control (Garland & Young 1983; Lowman, Menzies, & Palys 1987). Cohen's 1985 book, *Visions of Social Control: Crime, Punishment, and Classification*, is one of the earliest and strongest critiques of community supervision programs in the 1970s. Cohen argues that for all the talk of decarceration, incarceration rates were actually increasing alongside

"alternative" programs such as probation in the 1970s. In addition, Cohen argues that probation is in some ways more insidious than prisons, as it often: a) involves people who otherwise may not have been subject to supervision, b) exposes probationers' private lives to state scrutiny, and c) opens up the community to criminal justice interventions. In this sense, Cohen (1985) warned that community supervision represented the possibility of a true Foucaultian "carceral archipelago" through the "dispersal of discipline."

As the progressive vision of possible decarceration was replaced by the beginning of the prison build-up, the discourses around crime and punishment in the U.S. grew increasingly "tough" and scholarship shifted to exploring mass incarceration and the punitive turn in criminal justice policies. This conversation about probation, its relationship to mass incarceration, and its importance for understanding punishment largely fell of the radar of sociologists of punishment. Thus, we know little about how probation practices in the post-1970s period changed. What little evidence scholars have amassed suggests that some aspects of probation also got more punitive in this period. Many states in the 1990s, for example, began to develop Intensive Supervision Programs (ISP's), a more intensive version of probation, and incorporate boot camp programs, electronic monitoring, and increased fines (Gibbons & Rosecrance 2005; Logan 2003; Morris & Tonry 1990). Yet the sociological literature exploring these changes remains sparse. As documented in the next section, much of the knowledge about contemporary probation supervision is based on research on parole.

Research on Parole

While probation fell off the academic radar, research on parole began to proliferate as scholarly interest in the consequences of mass incarceration expanded. This research spanned the

gamut from more policy-oriented approaches to deeply theoretical inquires. While the literature on parole often refers to "probation and parole" simultaneously, the vast majority of this empirical work is focused on parole. Yet given the similarities between probation and parole in terms of the daily experiences of supervision, this literature is worth exploring. While this body of research is too large to provide a comprehensive summary, below I review the most important work in this tradition.

Petersilia's treatise, *When Prisoners Come Home: Parole and Prisoner Reentry* (2003), and Travis' *But They All Come Back: Facing the Challenges of Prisoner Reentry* (2005) are two of the best known policy-oriented texts on parole. Both note the tremendous challenges parolees face upon return; often leaving prison with few resources or social support, parolees are expected to find both employment and housing while facing substantial barriers. Ex-felons are often forbidden from residing in public housing, receiving some forms of public assistance, holding certain kinds of jobs, and (in some states) participating in politics through voting. Further, parolees are routinely discriminated against in the labor market, making it all the more difficult to find steady work (Pager 2007). Petersilia (2003) and Travis (2005) also document the importance of parole revocation, the process by which parolees are returned to prison for violations of the terms of parole (e.g. by testing positive for drug use or absconding from supervision) or new criminal convictions. States vary tremendously in the percent of parolees returned to custody for violating probation terms (known as "technical" violations), suggesting that the policy context governing revocations is critical for understanding parolees' success. In states where technical return rates are very high, revocations represent one of the primary drivers of continued increases in imprisonment rates (Caplow & Simon 1999).

All of these policy issues are relevant to probationers. Like parolees, probationers are convicted offenders and as such are often restricted in terms of their access to housing, employment, social assistance, and voting rights. Similarly, probationers are vulnerable to revocation (either to local jails or state prisons) should they violate the terms of their supervision.[6] Thus, many of the inequality-exacerbating mechanisms experienced by parolees are also endemic to the probationer experience. Further, some of the most methodologically sophisticated research on the effects of imprisonment (on outcomes such as employment and recidivism) finds that probationers fare as poorly as ex-prisoners, suggesting that it is the "mark" of a conviction (and other risk factors) that matters for shaping individuals' life chances, rather than the experience of imprisonment (Bushway 2011; Loeffler 2013). Thus, we cannot understand the importance of the carceral state for reproducing and exacerbating patterns of inequality without also studying probation.

Another strand of parole research expands beyond policy concerns, using parole as a case study for understanding punishment more broadly. Of this work, the best known is Simon's *Poor Discipline: Parole and the Social Control of the Underclass, 1890-1990* (1993), which traces transformations in California's parole system throughout the 20th century and their connections to broader trends in the economic and political spheres. Simon delineates three broad "eras" of parole to show how it shifted over time from a "disciplinary" model where the community was primarily responsible for reforming prisoners' behavior to a "clinical" model of parole where parole officers became professional agents tasked with rehabilitating parolees. The final stage,

[6] Probationers can be serving time for either misdemeanor or felony-level offenses, whereas parolees generally have all been convicted of felonies. The barriers in terms of employment, housing, etc., are often more substantial for felony convictions.

embodied in the 1990s version of parole, was titled “managerial” parole and involved a shifting of departmental priorities from rehabilitating individual parolees to monitoring internal performance metrics—particularly easy-to-measure indicators of parolee compliance, such as drug test results. As a result, Simon documents that revocation rates spiraled out of control, rising from 10 percent of parolees under supervision in 1975 being sent back to prison within the year to a high of 56 percent in 1990 (207). Simon expertly links these changes to broader economic shifts, particularly the decimation of blue collar jobs and the hardening of urban poverty, and the cultural shift toward post-modernism.

This empirical work helped to provide the grounding for one of the most important theoretical contributions to the study of contemporary punishment. The “new penology” model characterizes the sea change in punishment as a transition from a system predicated on rehabilitating individuals to one tasked with managing broad classes of “risky” persons (Feeley & Simon 1992; Simon & Feeley 2003). This new “waste management” model concerns itself with managing a permanently disenfranchised “underclass” that is perceived as socially irredeemable. In this “risk management” context, probation and parole were remodeled as cost-effective forms of supervision for low level risks. Thus, high revocation rates became a sign that probation and parole were effectively monitoring risk and segregating out the higher-risk populations, rather than a sign of individual or agency-level failure.

More recent work has questioned the degree to which the new penology accurately describes correctional work on the ground, interrogating whether this shift to risk management happened at the level of discourses, practices, or both (Cheliotis 2006; Hallsworth 2002; Hutchinson 2006; O’Malley 1999, 2000; Rengifo et al. 2010; Robinson 2002). Lynch (1998, 2000) provides one of the most thoughtful responses with respect to parole, using ethnographic

research to explore how probation officers talked about—and enacted—both rehabilitation and risk management techniques. Lynch (2000) argues that parole officers retained the rhetoric of "doing rehabilitation," yet departments invested few resources into meaningful services. Parole agents filtered this disconnect through a neo-liberal framework that understood parolees as flawed subjects who were ultimately responsible for their own rehabilitation. In a separate article, Lynch (1998) argues that this vision was embedded in a "law enforcement" perspective that privileged intuitive understandings of individual offenders, rather than actuarial knowledge of risk groups. In this reading, parole agents on the ground did not become passive "waste managers," but instead maintained much of the rhetoric of rehabilitation and the logic of individualized responses to parolees (albeit with limited resources).

These strands of research suggest a number of parallel questions for the study of probation. In Chapter 2, I examine the importance of revocation rates for understanding the relationship between probation and imprisonment rates. Like research on parole, I find that states have widely differing probation revocation rates, suggesting unique policy choices across state contexts. These different policies create very different relationships between probation and incarceration rates, with some states using probation as more of an alternative, while others expand both forms of supervision. In Chapter 4, I turn to the question of whether probation, like parole, continued to adopt the rhetoric and practices of rehabilitation. Using a historical case study approach, I analyze how the rhetoric and practices of probation transformed over time in response to shifting political realities. Together, this research represents a new sociological inquiry into probation and its role in the punitive turn.

Probation and the Punitive Turn

As demonstrated in Figure 1.1 above, over the past four decades, the U.S. has experienced a profound shift in criminal justice practices, with the national incarceration rate reaching "mass" (Garland 2001a) or "hyper" (Wacquant 2010) proportions. And yet, scholars have largely neglected the expansion of what I term (in Chapter 2) "mass probation." In this section, I describe the theoretical literature that developed to explain mass incarceration and how a focus on mass probation alters these conclusions.

Garland (2001b) provides the most comprehensive accounts of these social shifts, describing the emergence of a "Culture of Control," defined by an "obsessive" drive to identify, monitor, and contain risky individuals and control dangerous situations. In this vision, the rise of mass imprisonment is simply the tip of the iceberg of a swell of punitive shifts in vision and practice, including the reintroduction of chain gangs, tougher penalties for youth, reinvigoration of the death penalty, rise of administrative sanctions, and more. In a similar vein, scholars have debated whether these trends represent a unique "neo-liberal" or "post-modern" penality, defined in part by more punitive control and a heightened emphasis on "managerial" approaches to criminal justice practices (Garland 1997a, 2003; Hallsworth 2002; Simon 1993).

Yet as scholars seek to explain these changes as a coherent punitive shift, there has been a counter-movement to highlight the contested, volatile, and contradictory nature of punishment. Eschewing these "catastrophic criminologies," O'Malley (1999, 2000) and Hutchinson (2006) argue that punishment has always involved both elements of reformation and punishment—just as penal-welfarism did not completely transform punishment into a rehabilitative project in the 1950s and 1960s, nor did the punitive shift remove all of the penal-welfarist influence. Citing examples such as restorative justice and the prevalence of fines as a sanction, authors in this

wave of research document that a range of practices with diverse logics co-exist in the penal field today (Bottoms 1983; Matthews 2005; Phelps 2011, 2012). Similarly, scholars have shown *how* penal-welfarist practices survived the punitive turn, arguing that these seemingly contradictory practices managed to adopt and integrate punitive discourses, for example by framing rehabilitative projects in terms of risk management and public safety (Goodman 2012; Hannah-Moffat 2005; Maurutto & Hannah-Moffat 2006; Robinson 2002, 2008).

Probation, as the central institution of the rehabilitative model of corrections (Garland 1985; Simon 2012)—and the most prevalent form of supervision in the punitive era—provides a crucial example of this hybridization. As Robinson (2002) argues, "As an exemplar of modern penality's 'normalizing sector' (Garland 1985), probation is deeply implicated in the purported shift toward a 'new' or 'postmodern' penal rationality with risk management rather than normalization at its heart" (5). Rather than neglecting the study of probation, as do many accounts of the U.S. punitive turn (e.g. see Zedner (2002) critique of *Culture of Control*), I argue that probation should be central to the study of punishment. Using this critique of "catastrophic criminology," which urges scholars to focus on historical contingencies, contestation, variegation, and hybridization, I show how probation survived the punitive turn by embracing both rehabilitative and punitive logics—and that the consequence is a major re-thinking of contemporary punishment.

Probation and Public Policy

Beyond the theoretical relevance, understanding the role of probation in the criminal justice system is central to policy concerns as well. In the last several years, states have begun to reverse the trends that produced mass incarceration. Beginning in 2008, the number of

individuals incarcerated in state prisons in the U.S. decreased for the first time since 1972—and since then, half of U.S. states have reduced their prison populations (Guerino, Harrison, & Sabol 2011; Pew Center on the States 2010). While progress has been uneven across the country (with some states and the federal prison system continuing to expand), in other states reform efforts have produced declines of up to 20 percent (Pager & Phelps 2013). These reductions are being driven by a number of reforms, including scaled back criminal codes and sentencing guidelines, expanded prison alternative programs, and improved community supervision policies (Austin 2010; Bushway 2011; Jacobson 2005; Steen & Bandy 2007; Wool & Stemen 2004).

One of the most prominent themes in these reform efforts has been a push to divert prison-bound cases into non-custodial options, most commonly probation supervision (Austin 2010; King 2009). And yet the socio-legal literature on probation suggests that while probation is often framed or intended as a prison alternative, in practice probation expands the "net" of formal social control and ultimately increases imprisonment rates (Blomberg 1977; Blomberg, Bales, & Reed 1993; Blomberg & Lucken 1994; Chan & Ericson 1981; Hylton 1981; Miller 1980; Tonry & Lynch 1996).

Thus, in order to understand how best to dismantle mass incarceration, we must understand what drove its expansion. In particular, if probation is to be a part of the solution, policymakers must have a better understanding of how probation operates and how it is tied to imprisonment. Ignoring our past could mean repeating the same mistakes—perhaps generating an even larger prison population in the future (Gottschalk 2011; Weisberg & Petersilia 2010).

Plan of the Dissertation: Toward a New Understanding of Probation Supervision

At the broadest level, this dissertation argues that probation is an important and unique aspect of the expansion of the carceral state and that studying probation can help scholars to refine their understandings of the punitive turn. Probation is potentially destructive for individuals' life chances, critical for public policy, and central to our theorizing about punishment. In different ways, the three empirical chapters all highlight the versatility of probation, documenting how probation serves different purposes—both in rhetoric and practice—across both place and time. Thus, our understanding of the role of probation must be contextualized. The three empirical chapters are each summarized below.

Chapter 2 reconsiders the debates around probation as a net-widener in the era of mass incarceration, providing the first comprehensive evaluation of the role of probation during the carceral build-up. Analyzing probation and incarceration rates at the state level between 1980 and 2010, the results suggest that probation was not the primary driver of mass incarceration in most states, nor is it likely to be a simple panacea to mass incarceration. Rather, probation serves both capacities, acting as an alternative and as a net-widener, to varying degrees across time and place. Moving beyond the question of diversion versus net-widening, this chapter presents a new theoretical model of the probation-prison link that examines the mechanisms underlying this relationship between probation and prison. Using regression models and case studies, I analyze how states can modify the relationship between probation and imprisonment by changing sentencing outcomes and the practices of probation supervision. When combined with other key efforts, smart reforms to probation can be part of the movement to reverse mass incarceration.

Chapter 3 formally defines the term "mass probation" and describes its importance for understanding state variation in the scale of punishment. The analysis starts with the finding that

states vary tremendously in terms of how much probation and imprisonment rates expanded since the 1970s. States that most rapidly expanded probation supervision rates were not overwhelmingly more likely to have much larger (or smaller) imprisonment rates. Thus, if we want to understand the "scale of punishment," or how much states surveil, punish, and manage their residents, scholars need to consider both imprisonment and probation rates. To make sense of this variation, I propose and define the term "mass probation" to describe the rapid build-up (and racial disproportionality) of probation supervision rates. I then provide a typology of regimes of control, taking into account both probation and prison populations. The results suggest a surprising reconfiguration of states' scale of punishment. For example, states such as Minnesota and Rhode Island, which are often held out in the literature as examples of states that resisted the punitive turn, show overall supervision rates that are among the highest in the nation. Thus, including probation rates in our understanding of the carceral state changes both the relative rankings of states and highlights variability in the strategies states choose, with some investing more heavily in probation, others in imprisonment, and still others in neither or both. Using state-level regression models, I also document how some of these choices are tied to fiscal conditions, with states choosing probation more often as a policy solution when budgets are limited.

Chapter 4 revisits the importance of probation for theorizing the punitive turn, using a historical case study to analyze the persistence of probation throughout the prison boom. Using a case study approach, I investigate both the practices and logic of probation since the 1970s. The central question is how probation survived, and indeed flourished, during this period of changing penal discourses. Because of probation's liminal position between these two competing discourses, it is an ideal lens for viewing whether this shift from rehabilitation to risk

management did actually transform punishment—or whether, as many critics have argued, the rhetoric simply adapted. In summary, I find that probation survived the punitive turn because Michigan Department of Corrections officials continually presented probation as the solution to whatever public crises they faced, changing the rhetoric of probation to fit whatever ideology prevailed. Practices changed in more inconsistent ways, sometimes moving in parallel with changes in rhetoric and other times in contradictory ways. However, at no point in this history was there ever a moment characterized as a break from modern to post-modern punishment or rehabilitative to punitive practices. In fact, much of the risk-management narrative emerged in the 1970s, as a strategy to *prevent* mass incarceration, while rehabilitative practices in some ways increased throughout the 1990s. In the most recent years, reforms to probation have been on the vanguard of a new emergent corrections strategy that reinvents rehabilitation as a focus on "inmate success" and "promoting public safety." By studying punishment through the lens of probation, scholars can gain new perspective on the purported shift to risk management and the relationship between penal rhetoric and practices.

In the concluding chapter, I provide a brief summary of each chapter and a discussion of how future research might build on these findings.

Chapter 2

The Paradox of Probation: Community Supervision in the Age of Mass Incarceration[7]

After almost 40 years of steady growth, the U.S. prison system may finally be on the verge of a historic reversal. Between 2008 and 2009, the number of individuals incarcerated in state prisons in the U.S. decreased for the first time since 1972 (Pew Center on the States 2010). This decline continued into 2010, with 25 states reporting declines in prisoner populations between 2009 and 2010 (Guerino, Harrison, & Sabol 2011). While progress has been uneven across the country, in some states—including New York, New Jersey, Michigan, and Kansas—reform efforts have produced dramatic results (Greene & Mauer 2010). Propelled by state budget crises and a shift in the politics of punishment, these declines in incarceration are the result of a flurry of reform efforts, including revised criminal codes and sentencing guidelines, expanded prison alternative programs, and improved community supervision policies (Austin 2010; Bushway 2011; Jacobson 2005; Steen & Bandy 2007; Wool & Stemen 2004).

One of the most prominent themes in these reform efforts has been a push to divert prison-bound cases into non-custodial options, most commonly probation supervision (Austin 2010; King 2009a). Criminal justice reformers advocate that probation is a cheaper and more effective sanction than prison and should be used more often in order to bring down prison populations. Emblematic of these new reform efforts, a recent report by the Pew Center on the

[7] A modified version of this chapter was published (under the same title) in *Law & Policy* (Phelps 2013).

States argues: "By redirecting a portion of the dollars currently spent on imprisoning the lowest-risk inmates" toward community supervision, states can "significantly cut recidivism… at a fraction of the cost" (2009: 3).[8]

Despite the confident tone of this emerging policy consensus, the socio-legal literature on probation suggests that while probation is often framed or intended as a prison alternative, in practice probation expands the "net" of formal social control. This literature began in the late 1970s, as states and counties were beginning to expand probation as part of a larger effort to "decarcerate." Analyzing these early initiatives, researchers often found that expansions in probation *increased* overall punishment by drawing in more low-level cases (who might otherwise have been sentenced with community service hours, fines, or other more less invasive punishments) and making these individuals more likely to be incarcerated in the future due to increased restrictions and monitoring (Blomberg 1977; Blomberg, Bales, & Reed 1993; Blomberg & Lucken 1994; Chan & Ericson 1981; Hylton 1981; Miller 1980; Tonry & Lynch 1996).

As mass incarceration boomed, scholars largely lost interest in probation, citing the statistics on the expansion of probation occasionally, but rarely engaging with it seriously as an important institution. Thus, we have little understanding of whether the expansion of probation was one of the leading drivers of mass incarceration—or a counterbalancing trend that actually

[8] For other examples, see recent policy statements on prison downsizing from the Pew Center on the States ["One in 100: Behind Bars in America 2008" (2008) and "One in 31: The Long Reach of American Corrections" (2009)], Sentencing Project ["Downscaling Prisons: Lessons from Four States" (2010)], American Civil Liberties Union ["Smart Reform Is Possible: States Reducing Incarceration Rates and Costs While Protecting Communities" (2011)], and National Conference of State Legislators ["Principles of Effective State Sentencing and Corrections Policy" (2011)].

tempered the increases in imprisonment (though see Caplow & Simon 1999). This chapter provides the first comprehensive examination of the relationship between probation and incarceration in the era of mass incarceration. The results suggest that probation was not the primary driver of mass incarceration in most states and neither is it likely to be a simple solution to mass incarceration. Rather, probation can serve both roles, acting as both an alternative and as a net-widener, to varying degrees across time and place.

Moving beyond the question of alternative versus net-widener, this chapter presents a new theoretical model of the probation-prison link that examines the mechanisms shaping this relationship between probation and prison populations. The paradox of probation model argues that there are two central outcomes that determine the probation-prison link: the extent to which probation diverts individuals away from prisons or draws cases under greater supervision and how much probation serves as an opportunity for rehabilitation that reduces future incarceration or as a pathway to prison that pushes individuals deeper into the criminal justice continuum. These two outcomes are shaped by three central institutional practices: the sentencing process, the effectiveness and quality of probation supervision and services, and the policies and procedures around probation violations and revocations. These core institutional mediators are in turn shaped by state-level context, including sentencing laws, election rules concerning justice officials, and the financial and bureaucratic arrangement of probation.

To investigate this model, this chapter provides the first comprehensive evaluation of the relationship between probation and incarceration in the contemporary era. First, to establish basic patterns during the era of mass incarceration, I examine national and state-level trends in the build-up of probation and prison populations and the recent slowing down of correctional growth. Next, I present a series of regression models that estimate the relationship between

annual changes in states' probation and incarceration rates. The models estimate the average effect as well as variation in the probation-prison link over time and across place. The final analyses use case studies of recent reform efforts across several states to further explicate the mechanisms undergirding the probation-prison link. Together, the results suggest that on average, expanding probation rates leads to slightly greater incarceration rates. However, by manipulating the mechanisms that shape sentencing and revocations, states can negate and even reverse this association.

Given the current interest around criminal justice reform, understanding the historical and contemporary role of probation in the criminal justice system is crucial. Without understanding the probation paradox, policy reformers intending to downsize prisons may instead promote strategies that increase the incarceration rate. Through understanding these mechanisms, policymakers can craft reform efforts that have the potential to reverse the course of mass incarceration.

Explaining the Rise (and Reversal?) of Mass Incarceration

The expansion of mass incarceration has spurred an entire line of research in sociology, with scholars striving to explain the causes (and consequences) of this tremendous social policy shift. These works range from macro-level explanations and cross-national comparisons (e.g. Garland 2001b; Savelsberg 1994) to historical accounts of national-level racial and political conditions (Beckett 1977; Miller 2008; Simon 2007; Tonry 2011, Wacquant 2009) and state-level accounts of the specific levers influencing this shift (Barker 2009; Campbell 2011; Lynch 2009, 2011; Page 2011a; Schoenfeld 2010). This work has highlighted a number of conditions that facilitated mass incarceration, including cultural shifts, the federalist system of government,

the legacies of slavery, and special interest groups' political maneuvering. In addition, quantitative work on the correlates of mass incarceration has suggested that state-level variation in the scale of imprisonment is tied to differences in crime rates and drug arrest rates; demographic characteristics of state populations, especially the percent of the population identified as black; state revenues and spending patterns; the partisanship of the legislature and governor; and economic trends, including poverty and unemployment rates (Beckett & Western 2001; Greenberg & West 2001; Jacobs & Carmichael 2001; Spelman 2009; Western 2006).

Most relevant to this chapter, sociologists have also argued that part of the explanation for the mass imprisonment lies in the path dependencies created by the expansion of the criminal justice system itself. Caplow and Simon (1999) argue that the "increasing reflexivity" of the criminal justice system—i.e. increases in the rate of revoking probationers' (and parolees') community supervision and sending them to prison for violations of the terms of supervision—has been one of the drivers of the continued rise of mass incarceration. In other words, as the criminal justice system grew larger and policies for community supervision became tougher, probationer revocations became an increasing source of admissions. As evidence, Simon and Caplow (1999) point to the large increases in these populations alongside increases in imprisonment and document that the proportion of prisoners who were on probation at the time of arrest nearly doubled between 1974 and 1991, growing from 12 to 20 percent. This provides suggestive evidence of the role of probation in the build-up of incarceration, but this hypothesis has generally been neglected by socio-legal scholars whose emphasis has been on mass incarceration and, to a lesser extent, parole supervision.

In more recent years, the discussion has shifted to the slowing-down and reversal (in some states) of the growth in imprisonment. It is too soon for scholars to have explained this

reversal in full, but new works have increasingly noted this trend—tying these recent policy changes to states' fiscal crises and a new turn in the conversation around crime and punishment (Bushway 2011; Steen & Bandy 2007; Wool & Stemen 2004). However, researchers are also cautioning against being overly optimistic about a full turn-around in imprisonment trends. Recent work has warned of the strong pressures facing reformers from special interests groups that benefit from mass incarceration such as prison guard unions (Page 2011b) and of the potential pitfalls of basing reform simply on fiscal pressures (Clear 2011; Gottschalk 2011; Maruna 2011; Weisberg & Petersilia 2011; Wright & Rosky 2011).

This chapter contributes to this emergent literature by focusing on reforms to probation, a vital component in many states' visions of reform. In the next section, I outline the two perspectives on probation—one from reformer advocates and another from a line of critical criminology—and show how these versions of probation highlight the key outcomes that determine the probation-prison link: the degree to which individuals sentenced to probation are diverted from prison and how much probation supervision helps or hinders individuals' chances of avoiding future criminal justice contact.

Perspectives on Probation

As noted in the introduction, probation has been discussed in two very difference spheres—the policy arena and critical academic scholarship. Below, I explicate these two perspectives and show that both are undergirded by two primary claims about the population affected by expansions in probation and the effect of probation supervision on individuals (and by extension, the broader incarceration rate). In the next section, I build a theoretical model that frames these claims as the two key outcomes that determine the probation-prison link.

In each recent period of substantial criminal justice reform—including the progressive period, the "decarceration" movement in the 1970s, the push for "intermediate sanctions" in the 1990s, and the initial stirrings of reform in the contemporary period—advocates have promoted probation as a cheaper, more effective alternative to incarceration. Through expanding statutory eligibility, increasing spending on probation, and incentivizing judges to favor probation sentences, advocates have argued that states and counties can reduce the price of supervision by transferring cases from costly institutions to relatively inexpensive community supervision programs. In contemporary reform efforts, led by groups such as the Pew Center on the States, the American Civil Liberties Union, and the Council of State Governments, we again see the argument that many of the individuals locked up for low-level offenses (especially drug crimes) could instead be safely supervised in the community for a "fraction of the cost." For example, a report by the National Conference of State Legislatures argued that creating a continuum of correctional options was critical to reform efforts, noting that "Non-prison options for suitable offenders … helps states do more with their corrections money" (2011: 11). In many cases, these diversion reform suggestions include investments in special "intensive" probation programs or "intermediate sanctions," in order to handle more serious caseloads, while in others, the proposed changes involve only sentencing changes to expand eligibility for traditional probation (for more on intermediate sanctions, see Byrne et. al 1992; Cullen, Wright & Applegate 1996; Morris & Tonry 1990).

Reformers have also maintained that probation is a more rehabilitative option than imprisonment and that supervision can help to reduce future criminality and incarceration. In probation's current guise, community supervision is thought to promote rehabilitation by providing structure, incentives for compliance and punishments for violations, and referrals to

social services (Feeley & Simon 1992; McCorkle & Crank 1996). As rehabilitation increasingly re-enters the correctional lexicon, ideas about how to reform probation by making it more supportive have become increasingly common in the policy literature (Taxman 2008). Summarizing this new consensus, a recent Pew Center report argued that by redirecting lower-level cases toward community supervision and reinvesting prison savings in community corrections, states can "significantly cut recidivism—both for offenders coming out of prison and those diverted from prison in the first place—and do it at a fraction of the cost of a prison bed." (2009: 3). Lastly, as scholars grow more cognizant of the "collateral consequences" of incarceration, reformers have promoted probation as a better form of supervision because it does not require individuals to leave their families, quit their jobs, and cycle back and forth into and out of their communities. Although the empirical evidence is mixed, there is some support for the argument that felons placed on probation are less likely to recidivate than individuals sentenced to prison (Spohn & Holleran 2002; though see Green & Winik 2010).

In contrast, the critical scholarly literature on probation, which initially emerged in response to the push for probation in the 1970s, argues that while probation might be intended as a more rehabilitative diversion from prison, in practice it often has the opposite effects. Rather than shifting borderline cases *down* from incarceration to probation, sociologists argued that expanding "alternative" sanctions like probation induced court actors to shift cases on the margin between sanctions with no supervisory component (e.g. community service, fines, or a warning) *up* to probation supervision—thus "widening the net" of carceral control. These studies found that diversion programs were used in those cases where prosecutors were unwilling or unable to secure a conviction for imprisonment and that incarceration rates increased when community

corrections programs expanded (Blomberg 1977; Blomberg, Bales, & Reed 1993; Blomberg & Lucken 1994; Chan & Ericson 1981; Harcourt 2001; Hylton 1981; Miller 1980).[9]

Rather than driving down the average severity of punishments, these scholars found expansions in "alternatives" often increased punishment (Lucken 1997). For example, the "Intensive Supervision Programs" that gained popularity in the 1990s were touted as a way to reduce incarceration by diverting prison-bound cases to intensive probation programs. In practice, these intermediate sanction programs intensified the supervision of otherwise probation-bound cases and the special funding that was intended to improve both monitoring and treatment services was instead exclusively used to enhance surveillance capacities (Cullen, Wright & Applegate 1996; Petersilia & Turner 1999; Petersilia 1999).

This tradition goes on to argue that rather than being rehabilitative, the experience of probation can actually increase the probability of future incarceration—a phenomenon labeled "back-end net-widening" (Tonry & Lynch 1996). Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers' everyday lives.[10] In addition, the enhanced monitoring by probation officers (and in some cases,

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[9] It is important to note that these studies have faced critique. Matthews (1987), for instance, argues that the net-widening argument is too "paranoid" and suffers from over-generalizations (for instance, in using local case studies of particular institutions to draw conclusions for similar institutions in other contexts). McMahon (1990, 1992) echoes these concerns and criticizes a number of empirical limitations and errors in the leading studies. This literature is also limited in that it is focused heavily on programs for juveniles (which likely work differently than those for adults) and often conflates diversion and decarceration programs, leading to conflicting definitions and evaluations (Klein 1979).

[10] These daily hassles of probation mean that some felons perceive community supervision as more severe punishment than incarceration (Petersilia 2002). In the most recent national survey of probationers, conducted in 1995, 99 percent of probationers had special conditions imposed as

law enforcement as well) makes the detection of minor violations and offenses more likely. Research has consistently documented that when the restrictions and monitoring associated with probation are increased, probation violations and revocations to prison grow (Blomberg 2003; Blomberg & Lucken 1994; Lerman 1975; Lucken 1997; Petersilia 2002; Petersilia & Turner 1999; Petersilia 1999; Stemen & Rengifo 2009).

When these two perspectives are broken down in this way, it is clear that two key outcomes are central to understanding the probation-prison link: the population affected by expansions in probation and the effect of probation on supervisees (and by extension, the broader incarceration rate). In the next section, I build a theoretical model of the paradox of probation, arguing that these two outcomes are shaped by variation in states' institutional structures and bureaucratic practices.

The Paradox of Probation Institutional Model

The paradox of probation model posits that probation simultaneously serves as both an alternative to prison and as a net-widener that expands carceral control. Which of these two effects predominates depends on the two key outcomes identified from the literature above: the degree to which probation diverts prison-bound cases or expands control and whether probation supervision increases or decreases future prison admissions. In the model, summarized in Table 2.1, these two key outcomes are driven by three central institutional practices, which are in turn

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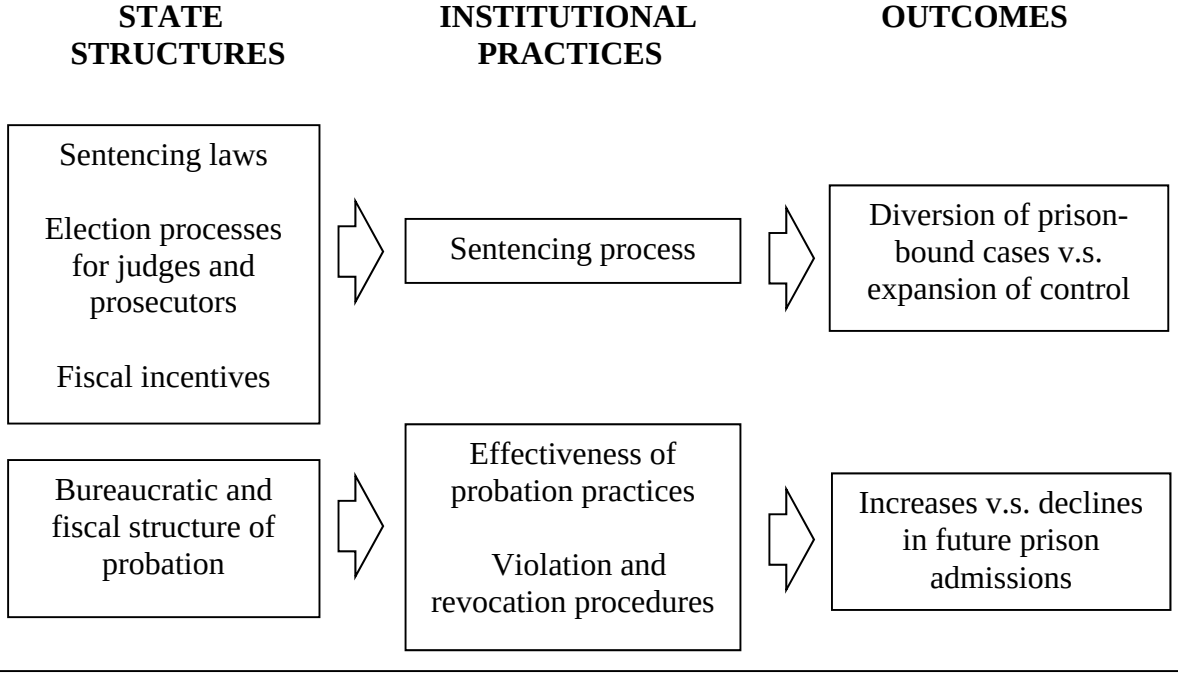
part of their supervision: 84 percent were required to pay fines or fees, 33 percent to submit to special drug testing, 41 percent to complete drug or alcohol treatment, and 26 percent to complete community service hours. In addition, the majority of probationers (72 percent) had contact with their probation officer in the past 30 days, with 59 percent reporting that contact had been in the probation office and 12 percent reporting home visits (Bonczar 1997).

shaped by larger state structures. Below, I discuss the proximal and distal drivers of both outcomes.

Table 2.1: The Paradox of Probation Model



Starting with the first key outcome, diversion versus expansion, I argue that broad state characteristics structure the sentencing process, which in turn determines who is sentenced to probation and prison. Table 2.1 highlights three of the most salient (but not exclusive) state structural characteristics that might matter for probation sentencing. First, states vary in terms of their sentencing laws (Shane-Dubow 2002). Across states, judges work under very different guidelines about which offenses are presumptively expected to receive probation supervision and which are ineligible. In addition, judges in different states have varying degrees of authority and independence from sentencing guidelines. Second, across states the selection, election, and reappointment procedures for judges (and to a lesser extent prosecutors) also varies. This variation then shapes the sentencing process—for example, scholars have found evidence that

electing court actors through popular vote incentivizes more punitive sanctions (Gordon & Huber 2002, 2007; Pozen 2008). Third, states may incentivize judges to sanction individuals with probation (or other community-based forms of supervision) by providing fiscal benefits to counties that divert individuals away from state prisons, often through Community Corrections Acts (Shilton 1992). These reforms address what Zimring and Hawkins (1991) dub "the correctional free lunch" problem, which is that in many states counties pay for local supervision (jail and probation), while the state funds prisons. Together, these structures shape the courtroom interactions among prosecutors, defense attorneys, and judges that determine the sentencing process and ultimately influence whether probation is more often meted out as an alternative to more serious forms of punishment for prison-bound cases or as an expansion of punishment for lower-level cases.

The second key outcome, probation's effect on supervisees and the broader incarceration rate, is likewise structured by broader state characteristics that filter through institutional practices. Across states, probation is organized bureaucratically and fiscally in very different ways. In some states, probation supervision is administered entirely through local counties, while in other states it is partially or entirely state-directed. Further, probation can be under the administrative authority of either the department of corrections (in the executive branch of government) or the judicial branch (as part of the state and/or local court systems). According to the most recent survey of probation departments conducted in the late 1990s, 29 states organized probation through the state department of corrections, 8 through the state judiciary, 7 through local corrections or judicial offices, and the rest involved a mix of both state and local administration (Petersilia 2002). Similarly, the relative mix of state and local funding for probation is complex and widely varies across states, with some states providing the entirety of

probation funding and others burdening local counties with the costs of probation services (Krauth & Linke 1999). Thus, probation departments have tremendous variability in terms of the level of funding available and their autonomy in decision-making, both of which may have a strong influence on the kinds of policies pursued by probation departments.

The first institutional practice that mediates the relationship between these broader structural characteristics and probation's effect on future prison admissions is the quality and effectiveness of probation supervision. In other words, whether or not supervision makes probationers more or less likely to have further criminal justice involvement depends (in part) on how much benefit or harm the monitoring and services associated with probation provide. These characteristics of probation practices include the type and frequency of monitoring, the services available through probation and affiliated social service institutions, and the overall tenor of interactions between probationers and probation officer. Specific policy choices can also shape probation supervision. For example, policies about how individuals are assigned to levels of monitoring and services and how and when probationers exit supervision can affect the quality of supervision, the amount of time probation officers' spend with their clients, and how long probationers are "at risk" of revocations.[11] If the practices of supervision are focused primarily on punitive monitoring or require such onerous commitments that they hamper probationers' ability to lead law-abiding lives, probation is more likely to contribute to back-end net-widening. Conversely, to the extent that the monitoring and services of probation are supportive and/or rehabilitative (or simply non-invasive), probation may be able to function more successfully as a prison diversion.

[11] In 2010, the mean length of supervision for probationers was 22 months (Glaze & Bonczar 2011).

In addition to the contours of monitoring and support services involved in probation supervision, the protocols and practices around probation violations and revocations are crucial. Probation departments vary on who makes these decisions (e.g. a probation officer, probation supervisor, or judge) and how much the decisions are structured by department guidelines. In addition, departments vary in terms of what sanctions other than imprisonment are at their disposal. When all minor probation violations lead automatically to prison revocations, probation supervision is much more likely to produce increases in the prison population. In contrast, departments that have alternative methods of responding to probation violations (such as graduated sanctions) will be more able to limit back-end net-widening.

Contemporary reform advocates appear to be growing more implicitly cognizant of the mechanisms undergirding the probation-prison link, with reform proposals increasingly arguing that supervision should be made "smarter" (Austin 2010). Organizations like the Pew Center on the States, the Vera Institute of Justice, and the National Conference of State Legislatures advocate not only for expanding the use of non-custodial options, but also for improving community supervision policies by adopting "evidence-based" practices, such as risk-needs assessment tools and graduated sanctions for violations. In addition, there is a growing awareness that high revocation rates signal problems with probation policies (rather than with probationers themselves). In particular, policy advisers seem increasingly aware that focusing too many restrictions and monitoring on low-risk probationers can produce back-end net-widening (for example, see Fabelo, Nagy, & Prins 2011).

Measuring Probation-Prison Link Outcomes

For each of the two primary outcomes, the analyses focus on a key proxy indicator. For the diversion versus expansion outcome, I use the percent of probationers convicted of a felony-level offenses. This is a proxy for the net-widening versus alternative role of probation because in most states, only felony-level offenses are eligible for prison time. Thus, the percent of probationers convicted of felony-level offenses is a rough measure of the proportion of probationers who might otherwise have been incarcerated. Nationally, 50 percent of probationers are convicted of felony-level offenses (Glaze & Bonzcar 2011).[12] However, this statistic varies tremendously across state lines, ranging from 21 to 100 percent. For measuring the effect of probation, the proxy is the revocation rate—or the percent of probationers who are sent to prison for violations of probation or new crimes. Like probationer composition, revocation rates also vary dramatically across place. However, extensive missing data prohibit reliable national analyses of state-specific revocation rates. Due to this, I rely on the state case study data to investigate the processes related to probation revocations.

[12] The methodology for calculating this statistic is as follows. First, I collected data on the number of probationers reported in a state, broken down by the offense category (felonies versus misdemeanors and other lesser crimes). Second, I calculated the rate of felon probationers (among probationers with a known offense category) and the number of probationers with no known offense category. If the missing data rate was higher than 10 percent, I discarded the most recent year's data and instead entered the previous year's data. For 40 states, acceptable data were gathered from the 2010 figures. For another 9 states, I used earlier data (going back as far as 1998). Preliminary analyses suggested this figure remained fairly stable within states across years. For one state (MA), data were unavailable for all years.

Data and Methodology

To evaluate and illustrate the paradox of probation model, I present multi-level analyses of the probation-prison link, starting with overall national trends in probation supervision and imprisonment, then narrowing down to state-level variation, and moving on to regression analyses that estimate the effect of year-to-year changes in probation rates on changes in incarceration rates. Lastly, I take a closer look at recent decarceration efforts, illustrating the mechanisms underlying the probation-prison link in more detail.

The primary data are counts of probation and prison populations between 1980 and 2010. The analyses begin with 1980 because this was the beginning of the build-up in imprisonment and the start of many of the relevant data series. These data were collected by the Bureau of Justice Statistics and reported in the "Prisoners," "Probation and Parole in the United States," and "Correctional Populations in the United States" series. The prison counts include all adults sentenced to serve one year or more under states' jurisdiction and include prisoners housed in local jails or outside prison systems due to overcrowding. Probation totals include all adults reported as under supervision by state or local probation departments.

Whenever possible I incorporate data on incarceration in local jails. When scholars use the term "mass incarceration," they are primarily referring to the 1.5 million prisoners in state and federal prisons. However, there are also roughly 0.7 million prisoners housed in local jail facilities. Some scholars have suggested that instead of affecting the prison population, changes to probation primarily affect jail populations (McMahon 1992; Shilton 1992). Certainly for the roughly 50 percent of probationers convicted of misdemeanor-level crimes, which in most states are ineligible for prison sentences, incarceration in local jails is the most likely alternative. This is not to say, however, that we should exclude misdemeanant probationers from the analysis of

the relationship between probation and imprisonment—such probationers comprise much of the potential net-widening effect of probation, and their propensity to later wind up incarcerated is an important component of the probation-prison link. However, this suggests that it is important to analyze jail populations alongside prison totals. Estimates of the national jail population are available for the entire period, but state-level totals of jail populations are only available in the years in which the Bureau of Justice Statistics conducted a jail census (1983, 1988, 1993, 1999, and 2006). Therefore, analyses of jail populations are limited, but I include this total whenever possible.

The analyses primarily focus on the relationship between states' probation and incarceration supervision rates. The state was chosen as the unit of analysis since most of the relevant sentencing policy is set at the state level. In addition, national data on the total number of prisoners and probationers are available only at the state level. Thus, to get a picture of variation across the U.S., it is necessary to aggregate to the state level. Supervision rates are calculated as the number of individuals currently under each form of supervision per 100,000 individuals in the resident population. I focus on rates of supervision (rather than the total number under supervision) because this measure controls for differences in population sizes across states and years. Finally, the focus is on overall population rates, rather than admission rates. This is necessary since probation is hypothesized to affect probation both through immediate impacts (through diversion) and longer-term influences (through revocations) on prison populations. Because the primary independent variable is a "stock" measure of probation population rates, the appropriate dependent variable should be the prison population rate (McMahon 1990, 1992). However, when the models are replicated using prison admission rates as the dependent variable, consistent results emerge.

After presenting descriptive trends on probation and incarceration rates, I use a fixed-effects log-log model to estimate the association between annual increases in the probation rate and increases in incarceration rates in the subsequent year. The dependent variable (incarceration rates) and primary independent variable (probation rates) are both logged to approximate a normal distribution. This also eases interpretation of the results since the coefficients in a log-log model can be translated as the percentage change in the dependent variable, given a 1 percent increase in the independent variable. To control for time-invariant characteristics that differ across states, I include state fixed effects. Time trends are incorporated using a linear and quadratic term for time (which produces similar results as including fixed effects for year). Probation rates in this model are lagged by 1 year to better account for casual ordering. Sensitivity analyses with slightly longer lag times produced substantively similar results.

To control for the time-variant state characteristics that influence probation rates, the models include a host of control variables. Most important is the control for the index crime rate—a measure of some of the most common property (burglary, larceny, and motor vehicle theft) and violent (rape, robbery, and assault, and murder) crimes reported to the police. This measure has the advantage of being reported consistently at the state level across time. I also include a control for drug arrest rates, the closest proxy available for state-level trends in drug usage and enforcement of drug laws. Data on index crime rates and arrest rates for drug offenses are culled from the Federal Bureau of Investigation's Uniform Crime Reports.[13] Together, the index crime measure and the drug arrests index serve as a proxy for the number of serious cases entering the courts in a given state-year.

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[13] Due to the high degree of missing data in smaller jurisdictions, states' drug arrest rates are estimated using only data from jurisdictions with populations over 50,000.

In addition, I include other covariates that have been documented as associated with variation in incarceration rates within and across states. These include state demographic characteristics (percent of the population aged 15 to 24 years, percent black, percent Hispanic, percent foreign, percent urban, and state population), political indicators (percent of state legislators identified as Republican, Republican governor, and percent of state spending devoted to police services), prison overcrowding, and economic measures (total state expenditures per capita, Gini index, unemployment rates, and poverty rates). State characteristics were drawn from the U.S. Census, American Community Survey, Bureau of Labor Statistics, the Census of Government Finances, and the State Partisan Balance Dataset (Klarner 2003). Information on prison overcrowding was calculated from the Bureau of Justice Statistics' "Census of State and Federal Correctional Facilities" series. Missing data for the control variables were estimated using multiple imputations through the Amelia II program (Honaker, King, & Blackwell 2011).[14] This algorithm is well suited for time-series cross-sectional data because it allows users to interact time trends with cross-sectional units, producing more accurate imputed values (Honaker & King 2010). For summary statistics and a full description of data sources, see Appendices A and B.

[14] The most commonly missing values are for variables collected through periodic censuses, including percent urban and percent foreign. The prison overcrowding variable is only available for the years in which the Bureau of Justice Statistics fielded a correctional facility census. There is also a substantial amount of missing data for the drug arrest rate. Lastly, the political partisanship of legislators variable is missing for Nebraska in all years.

Untangling Probation and Incarceration Trends

National Analyses

The first piece of evidence for understanding the probation-prison link is the trajectory of both forms of supervision nationally. If probation were being used as an alternative to imprisonment, we would expect a negative correlation—i.e., increases in probation should track declines (or smaller increases) in imprisonment. Conversely, if probation is a net-widener that increased overall levels of control, we would expect a positive correlation, with increases in probation matched with even larger increases in incarceration.

At first glance, the national data suggest a positive relationship between probation and incarceration rates through the period of 1980 to 2010. During this window, both populations expanded tremendously: the number of persons subject to probation supervision increased by 3 million persons, ballooning from 1.1 million to 4.1 million, while the number in state and federal prisons grew from 0.3 million to 1.5 million.[15] By 2010, 1 in every 58 adults in the U.S. was under probation supervision and 1 in every 104 adults was in the custody of state or federal prisons (Glaze 2011).

But how do these trends look when measured against changes in crime? As Michalowski and Pearson (1987) argue, if crime rates are increasing, then a shift toward non-custodial

[15] It is possible that some of this increase could have been a reporting issue if the Bureau of Justice Statistics expanded the number of local probation agencies providing data during this period. However, by 1980, surveys to probation agencies had been piloted in three previous years (1977-1979) and the Bureau of Justice Statistics makes no note about increasing coverage during this period. In contrast, the increase in probationers in 1998 and 1999 does seem to be due to reporting changes; the Bureau of Justice Statistics reports expanding the number of probation agencies included in its annual probation survey during these years (Glaze & Bonczar 2011). However, trends in these years are consistent with the growth in probation before and after the data expansion, suggesting that this change does not substantially bias results.

sanctions would appear as a large increase in community supervision alongside slower increases in imprisonment. Although there is no perfect measure of overall crime levels, we can get a fairly reliable estimate of trends in some of the most common crimes by looking at the number of reported index crimes, which include both property crimes (burglary, larceny, and motor vehicle theft) and violent crimes (rape, robbery, and assault, and murder).[16]

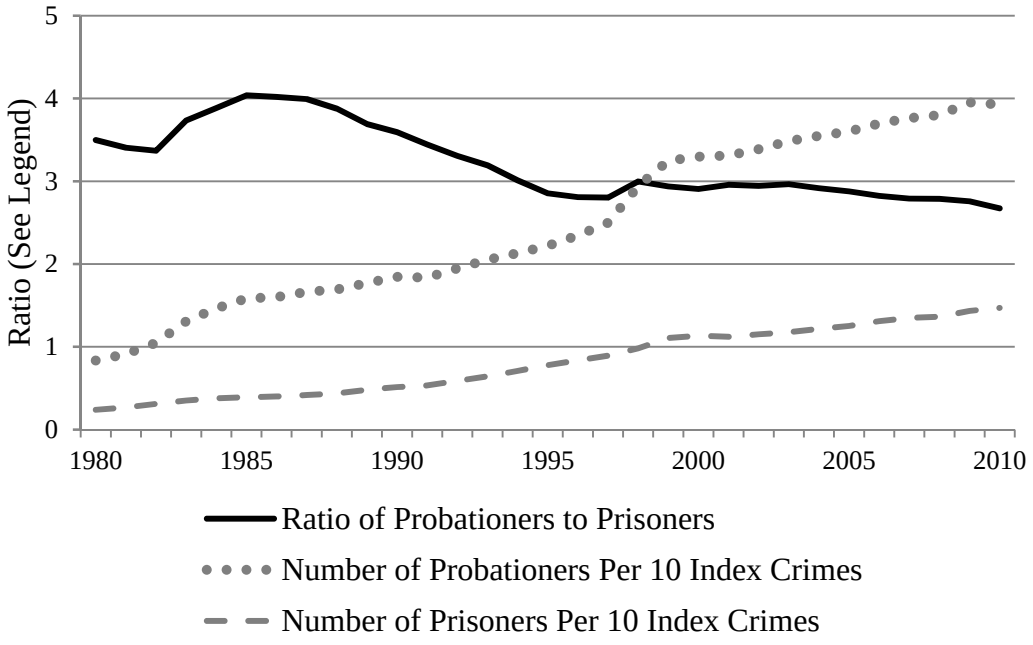
A simple way to evaluate changes in supervision rates relative to index crimes is to create a ratio of the numbers of supervisees relative to the number of index crimes. Although this measure is not an exact indicator of the number of individuals under supervision for a given number of crimes in a specific year (because many crimes are not included as index crimes and many supervisees in a given year are serving time for a crime committed in a previous year), it does provide a useful indicator of the overall current level of punishment relative to the current level of crime.

Figure 2.1 traces the expansion of probation supervision and prison populations, controlling for changes in the number of index crimes between 1980 and 2010. What is clear from the figure is that for most of these years, both populations have expanded, regardless of trends in crime. These increases were mildest in the early 1980s, when the trends are nearly flat, then ramped up in the 1990s, and began to slow down again in the late 2000s. By the most recent years (as crime continued to decline), the build-up finally leveled off. While prison populations expanded at a faster *rate* than probation totals, the *absolute* gains were greatest for probation:

[16] This crime data are reported by local and federal law enforcement agencies, although the trends are broadly consistent with statistics compiled from national victimization surveys (Lynch & Addington 2007).

between 1980 and 2010, the number of probationers under supervision per 10 index crimes increased from 0.8 to 3.9, while the ratio of prisoners to index crimes increased from 0.2 to 1.5.

Figure 2.1: Probation and Incarceration Supervision Totals Relative to Index Crimes, 1980-2010



We might also ask if the relative influence of probation or prison as a sanction increased, for example, if the ratio of probationers to prisoners changed over this period. If at any point probation was being used more frequently as an alternative to imprisonment, we would expect the ratio of probationers to prisoners to increase, regardless of overall trends in the number of supervisees. Figure 2.1 also plots this trend, documenting that there was indeed one period where this happened—during the early 1980s—when the probation to prisoner ratio climbed from 3.5 to 4.0. The ratio then declined, first quickly and then more gradually, ending at 2.7 in 2010. The ratio of overall incarceration—prisoners in jails and prisons—to all individuals on community supervision—probation and parole—follows a parallel trajectory, rising in the early 1980s and declining thereafter.

Together, the national evidence suggests that in only one period (in the early 1980s) was there any evidence of probation being used as an alternative to prison. In contrast, the pattern after the mid-1980s is consistent with the idea of probation as a net-widener that played a role in the build-up of mass incarceration, with both populations expanding throughout the build-up and slowing down in the most recent years. This pattern continued into the most recent years as some states have begun to scale back their prison populations. Rather than showing any evidence of probation taking up the "slack," both populations have been declining in the most recent years. Between 2008 and 2010, the number of prisoners, probationers, and jail inmates all declined. In addition, the estimated number of probationers under supervision for felony-level offenses declined, as did the overall number of admissions to probation. Thus, there is little evidence that the national downturn in state prison populations has been accomplished by transferring cases to probation.

State-Level Analyses

Although the national trends present an intriguing pattern, such trends may obscure underlying differences across states. A stronger evaluation of the probation-prison link is to scale down to state-level changes, investigating whether states that had larger increases in probation populations show smaller or larger than average increases in imprisonment rates, controlling for changes in crime rates.

Figure 2.2 presents a visual investigation for this question, plotting whether there is a correlation across states in expansions in probation and imprisonment across time. The graphs presents box-plots that display variation in the increase in imprisonment rates across states, stratified by decade and the size of the state's increase in probation rates. The graph categorizes

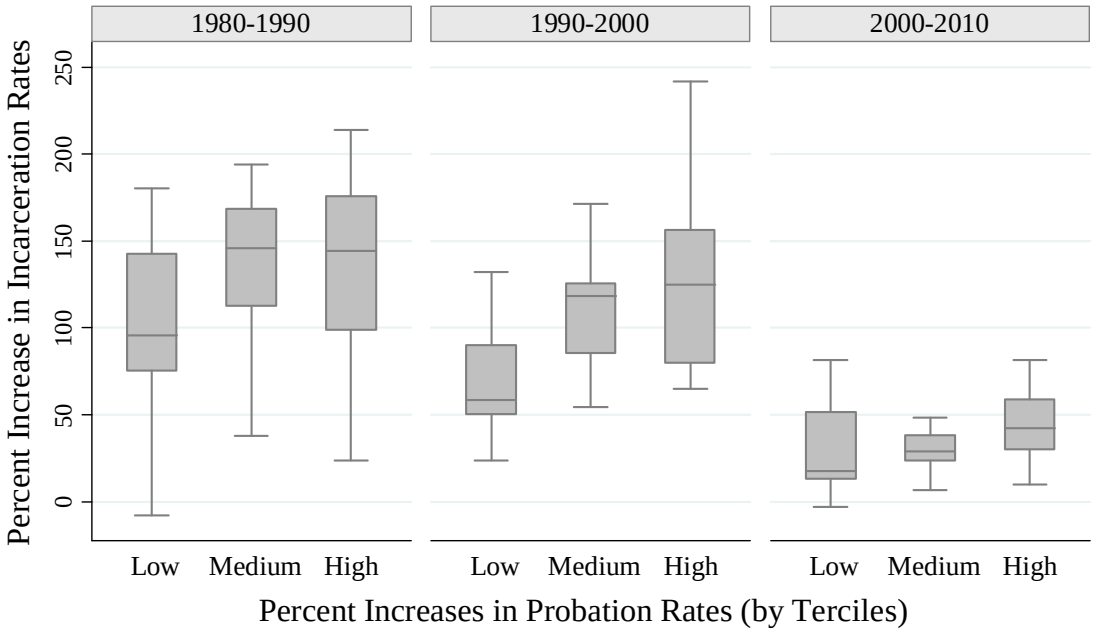
states into three terciles according to the percent increase in probation rates in the decade. Thus, the "Low" category represents the states with the smallest increases in probation rates, "Medium" represents states with average increases in probation rates, and "High" represents states with the greatest increases in probation rates. On the y-axis, the percent increase in incarceration rates is plotted. Thus, Figure 2.2 provides information on how much states' incarceration rates increased across a given decade, relative to how much probation rates also expanded during that period. The box-plots provide a quick visual summary of each distribution, with the median value corresponding to the line inside the boxes, the 25th and 75th percentiles corresponding to the lower and outer edges of the box, and the lower and upper adjacent values[17] corresponding to the bottom and top of the "whiskers." Both the increases in probation rates and the increases in incarceration rates control for state-level differences in changes in crime rates in each decade through the ratio method used in the national results.

The box plots document a small positive relationship between larger increases in probation rates and larger increases in incarceration rates across states. For the 1980s, states with the highest increases in probation had a median increase of 144 percent in incarceration rates over the decade, controlling for increases in crime rates, compared to a median increase of 95 percent among states in the lowest tercile. This difference is even larger for change across the 1990s, with a median increase of 125 percent in the highest tercile and 59 percent among states

[17] The lower and upper adjacent values are defined by Tukey (1977) and conceptually represent the lower and upper bounds of the majority of the distribution. For example, in the 2005 data, the lower adjacent value is roughly the 1st percentile and the upper adjacent value is roughly the 90th percentile. Mathematically, the lower adjacent value is defined as the smallest value greater or equal to the 25th percentile minus 1.5 times the difference between the 25th and 75th percentiles, while the upper adjacent value is the largest value equal to or less than the 75th percentile plus 1.5 times the difference between the 25th and 75th percentiles.

in the low tercile. Finally, for change across the 2000s, states with the largest growth in probation rates, net of crime rates, saw an increase of 42 percent in incarceration rates, compared to an increase of 17 percent for states with the smallest probation growth.

Figure 2.2: Box-Plots of State Variation in Incarceration Rate Growth By Growth in Probation Rate and Decade



NOTE: Percent increases in supervision rates control for increases in crime rates.

However, Figure 2.2 also documents the substantial state-level heterogeneity in these relationships. In all three decades, the 25th to 75th percentile for each tercile overlaps considerably (with the exception of the low versus high categories in the 1990s). For example, in the 2000s, the spans between the 25th and 75th percentiles for the low and high terciles share much of the same distribution, with increases in incarceration ranging from 12.7 to 51.7 percent in the lowest tercile and from 30.1 to 59.1 percent in the third highest tercile. Thus, the results suggest that there is a small, positive relationship between expansions in probation and imprisonment, but that this relationship varies by state. Some states with slow growth in

probation saw enormous increases in incarceration, while other states with large probation expansions witnessed relatively small gains in incarceration. The same results (of a small positive correlation, with substantial state heterogeneity) emerge if we instead look at state-level variation in the broader measure of imprisonment (incarceration in both jails and prisons).

Regression Models Results

Thus far, I have amassed descriptive evidence suggesting a small and positive relationship between probation and incarceration rates. The results have also documented substantial state variation, with the probation-prison link appearing quite different in varied state contexts. In this empirical section, I present a log-log regression model to estimate the relationship between annual changes in states' probation rates and changes in incarceration rates in the following year. The advantage of such a model is that it can pool information from different cases and incorporate a number of control variables to derive the best approximation of the potential causal effect of probation rates on incarceration rates. I first present a pooled model for all state-years and then show results for models stratified by decade to test for variation in the probation-prison link over time. I then show variation across states in this relationship. Finally, I document how the effect of probation on incarceration rates ties to one key mechanism of the probation-prison link: the percent of probationers supervised for a felony-level offense.

As summarized in Table 2.2, consistent with the descriptive evidence suggesting a small, but positive relationship between increases in probation and incarceration rates, the pooled model (for years 1980-2009) shows a small, but positive and significant coefficient for the effect of probation rates on states' incarceration rates. Moving from column 1 to column 3, the model grows increasingly complex. Models in column 1 include only state fixed effects and a linear and

Table 2.2: Log-Log Models Estimating Effect of Probation Rate Changes on Incarceration Rates, 1980-2009

(standard errors in parentheses)

	(1)	(2)	(3)
Pooled Models			
Probation Rate (Log)	0.094 ***	0.084 ***	0.060 ***
(N=1,500)	(0.015)	(0.015)	(0.015)
Stratified Models			
Stratified by Decade			
1980-1989			
Probation Rate (Log)	-0.038 *	-0.033	-0.014
(N=500)	(0.022)	(0.021)	(0.022)
1990-1999			
Probation Rate (Log)	0.097 ***	0.090 ***	0.057 *
(N=500)	(0.031)	(0.031)	(0.029)
2000-2009			
Probation Rate (Log)	0.079 ***	0.069 ***	0.053 ***
(N=500)	(0.019)	(0.019)	(0.020)
Stratified by Percent Felony Probationers			
States with Less than Average Percent Felony Probation			
Probation Rate (Log)	0.135 ***	0.134 ***	0.124 ***
(N=720)	(0.020)	(0.020)	(0.021)
States with Greater than Average Percent Felony Probation			
Probation Rate (Log)	0.078 ***	0.029	-0.009
(N=750)	(0.025)	(0.025)	(0.024)
Crime Rate Controls Included?	No	Yes	Yes
Other Controls Included?	No	No	Yes

Note: ***p < .01, **p < .05, *p<.10. All models include state fixed effects and linear and quadratic terms for year. Crime rate controls are index crime rate and drug arrest rate. Other controls include state demographic characteristics (percent Black, percent Hispanic, percent foreign, percent urban, and percent aged 15-24 years), wealth and spending measures (gini index, unemployment rate, poverty rate, logged total state expenditures per capita, and percent of state spending on police), political characteristics (percent of state Legislators identified as Republican and Republican governors), prison crowding rate, region (South), and resident population total.

quadratic term for time; models in column 2 add controls for the index crime rate and drug arrest rates; models in column 3 include the full range of demographic, social, economic, and political control variables. For the pooled model, all three versions of the model estimate that a 10 percent increase in a state's probation rate in a given year is associated with a 0.6 to 0.9 percent increase in the following year's incarceration rate, all else being equal.

Next, I stratify the model by decade, investigating whether the probation-prison link varies by time period. The results show a negative and significant relationship between probation and incarceration rates in the 1980s, although the coefficient loses significance once the crime rate controls are included. These models estimate that a 10 percent increase in the probation rate in the 1980s is associated with a 0.01to 0.04 percent *decline* in the incarceration rate (although these coefficients largely do not reach statistical significance). For the 1990s and 2000s, the models suggest a positive relationship between the two forms of supervision, estimating that a 10 percent increase in probation rates is associated with a 0.6 to 1.0 percent increase in incarceration rates in the 1990s and a 0.5 to 0.8 percent increase in the 2000s. Thus, the results do suggest a difference across decades, with probation rates showing little evidence of a relationship with incarceration rates in the 1980s and a positive relationship in the 1990s and 2000s. This is consistent with the national descriptive evidence, which suggested some role of probation as an alternative in the 1980s and more of a net-widening relationship in the 1990s and 2000s.

In order to investigate how the relationship between probation and incarceration rates varies across states, I estimate the full model from column three for each state independently. The resulting estimates show a dramatic range in this relationship, with states showing widely different coefficients for probation. Just under half of states (20) show a coefficient within the range of -0.1 to 0.1 (effects sizes that would translate into a decrease of 1 percent or increase of 1

percent in a state's incarceration rate given a 10 percent increase in probation rates), with an overall mean coefficient of 0.01, consistent with the pooled model results. However, in other states, the estimated coefficients are surprisingly extreme, ranging from a low of -0.58 (suggesting a decline of 5.8 percent in the incarceration rate given a 10 percent increase in the probation rate) to a high of 0.47 (suggesting an increase of 4.7 percent in the incarceration rate for a 10 percent increase in the probation rate). Thus, this evidence suggests that states vary dramatically in the relationship between probation and imprisonment rates. In some states, probation appears to have a strong net-widening effect, in others it has a strong alternative effect, and in still others the two forces seem to roughly balance out.

The paradox of probation model potentially provides a useful way to summarize this state-level variation. Focusing on the first outcome, diversion versus net-widening, we would expect that states that more often used probation as a form of supervision for prison-eligible cases would be less likely to show a positive (or net-widening) effect. To analyze this hypothesis, I stratified the model across two kinds of states: net-widening states where probation is used primarily to supervise misdemeanants and alternative states where probation is used primarily to supervise individuals convicted of felony-level offenses.[18]

Consistent with the model, the results suggest that net-widening states show a positive and significant correlation between probation and incarceration rates. For states where the probationer population is more heavily skewed toward misdemeanants, a 10 percent increase in probation rates is associated with a 1.2 to 1.4 percent increase in incarceration rates. While this coefficient is still fairly small, effects of this size could begin to be substantial when

[18] See footnote 12 for methodology for generating the percent felony variable. States were split into two equal-sized groups based on the median value, which was 60.4 percent.

compounded year after year. For states where the probation population is more heavily skewed toward felons, there is no evidence of a significant relationship between the two forms of supervision after the controls variables are introduced into the model.

In summary, the results thus far suggest that probation and incarceration rates on average show a small, positive relationship—in other words, states that more rapidly expanded probation supervision were more likely to see greater than average increases in incarceration rates in the following year. This relationship is primarily propelled by dynamics in the 1990s and 2000s, with probation fulfilling more of a prison alternative role in the 1980s. However, states show widely variable relationships between probation and incarceration rates. In some states, there is a strong positive (or net-widening) relationship between probation and incarceration rates, while in others there is a strong negative (or alternative) relationship, and in still others, the two effects cancel one another out. Aggregating states according to the first outcome of the paradox of probation model reveals that the aggregate positive effect is driven by states in which probation is primarily used to supervise individuals convicted of misdemeanor-level offenses. In states where probation does provide an alternative form of supervision for felony-level offenses, this relationship is negated. These relationships are all replicated if I instead model the prison admission rate as the dependent variable (instead of the total prison population rate).[19]

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[19] Results for the prison admission rate models are generally larger, with the pooled model estimating that a 10 percent increase in a state's probation rate is associated with a 0.9 to 1.5 percent increase ($p<.01$) in the proceeding year's prison admission rate. The models stratified by decade for prison admissions also generate substantively similar results, again producing slightly larger coefficients for the 1990s and 2000s, and no evidence of a consistent relationship in the 1980s. Finally, the models stratified by percent of probationers convicted of felony-level offenses are also consistent: the full model estimates that in states with more misdemeanants on probation, a 10 percent increase in the probation rate is associated with a 1.6 percent increase ($p<.01$) in the following year's prison admission rate, compared to a 0.3 percent increase (p=NS) in states with more probationers convicted of felony-level offenses.

Unfortunately, data limitations prevent systematic national analysis of the second key outcome of the probation-prison link. However, the case studies that follow this analysis provide a small-N perspective on both outcomes and illustrate the importance of the mediating institutional practices.

The Paradox of Probation and Recent Downsizing

As noted above, in the most recent years, many states have begun experimenting with policy reforms to decrease incarceration rates. These reform efforts provide ideal case studies of the probation-prison link, exposing how broader state structures filter through institutional practices to shape the probation-prison link.

Focusing first on sentencing outcomes, the research suggests that policymakers in some states have been able to reconfigure the probation-prison link by changing the state structures that influence sentencing. Here, I discuss two recent examples of reform efforts, involving sentencing law reforms in Kansas and changes in the fiscal incentives shaping sentencing in Michigan.

In Kansas, the most notable sentencing change was Senate Bill 123, a law enacted in 2003 that allowed judges to divert low-level drug offenders into intensive probation programs that provided specialized substance abuse treatment. Initial reports from organizations such as the Sentencing Project (Greene & Mauer 2010) argued that these reforms had been a success, reporting that Kansas had experienced reductions in the number of individuals incarcerated for drug crimes and that this decline was a major component of prison population reductions. However, scholars who have looked more closely at the Kansas reforms recently came to the opposite conclusion. Analyzing sentencing records, Stemen and Rengifo (2009) find that rather

than diverting prison-bound cases, the shift instead increased the intensity and length of supervision for cases that otherwise would have been sentenced to low-level probation supervision. This increased surveillance and lengthened supervision period led to higher revocation rates than would have been expected with traditional probation (Rengifo & Stemen 2010a). The evidence suggests that these reforms failed as many diversionary programs have in the past: once the "intensive probation" was funded, judges primarily used it to enhance control over individuals who otherwise would have been sentenced to traditional probation and the intensive monitoring of the program increased revocation rates. Although the evidence suggests this was a failed reform effort, it nonetheless demonstrates how changes to legal rules reshaped the sentencing process, which in turn affected the net-widening potential of probation.

In other states, policymakers have successfully reformed both sentencing and supervision outcomes by redesigning fiscal incentives (Austin 2010; Clear 2011; Lynch 2011; though see concerns raised in Lucken 2011). One of the most successful examples of this strategy is from Michigan, where a fiscal incentive program to keep felons supervised at the county level has been in place since 1988. This reform effort centers around the Michigan Community Corrections Act, which provides grant money to counties that establish a Community Corrections Advisory Board, and develop a comprehensive plan for both decreasing the number of felons sent to prison and improving probation services. As state officials have worked with counties to develop these plans, the commitment rate to prison for new felony offenses has declined steadily, falling from 35 to 21 percent between 1989 and 2010 (Michigan Department of Corrections 2011: 3). This trend is all the more remarkable when viewed in light of the increases in commitments to prison for felony offenses nationally during this period. In the most recent years, the state has used the Community Corrections Act to revitalize efforts to downsize,

working with judges to reduce the percent of "straddle cell" cases (those that are on the boundaries between probation and prison sentences) sentenced to prison from 43 percent to 33 percent between 2001 and 2008 (Greene & Mauer 2010: 39).

The Michigan reform story also includes major efforts to reconfigure the probation-prison link by addressing the other central outcome that determines the probation-prison link: probation revocations.[20] Again harnessing the fiscal power of the Community Corrections Act, the state Department of Corrections implemented a series of changes to probation supervision, improving probationer-probation officer interactions, developing graduated sanctions, and introducing new risk-assessment tools to guide supervision-level assignment. These reform efforts translated into a substantial decline in prison admissions: since 2000, the annual number of probation violators admitted to prison has fallen by 16 percent, contributing substantially to the overall declines in prison admissions over this period (Greene & Mauer 2010: 38). Together with reforms to parole, these efforts have made Michigan one of the most successful examples of the "Justice Reinvestment" model of decarceration in recent years (Clear 2011).

In other states, policymakers have also found success using fiscal incentives to reform probation supervision and violation practices. In 2007, Kansas legislators began the Community Correction Statewide Risk Reduction Initiative (later known as the Safe Communities Act of SB 1476), which appropriated $4 million to provide community development funds for local

[20] Nationally, it is hard to evaluate whether probation revocations are increasing or decreasing. The Bureau of Justice Statistics reports state-level data on the type of probation exit for probationers leaving probation each year (i.e. through incarceration, successful discharge, or other means). The report breaks exists down into 10 exist types. According to these data, the percent of probationers exiting probation through incarceration remained at 9 percent between 2007 and 2010 (Glaze & Bonczar 2011). However, for almost all states, one or more of the categories are denoted as "not known" and nearly half of states have used estimated data. This suggests that calculations based on these data may not be reliable.

jurisdictions that pledged to reduce probation and parole revocation rates by 20 percent (Greene & Mauer 2010; Pew Center on the States 2008; Rengifo et al. 2010). To accomplish this reduction, the state encouraged probation departments to adopt evidence-based supervision practices, developed intermediate sanctions, and implemented guidelines for determining appropriate reactions to probation violations. The results suggest that these changes have led to a dramatic shift in probation outcomes: between 2006 and 2008, the proportion of exiting probationers that successfully completed the requirements of supervision increased from 46 to 61 percent (Greene & Mauer 2010: 55). This change is particularly impressive given that probation revocations had been on an upward trajectory—between 2002 and 2006, probation revocations increased about 40 percent, driving much of the increases in growth in the prison population during this period (Pew Center on the States 2007: 5).

This improvement in probation outcomes has had a large impact on the probation-prison link, substantially reducing the number of prison admissions from probation—at the highest point in 2006, over 2,000 of the roughly 5,300 individuals sent to prison in Kansas were technical probation violators (Greene & Mauer 2010: 55) and one in five prison beds were filled by probation violators (Pew Center on the States 2007: 5). By 2009, prison admission for technical probation violators were down to 1,500 (Greene & Mauer 2010: 55). Thus, by changing probation practices (improving services and monitoring and revising revocation policies), Kansas has modified the probation-prison link and used probation reforms to help bring down the incarceration rate.

Similar results have been documented in Arizona, which introduced legislation in 2008 that allowed the state to pay counties for probationers who were kept in the community, rather than revoked to state prison following a probation violation (Pew Center on the States 2011).

Through a combination of changes to probation supervision—including earned-time credits that allowed probationers to exit supervision faster if they were compliant, giving probation officers more time to work with higher risk cases, and the adoption evidence-based practices, such as risk-needs assessments and targeted case supervision strategies—and the violation and revocation process, the state has substantially reduced the number of probation violators sent to prison. The Pew Center on the States reports that the number of revocations to prison is down 48 percent between 2008 and 2010 (2011: 3).

These case studies illustrate how by changing state structures, such as sentencing laws and fiscal incentives, policymakers can reshape the central institutional practices that determine the probation-prison link. Hidden behind these stories, however, is a broader conclusion about the complexities of criminal justice reform. Following the "Iron Law" of prison populations, true reform will only be possible if policymakers address both the number of individuals going into prison and the length of time prisoners spend incarcerated (Clear & Austin 2009). Changes to probation address only the first half of this equation. Because of this, in most (if not all) states, probation reforms comprise only one component of decarceration and must be implemented in sync with a variety of other reform efforts that also address sentence length (Austin 2011; Schoenfeld 2011). In many states, reforms to parole—the only form of correctional supervision that grew between 2009 and 2010—have been crucial for downsizing (Glaze 2011; Greene & Mauer 2010). These reforms often look similar to those for probation, in that the goal is to both increase the number of individuals on community supervision and to improve supervision and reduce the revocation rate (Greene & Mauer 2010).

Discussion

The goal of this chapter was to provide a fresh perspective on the role of probation in the criminal justice system, investigating whether probation was a driver of mass incarceration or a possible panacea. The results suggest that across place and time, probation paradoxically exerts both a prison alternative and net-widener effect, with the two forces often cancelling one another out. In addition, this chapter pushed beyond the current debate by providing a theoretical framework to explain *when* and *how* probation will lead to net-widening. Using regression analyses and case studies of recent reform efforts, I documented how states can reconfigure the central institutional practices mediating the relationship between probation and incarceration rates. These examples suggest that probation reforms—when combined with other efforts—can be critical for reversing the course of mass incarceration.

More broadly, this work suggests that scholars of punishment might think differently about the concept of "net-widening." Popularized before the boom in imprisonment, this term was often affixed to the concept of community corrections and the tendency of such "alternative" programs to expand the net of punishment. From today's vantage point, it is clear that both probation and incarceration rates continued the march of expansion throughout the 1980s, 1990s, and most of the 2000s, despite fluctuations and then declines in crime rates. In this sense, all forms of punishment have increasingly become net-wideners, pulling in a broader cast of individuals as supervision rates and crime rates became uncoupled. Only in the most recent years have supervision populations begun a tepid decrease, after two decades of consistent and steep crime declines. Thus, focusing concern about net-widening primarily on penal alternatives ignores the substantial role played by the expansion of imprisonment. The "problem" then isn't

the expansion of probation per se, but the expansion of all forms of criminal justice supervision over this period.

Second, this work suggests that scholars of punishment still have much to learn about probation and its role in the criminal justice system. Focusing on the paradox of probation model, research might examine in more detail the varied state structures that affect the central institutional practices. For example, scholars could further investigate how the sentencing process is affected by larger structural factors and how these state characteristics in turn influence what kinds of cases are sentenced to probation versus incarceration. Research could also further explore how the bureaucratic structure of probation shapes institutional decision-making around supervision practices and revocation policies. Scholars interested in the emergence of the discourse around "evidence-based practices" might examine how such practices are popularized in the context of probation supervision and when and why such practices are adopted by probation departments. Beyond the model, this work suggests that probation was and continues to be an important component of the criminal justice system, worthy of the same scholarly attention as has benefited mass incarceration. It also highlights a common theme in corrections work that policy reform implementation is often a complex and contested process (Subramanian & Tublitz 2012).

Finally, the paradox of probation model has important implications for policymakers and advocates interested in reducing the supervised population. For probation reforms to be successful, efforts must focus on increasing the diversion potential of probation while also limiting back-end net-widening. In addition, these reforms must be enacted within a broader framework of changes to sentence lengths and parole policies. As Austin and Krisberg (1981) presciently argued, for this to be possible "a new political consensus must emerge … in which

the values of punishment and public safety are rationally balanced with fiscal constraints and competing claims for public revenue" (374). As reforms have swept across the nation in recent years, it seems we are beginning to reach this new consensus (Jacobson 2005; Wool & Stemen 2005). To be sure, a real transformation away from mass incarceration will not be easy and is difficult even to imagine. Reforming the policies that led to mass incarceration will require battling entrenched interest groups, forming new coalitions, avoiding old mistakes, and re-writing the relationship between academics and policymakers (Gottschalk 2011; Lynch 2011; Page 2011b; Weisberg & Petersilia 2011). However, it is worth noting that when the shift toward mass incarceration began, criminologists had little warning and were developing a theory of the "stability of punishment" (Blumstein & Cohen 1973). As scholars continue to warn that recent trends toward reductions in mass incarceration are fragile and prone to reversal, it is possible that history may once again surprise us.

Chapter 3

Reconceptualizing the Scale of Punishment: State Variation in Mass Probation

In Chapter 1, I documented that the expansion of probation across the past four decades has been massive, comprising a hidden dimension of the expansion of penal control in the U.S. Chapter 2 took the first step forward in providing a contemporary sociological account of the relationship between probation and imprisonment rates, illustrating that states have implemented probation in quite different ways, producing divergent trends in supervision rates. Thus, states that most rapidly expanded probation supervision rates were not overwhelmingly more likely to have significantly larger (or smaller) imprisonment rates. As a result, as probation rates grew across states, they followed a unique trajectory independent of mass imprisonment.

This chapter provides a broader perspective on the consequences of reimaging punishment with probation rates in mind. I first name the phenomenon, drawing from the definition of mass imprisonment to conceptualize *mass probation*. As detailed in Chapter 1, today roughly 1 in every 60 adults in the U.S. is under probation supervision (Glaze & Parks 2012). In addition, as with mass imprisonment, mass probation is concentrated among disadvantaged minority groups; for black adults, the prevalence rate is 1 in every 23. For black men, 1 in every 14 are currently under probation supervision.[21] Thus, like mass imprisonment,

[21] Authors calculation based on the demographic composition of probationers (as reported by the Bureau of Justice Statistics) and the general public (as reported by the U.S. Census) for 2011. The calculations assume that the percent of black probationers identified as male is equivalent to the overall percent of probationers identified as male.

the experience of probation is increasingly common, concentrated among the most disadvantaged Americans, and potentially crucial for reproducing and exacerbating inequality. The neglected expansion of mass probation suggests that the build-up in penal control was much larger than is often appreciated—and that it included a qualitatively different form of control. In addition to warehousing whole swaths of the population behind bars, states have also been actively managing marginalized populations from within their communities.

Yet when scholars consider variation in what Zimring & Hawkins (1991) dub "the scale of imprisonment," or the tremendous range in states' adoption of the turn towards mass imprisonment, these millions of supervisees are not included. I argue that we must begin to think about state variation in the *scale of punishment*, with attention towards the multifaceted forms of punishment that exist today. Thus, in order to understand how much states have adopted the "culture of control" (Garland 2001b) or "governing through crime" strategy (Simon 2007)—and manage various social risks through isolating, monitoring, and punishing vast numbers of adults—we must understand variation in both imprisonment and probation rates.

To explore this variation theoretically, I build a stylized typology that clusters states according to both the probation and imprisonment rates. Modeled after Esping-Andersen's (1990) varieties of capitalism argument, this typology sorts states into regimes of control that describe both how much states punish their residents and how they enforce that control. The typology categorizes states into four loose control groups, depending on whether their probation and imprisonment rates are below or above average. The high-high group, indicative of states that have extremely high probation and imprisonment rates, are labeled the "Culture of Control" category, as these states most directly embody that logic as articulated by Garland (2001b). States in the low-low group are categorized as "Culture of Moderation" category, as they have

restrained both forms of supervision, with imprisonment rates that are more on-par with countries across Western Europe. On the off-diagonal are the "Probation as Alternative" states, which monitor large numbers of residents under probation yet keep imprisonment rates relatively restrained, and "Prison-Based Control" states which developed extraordinarily high imprisonment rates while maintaining low probation supervision rates. These categories complicate the linear narrative that states with more incarceration are more punitive, bringing into focus the multi-dimensionality of punishment.

In the empirical analyses, I document that this range of supervision regimes exists across states and begin to provide an explanation for this variation. The analysis starts by returning to the expansion of imprisonment and probation rates across states since the 1970s. The results suggest that as the carceral state expanded, states' probation and incarceration rates became decoupled from each other—and from broader trends in crime. As a result, by 2010, variation in the scale of punishment across U.S. states looks entirely different than the scale of imprisonment. For example, states such as Minnesota and Rhode Island, which are often held out in the literature as examples of states that resisted the punitive turn, show overall supervision rates that are among the highest in the nation. Furthermore, some states with extraordinarily high imprisonment rates, such as Mississippi and Oklahoma, actually have relatively low overall supervision rates. I end by evaluating why states sort into these different categories in the typology. The results suggest that states may have turned to probation when state finances were limited. However, the results also show that much more work is needed in understanding and explaining variation in rates of mass probation across states.

In summary, I argue that the scale of punishment cannot be summarized by variation in imprisonment alone. Instead, scholars need to highlight the diverse methods of control utilized

by states—and explore their unique determinants, implications for individuals and broader patterns of inequality, and import for theoretical explanations of variation in punishment.

The Missing Piece of the Punitive Turn

Variously titled the "new punitiveness" (Pratt et al. 2005), "culture of control" Garland 2001b), "new penology" (Feeley & Simon 1992), and "governing through crime" (Simon 2007), scholars concur that there has been a radical shift in the way that U.S. state governments surveil and punish their residents. In the majority of this literature, scholars present mass incarceration as "Exhibit A" in the argument that the U.S. has become increasingly punitive. Because of the uniqueness of the scale of imprisonment in the U.S., this single stylized fact often comes to the forefront of debates about whether the rest of the world is growing increasingly punitive as part of a neo-liberal or post-modern shift (e.g. Matthews 2005).

As a result, much of the discussion around the punitive turn hinges on the idea of the prison boom and the drive to isolate and contain "risky" individuals seen as "social refuse" (Feeley & Simon 1992). In addition, much of what we know about the history of this social shift and its variation across U.S. states is based on studies of incarceration trends. From this voluminous research literature, we have learned that punishment is heavily concentrated in Southern states and is lower in the Northeast and that part of this association is due to the fact that states with larger African-American communities (and histories of slavery) tend to have higher rates of punishment (Oshinsky 1996; Perkinson 2010; Schoenfeld 2009). Campbell and Schoenfeld (2013) argue that this distribution of the scale of imprisonment is also tied to states' early commitments to a penal-welfarist orientation, with states in the Northeast most deeply rooted to the Progressive Era reforms and states in the South least tied. They argue that this early

connection to progressive penal politics insulated these states from some of the most extreme versions of "high crime politics."

With all this attention on mass incarceration, it is easy to forget that imprisonment has never been the dominant form of criminal justice supervision. Throughout this period, probation has remained the most common form of supervision, despite its past as the "exemplary penal form" of the older penal-welfarist model of corrections (Garland 1985; Simon 2012). By 2010, it was still true that nearly 60 percent of the 7 million individuals under correctional supervision were on probation, with the total probationer population nearly three times as large as the prisoner population (Glaze 2011).

Thus, the carceral state is much larger than is often appreciated. But it also suggests that the qualitative nature of that control is different. In addition to warehousing whole swaths of the population behind bars, states have also been actively managing marginalized populations from within their home communities. While imprisonment rates are often taken as the primary indicator of the shift in the scale of punishment, they are in fact just one component of a larger social process. When we include probation in our theoretical understanding of the punitive turn, it suggests that this period was defined not just by a prison boom, but an expansion of all forms of penal control. In addition, the expansion of these forms varied tremendously across states, as documented below.

Thus, many of the states seen as having resisted "high crime politics" did in fact massively expand their carceral populations. Until scholars study the multiple dimensions of punishment, our understanding of the punitive turn will be limited and inaccurate. As McNeill (2013) argues with respect to the expansion of community sanctions in Europe (a phenomenon he similarly dubs "mass supervision"), this strong emphasis on mass imprisonment "skews

academic, political, professional and public representations and understandings of the penal field" (172). In the next two sections, I define the term "mass probation" and then outline a theoretical sketch of how to reconceptualize punishment as varying across multiple forms of state control.

Defining Mass Probation

Garland (2001a) presents the term "mass imprisonment" to describe the unique scale and racial disproportionality of incarceration in the U.S. Distinguishing mass imprisonment from the forms of imprisonment seen in the rest of the world, Garland (2001a) argues that this "pathological phenomenon" is defined by two characteristics:

> Mass imprisonment implies a rate of imprisonment and a size of prison population that is markedly above the historical and comparative norm for societies of this type… The other feature is the social concentration of imprisonment's effects. Imprisonment becomes *mass imprisonment* when it ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population. In the case of the USA, the group concerned is, of course, young black males in large urban centres. For these sections of the population, imprisonment has become normalized. It has come to be a regular, predictable experience, rather than a rare and infrequent event" (1-2).

If the level of incarceration has reached "mass" proportions, it is certainly the case that probation—with a population that is nearly three times as large as the number of prisoners—has also reached "mass" proportions. Furthermore, like imprisonment, probation is disproportionately felt in minority communities. In 2011, 31 percent of probationers were identified as black and 13 percent were identified as Hispanic or Latino (Glaze & Parks 2012). Thus, there were over 1.2 million black probationers under supervision in 2011, with 1 in every

23 black adults and 1 in 14 black men currently under probation supervision.[22] For many individuals, particularly those in disadvantaged urban neighborhoods, probation supervision has become a very commonplace part of everyday life.[23]

Thus, the expansion of the carceral state has implicated more individuals than is often appreciated. This also means that the effects of the expansion of the carceral state have been understated. Much as the experience of imprisonment can limit individuals' life chances, the imposition of a criminal conviction and probation supervision can "mark" probationers as well, affecting their ability to find work, access supportive housing and other assistance, and participate in political life (Manza & Uggen 2006; Pager 2007; Petersilia 2003; Travis 2005). In addition, the restrictions and monitoring imposed by probation, including drug and alcohol tests, mandatory reporting, and fines, can make it hard to avoid future incarceration. This suggests that much of what we have learned about the inequality-exacerbating effects of incarceration (Western 2006) is likely also true for probation. Some of the most methodologically sophisticated research on the effects of imprisonment (on outcomes such as employment and recidivism) finds that probationers fare as poorly as ex-prisoners, suggesting that it is the "mark" of a conviction (and other pre-existing risk factors) that matters for shaping individuals' life chances, rather than imprisonment alone (Bushway 2011; Loeffler 2013). In addition, instead of removing members of the community, thus perhaps weakening social control (Clear 2007; Lynch

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[22] Ibid.

[23] However, because of the large size of the probation population and because it is less racially disproportionate than imprisonment, mass probation has affected a larger and broader swath of Americans than mass incarceration. Today, for example, there are more non-Hispanic white adults on probation than there are prisoners of any race/ethnicity. This means that the punitive turn has affected both a larger population than we often acknowledge and a more broadly representative demographic.

& Sabol 2004), probation inserts the criminal justice system into the community (Cohen 1985), suggesting that mass probation likely has different (but potentially no less insidious) effects on neighborhood dynamics as well. In sum, we cannot understand the importance of the carceral state without also studying probation.

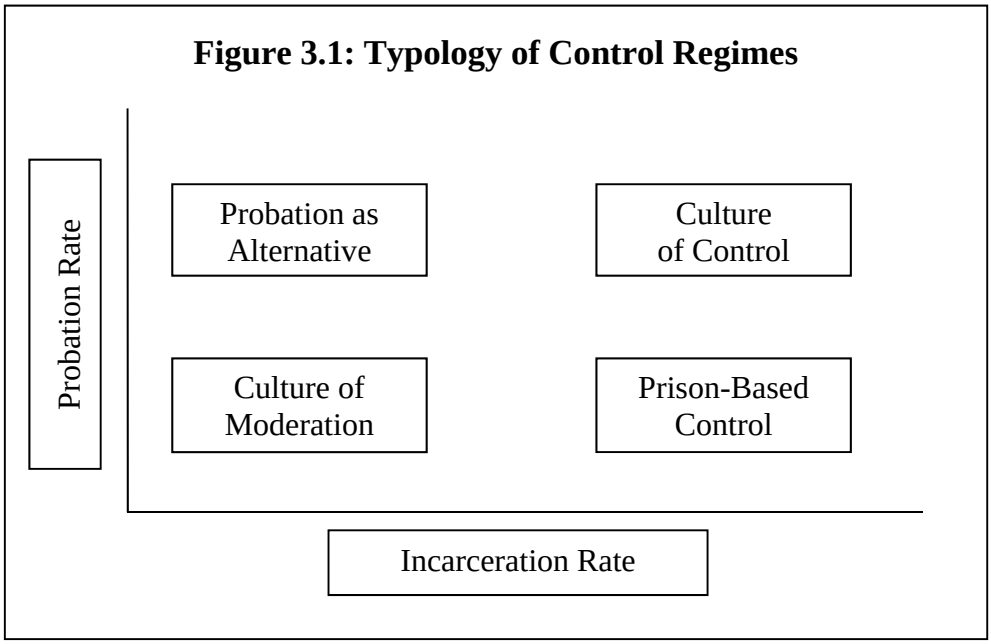
Reconceptualizing the Scale of Punishment

Esping-Andersen (1990) introduced the idea of "welfare state regimes," arguing that countries clustered into three broad categories organized by the political economy of welfare services. This model allowed scholars of welfare to understand the *relational* aspect of welfare services, illustrating that any specific feature of welfare spending had to be considered within the broader political context.

In a similar way, I develop the idea of "control regimes," clusters of states that have similar configurations of criminal justice supervision rates. This framing allows us to explore the multi-dimensionality of punishment and to highlight the relational nature of supervision rates. For example, the meaning behind high probation rates is different in states with high imprisonment rates as compared to states with low imprisonment rates. By examining both probation and imprisonment rates, it becomes clear that the scale of punishment depends both on how many individuals are surveilled, controlled, and managed through the criminal justice system and the institutional form of that control. Thus, states vary in terms of *how much* as well as *how* they punish. By thinking about the scale as distinct from the form of punishment, scholars can clarify—both empirically and theoretically—the nature of the punitive turn in the U.S.

Figure 3.1 presents a simple schematic of this two-dimensional probation-prison space.[24] Each quadrant in the two-by-two typology is a Mertonian "ideal type" of that particular regime of control. Rather than rigid empirical boundaries, these groupings instead represent extreme versions of each quadrant in the space. As documented later in the chapter, in practice, states fall fluidly across the entire two-by-two space with no clear clustering across categories. Although they do not represent clear-cut groupings, delimiting the categories helps us to theoretically explain the variation

Figure 3.1: Typology of Control Regimes



The two categories on the main diagonal represent the most extreme categories. In the upper right-hand corner of Figure 3 is the high-high group, indicative of states that have extremely high probation supervision and imprisonment rates. These states might be thought of as most firmly embodying the "Culture of Control" argument proposed by Garland (2001b). In

[24] For purposes of simplicity, this analysis focuses on the two dimensions of punishment central to this analysis: probation and imprisonment rates. A more inclusive typology would incorporate jail and parole populations as well as individuals on the criminal justice periphery, including those awaiting trial, on pre-trail release, and subject to other administrative restrictions.

these states, a very high percent of the population is under active supervision and much of that supervision is happening inside of prisons. Shifting across the diagonal to the low-low group are states in the "Culture of Moderation" category. These states have restrained supervision rates, with imprisonment rates that are more on-par with countries across Western Europe. In addition, these states have not supplemented penal restraint with more probation. Thus, these states formally punish and supervise a relatively low percent of their population and do so with both probation and imprisonment.

The two categories on the off-diagonal are more complex to explain. States in the "Probation as Alternative" category are those which have restrained incarceration rates, yet have very high probation rates. In these states, probation was perhaps promoted as a policy solution to rising anxiety around crime and punishment in lieu of developing extreme levels of mass incarceration. These trends may have been tied to states' history of penal moderation or a paternalistic mode of governance that expected the criminal justice system to provide some support or supervision for convicted offenders. Lastly, the most aberrant category is the "Prison-Based Control" states which developed extraordinarily high imprisonment rates while maintaining low probation supervision rates. As we will see later in the analyses, states in this category may show lower probation rates because they are using other kinds of control to manage lower-level (misdemeanant) probationers; when we look at rates of felony supervision for probation instead, these states shift into the high-high "Culture of Control" category.

These categories complicate the linear narrative that states with more incarceration are more punitive.[25] Instead, we see that punishment is multi-dimensional, such that scholars must

[25] This reconceptualization of the scale of punishment is distinct from (but related to) broader attempts to quantify the various dimensions of states' punitiveness (e.g. Frost 2006; Kutateladze

attend to both the scale and composition of control. In this picture, states in the "Culture of Control" category clearly punish more on all dimensions than "Culture of Moderation" states. However, comparing across the off-diagonal is more complex. While it is easy to suggest that states should resort to probation when possible over incarceration (because of the reduced deprivations on liberty), states in the "Probation as Alternative" category often have higher overall supervision rates than those in the "Prison-Based Control" group, because probation allows for more net-widening (i.e. more individuals being pulled into formal social control) and because probation sentences are often longer than prison sentences. Thus, the answer to which kind of state is "tougher" must depend on a complex mix of underlying crime rates, the number of individuals subject to both forms of supervision, how long terms of supervision last, and the harder to measure subjective experience of being under both forms of supervision (e.g. how well maintained are the prisons, how supportive is probation, how high are revocation rates, etc.).

What this typology does allow us to note, however, is that there is more variation across states than is visible by examining incarceration rates in isolation. By making visible variation in probation rates, it is clear that some states previously considered as having resisted the punitive turn in fact embraced it—but expanded control through a more hidden form of punishment. Only by considering these multiple forms can we gain a clear view of variation in the scale of punishment. In the following analyses, I present the first picture of state variation along these two dimensions and investigate why certain states fall into a given location in the probation-prison space.

2009). Rather, this analysis focuses on the extent to which states surveil, manage, and punish their residents through criminal justice interventions.

Data and Methodology

The analyses rely on the same database of state characteristics described in Chapter 2. These measures include counts of probation and prison populations, criminal justice variables (index crime rates and drug arrest rates), state demographic characteristics (percent of the population aged 15-24 years, percent black, percent Hispanic, percent foreign, percent urban, and state population), political indicators (percent of state legislators identified as Republican, Republican governor, and percent of state spending devoted to police services), and economic measures (total state expenditures per capita, unemployment rates, and poverty rates). As with Chapter 2, missing covariates were estimated using multiple imputation through the Amelia II program (Honaker, King, & Blackwell 2011). For a full description of data sources and summary statistics, see Appendices A and B.

After presenting descriptive evidence on the expansion of mass probation, I turn to examining the factors that drive states' probation and incarceration rates. For these analyses, I use log-linear models for time-series cross-sectional data. I include fixed effects for state to control for the time-invariant characteristics that differentiate states.[26] To control for secular time trends, the models include linear and quadratic terms for year. Independent variables are lagged by one year to better account for causal ordering. All variables showing skewed distributions (including outcome variables) were logged when this improved the normality of the distribution.

Given the scarcity of sociological research on probation, there is little empirical or theoretical evidence on how its drivers may be different from those for incarceration. Thus, in this analysis, I evaluate whether the standard predictors of incarceration correlate with states'

[26] Models with state-level random effects produce substantively similar results. My discussion emphasizes those results that were statistically significant in both specifications.

probation rates. We might expect, however, that some of these characteristics have different effects across supervision types. Most saliently, we might expect that while higher state finances create a context that is more conducive to the massive spending required to support mass imprisonment (Spelman 2009), the reverse may be true for mass probation. Since probation is often touted as a "cheaper" or more "cost-effective" sanction, it might be the case that probation developed in those states unable to afford mass imprisonment.

Results

The Expansion of Carceral States, 1980-2010

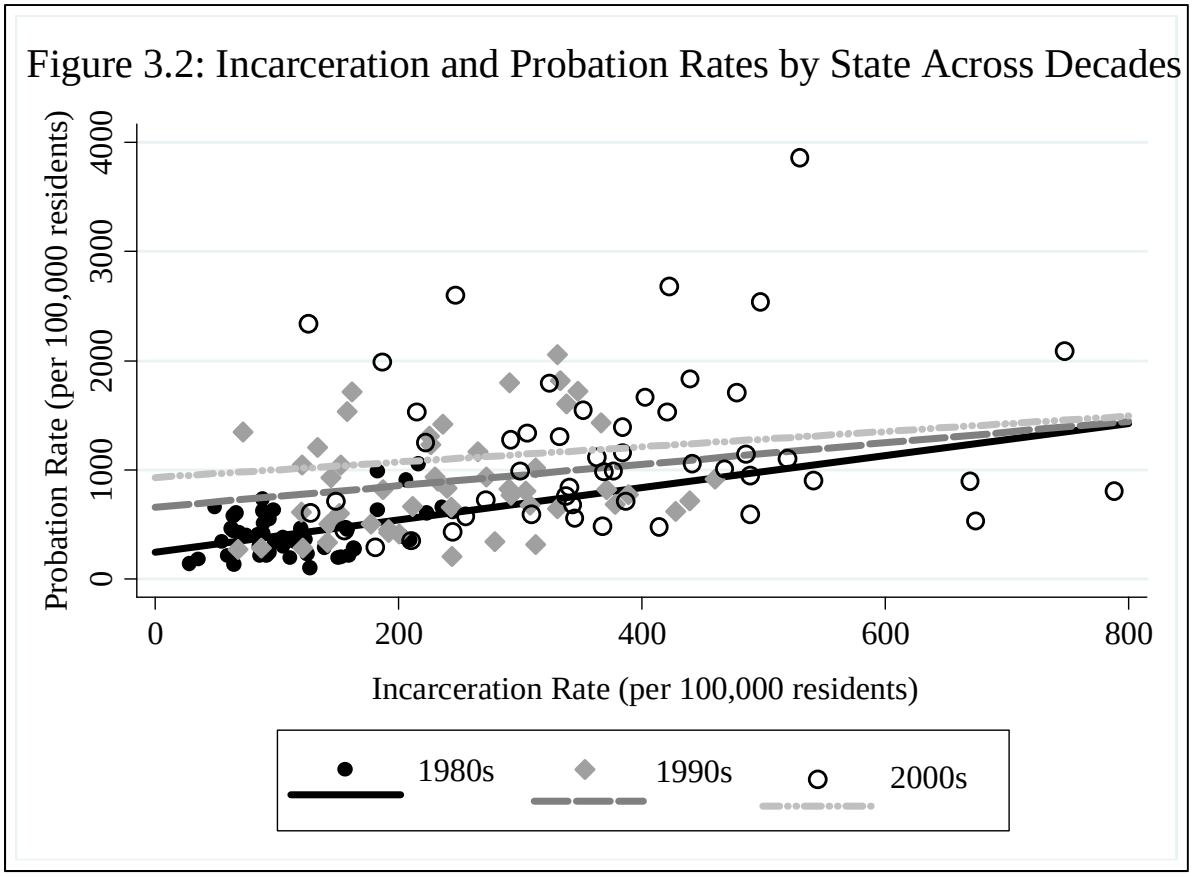
As depicted in Chapter 1 (Figure 1.1), the expansion of mass probation has been profound in scope. Alongside the increase in the total number of individuals imprisoned in state and federal prisons (which rose from 0.3 to 1.5 million between 1980 and 2011), the U.S. has binged on probation, with the number of individuals subject to such control increasing from 1.1 to 3.9 million in this same time period. Despite fluctuating crime trends (which generally increased in the 1980s and early 1990s and decreased in the 2000s), in every year until 2009, more individuals were swept up into every form of criminal justice supervision.

Yet as we saw in Chapter 2, when we scope down to the state level, this expansion was not uniform across states. That analysis demonstrated that overall, the correlation between states' probation and incarceration rates is weak; states that more rapidly embraced mass probation were only slightly more likely to have developed unusually high imprisonment rates. Figure 3.2 displays this cross-sectional relationship, plotting states' incarceration and probation rates for

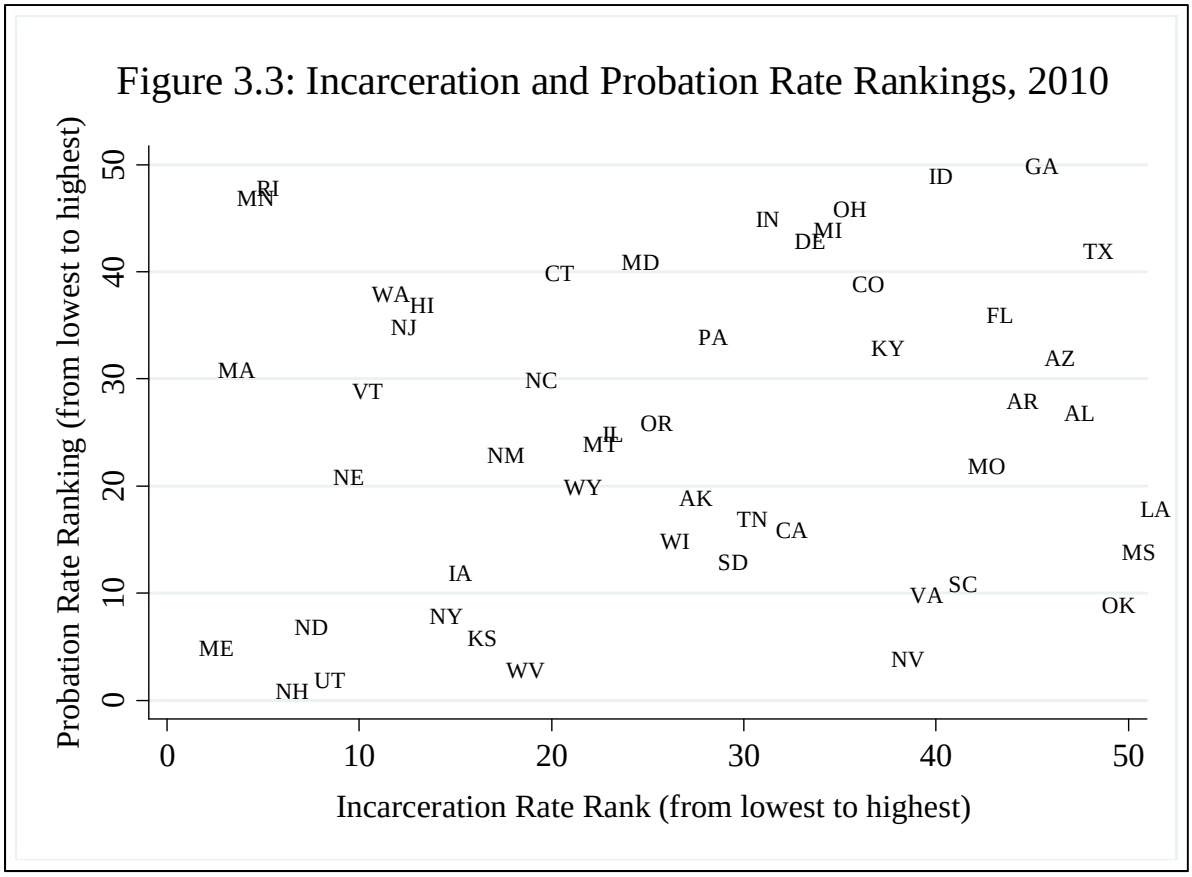
each decade of the build-up—1980, 1990, and 2000.[27] It is clear that in each decade, rates of supervision for both forms of punishment rose dramatically across states. The median state probation rate increased from 385 probationers per 100,000 in the resident population in 1980 to 820 in 1990, 995 in 2000, and 1,025 in 2010. Similarly, the median incarceration rate across states grew from 105 state prisoners per 100,000 in the resident population in 1980 to 240 in 1990, 365 in 2000, and 385 in 2010.

Superimposed on top of the decade scatterplots are the regression lines for the relationship between probation and incarceration rates across states in each decade. The results show a significant positive relationship between probation and incarceration rates in the 1980s ($r=0.4$, $p<.01$) that declined throughout the following decades. By 2010, the correlation coefficient had declined down to 0.1 (n.s.). Thus, while probation and incarceration rates were substantially coupled before the prison boom, as states invested heavily in prisons, probation, or neither/both, these two forms of supervision became decoupled. Interestingly, in the 1980s, probation and incarceration rates were also significantly positively correlated with crime rates, suggesting that states with higher crime had higher rates of both forms of supervision. As crime and punishment became decoupled, probation and incarceration rates also diverged.

[27] The points for 2010 are not plotted in this figure for visual clarity. The 2010 the distribution almost wholly overlaps with the 2000 data.



Because of this decoupling between states' probation and incarceration rates across time, our understanding of state-level variation in the scale of penal control radically shifts if we consider probation rates instead of incarceration rates. Figure 3.3 plots variation in state's supervision rankings for both probation and incarceration rates in 2010. The rankings were assigned by sorting states from lowest to highest supervision rate and numbering accordingly (such that low rankings correlate with low rates). This compresses the distribution into a two-dimensional space that considers relative (rather than absolute) size of correctional populations and allows space to graph the state name abbreviations.



Examining Figure 3.3 in light of the prison-probation space typology presented in Figure 3.1, we see that there are states occupying all four quadrants of the control regimes typology. If probation and incarceration rates were perfectly correlated, we would expect to see a 45 degree regression line that intersects the graph's origin point. Instead, the regression slope is close to zero, with states' probation rate rankings almost entirely independent from their imprisonment rate rankings. This means that switching from one form of supervision to another has radical implications for assessing levels of punishment for some states. For example, Oklahoma ranks as the one of the highest incarceration rates (number 48), yet is relatively low in terms of probation rates (number 9). Similarly, Mississippi and Louisiana have the two highest incarceration rates, yet rank relatively low in terms of probation rates. On the other side of the spectrum, Minnesota

and Rhode Island transform from having two of the lowest incarceration rates to having some of the highest probation rate rankings.

More broadly, viewing punishment through this two-dimensional space reveals heterogeneity across states formerly understood as similar in terms of punitiveness. For example, looking from left to right across Figure 3.3, it is obvious that traditionally liberal states (especially those in the Northeast) have lower incarceration rates, while more conservative states (especially those in the South) dominate the right-hand side of the graph where incarceration rates are highest. Yet if we instead examine variation on the y-axis, conventional categories are upturned. Red states, such as South Carolina and Louisiana, have below-average probation rates, while blue states, such as Minnesota and Washington, have above-average rates. This variation is more intelligible if we again come back to the idea of relational punishment; states in the South tend to cluster in the "Culture of Control" and "Prison-Based Control" variants, while states in the Northeast and Midwest tend to cluster in the "Culture of Restraint" and "Probation as Alternative" variants.

This scrambling of traditional notions of variation in the scale of punishment across regions is easily documented by summarizing supervision rates across region. In 2010, the mean incarceration rate was more than 50 percent greater in the South than in other regions, averaging 535 prisoners per 100,000, compared to a rate of 260 in the Northeast, 360 in the Midwest, and 390 in the West. However, in stark contrast to this, probation rates are roughly equivalent across regions, averaging 1,310 probationers per 100,000 in the South, 1,170 in the Northeast, 1,245 in the Midwest, and 1,220 in the West. As recently as 2008, probation rates were actually higher on average in the Northeast as compared to the South (averaging 1,390 and 1,310, respectively), but

with the recent reductions in correctional populations (which have been especially pronounced in some Northeastern states), this pattern reversed direction by 2009.

In addition to providing information about probation itself, probation rates are also the best indicator of overall criminal justice supervision rates. In part because probation comprises a majority of the supervised population in each state (averaging 60 percent nationally in 2010), probation rates are highly correlated with overall supervision rates, compared to the weak association between incarceration rates and overall supervision rates. The most recent count of all individuals under penal control, which includes prisoners in jails and prisons, probationers, and parolees, by state is available for 2006. For that year, the correlation between states' overall supervision rate and probation rate was 0.9 ($p<.01$), compared to a correlation coefficient of 0.3 ($p<.05$) for the relationship between the overall supervision rate and total incarceration rate for prisoners in jails and prisons. Thus, if researchers want to understand variation in states' overall levels of penal control, we must understand variation in probation rates.

For the purpose of summarizing this variation and providing more accurate measures of the scale of punishment, Table 3.1 list states' supervision rate rankings for probation, imprisonment, and all forms of supervision (using the most recent data from 2006). This visually displays the weak tie between incarceration rates and overall supervision rates and the much closer correlation between probation rates and overall supervision rates.

Determinants of Supervision Rates

The preceding discussion suggested that the state-level expansion of mass probation was quite unique from that of mass incarceration. This divergence implies that the two forms of supervision were propelled forward by different state conditions. This section asks what we can

Table 3.1: Rankings of State Supervision Rates (from Lowest to Highest) by Control Type, 2006

ABBREVIATIONS: PR = Probation Rate; IR = Imprisonment Rate; SR = Total Supervision Rate

(all rates per 100,000 in resident population)

State	PR	IR	SR	State	PR	IR	SR
Alabama	23	46	30	Montana	18	22	12
Alaska	16	31	17	Nebraska	25	7	10
Arizona	28	44	28	Nevada	4	39	9
Arkansas	26	37	36	New Hampshire	1	5	1
California	20	36	27	New Jersey	36	13	32
Colorado	32	33	33	New Mexico	17	16	21
Connecticut	37	23	31	New York	8	15	8
Delaware	42	38	41	North Carolina	31	20	20
Florida	35	40	35	North Dakota	9	6	5
Georgia	49	45	50	Ohio	44	30	45
Hawaii	34	17	29	Oklahoma	50	48	16
Idaho	48	35	49	Oregon	29	21	34
Illinois	27	19	22	Pennsylvania	33	18	39
Indiana	43	27	42	Rhode Island	46	4	44
Iowa	11	11	6	South Carolina	22	43	19
Kansas	5	14	7	South Dakota	10	29	13
Kentucky	14	32	25	Tennessee	13	28	15
Louisiana	15	50	46	Texas	41	49	48
Maine	6	2	2	Utah	2	8	3
Maryland	38	24	38	Vermont	30	9	14
Massachusetts	47	1	47	Virginia	7	34	11
Michigan	39	42	40	Washington	40	10	37
Minnesota	45	3	43	West Virginia	3	12	4
Mississippi	12	47	26	Wisconsin	21	25	24
Missouri	19	41	23	Wyoming	24	26	18

Note: Total supervision rate includes probation, parole, prison, and jail populations. Rankings are from lowest supervision rate (#1) to highest (#50). States listed in alphabetical order.

learn by studying the determinants of these different facets of state control. In other words, why did some states rapidly expand both form of supervision, restrain both, or invest more heavily in imprisonment or probation? Rather than examining the proximal determinants of incarceration and probation rates (such as sentencing legislation), this analysis explores the state-level characteristics that predisposed states to develop their blend of probation and incarceration supervision.

Because there is no method to combine the two measures into a single index without eliminating important variation, I instead model the determinants of both forms of supervision independently and compare across models. The central goal is to determine if the predictors of mass incarceration also correlate with probation rates. Table 3.2 displays these results. Both models include fixed effects for state and a linear and quadratic term for time and cover the period from 1980 to 2010. The analyses use logged outcome variables (to account for skew in the distributions) making the interpretation of coefficients different than in traditional regression models. For linear predictors (i.e. covariates that have not been logged), these coefficients represent the estimated effect of a one-unit change on the log of the supervision rate. Once exponentiated, these coefficients can also be interpreted as the multiplicative effect of the variable on the base outcome. In other words, a coefficient of 0.3 represents a multiplicative effect of e^(0.3) or 1.35, which translates into an increase of 35 percent in the outcome given a 1 unit increase in the predictor variable. When the predictor variable is also logged, the coefficient can be interpreted as a measure of elasticity (i.e. the percent increase expected in the supervision rate given a 1 percent increase in the predictor variable).

Starting with criminological factors, I find that states' incarceration rates are positively associated with index crime rates, drug arrest rates, and percent of the population aged 15 to 24

Table 3.2: Fixed Effects Models Predicting State Incarceration and Probation Rates 1980-2010

Outcome Variable:	**Incarceration Rate (Log)**			**Probation Rate (Log)**		
	Coef.	S.E.		Coef.	S.E.	
Criminological Factors						
Index Crime Rate (Log)	0.049	(0.037)		-0.020	(0.065)	
Drug Arrest Rate (Log)	0.039	(0.014)	**	0.015	(0.015)	
Percent of Population Aged 15-24 Years	0.028	(0.005)	***	0.003	(0.009)	
State Budgets						
Ratio of State Revenue to Debt (Log)	-0.017	(0.014)		-0.056	(0.025)	**
Total State Expenditures Per Capita (Log)	0.315	(0.052)	***	-0.004	(0.093)	
Percent of State Spending on Police	-0.102	(0.026)	***	-0.124	(0.046)	***
Percent of State Spending on Welfare	0.005	(0.003)		0.007	(0.005)	
Political Factors						
Percent Republican Legislators	-0.001	(0.001)		0.002	(0.001)	*
Republican Governor	0.042	(0.008)	***	0.019	(0.014)	
Social and Demographic Factors						
Percent Black (Log)	0.013	(0.013)		0.020	(0.022)	
Percent Hispanic (Log)	-0.018	(0.016)		0.000	(0.028)	
Percent Foreign Born	0.001	(0.002)		-0.002	(0.005)	
Percent Urban	0.001	(0.001)		0.002	(0.002)	
Unemployment rate (Log)	-0.006	(0.018)		-0.089	(0.031)	***
Gini Coefficient of Income Inequality	-0.002	(0.002)		-0.007	(0.004)	
Total State Population (Log)	-0.440	(0.053)	***	-0.524	(0.096)	***
Time (years)	0.040	(0.002)	***	0.035	(0.003)	***
Time squared	- 0.002	(0.000)	***	-0.000	(0.000)	***
Constant	8.068	(0.577)	***	11.442	(1.025)	***
N	1500 (50)			1500 (50)		

Note: *** = p<.01, **=p<.05, *=p<.1. Fixed effects for state included in all models. All predictor variables lagged by one year.

years. Consistent with prior literature on the importance of drug arrests and the percent of the population in the most crime-prone age group (15-24 years), both of these coefficients show a significant and positive association. The model estimates that a 1 percent increase in the drug arrest rate is associated with approximately a 0.04 percent increase in the following year's expected incarceration rate, while a 1 percentage point increase in the percentage of a state's residents aged 15 to 24 years is associated with approximately a 3 percent increase. Changes in states' index crime rate also showed a positive association with changes in incarceration rates, although this relationship was not statistically significant. Other scholars have shown conflicting results for the relationship between crime and imprisonment rates, in part reflecting the increasing disconnect between these two trends in recent decades as crime rates fluctuated and imprisonment rates continued to increase (Western 2006).

In contrast, states' probation rates are not significantly correlated with any of these traditional criminological measures. While the coefficients for the drug arrest rate and the population age structure variable both go in the expected (positive) direction, the coefficient for the index crime rate measure is *negative*. If this result were statistically significant, it would suggest that as index crimes increased, probation rates usually decline. Thus, if probation is in some way tied to these standard factors, the relationship is more complex than for incarceration.

Moving onto economic factors, states' incarceration rates appear to be significantly correlated with state expenditures and spending on police. The results suggest that wealthier states produce larger prison populations: the model estimates that a 1 percent increase in total state expenditures per capita is associated with a 0.3 percent increase in the incarceration rate in the following year. Spending on police is also significantly negatively correlated with states' incarceration rates, with the model estimating that a 1 point increase in the percent of the state

budget devoted to policing services is associated with approximately a 10 percent reduction in incarceration rates. This result is likely tied to improvements in recent decades in policing technologies which seek to reduce opportunities for crime (Zimring 2008). The model estimates no significant results for the effect of changes in states' fiscal capacity (the ratio of state revenue to debt) or the percent of state spending on welfare.[28]

Probation rates reveal a somewhat different picture with respect to economic factors. Most importantly, rather than showing a positive association with state expenditures per capita, probation rates are significantly negatively associated with states' fiscal capacity. The model estimates that a 1 percent increase in the ratio of revenue to debt is associated with a 0.06 percent decline in the state's probation rate in the following year. Another way of thinking about this is that when states' fiscal capacity declines, we can expect probation rates to increase. The association with states' raw spending per capita is not significant, but the point estimate is also negative. This suggests that in contrast to the finding for incarceration, where wealthier states were associated with higher imprisonment rates, higher state spending is associated with lower probation rates. Consistent with the results for imprisonment, probation rates are significantly negatively associated with state spending on police, suggesting again that police presence may

[28] This finding diverges from Beckett and Western's (2001) thesis that welfare spending and prison populations are inversely related. However, several methodological differences might explain this discrepancy. In these analyses, welfare spending is limited to means-tested public welfare programs (excluding medical payments such as Medicare), while Beckett and Western calculate an index of welfare generosity that also includes unemployment insurance, state healthcare, and non-tertiary education. In addition, Beckett and Western's (2001) model uses data from only three time points—1975, 1985, and 1995—rather than using annual time-series data from 1980 to 2010. Thus, the fact that I do not find an association here does not directly negate their findings.

mitigate growth in both correctional populations, and are not significantly associated with spending on welfare.

Turning to political characteristics, the models estimate that states which elect Republican governors are significantly more likely to have higher imprisonment rates. This is consistent with research suggesting that Republican leaders—and especially governors—led the "tough on crime" charge (Beckett 1997; Simon 2007). The model estimates that having a Republican governor in office in a given year is associated with approximately a 4 percent increase in a state's incarceration rate in the following year. In contrast, I find no effect for the percent of legislators identified as Republican, which might be due in part to the waning distinction between Democratic and Republican legislators since the 1980s (Pager & Phelps 2013).

The results for predicting probation rates are mixed for this category. The model results show a positive (but only marginally significant) effect for the percent of legislators identified as Republican, with a 1 point increase in the percent of Republican legislators associated with roughly a 0.2 percent increase in the incarceration rate. In addition, the model shows no significant relationship between having a Republican governor and probation rates (although the point estimate is positive, consistent with the effect for incarceration rates). This suggests that overall there is little evidence of a clear relationship between political partisanship and states' supervision rates. Although surprising, this is consistent with other research that suggests that both Democrats and Republicans ushered in both punitive reforms in the 1980s and 1990s—and have both contributed to more progressive reforms in the 2000s (Greenberg & West 2001; Pager & Phelps 2013).

Lastly, states' incarceration and probation rates show mostly null relationships with the social and demographic factors included in the model. Most of these variables (including percent of resident population identified as black or Hispanic, percent foreign born, percent urban, and the gini coefficient of inequality) are estimated as having no significant relationship with either supervision rate. Although these results might be counter-intuitive (especially for percent black), this is likely the consequence of using state fixed effects. Since these broad state-level characteristics change very slowly, research that uses fixed effects for state often find non-significant results for these kinds of characteristics even when there is are substantial cross-sectional associations. The one result that does appear as statistically significant is unemployment rates on probation rates, but the direction is opposite to what might be expected from traditional criminological theory. The model estimates that a 1 percent increase in unemployment is associated with a 0.09 percent *decline* in probation rates. This is inconsistent with neo-Marxist perspectives that argue that formal social control will increase when labor is plentiful and jobs are scarce. Yet given that probation doesn't remove bodies from the population, it is unclear if these theories would apply to probation in the same way as they do to imprisonment.

The results in Table 3.2 present a mixed picture. In terms of explaining the growth of mass imprisonment within states, the results suggest that drug arrest rates, youthful populations, state expenditures, and having a Republican governor are all associated with propelling imprisonment rates upward, while spending on police had a moderating effect. For predicting mass probation, the story is less clear, but the results suggest that state fiscal capacity, spending on police, and unemployment rates have a depressive effect on probation rates. Together, these results suggest that this group of variables has a closer relationship with incarceration rates,

compared to probation rates, as we might expect given that they are pulled from existing studies of imprisonment trends. As I argue in the next section, in addition to simply knowing less about the expansion of probation (and therefore selecting perhaps the wrong variables to model), it may be that probation rates are also systematically more difficult to model than imprisonment trends.

However, one tentative conclusion about the predictors of mass probation appears warranted. Across multiple specifications and tests (not displayed), the result that imprisonment rates were positively correlated with state spending, while probation rates were *negatively* correlated with states' fiscal capacity, was consistently replicated. This suggests the possibility that probation expanded as a *fiscal alternative* to mass incarceration. In states where there was a drive for more punitive policies—but limited funds—probation may have acted as a way to increase state control for a fraction of the cost.

Caution in Modeling the Determinants of Probation

The previous section demonstrated that the traditional determinants of imprisonment are generally poorly correlated with probation rates. To some extent, this difficulty in predicting probation rates is consistent with the evidence presented earlier. As demonstrated in the previous figures in this chapter, states' probation rates bear little resemblance to states' incarceration rates, so we would a priori expect to see different determinants. It may also be the case that without more research on probation, we do not yet have enough of a sense of what factors should be included in the model.

Perhaps more importantly, as I discussed earlier in the context of Figure 3.3, the kinds of states with low probation rates and those with high probation rates comprise extremely

heterogeneous categories. This might mean that scholars are unlikely to find clear determinants of mass probation, since these diverse states have little in common. In addition, as we saw in Chapter 2, states are doing quite different things with probation, which might imply that the determinants of probation vary according the way in which probation is implemented. In other words, state-level contextual factors may matter more for probation than for imprisonment. This might mean there are different pathways to mass probation, with diverse historical trajectories producing seemingly similar outcomes.

One reason context may matter more for probation is that probation populations are inherently more fluid and ambiguous than prison populations. While prisoners are a contained group of bodies inside of a select number of institutions, probation counts include a range of individuals under varying degrees of supervision. For example, in many states, some percent of probationers are on "informal probation," which requires no active management from the probation department and is more akin to a "suspended sentence"[29] in other states. In many locales, probationers cannot formally exit probation unless they have fully paid their probation fees, leaving a swath of probationers who are no longer under active supervision yet are still counted in the total number of probationers. In still other states, individuals may be sentenced to "lifetime probation," whereby they are included in probation counts indefinitely, even if under active supervision for only a relatively short period of time. Thus, the number of bodies counted as being under probation supervision is more policy-dependent than is true for imprisonment, where the in/out decision is more clear-cut.

[29] A form of supervision in which convicted offenders are released from custody and given no supervision conditional on avoiding future arrests.

In addition, probation combines two different criminal justice populations—individuals convicted of lower-level misdemeanor offenses and individuals convicted of more serious felony-level offenses. In some states, such as Michigan, these two probation populations are managed through entirely different administrative bodies (with the Department of Corrections supervising felony-level probationers and the local county-level authorities supervising misdemeanant-level probationers). In Chapter 2, I documented that the percent of probationers under supervision for a felony varied from 21 to 100 percent across states. Thus, probation is doing very different work across states, with the implication that the determinants of probation may vary according to the composition of probationers and/or trends for both misdemeanant and felon probationers.

If I reproduce the probation-prison space map of state supervision rate rankings using only probationers convicted of felony-level offenses (using the same estimation strategy described in Chapter 2), most of the states in the errant category—low probation and high incarceration—shift to the high-high quadrant. In other words, these states do not supervise many misdemeanants under probation supervision, but they do supervise vast numbers of felons on probation. Thus, these states are more consistent than they first appear, in that they have large percentages of residents under supervision through both probation and prison for felonies. The reason for their low probation rates for misdemeanants is likely that they have alternative programs or sentences for probation, such as community service sanctions, pre-trial monitoring, and suspended sentences, that in practice function very much like informal (or low-level) probation supervision in other states. However, since no consistent data are collected on these populations, it is difficult to confirm this impression. Unfortunately, it is also impossible to run regression models predicting year-to-year fluctuations in states' felony probation populations,

since the data on crime type for probationers is missing for the majority of state-years in the sample.

This discussion of the ambiguity of probation populations does not imply that states' probation rates are a meaningless statistic, but rather, that our interpretations of state variation in probation rates must be more nuanced than that for incarceration rates. Scholars cannot assume that probation means the same thing across states. Ultimately, a full account of why states fall into different locations on the probation-imprisonment space will depend on new research investigating the trajectory of both prison and probation populations and their interactions. However, we can conclude that states' level of formal punishment varies tremendously by the form of social control modeled. Some of the states which had previously been identified as having resisted the punitive turn, such as Minnesota and Washington, in fact maintain extremely high supervision rates.

Discussion

Over the past decade, sociologists have become increasingly concerned about the dramatic expansion of mass imprisonment. Yet in terms of the raw numbers of individuals involved, this expansion has been eclipsed by the dramatic rise of mass probation. Thus, in addition to warehousing large swaths of the population in remote institutions, the criminal justice system has increasingly come to occupy neighborhoods as well, supervising vast numbers of individuals outside of brick-and-mortar institutions. The results of this chapter establish that the development of mass probation is a profoundly important event, with a unique history independent of the expansion of mass incarceration.

As a result, studying mass probation makes visible formerly obscured aspects of contemporary punishment. For example, some of the states identified as having resisted the punitive turn and restrained prison growth due to a culture of penal moderation—such as Minnesota and Rhode Island—actually have incredibly large carceral populations. Furthermore, some of the highest penal control rates are in the Northeast, a region often praised for its more lenient stance toward punishment. This suggests that states in this region were not insulated from "high crime politics," but rather, channeled this impulse into a qualitatively different kind of control.

The regression results presented above suggest that predicting where states lie in terms of the typology is a complicated task. One of the clearest conclusions from the results is that probation tends to flourish in states with relatively limited fiscal capacity. Prisons are expensive to build and maintain and states with the impulse to control larger populations, but lacking the funds, may well have seen swells in the probation population instead. Thus, probation is perhaps an "alternative" to imprisonment in a very specific sense: states that had the drive to increase the carceral state yet had limited resources may have turned more heavily toward probation supervision to manage the burgeoning correctional population. In this telling, mass probation expanded not because it was a more lenient alternative to imprisonment, but rather, because it was perceived as a cheaper way to enforce mass penal control.

The typology of control regimes begins to explain this variation and highlights the importance of considering both probation and incarceration rates in context. Rather than seeing low or high incarceration states as a monolith, we instead see the multi-dimensionality of punishment. Only by examining both the scale and content of control can scholars accurately describe variation in the scale of punishment. This change in our conceptualization of state

variation has profound consequences for the ways that researchers shape their question about punishment. For example, in one of the best examples of state-to-state qualitative comparisons, Barker (2009) asks how we explain the relatively high incarceration rates of California, compared to the much more moderate expansion of imprisonment in Washington.[30] Yet when we expand the focus to probation, the comparison is reversed—Washington has substantially higher probation supervision rates (and overall supervision rates) than does California. Thus, the question is not why California's rate of imprisonment is so high, but rather, why California has a high imprisonment rate with a middling level of probation supervision, while Washington monitors a small number of felons inside of prisons yet has a vast probationer population.

However, the analyses also reveal the complexities of trying to model probation rates quantitatively. Future research in this area would benefit from better data collection processes (e.g. more reliable data on misdemeanor versus felony probation) and a continued investigation of the structural differences in probation across states that might explain how to group states. In addition, as the research on mass incarceration has moved from macro-level investigations of national trends and quantitative analysis of state-level variation to specific historical accounts in individual states, so too should the study of mass probation grow to include a more nuanced accounting of this massive expansion in states' capacity to punish.

More broadly, this chapter highlights the importance of considering mass probation in understanding the consequences of this "social experiment." Like imprisonment, a period of probation supervision (and the conviction attached to it), can have profound consequences for individuals' life outcomes. Further, since probation brings control into the community, it

[30] Barker (2009) also considers New York but because the rankings for New York's incarceration and probation rates are relatively similar, I do not include it in the example.

potentially has transformative effects at the neighborhood level (Cohen 1985). Future research that incorporates the study of probation would likely teach scholars much about the nature, extent, and consequences of the carceral state.

Chapter 4

From Managing Risk to Reforming Punishment: The Development of Mass Probation in Michigan

The previous two chapters quantitatively documented the expansion of mass probation, examining the rapid rise of this form of social control, its variation across states, and the relationship between probation and incarceration rates. The results suggest that mass probation developed along a unique trajectory, rapidly expanding in states that both did—and did not—develop particularly high rates of imprisonment. Thus, mass probation represents a unique axis of the carceral state, with different drivers and consequences than mass imprisonment. This final empirical chapter expands the analysis by providing a qualitative look at how corrections officials in one state promoted probation as a legitimate form of state control throughout the prison boom (and beyond).

As I argue in Chapter 1, the persistence of probation into the prison boom was in many respects "improbable" (Robinson, McNeill, & Maruna 2012). If, as the prevailing wisdom suggests, the logic of punishment shifted away from rehabilitation toward mass containment of "risky" populations in isolated "warehouse prisons," how do we understand the concomitant expansion of probation, the "exemplary penal form" of the penal-welfarist model (Garland 1985; Simon 2012)? As Robinson (2002) argues, "As an exemplar of modern penality's 'normalizing sector' (Garland 1985), probation is deeply implicated in the purported shift toward a 'new' or 'postmodern' penal rationality with risk management rather than normalization at its heart" (5).

Yet, despite this centrality of probation, sociologists in the U.S. have yet to deeply explore accounts of probation or its expansion.

This chapter provides the first historical account of the development of mass probation in the U.S. to better understand this apparent disconnect between the transition to the punitive era and the persistence of probation. In addition, this analysis provides a view of probation's role in the punitive turn, highlighting the complex and contested nature of punishment throughout this period. Using a case study approach, I investigate how the framing and implementation of probation shifted between the early 1970s and today, analyzing public reports, internal documents, and statistical data. The analyses provide a more nuanced perspective on the purported shift from rehabilitation to risk management—deciphering whether the practices of punishment radically shifted or if the rhetoric simply adapted to defend the same practices under a new guise. As Garland (1997) calls for, this study merges a Foucaultian interest in "specific ways of thinking (rationalities) and specific ways of acting (technologies)" with a sociological inquiry into how these logics and practices were actually substantiated throughout this reconfiguration of penal power (174).

The case study focuses on Michigan, a state that embraced many of the most punitive reforms of the 1990s, including the toughest drug laws in the nation, and yet has also been a national leader of progressive reforms in the 2000s. By the height of mass incarceration in 2008, Michigan had the 38th highest imprisonment rate,[31] yet by 2010, Michigan was leading the country in dollars "reinvested" through prison downsizing (Clear 2011). Thus, Michigan provides an example of both of the extremes across this period. Using internal memorandums

[31] Author's calculations from data set used for Chapters 2 and 3.

and public annual and statistical reports as the primary data, I show how state bureaucrats changed the ways in which the state publically defended probation and implemented probation services between the early 1970s and today. In summary, I find that probation survived the punitive turn because Michigan Department of Corrections (hereafter MDOC) officials continually presented probation as the solution to whatever public crises they faced, be it declining public faith in the department's ability to rehabilitate offenders, overcrowded prisons, politicians' zeal for punishment, or the need to reduce correctional costs. Probation practices changed in more inconsistent directions, sometimes moving in parallel with changes in rhetoric and other times shifting in contradictory directions. As I detail below, through this lens of the rhetoric and practices of probation, we can draw new conclusions about the decline of rehabilitation and the rise of "post-modern" punishment.

Using a "periodization" strategy (Campbell & Schoenfeld 2013), I organize the historical narrative around three relatively bounded time periods, entitled "Transition" (1970s and 1980s), "New Penology" (1990s), and "Intervention" (2000s). In the first period, "Transition," I document how probation became essential to the risk-management narrative used to justify the department's mission in the wake of the tumult of the early 1970s. The MDOC vociferously defended penal moderation in this period, fighting against punitive reforms and often using the rhetoric of cost-effectiveness (and "common sense") to advocate for expanding probation. In this period, probation was seen as the solution to limited prison space and a way to monitor the risk posed by probationers. At the same time, the department began experimenting with pilot programs to make probation a "tougher" and more effective sanction and rapidly built-up the number of field officers available to provide supervision.

Even with the MDOC's strenuous efforts to moderate prison growth, by the 1990s, increasing judicial severity and punitive criminal justice legislation had dramatically extended the average time served by prisoners, creating extreme overcrowding despite repeated prison-building campaigns. In this period, which I title the "New Penology," MDOC's rhetoric increasingly adopted a managerial approach that privileged public safety in ways consistent with Feeley and Simon's (1992) description of this period. During this period, MDOC officials stopped fighting the legislature and the public on punitive measures and instead re-framed probation as the solution to the problem of having limited prison space for incapacitation. By diverting the non-dangerous to probation, the department argued that it could "reserve" prison beds for incapacitating truly "violent and dangerous" offenders indefinitely. Officials actively linked probation to the new rhetoric, using a series of reforms (both small and large) to increase the "toughness" of probation and driving up the revocation rate in the process. Paradoxically, however, in other ways, probation became more capable of providing rehabilitative services in this same period.

Lastly, as the punitive push began to lull and slowly reverse in the 2000s, Michigan emerged on the vanguard of prison reform. In this "Intervention" phase, the problem became the high level of imprisonment in the state and the cost that entailed. To tackle this new problem, MDOC officials implemented a series of reforms designed to place more felons on community supervision and reduce the number of probationers and parolees revoked to state prison for violations. In this new model, rehabilitation reemerged under the rhetoric of "promoting offender success" (and defending public safety), with probation providing a key part of the strategy. These changes in rhetoric closely matched important changes to probation supervision that decreased

the number of probation revocations and helped to bring down the prison population, as noted in Chapter 2.

Through viewing this history through the lens of probation, it is clear that there was never a clean shift from rehabilitation to risk management in rhetoric. Rather, probation embodied both rehabilitative and neo-liberal or punitive logics, often woven together. Probation throughout this period was about providing an "alternative" to imprisonment that enforced "tough" supervision, but the defense of this practice was variously to stop prison growth, reduce prison overcrowding, provide cheaper supervision, or "reserve" prison beds for violent offenders. Rhetoric about the severity of probation as a sanction and the fiscal benefits of community supervision were not a "post-modern" phenomenon, but rather, an extension of the logic employed from the beginning of the 1970s. This highlights the flexibility of these logics; rather than prescriptively matching supervision types, such discourses were molded to fit whatever constructed problem the department faced.

Similarly the evidence suggests there was also no clear shift from rehabilitative to punitive practices in the implementation of probation's "technologies" of control. Changes to rehabilitative practices are often ambiguous to measure, but it is clear that there was no "golden era" of probation in the early 1970s in Michigan. Rather, the evidence suggests that probation supervision was severely understaffed and provided little active supervision. As time progressed, probation became simultaneously more punitive and more capable of providing rehabilitative support: at the same time that MDOC was implementing punitive reforms, such as electronic monitoring and day reporting centers, they were also funding new progressive services such as drug treatment and job training. However, the net result of these changes on the revocation rate was to dramatically increase the number of probationers sent to prison. In the most recent years,

the evidence suggests rehabilitation has re-emerged, albeit under new language, and that probation supervision practices have grown more supportive, with revocation rates declining back to their pre-1990s levels. Thus, to the extent that practices shifted towards harsher control in the 1990s, that trend has again reversed. This suggests that some of the more dire warnings about shifts in punishment practices, such as those associated with the new penology model (Feeley & Simon 1994), need to be substantially revised to take into account both variation within the most punitive years and the reform efforts that have emerged in the most recent decade.

Finally, this analysis highlights that part of the reason for these contradictory trends was the "loosely coupled" nature of the criminal justice system (Hagan, Hewitt, & Alwin 1979). Rather than representing a coherent group of interests, the actors responsible for penal policies and practices encompass a wide range of groups, with different guiding ideologies, policy preferences, and political power within the penal field (Page 2011). At the beginning of the punitive turn, bureaucrats at the MDOC held entirely different ideas about the best way to address the criminal justice system than legislators, the judiciary, and much of the public. Throughout the 1970s and 1980s, MDOC officials strategically used their public statements to rally against the punitive changes being implemented by these groups and prioritize their own vision of corrections. By the 1990s, the MDOC's official rhetoric had shifted radically towards that of the other actors, yet they continued to support progressive policies in less visible ways. Thus, we see how penal policies are inherently structured to be contradictory, since they are governed by different groups with varying degrees of power over the various policy levers shaping criminal justice practices.

By studying shifts in probation—an institution caught squarely between rehabilitative and neo-liberal logics—we can see these processes in new light. This chapter provides a historical account of these shifts since the 1970s and concludes with a discussion of how the findings revise our understandings of the punitive turn, the decline of the rehabilitative ideal, and the relationship between rhetoric and practices in punishment.

Contesting the Decline of Rehabilitation

As summarized in Chapter 1, the rise of mass incarceration prompted a new wave of scholarship exploring the "punitive turn" in corrections. In the most prominent and comprehensive of these accounts, Garland (2001b) describes these changes as the emergence of a "Culture of Control" defined by a series of social and cultural shifts, including: the decline of the rehabilitative ideal, privileging of victims and public safety, politicization of crime and increased populism, re-emergence of "expressive" and "emotional" justice, and expansion of surveillance and punishment within civil society.

In a similar vein, scholars have posited the rise of "neo-liberal" or "post-modern" penality and linked these developments to a new emphasis of risk assessment and risk management. Feeley and Simon's (1992) classic statement on the "new penology"[32] and Simon's (1993) work on parole reviewed in Chapter 1, for example, both place these developments in the context of a shift to a neo-liberal economic order (in which the "have-nots" are a permanently excluded, marginalized, and criminalized population) that transformed the criminal justice system into a "waste management" system. Harcourt (2012), Wacquant (2009), and O'Malley

[32] As well as the update published more recently (Simon & Feeley 2003).

(1999, 2000) similarly have productively linked many of the recent developments in punishment (including expansions in imprisonment, the reintroduction of chain gangs and capital punishment, and harsher prison conditions) to neo-liberal policies and practices. More broadly, the shift before and after the punitive turn is often described as a shift from "penal modernity" to "postmodern penality," although scholars have debated whether the concept of the "post-modern" accurately describes this shift (Garland 1997a, 2003; Hallsworth 2002).

Yet as scholars seek to explain these changes as a coherent punitive shift, there has been a counter-movement to highlight the contested, volatile, and contradictory nature of punishment. Eschewing these "catastrophic criminologies," O'Malley (2000) and Hutchinson (2006) argue that punishment has always involved both reformation and punitive retribution and that both strands continue to weave together today. Invoking various metaphors, scholars have argued that rather than a meta-narrative from penal-welfarism to punitiveness, we should understand punishment as inherently "hybridized" (Hannah-Moffat 2005), "braided" (Hutchinson 2006), or "pixilated" (Goodman 2012). To support this understanding of penalty, scholars point to the continuing prevalence and importance of a number of concepts associated with the rehabilitative ideal, including diversion programs, drug and mental health courts, and restorative justice models. Exploring in-prison rehabilitation programs in the U.S., Phelps (2011, 2012) finds that penal-welfarism did not completely transform punishment into a rehabilitative project by the late 1970s, nor did the punitive shift remove all of the penal-welfarist projects in the 1990s and 2000s. As Pease (1980) wryly remarks, if the rehabilitative ideal is dead, it is "a remarkably lively corpse" (149, quoted in Raynor and Robinson 2009).

Particularly relevant is Maurutto and Hannah-Moffat's (2006) concept of "assemblages." Drawing on post-modern theory, these scholars argue that "new penal technologies combine,

merge and continually reassemble risk with other logics in response to various institutional agenda" (439). Thus, rather than pitting logics of rehabilitation against those of the new punitiveness, Maurutto and Hannah-Moffat (2006) explore the "interface" between these two modes of governance. Using this kind of theoretical tool-kit, empirical research has shown that many kinds of rehabilitative programs survived the punitive turn by justifying the same practices under new rhetorics of risk and public safety (Cheliotis 2006; Goodman 2012; Hannah-Moffat 2005; Maurutto & Hannah-Moffat 2006; Robinson 2002, 2008).

This literature provides a possible interpretation for the expansion of mass probation. Rather than ignoring the incongruence between mass probation and the prison boom—or assuming that probation (like all penal practices) became more punitive—this perspective suggests that scholars ought to investigate how, when, and why these divergent logics come together in the rhetoric of probation—and whether and to what extent these changes in discourses filtered down to probation practices. This paper provides the first such analysis for the U.S. context, using a historical case study to explore the expansion of mass probation.

Revisiting Probation's History

As reviewed in Chapter 1, probation emerged in the U.S. during the temperance movement and expanded across the country during the Progressive Era reforms. As the penal-welfarist model crystalized, probation became the "exemplary penal form" (Garland 1985; Simon 2012). As the prevailing penal discourses turned more punitive in the 1960s, scholars argue that community supervision—probation and parole—also transformed. Feeley and Simon (1992) provide the most complete theoretical picture of this transformation, arguing that community supervision programs grew "tougher" and were reconfigured as a cost-effective risk-

management solution for low-risk offenders (Feeley & Simon 1992). Thus, instead of challenging the doxa of the "new penology," Feeley and Simon argue that probation became an integral extension of risk-management discipline.

Other evidence from criminological research suggests that probation responded to the charge that it wasn't "tough" enough by incorporating additional punitive elements, such as boot camps, home confinement and electronic monitoring, day reporting centers, and increased fines (Gibbons & Rosecrance 2005; Logan 2003; Morris & Tonry 1990). In addition, many states experimented with Intensive Supervision Programs (ISP's), a more intensive version of probation that in theory involved both more services and more monitoring, but often resulted in more supervision without additional services and led to higher revocation rates (Petersilia & Turner 1993).

However, scholars have yet to produce an in-depth sociologically informed empirical analysis of this transformation in probation. In addition, some of the descriptive evidence suggests that practices have changed little. For example, consistent with historical evidence that probation was continually under-funded (Rothman 2002), most probation officers today supervise very large caseloads (on average 150-250 probationers), which makes both direct services and strict monitoring difficult to enforce (Gibbons & Rosecrance 2005).[33] In addition, few probation departments today fully embrace the punitive technology that emerged in the 1990s such as electronic monitoring and intensive supervision programs, with the vast majority

[33] Caseload sizes offer an ambiguous measure of probation's intent and capacities because it is not clear from the literature whether lower caseloads lead to better or worse probationer outcomes in terms of recidivism and incarceration (Clear 2005).

of probationers supervised on regular caseloads.[34] Conversely, some of the rehabilitative elements of probation—to the extent they were ever prevalent—still remain today, with a subset of probationers on "special" case loads with heavier services (e.g. drug court, mental illness, or sex offender caseloads). In addition, in recent years, there has been a re-prioritization of "what works" research, particularly in community corrections, and an attempt to lower recidivism and revocation rates through better supervision practices (Taxman 2008).

Lastly, if we draw from the research on parole, ethnographic accounts suggest that the officers responsible for community supervision continue to incorporate rehabilitative logic into supervision practices and distance themselves from the risk management narrative. Lynch (1998, 2000) finds that parole officers resisted the shift towards actuarial practices, preferring instead to privilege their own clinical intuition. In addition, they continued to use the rhetoric of rehabilitation, although meaningful services were limited. Werth (2013) similarly documents how parole officers navigated competing goals, arguing that rehabilitation became worked into the logic of promoting offender's reentry and reintegration process (and therefore public safety). Although this entailed a transformation of parole supervision practices, rehabilitation nevertheless remained a central goal of supervision. In the European context, researchers again have found that community supervision field officers have resisted the shift away from a penal-welfarist model (McNeill 2013; McNeill at al. 2009; Robinson 1999, 2002; Robinson and Raynor 2009).

[34] In 2006, among the states that were able to report the number of probationers under electronic monitoring or intensive supervision programs, less than 1 percent of the probationer population were controlled through electronic monitoring and less than 3 percent were in intensive supervision programs (Glaze & Bonzcar 2007).

This mixed evidence suggests that there is a critical need for scholars to understand how probation practices—and the rhetoric surrounding them—changed during this period. Without this knowledge, scholars' understanding of how the criminal justice system changed during the punitive turn remains woefully incomplete.

Data and Methodology

This analysis provides the first historical study of the expansion of mass probation since the beginning of the punitive turn in the early 1970s. Using Michigan as a case study, I develop a chronological narrative of the expansion of probation, paying close attention to the ways in which the MDOC shifted the rhetoric and practices of probation. Within this history, I use a "periodization" strategy that breaks the state's history into three relatively discrete time periods, which each represent a unique period of state governing strategies with respect to probation and the broader criminal justice system (Campbell & Schoenfeld 2013). The analysis relies on historical data from the Michigan Department of Corrections, including annual reports, statistical reports, public newsletters, internal memorandums and policy directives, and press releases. By focusing on these public and private documents, I am able to establish how MDOC officials defended probation (to the legislature and the public) and how the rhetoric and practices of probation were changed to shape these perceptions.

Data were collected by first generating a complete list of the public documents released by the department since 1970. This list includes the entire collection of MDOC materials available at the University of Michigan Law School library, the State of Michigan Archives, and the internal staff library at the MDOC offices. In addition, I supplemented these resources with internal memorandums and staff newsletters saved in the MDOC library and MDOC-related

media accounts at the Archives of Michigan. All of the primary documents (annual and statistical reports) were scanned intro electronic form and added to my document database. For some of the supplementary materials (e.g. internal newsletters and press releases), the archives were too large to be scanned in their entirety. In these instances, I reviewed the contents while in the MDOC offices and scanned all of the items that involved probation, alternative sanctions, sentencing legislation, sentence lengths, overcrowding, or rehabilitation.

Using an inductive "grounded theory" approach (Glaser & Strauss 1967), I allowed the time periods and themes to emerge directly from the data. I first reviewed each document and took notes on general content, selecting codes as they emerged in the source material. I then compiled a meta-summary of these notes and organized broader themes and trends across time. Once I had identified the three periods and each period's dominant themes, I went back through the documents to code for the appearance of these themes. All quotes selected were representative quotes that instantiated these broader themes, rather than "cherry-picked" isolated cases. In many instances, I share several short quotes to emphasize the prevalence of a given theme within a time period. When codes in a given document did not match the prevailing theme of the period, I noted that as well. These "exceptions to the rule" are included in the analysis in order to show the complexity of each period, which is a key part of the chapter's conclusions.

The analysis focuses particular attention on MDOC's annual reports and annual statistical reports because they are the primary vehicle through which MDOC bureaucrats publically summarize and report on their activities. The intended audiences of these documents are policy-makers and the public, with the goal being to justify the MDOC's annual expenditures and engender future support for MDOC's preferred policies and future budgets. As such, we should expect these reports to be positively biased as to MDOC's achievements. However, these

documents do present an accurate view of how MDOC officials strove to be understood in the public and political spheres. In other words, these represent the best data for understanding official discourses around probation and their tie to specific criminal justice practices. In addition, I triangulate these discourses with quantitative indicators, such as probation admission rates, revocation rates, and spending patterns, to distinguish between changes in rhetoric and changes in practices.[35] I also bolster the analysis by examining MDOC rhetoric across a number of different venues, including public reports and internal newsletters, to assess whether the perspective changes across venues.

The case study focuses on Michigan because it is a state that embraced many of the most punitive reforms of the 1990s, including the toughest drug laws in the nation, yet has also been a national leader of progressive reforms in the 2000s. Thus, Michigan provides an example of both of these trends. In addition, many of the trends that passed through Michigan, such as increasing judicial severity, lengthening prison sentences, drug law crusades, court battles, prison riots, and overcrowding concerns, affected states throughout the country. The reforms happening around community supervision in Michigan in the past decade are also reflective of a broader national conversation on prison reform, as described in Chapter 2.

Throughout many of these years, Michigan has had somewhat higher than average incarceration and probation supervision rates. For example, across U.S. states, the mean incarceration rate increased from 120 prisoners per 100,000 residents in 1980 to 375 in 2000; in

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[35] It is possible that these "hard facts" are also positively skewed or distorted. Unfortunately, there is no external check for such data. However, given that the department in some instances does report negative outcomes (e.g. not having enough probation staff to manage their caseload), it does not seem to be the case that the MDOC only reported positive numbers. In some cases, it might also have been in the MDOC's own self-interest to acknowledge limitations so that additional funding could be requested.

Michigan, the incarceration rate increased from 164 to 478. The increase in probation rates also grew to be higher than average (although it did not begin above the mean), increasing from 275 probationers on supervision per 100,000 residents in 1980 to 1,705 in 2000 for Michigan, compared to a national average of 420 and 1,190 respectively.[36] However, Michigan has also been a leader of progressive reforms in the contemporary era (Greene & Mauer 2010). Between 2005 and 2010, the Michigan incarceration rate declined by nearly 13 percent, far exceeding national trends and establishing the state as a leader in the "Justice Reinvestment" reforms that redirect money from prisons to community programs.

In other respects, Michigan is a fairly average state demographically. Violent and property crime rates that have historically been slightly above average in Michigan, but have been declining during the past decade in many other states. By 2010, the state's violent crime rate was roughly one standard deviation higher than the mean across states (coming in it 490 violent crimes per 100,000 compared to 365) and the property crime rate was just below the mean (2,710 compared to 2,855). Michigan's population is primarily white, as in most states, with 15 percent of the population identifying as non-Hispanic black (compared to a mean of 11 percent) and 4 percent identifying as Hispanic (compared to a mean of 10 percent). Michigan also has a fairly typical level of inequality, with a gini index of 46 (compared to a mean of 45), and a poverty rate of 14 percent (compared to a mean of 13.5 percent). The political composition of Michigan's current legislative bodies also matches the national average, with roughly 40

[36] Author's calculations using data set described in Chapter 2.

percent of legislators identified as Republican in 2010 (compared to a mean of 45 percent).[37] Thus, demographically, Michigan is in many respects a fairly average American state.

The analyses center on probation for felony-level offenses because in Michigan only felon probationers are supervised through the state's Department of Corrections, while decentralized local county probation agencies are responsible for supervising misdemeanor probationers. The advantage of such an approach is that for felon probationers, the MDOC collects and disseminates centralized information on official policies, public statements, and probationer data. This research approach would not be possible in a context where probation services were entirely locally organized. This focus means that the rhetoric and practices of probation are centered on supervising individuals convicted of more serious crimes, who were eligible to serve time in state prison. In addition, felony probation supervision is where we are more likely to see substantial investments in both rehabilitative and control-oriented services, making it a strategic research site.

As with all case studies, Michigan cannot reflect the diversity of states across the country, with criminal justice policies in each context shaped by specific actors and unique circumstances. However, Michigan can reveal how these processes unfolded within one specific context. As with many single-case studies, this analyses seeks to use this concrete contextual example to build upon broader theory (Scheppele 2004) and I focus attention on the broader conclusions that emerge from the development of mass probation in Michigan and their implications for penal theory.

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[37] Ibid.

Results: Mass Probation in Michigan

Using a "periodization" strategy (Campbell & Schoenfeld 2013), I organize the analyses around three relatively bounded time periods, entitled "Transition" (1970s and 1980s), "New Penology" (1990s), and "Intervention" (2000s). Table 4.1 summarizes the analysis. For each period, I list the (loose) start and end dates, the perceived political problem MDOC is responding to, the dominant MDOC rhetoric around probation, and trends in probation practices. In what follows, I provide a narrative for each period, highlighting these three aspects. In the concluding section, I provide a broader analysis that bridges across the periods.

Table 4.1: Three Periods of Probation in Michigan

Period	*Correctional "Problem"*	*Dominant MDOC Rhetoric*	*Practices of Probation*
Transition (mid-1970s to 1980s)	Declining public faith in MDOC's ability to rehabilitate.	Goal of MDOC is to predict risk; probation "tests" individuals' ability to live in the community while providing "cost-effective" supervision.	Supervision minimal; MDOC strives to increase staffing and starts pilot programs.
New Penology (1990s)	Increasing push from public and legislators for more punitive sanctions.	Probation provides "tough" supervision and "reserves" prison beds for "truly violent" offenders.	Introduction of boot camps and electronic monitoring. Revocation rates increase.
Intervention (2000s)	Mass incarceration perceived as too expensive.	Revamped community corrections offer more "cost-effective" supervision while reducing crime.	Introduction of new case management tools and intermediate sanctions for violations. Revocation rates decrease.

Transition (mid-1970s to 1980s)

Opening the 1974 MDOC Annual Report, Director Perry Johnson offered a startling re-assessment of the work of corrections. In the wake of the Attica prison riot in New York and amidst fears that such disorder would spread to Michigan, the public was increasingly concerned about the criminal justice system and skeptical that prison officials truly rehabilitated their charges. To construct a new social justification without the crutch of rehabilitation, the department turned to risk assessment and cost-benefit analyses. Given the importance of this statement (and its resonance with later materials), it is worth quoting Director Johnson's comments at length:

> During the past few years, the Michigan Department of Corrections has become more acutely aware of public dissatisfaction with the criminal justice system's ability to make substantial inroads against crime.
>
> With regard to the correctional system in particular, the public feels now it has been deceived; that a commitment to prison should have meant an individual would never again commit a crime because he would be rehabilitated. Instead, much of the citizenry now believes that parolees and ex-prisoners are a major part of the problem.
>
> This feeling of betrayal – that rehabilitation was supposed to work, but didn't – has resulted in several reactions. One says if rehabilitation doesn't work, then prisons are no good and should be abolished; the other says if prisons don't rehabilitate, then we shouldn't parole offenders who aren't rehabilitated.
>
> The first reaction – to abolish prisons – which is less likely to gain substantial support, ignores the fact that some individuals must be isolated from society because they are dangerous and violent. It offers no protection for the public.
>
> The second, which would lock up all prisoners longer, has gained more support but it offers public protection only at an enormous human and economic cost.
>
> In Michigan about one parolee in 100 will commit a very serious crime involving death or injury to the victim. Yet most legislative proposals require that we lock up all 100 persons longer to try to prevent the one violent crime.
>
> We believe this alternative offers an essentially unjust, wasteful and ineffective solution to the problem.
>
> Unless we are able to present a reasonable and balanced alternative for public protection, however, some of the harsh, public reaction to crime will be enacted into law because there seems to be no other solution.

> The department has been re-examining its concepts and reason for being and has reconfirmed its single and overriding justification for being – protection of the public.
>
> We have now concluded that the greatest failure of the corrections system is not its inability to rehabilitate or deter, but its failure to realize its full potential in testing and screening out the possibly dangerous.[38]

This message begins a number of themes that become increasingly important over the coming decades. Most saliently, this statement explicitly positions risk-management as the new goal of corrections, replacing the rehabilitative ideal. In this new framing of the department's mission, probation provided a test of whether individuals could lead law-abiding lives. Thus, rather than emerging as a cause or consequence of mass imprisonment, here we see risk rhetoric emerge precisely to halt the emerging punitive turn.

In stark contrast to the more punitive themes that present later, in this period the department very explicitly argues against the "lock 'em up and throw away the key" strategy. This focus on penal moderation is defended with the logics of cost-effectiveness and public safety. For example, in the "Director's Letter" from the 1976 Annual Report, Director Johnson writes: "Prison is an expensive remedy. We must calculate its cost against the amount of public protection we get for that cost. If we incarcerate substantial numbers who are not serious threats to the public safety when there are alternatives to that, we perform a poor public service."[39] Once they've made the cost argument, MDOC leaders also describe community sanctions as "more productive" sanctions that offer a chance to keep individuals from "becoming tax burdens in a corrections system that we already cannot afford."[40]

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[38] MDOC 1974 Annual Report, p. 2-3.

[39] MDOC 1975-76 Annual Report, p. 1.

[40] Ibid.

As part of the strategy of promoting probation as the alternative to the prison build-up, MDOC officials begin the campaign to present probation as a "tough" sanction. In the 1976 Annual Report, for example, the department argues: "It… is a mistake to think of probation as nothing but a form of leniency, with prison as the only real punishment," since probation can be "a significant sanction in its own right" and is "more difficult for some offenders than short terms of incarceration."[41] More important, however, than these claims is the admission that in previous years, probation provided "few resources and requirements" and that due to staffing limitations, the majority of probation officers' time was spent writing Pre-Sentence Investigation Reports (which help judges decide on an appropriate sentence) rather than "counseling, family assistance or job finding."[42]

To address this inconsistency, MDOC officials worked to make probation tougher in reality as well. Key to these efforts was expanding the number of field service agents employed by MDOC. In the mid-1970s, the department sought out a $885,000 federal grant to improve community supervision, of which the majority went to hiring new senior probation agents.[43] In the following year, the Legislature approved a $5 million appropriation that allowed them to hire 116 new field agents and other staff—the biggest expansion of probation services on record at the time.[44] By hiring new staff, the department hoped to reach a standard caseload size of 75 probationers and parolees per officer.[45] These initiatives did reduce the caseload of field agents,

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[41] MDOC 1976-77 Annual Report, p. 117.

[42] MDOC 1976-77 Annual Report, p. 117-18.

[43] MDOC 1975-76 Annual Report, p. 4.

[44] MDOC 1976-77 Annual Report, p. 6.

[45] Deadline, Aug. 31, 1979: 1(5).

but not down to the desired goal. By 1986, field services caseloads were at 95 probationers and parolees per officer.[46]

The department also instigated new pilot programs for probationers. In 1975, the department began two experimental programs—Mutual Objective Program (MOP) and Probation Incentive Program (PIP)—to improve probation outcomes. The two programs addressed the two "levers" influencing the relationship between probation and incarceration established in Chapter 2 (sentencing and supervision). MOP used individualized behavioral "contracts" for probationers to improve compliance and reduce revocations, while PIP offered counties an extra $3,000 in funding for each individual diverted away from prison and into probation.[47] Internal reviews of these programs suggested that they were reducing prison admissions.[48] However, after a brief pilot period, the MDOC stopped mentioning either program in their public reports.

Despite the department's efforts to encourage judges to sentence individuals to probation, the volume of incoming admissions to prison and the length of stay both continued to increase, causing pressing crowding issues. These increases were in part due to changes in arrest, prosecution, and sentencing patterns (which increased the number of felony convictions)[49] and to changes in criminal justice sentencing legislation (which increased time served). The most important of the policy changes was the curtailing of good time credit in 1978, enacted as law

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[46] MDOC 1992 Statistical Report, p. 5.

[47] MDOC 1976-77 Annual Report, p. 118.

[48] MDOC 1975-76 Annual Report, p. 4.

[49] The first Statistical Report MDOC produced in 1968 reported that there had been over 10,000 felony dispositions that year. By the early 1980s, the annual number had doubled, reaching over 20,000 dispositions.

through a popular ballot initiative. In addition, the state's "war on drugs" initiatives began in earnest that same year, with the Legislature approving a "650 Lifer Law" that established a life without parole sentence as the mandatory punishment for individuals found holding more than 650 grams of cocaine or heroin and other mandatory minimums for lesser quantities.

The department used its annual reports and press releases to rally against these changes, continually supporting moderation in punishment. For example, writing about overcrowding in 1977, Director Perry argued that "a large part of our problem" has been an "emotional response" on the part of judges, which has "brought thousands of people to prison across the country."[50] Similarly, the department's public statements often included warnings about "hasty or piecemeal changes to the state's penal code" and the dangers of eliminating good time credits.[51] In 1976, the MDOC report summarized recent legislation by stating "Unfortunately, the majority of the bills that were introduced were ones the department opposed, yet seemed to be the kind that very likely reflected the concerns and wishes of many legislators."[52] MDOC reports linked these legislative changes to probation, presciently arguing that community sanctions were the only way to "really do the job of protecting the public without bankrupting it," arguing that "imprisoning people indiscriminately is not the right way to go, and it is not necessary."[53] By using risk-assessment tools and categorizing individuals into appropriate sanctions, the MDOC (ultimately futilely) strove to prevent mass incarceration.

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[50] MDOC 1977-78 Annual Report, p. 10.

[51] MDOC 1976-77 Annual Report, p. 2.

[52] MDOC 1975-76 Annual Report, p. 3.

[53] MDOC 1977-78 Annual Report, p. 11.

Across outlets, MDOC administrators openly mocked the public's contradictory attitudes—supporting punitive legislation but vetoing bills that would increase revenues for prison construction and blocking prison construction in their own neighborhoods. For example, in an annual report in the mid-1970s, MDOC staff critiqued "many members of the general public" for wanting more individuals behind bars while "appalled at the thought that a prison might be located anywhere near there communities."[54] In a 1979 publication aimed at MDOC employees, the department reported on a survey of Michigan residents about their preferences around criminal justice policies. Their biting title for this piece was "Build More Prisons – For Less Money – But Not Here" and the brief article detailed that residents wanted more prisons, but also wanted MDOC to get less state money and to keep prisons out of their neighborhoods. They end the piece with a "Did You Know?" inset that noted the average minimum sentence had risen from 3.2 to 4.2 years between 1972 and 1977.[55] While not clearly expressing a policy solution, the tone of this article clearly suggested that the public (and by extension, the legislature) had already increased sentence lengths beyond the point that the state was able to afford.

The crowding crises and other problems culminated in a series of scandals and crises in the late 1970s and early 1980s. Because of the national recession, in 1979, the department's funding was cut by $7 million.[56] This created a hold on replacing vacancies and cuts to many programs. At the same time, the legislature initiated a joint task force on the already serious overcrowding issues. By December 1980, overcrowding had become such a problem that the

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[54] MDOC 1976-77 Annual Report, p. 2.

[55] Deadline, July 19, 1979: 1(5).

[56] Deadline, Nov. 30, 1979: 1(9)

legislature approved the Prison Overcrowding Emergency Public Act (POEPA), which allowed the department to trigger automatic releases once they were above capacity for 30 days in a row.[57] Between 1980 and 1984, the POEPA was triggered regularly, prompting a huge public outcry. In addition, the department was besieged by a series of disturbances (including shootings and riots) inside the prisons and became subject to a consent decree in 1983 that forced administrators to make a series of improvements and expansions to its prison facilities.[58] By 1984, the press has become so toxic around corrections that Governor Blanchard refused to approve any more POEPA requests and instead pushed an ambitious legislative agenda for prison expansion. The resulting legislation in 1984 appropriated $16 million for new prison facilities and $0.6 million to hire new field agents.[59]

Despite this expansion, prison populations were again quickly stretched to the brink. After a series of commissions on overcrowding and repeated efforts to modify sentencing legislation, legislators in 1988 were able to pass the Michigan Community Corrections Act, which created an autonomous agency, the Office of Community Corrections (OCC), responsible for overseeing county-level efforts to reduce the number of prison sentences for lower-level felonies (those with a recommended minimum sentence of one year or less).[60] The Act stipulated that OCC would distribute grant money to counties that established Community Corrections Advisory Boards and developed comprehensive plans for reducing the number of felons sent to prison. Further, counties were required to use the additional funding to improve probation

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[57] MDOC 1980 Statistical Report, p. 6.

[58] Ibid.

[59] MDOC 1984 Statistical Report, p. 8.

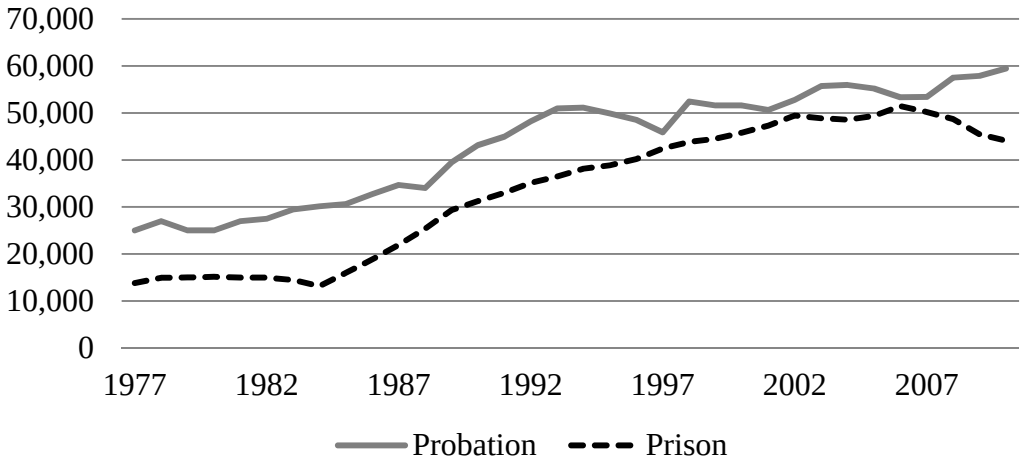
[60] PA 511.

services, through enhancing probation's surveillance and treatment capacities (e.g. through community service, day reporting, electronic monitoring, and/or drug treatment programs) (Clark 1995). The MDOC's advocacy for the act represented the last years of this period of resistance and a shift to a new mode of advocacy wherein the department avoided directly challenging the logic driving mass incarceration.

New Penology (1990s)

By the 1990s, the politics of punishment in Michigan had officially shifted into a more punitive mode. As documented in Figure 4.1, by the end of the 1980s, the prison population had nearly doubled over the decade, growing from roughly 15,000 to over 31,000. The probation population grew only slightly more moderately in terms of the percent increase, expanding from roughly 25,000 to over 43,000 probationers under supervision on an average day in 1990.

Figure 4.1: Felony Probation and Prison Population Totals in Michigan, 1977-2010



With incarceration rates hitting over 350 prisoners per 100,000 residents,[61] Michigan had become a central example of the "culture of control." By 1992, Michigan would report that it had the highest rate of felony supervision in the Great Lakes states and was among the five highest jurisdictions nationally.[62]

Importantly, this expansion in imprisonment rates was not due to an increasing percent of felons sentenced to prison, as was the case in many states. Instead, the expansion in Michigan was driven partly by continued increases in the total number of felony convictions[63] and a lengthening of average prison sentences. As documented in Figure 4.2, leading up to the 1990s, new court commitments to prison (and, to a lesser extent, probation violators admitted to prison) increased, nearly doubling in size, suggesting that much of the prison expansion in this period was driven by greater admissions. However, after the Community Corrections Act was passed, new court commitments to prison declined rapidly before stabilizing in the early 2000s. These trends persisted despite increases in the number of felony convictions, which means that the growth in the prison population after 1990 was driven almost entirely by sentence length changes.

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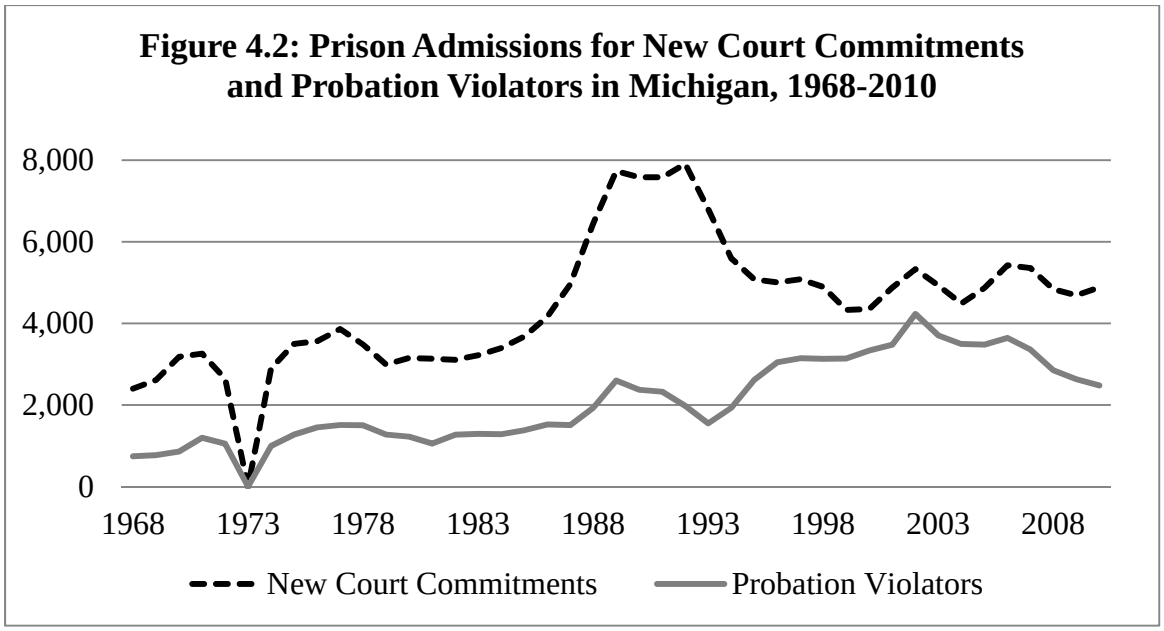
[61] Author's calculations from data set used for Chapters 2 and 3.

[62] MDOC 1992 Statistical Report, p. 5.

[63] Throughout the 1990s, the number of felony dispositions increased rapidly, doubling again from roughly 20,000 to nearly 40,000 per year (MDOC Statistical Report, various years).



The sentencing changes that swept Michigan in this period were in many respects extreme examples of the kinds of sentencing modifications cropping up across the country. In 1998, Michigan enacted a tough mandatory minimum sentencing scheme and a particularly strict truth-in-sentencing law that required inmates to serve 100 percent of their minimum sentence.[64] In addition, throughout the mid-1980s to 1990s, the state enacted over 100 new statutes that increased penalties for various crimes (Clark 1995). These changes dramatically increased the length of time served. Between 1981 and the late 1990s, the estimated average length of stay in prison increased by nearly 60 percent, from just under 30 months to nearly 45 months (Citizen Research Council of Michigan 2008).

In line with this more punitive mode of crime governance, the department's public rhetoric grew increasingly managerial, focusing on risk management and public safety in ways consistent with the new penology model developed by Feeley and Simon (1992). Rather than

[64] 1998 PA 317. For more details, see Deming (2000).

fight the public or legislators on penal moderation, the official rhetoric of MDOC increasingly adopted the punitive consensus, with little distinction between MDOC's perspective and the Governor's (and legislators') "tough on crime" stance. In fact, the 1993 Annual Report included a letter from the Governor that was virtually indistinguishable from the department's own language, indicative of this new symbolic relationship and the increasing importance of issues around punishment for governors (Simon 2007). Themes around public safety concerns also grew more prevalent, with the department increasingly framing the public as its "customer" in a mirror of corporate discourses. In the 1993 Annual Report, for example, the department included a long section on "Satisfying Our Customers," which addressed the various ways MDOC had become "tougher" on crime.[65] In addition, the language of offenders' "accountability" for their own behavior featured much more prominently in this period.

The one notable exception to the consistency with Feeley and Simon's new penology model is the submersion of language around risk assessment and risk management. As risk management was primarily promoted as a way to prevent mass incarceration in Michigan, the turn to more punitive discourses meant that risk narratives faded in importance. Instead, the focus shifted to the need to incapacitate violent and dangerous criminals. Rather than stressing their role as risk-sorters, MDOC officials increasingly adopted a rhetoric that omnisciently assumed that "dangerous" felons could be easily identified. Once it was clear who posed a threat to the community and that the goal was to incapacitate these threats to public safety, all that remained was to find prison beds in which to warehouse them. In order to do this, the department framed probation as a way to provide punishment and monitoring to non-dangerous felons, while

[65] MDOC 1993 Annual Report, p. 1.

preserving space in prisons for long-term incapacitation. Thus, while probation retained its image as a prison "alternative," under the new logic, probation became an alternative that facilitated extremely long prison sentences. For example, much of the "Satisfying Our Customers" section referenced above focused on strengthening community supervision so that prison beds could be "reserved" for "violent and chronic offenders."[66]

Department and state leaders were very direct about this trade-off. In the Governor's letter mentioned above from the 1993 Annual Report, Governor John Engler addressed Michigan's citizens with: "As Governor, my most critical responsibility is public protection—the safety of each and every family."[67] To accomplish this goal, the Governor argued that the state needed to "punish certain types of low-level felons on the local level, rather than in prison" in order to "have more prison space for Michigan's violent and chronic offenders."[68] Similarly, in the introductory letter to "Michigan's Citizens" included in the 1998 Annual Report, the Director writes that MDOC fulfills its mission of "helping to protect the public" both by "incarcerating the state's most dangerous and chronic offenders" and "providing a wide range of sanctions for those who do not require incarceration."[69] Notably, the department ended this statement with a nod to the cost-effectiveness of community supervision, documenting the continuous undercurrent of the economic argument for probation.

As the department strove to justify probation as a viable sentencing option for the "non-dangerous," their annual reports, internal memos, and press releases strove to project a "tough"

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[66] Ibid.

[67] MDOC 1993 Annual Report, p. 1.

[68] Ibid.

[69] MDOC 1998 Annual Report, p. 5.

image of probation, with language of "enhanced" monitoring and ensuring probationers' "accountability" for their behavior. For example, in the 1993 Annual Report, the department listed as one of its goals: "Improve the accountability of offenders by providing incentives and opportunities for positive changes in behavior and by providing legitimate sanctions for unacceptable behavior."[70] Consistent with other research (Bosworth 2007; Lynch 2000), this placed ultimate responsibility on the individual supervisees, with the department required only to provide the "opportunity" for change.

At the same time as the discourse was changing, probation practices in some ways changed dramatically as well. In the late 1980s and 1990s, the department implemented electronic monitoring, opened technical rule violation centers, and developed boot camps ("Special Alternative Incarceration" or SAI programs). By 1999, roughly 1,400 probationers were monitored through electronic tether on an average day.[71] In 1990, the Special Alternative Incarceration (SAI) boot-camp program was expanded to accept probationers (in addition to lower-level prison-bound cases). By 1998, more than 1,000 probationers were starting the boot camp program in the year, with a completion rate of 68 percent.[72] The late 1990s also ushered in pilot programs for "zero tolerance" drug testing, special sex offender programs, and the "Night Hawk Program," a collaboration with law enforcement that allowed field officers to make unscheduled visits to supervisees' homes at night.[73]

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[70] MDOC 1993 Annual Report, p. iii.

[71] MDOC 1999 Annual Report, p. 61.

[72] MDOC 1999 Annual Report, p. 64.

[73] MDOC 1999 Annual Report, MDOC 2000 Annual Report.

There is also strong evidence that probation became much tougher in terms of the percent of probationers revoked to prison. For example, in 1987 (the first available year of data), for every 1,000 probationers under supervision that year, there were 45.5 admissions to prison for probation violators; by 2002, this ratio reached a high of 76 prison admissions for every 1,000 probationers—an increase of 67 percent. As documented in Figure 4.2 above, this increase was a large contributor to the build-up in prison admissions over this period.[74]

In addition, the department worked to match the increase in the number of probationers with the number of field officers. As the number of probationers and parolees had increased over the years, caseloads had gotten heavier. Between 1985 and 1992, the average caseloads for field officers increased from 95:1 probationers and parolees per officer to 127:1.[75] In response, the department put a strong emphasis on increasing staffing in the 1990s; between 1991 and 1999, the department increased the number of field officers by 65 percent, reducing the caseload substantially.[76] MDOC leaders actively promoted these developments and tied them to increasing success with using probation for lower-level felons. In the 1998 Annual Report, for example, Director Kenneth McGinnis noted that the state had "succeeded in slowing down new prison commitments, especially of low-risk offenders who can be safely managed in the community, through the support of community sanctions and an increase in the number of field agents" and in the very next sentence, McGinnis proudly noted that the department was now able to "keep

[74] MDOC Statistical Report, various years.

[75] MDOC 1992 Annual Report, p. 151.

[76] MDOC 1999 Annual Report, p. 53.

violent offenders in prison, through fewer paroles," with the result of "more prisoners staying longer."[77]

And yet, in the day-to-day aspects of supervision, probation in some ways remained much the same. For most probationers, supervision continued to involve infrequent meetings with over-burdened probation officers. Most of the special programs implemented to demonstrate probation's toughness were relevant to only a small proportion of probation supervision. Paradoxically, in some ways, probation supervision also grew more attentive to rehabilitative services. For example, one of the effects of the Community Corrections Act was to motivate counties to develop plans to improve supervision, often by expanding treatment options. Between the late 1990s and late 2010s, the Office of Community Corrections appropriated roughly $13 million each year to local counties for improving community supervision.[78] These funds went to support diverse reform efforts, many of which were progressive in orientation, including community service, group counseling, assessment tools, case management training, substance abuse testing and treatment, employment and training, and mental health programs.

Thus, by the close of the 1990s, the MDOC was in a very different place than it was by the end of the 1980s. MDOC officials had successfully diverted lower-level felons away from prison and onto probation, but the prisons were still straining past capacity due to increasingly long sentences. Throughout this period, probation got a punitive make-over in the department's official statements while supervision on-the-ground in some ways changed and in others remained very much the same. While I gave this period the title of "New Penology," in many

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[77] MDOC 1997 Annual Report, p. 3.

[78] MDOC Annual Report, various years.

ways this transformation was incomplete and contradictory. MDOC officials implemented a number of punitive reforms, while simultaneously increasing resources for treatment programs. One of the most important changes in probation practices was the increase in probation revocations, which as Figure 4.2 demonstrates, were an increasingly large portion of prison admissions. This trend would become reframed as one of the central "problems" facing probation in the next decade.

Intervention (2000s)

By the early 2000s, another major shift in the politics of punishment was beginning. By then, the state had decided its current level of incarceration was both unsustainable economically and ill-conceived as a policy choice. With the support of a progressive Governor, Jennifer Granholm, legislators enacted a series of sentencing changes. Most notable of the sentencing changes were sweeping changes to the drug laws in Michigan in 2002. These reforms eliminated mandatory minimums for drug violations, moderated the sentencing guidelines, and abolished the use of lifetime probation. In addition to changing sentencing for new offenses, the protocols were retroactively applied to current inmates, producing a wave of parole releases (Citizens Research Council of Michigan 2008).

At the same time, the MDOC initiated a series of reforms to internal policies and practices. Central to these changes was an overhauling of both probation and parole, although the reforms to parole have garnered much more public attention. In 2003, the department introduced an ambitious parole reform project—the Michigan Prisoner Reentry Initiative (MPRI). This program overhauled both the parole release process and parole supervision. Key to these new changes were training on risk-assessment tools for parole board members (to increase the rate of

parole releases), new links between parole agents and local service providers, the introduction of individualized re-entry plans, and a range of intermediate sanctions for responding to parole violations (Greene & Mauer 2010; Rengifo & Stemen 2010b). To build in these intermediate sanctions—as an alternative to sending violators to state prisons—the department invested in electronic monitoring, re-entry planning, and day reporting centers.

These expansions and re-training of staff members were not just surface-level changes, but rather, reflected a substantial shift in the priorities of the state leaders and correctional outcomes. By 2007, MPRI reforms had spread from a select number of target counties to the entire state. Between 2007 and 2009, the budget for MPRI increased from $6 to $57 million (Rengifo & Stemen 2010b: 22). In the same two years, the parole approval rate increased by 15 percent and the prison admission rate for parole revocations declined by 22 percent (Greene & Mauer 2010: 37).

In addition to increasing releases through parole, MDOC also strove to divert more individuals to probation and improve supervision outcomes. In 2003, the department announced a "5 Year Plan" for reform, which included "expanding community sanctions for low-level offenders."[79] By revitalizing efforts associated with the Community Corrections Act, MDOC leaders pushed local counties to decrease the percent of felons sentenced to prison. These efforts led to a reduction in the percent of "straddle cell cases" (those on the margins between prison and community supervision sentences) sentenced to prison from 43 to 33 percent during the 2000s (Greene & Mauer 2010: 41). As a result of these efforts, prison populations have steeply

[79] MDOC 2003 Annual Report, p. 14.

declined, making Michigan one of the states with the biggest declines in imprisonment rates in recent years (Greene & Mauer 2010).

The second probation-related aspect of the "5 Year Plan" was to improve probationer outcomes and keep more probationers in the community (rather than revoking them to state prison) by improving supervision and violation policies. These changes in many ways paralleled those of MPRI, including the increased use of risk-needs assessments for assigning the level of probation supervision and graduated sanctions for responding to probation violations (Greene & Mauer 2010). In addition, MDOC increased the number of field agents (hiring more than 100 new parole and probation officers), introduced new technology to decrease office visits (e.g. check-ins through phone and electronic kiosks), and assigned select field agents to smaller specialized caseloads (e.g. mental health and sex offender caseloads) (Greene & Mauer 2010: 28, 38). All of these initiatives reduced caseload sizes and focused officers' attention on a more limited number of high-risk and/or high-needs cases. Finally, MDOC also overhauled its case management system and staff training, encouraging field officers to work with community social services and probationers' family members and employment contacts collaboratively.[80]

As a result of these changes, probation revocations to prison have been quickly declining. In 2002, the number of prison admissions for probation violations relative to every 1,000 probationers on supervision reached a high of 76 prison admissions for every 1,000 probationers. After 2002, this ratio continuously declined, reaching a low of 41.6 in 2010. This decline was so large that a smaller percent of probationers were being sent to prison for probation violations in

[80] All details in this paragraph confirmed by interviews with MDOC staff in 2012 and various policy directives in MDOC's administrative files.

2010 than in 1987.[81] In addition, these declines have been the single largest contributor to the decline in prison admissions. As documented above in Figure 4.2, admissions for probation violations have declined from a high above 4,000 admissions per year in the early 2000s down to under 2,500 probation violators by 2010.

Interestingly, these probation changes have been much less publicized by the department, relative to MPRI, making them harder to track. While MPRI's successes are continually referenced by the department, the successes in terms of bringing down probation revocations are hardly mentioned. For example, in 2008, Michigan received technical assistance with the Justice Reinvestment Initiative (JRI) to improve criminal justice outcomes. The suggestions from JRI included a pilot program for high-risk probationers. In response, the legislature approved $1 million in funding for a pilot program in 2010 (Council of State Governments Justice Center 2010). However, these initiatives do not appear in the departments' most recent annual reports. This perhaps suggests that probation is less consistent with the department's current framing of its work than in earlier years, and thus has been obscured in public reports (Goodman 2010). Another possibility is that the public support for "re-entry" programs has placed the spotlight on parole reforms, ignoring the parallel reforms happening with probation.

These changes to community supervision are reflective of a broader shift toward an emergent new model of corrections. As Rengifo & Stemen (2010) argue, during this period Michigan (and other states) shifted from "relatively narrow policies inspired by the need to moderate prison growth to a system-wide realignment of correctional goals" (5). Embodied in recent changes to tools and protocols for decision-making, case management strategies, and

[81] MDOC Statistical Report, various years.

linkages with service providers, this new model uses the language of "risk reduction" and "prisoner success," rather than the older model of "trail them, nail them and jail them" (respondent quoted in Rengifo & Stemen 2010b: 24). By 2009, Director Patricia Caruso confidently announced in the annual report that: "The Michigan Department of Corrections remains a national leader in re-entry policy. We continue to have the support of Governor Granholm, legislators, community partners and interest groups who care about *offender success* and who realize that *human warehousing* is a poor strategy for successful offender re-entry policy" (emphasis added).[82] The phrase "offender success" here provides the coded reference to rehabilitation, while "human warehousing" is used to denigrate the punitive model. This shift is reflected in the overhauling of probation and parole supervision but also has echoes throughout the system. For example, the Special Alternative Incarceration program, initially run as a boot-camp, shifted to a risk-need based program approved by a leading progressive criminologist.

Thus, by the late 2000s, MDOC was on a path toward a new model of corrections, aimed at reducing the prison population in part by returning to the practices of rehabilitation, albeit branded now as promoting "offender success" and "community safety." Community corrections were again central to this transformation, providing a solution to the problem of mass incarceration.

Discussion

This chapter aimed to provide a grounded historical analysis of why mass probation developed during the prison boom. The results suggest that probation in Michigan flourished

[82] MDOC 2009 Annual Report, p. 1.

because MDOC officials were able to adapt the logic of probation to changing penal discourses. In the wake of the public's shattered faith in the rehabilitative potential of prison, probation was framed as how the department tested the risks individuals posed in the community. As overcrowding started to threaten control, probation became the solution to reduce prison admissions. After the department lost the battle for penal moderation and adopted an increasingly punitive tone, probation became the solution that allowed the state to "reserve" prison beds for incapacitating violent offenders. Finally, as the punitive push finally crested, probation re-emerged (alongside parole) as the solution to reducing the state's costly reliance on imprisonment. Thus, probation remained centrally positioned no matter what the crisis facing MDOC administrators and its defense fluidly threaded both punitive and rehabilitative logics.

By watching this process of change in the rhetoric and practices of probation, scholars can gain new understanding of the purported shift from the rehabilitative model to punitive era. Focusing first on the rhetoric, the results suggest no clean break from the earliest years to the "post-modern" years. Throughout the entire time period, the managerial logic of cost-effectiveness remained central, as did a concern with making probation appear to be a "tough" sanction. In addition, the emergence of the key element of the new penology model—the obsessive focus on managing risk—began much earlier than the 1990s, as an explicit strategy to respond to the public's declining faith in rehabilitation and moderate prison growth. Thus, rather than emerging as a cause or consequence of mass imprisonment, risk management entered the lexicon as a way to *prevent* the build-up. In other ways, however, the 1990s did usher in a new managerial logic consistent with the new penology model, especially the framing of the public as the "consumer" of the MDOC's services and the heavier emphasis on public safety. In the most recent years, the discourse has turned back towards rehabilitation, re-branded as a focus on

"offender success" and directly linked to public safety outcomes (Garland 2001b; Rengifo & Stemen 2010b; Simon 2008).

Turning to the "technologies" of control and their implementation, the historical narrative suggests that these changing discourses did sometimes synch up with shifts in probation practices on-the-ground, but often in unexpected ways, and that there were important discontinuities between rhetoric and practices. Despite the more progressive tone of the MDOC's statements in the early 1970s, the results suggest that there was no "golden era" of probation supervision. Probation in these years appears to have provided few supportive services, as the staffing levels were barely adequate to provide the court with pre-sentence reports, let alone provide active supervision. As probation in many ways became more punitive (adopting electronic monitoring, drug testing, etc.), and revocation rates spiked, MDOC simultaneously began to supply the staff and program funding needed for probation to serve as a supportive institution. As the punitive push lulled by the early 2000s, rehabilitative services continued to slowly expand in many respects. By the end of the reforms in the 2000s, revocation rates were back down to their pre-1990s levels, suggesting that to the extent that Michigan did enter a "new penology" period, it has since retreated.

This flexibility in institutional logics and practices suggests that there was no moment of transformation from modern to post-modern punishment. Instead, concerns around risk management, cost-efficiency, and managerialism represented a recycling and reconfiguring of older modernist logics, rather than a sharp break into the "post-modern" (Garland 2003). Moving into the contemporary period, we see this remodeling happening again, with the logic of rehabilitation being reinserted under the guise of public safety (Robinson 2002). These findings reinforce what scholars often refer to as the "braided" nature of punishment; rather than

envisioning a "rupture" from rehabilitative to punitive practices, this strand of thought argues that punishment continually reconfigures both punitive and progressive impulses and rhetoric (Hutchinson 2006). Probation provides a particularly good example of this hybridization, blending a progressive drive to offer an "alternative" sanction and the opportunity for redemption with a punitive impulse to surveil and manage vast swaths of the population.

In particular, the analyses show that that the emergence of language around risk did not necessarily have to emerge with the prison boom—but rather, had the potential to be a counter-force to the punitive turn. Thus, there is no clean link between the rehabilitative logic and smaller prison populations—and risk management and mass imprisonment. In other words, the emergence and use of risk language does not have to be associated with the other features of "harsh" punishment identified in Feeley and Simon's (1992) theory. Discourses focused on risk were tied to penal moderation in the 1970s and 1980s, penal "alternatives" in the 1990s, and improving community supervision and "offender success" in the 2000s. Thus, this rhetoric is surprisingly adaptable to a range of different practices with diverse goals.

In addition, the historical narrative suggests that the interface between penal rhetoric and practices can be strategically molded to achieve social and political aims. Rather than posing the inquiry as whether rhetoric or practices (or both) changed during a given historical period, scholars might instead examine how the two collide, combine, and reconfigure one another. Particularly in the case of pilot programs implemented across the years, the evidence suggests that state leaders adapted practices to fit changing discourses—and then shifted those discourses to highlight the changes in practices. These reforms often tailor-fit the prevailing discourses at the time and allowed MDOC officials to have something weighty to report in their public materials. While such changes often affected only a small percent of the probationer population,

they represented the majority of the text devoted to probation. Thus, the interesting theoretical action may be in the interface between rhetoric and practices, a location that historical methods are particularly well-suited to study.

As the classic studies of "net widening" suggests, drawing any dichotomy between rehabilitation and punitiveness is inherently fraught, since treatment-oriented programs are often implemented in punitive and controlling ways (Blomberg & Lucken 1994; Cohen 1985). This is in part due to the difficulties in running service programs within fundamentally coercive environments. What is often less appreciated, however, is how the diverse interests and power of the different actors in the penal field shape these contradictory policies (Page 2011)—leading to a criminal justice system that often harms when it attempts to help. Rather than representing a coherent group of interests, these actors, including criminal justice bureaucrats, judges, legislators, governors, national advocates, and the public at large, often have quite different guiding ideologies, policy preferences, and political power. As all of these interest groups come together to form the multiple legal and bureaucratic structures that frame the criminal justice field, their preferences get combined in a contradictory jumble of policies (Stone 2002).

Thus, the end result is a criminal justice system where, as the saying goes, "the left hand doesn't know what the right hand is doing." When only the MDOC was working to moderate the prison population, coherent policies were impossible. Instead, the percent of felons committed to prison decreased while sentence lengths expanded, causing profound crowding issues alongside a dramatic expansion in the probation rolls. In contrast, when the various power-holders are in agreement about policy preferences, as in the 2000s, the various components of the criminal justice system (e.g. sentencing, prisons, and community supervision) can work in parallel. Thus, we see the proliferation of "best practices" among probation and parole officers, the introduction

of re-entry planning inside of prisons, and new ways of responding to violations being implemented alongside substantial sentencing reform. Because the interests of these various groups are more closely correlated in the most recent decade, coherent reform efforts have become possible.

As with all case studies, it is worth ending with a note of caution regarding generalizability. The story told here of Michigan may not resonate in other states, particularly states which fall outside of the high-high category in the probation-prison typology presented in Chapter 2. However, we can conclude that in some states, mass probation developed not just in spite of its role as a prison alternative—but because of it. As the state adopted increasingly punitive policies, probation became a way to facilitate the extraordinarily long sentences associated with mass incarceration, even as it provided a diversion option at sentencing. Future research might profitably explore how these processes developed in other states, facing perhaps different penalogical crises and reacting with unique responses.

However, the broader conclusions about the flexibility of penal logics, the interface between rhetoric and practices, and the importance of penal actors should apply across diverse state contexts, time periods, and forms of punishment. In addition, the results suggest that scholars have much to learn by incorporating probation into historical studies of the expansion of the carceral state. In particular, the study sheds new light on the complexity of the shift from penal-welfarism to the post-modern period and provides one of the first examinations of how penal power is adapting in the current moment of prison reform. This rich description might be expanded to develop a new theoretical model for the present.

Chapter 5

Conclusion

Over the past 40 years, the U.S. embarked on an unparalleled expansion of the criminal justice system. While popular and academic attention has focused primarily on mass incarceration, the expansion of what I term "mass probation" also merits substantial inquiry. By 2011, the number of adults under state probation supervision in the U.S. was roughly 4 million persons, representing about 1 in every 60 U.S. adults (Glaze & Parks 2012). Like imprisonment, probation is potentially transformative for individuals' life courses and central for understanding the criminal justice system as a policy arena and issue of theoretical concern. This dissertation provides the beginning of a sociological literature on mass probation in the U.S., opening up several lines of possible future research. I first briefly review each empirical chapter and then move to directions for future research.

Chapter 1 answers the question of whether expansions in probation supervision rates across states since 1980 were a contributor to—or an ameliorative force against—mass imprisonment. This chapter provides the first contemporary revisiting of the "net-widening" debate with empirical evidence from the past 30 years. Using state-level quantitative data, the results suggest that probation pulls in both directions, depending on the state context. Rather than simply ask whether probation is a net-widener or alternative, I build a theoretical model that explains how the implementation of probation (in terms of both sentencing and supervision) shapes the probation-prison link. In states where probation is primarily a prison alternative, I find a null relationship between probation and imprisonment rates. In states where probation is primarily used to supervise lower-level cases, there is a significant and positive relationship

between probation and imprisonment rates, indicative of net-widening. To develop the mechanisms behind these results, I then present a series of case studies of recent reform efforts where changes to probation helped to reduce prison populations. The results suggest that while probation is not a panacea for mass incarceration, reforms to the practices of probation can be part of a package of changes that reverses the course of imprisonment rates.

In the second chapter, I return to the finding that the expansion of mass probation and mass imprisonment across states was largely decoupled. Thus, some states rapidly expanded prison populations (but not probation), while others focused on probation, and still others saw both forms of supervision rapidly (or tepidly) build. Reflecting more broadly on these patterns, I show that including probation in our understandings of state variation in the scale of punishment radically reconfigures state rankings. I also generate a 2-by-2 typology that outlines four regimes of control based on probation and imprisonment rates. The results show that some of the states renowned for having resisted the push toward mass incarceration, such as Minnesota and Rhode Island, actually maintain tremendously high overall supervision rates. This suggests that states in this region were not insulated from "high crime politics," but rather, channeled this impulse into a qualitatively different kind of control. In addition, quantitative analyses of the determinants of probation rates suggest that states may have leaned toward probation in lieu of imprisonment when state finances could not accommodate sufficient prison-building. In this telling, mass probation expanded not because it was a more lenient alternative to imprisonment, but rather because it was perceived as a cheaper way to enforce mass supervision. However, I also document the complexities of modeling probation rates given policy differences across states.

Chapter 3 broadened out the analysis by examining the historical trajectory of mass probation in one state, investigating how probation survived the turn toward a more punitive

model of corrections in the 1970s. The case study centers on Michigan, a state that has a unique history of embracing some of the harshest sentencing reforms in the 1980s and 1990s and the most progressive reforms in the 2000s. The results suggest that probation was continually re-invented to fit whatever new "crisis" faced corrections. Through these periods, there was never a clear shift from rehabilitation to risk management in penal logics or practices. Rather, both the rhetoric and practices of probation iteratively changed to fit different understandings of the criminal justice problem to be solved, drawing on both rehabilitative and punitive (or neo-liberal) narratives throughout this time period. In the process, the practices of probation varied radically, sometimes moving in synch with the rhetoric, but in other instances changing in contradictory ways. In the discussion, I argue that this history helps scholars to reimagine penal power throughout these eras and to build new theory about the relationship between rhetoric and practices.

Directions for Future Research

Beyond the suggestions embedded in each chapter's discussion sections, three future avenues of research are worth noting. Each avenue addresses a different level of inquiry, moving from the macro to the micro-level.

At the broadest level, much could be learned by studying states' unique historical trajectories toward mass probation. As noted in Chapter 3, probation populations are inherently more ambiguous than prison populations and group together different populations across states. In addition, national information on this state-level variation is extremely limited. In Chapter 4, I provided an examination of the expansion of probation in Michigan, showing that the trajectory there was in large part driven by a desire to divert prison-bound offenders to probation. In other

states, particularly those in other places in the typology presented in Chapter 3, this trajectory might look quite different. In addition to providing historical context regarding the unique penal fields in each state, such studies could also better explore the importance of bureaucratic rules in shaping these control regimes (e.g. the processes determining who is counted as being on probation, the policies around revocations and exiting probation, the role of fines in probation supervision, etc.). This research could further develop the idea that rather than resisting "high crime politics," some Midwestern and Northeastern states instead developed this more hidden form of control, while other states did truly restrain all forms of penal expansion. How did states such as Maine, New York, and Kansas avoid developing high rates of either probation or imprisonment?

Moving to the meso-level, ethnographic and historical portrayals of the daily realities of probation supervision would help scholars to better understand this dimension of carceral control. While we have ethnographies of institutional prison life (Comfort 2008; Irwin 2005; Lin 2000) and parole supervision (Lynch 1998, 2000; Simon 1993; Werth 2012, 2013), sociologists have yet to explore the unique features of probation supervision—and the importance of this institution for building penal theory.[83] Such studies would illuminate whether probation supervision is any more rehabilitative than parole, how the control of probation operates on the ground, and how probationers experience supervision. This line of research would continue the discussion begun in Chapter 4 about how a focus on probation might change many of our understandings about penal practices and penalogical theory.

[83] A notable exception to this trend is Cox's (2011) work on how juvenile probationers negotiate agency in the context of probation supervision.

Finally, at the individual or micro level, there is much work to be done on how mass probation shapes individuals' life trajectories and daily life in disadvantaged communities. Like imprisonment, probation involves the imposition of a criminal record and a series of restrictions, monitoring, and barriers to work and housing. Thus, probation supervision likely has deleterious consequences for individuals' life outcomes. Beyond individual probationers, researchers might also explore the neighborhood-level dynamics of carceral control in the "million dollar blocks" that have been most affected by the expansion of criminal justice sanctions. While we have begun to understand how the experience of mass imprisonment affects daily life for many families (Braman 2004; Comfort 2008), research again has not focused on the experiences of people in those same communities with respect to probation. Since supervision takes place *inside* of the community context, there is good reason to think it might have different effects on families and neighborhood dynamics. Updating Cohen's (1985) classic work on punishment in the community to the contemporary era would show how the expansion of the carceral state has transformed impoverished communities, both by removing many of their men (and an increasing number of women) and by inserting criminal justice agencies into the fabric of everyday life on an unparalleled scale. [84]

[84] Goffman's (2009) study of being "on the run" is an excellent example of the kinds of themes this research would likely uncover. In that study, she found that for young men (and their friends and family) in a poor Philadelphia neighborhood, many of the normal interactions of daily life (such as searching for a job, going to the hospital, or calling the police) were disrupted because of the legal vulnerability created by outstanding warrants. Similarly, being under probation supervision likely reshapes individuals' and families' daily patterns of interaction.

Conclusion

Mass probation represents the largest component of the criminal justice supervisee population, yet is radically under-studied and under-theorized. This dissertation takes the first step in this research trajectory, developing new theoretical understandings of state social control and penal change and opening up more nuanced conversations around the potential reversal of mass incarceration. Future scholarship that incorporates the study of probation—alongside imprisonment and other forms of punishment—can redefine scholars' understanding of the punitive turn and contemporary penality.

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Appendix A. Data Definitions by Source

Bureau of Justice Statistics

Incarceration Rate	Number of prisoners per 100,000 residents sentenced to 1 year or more under the jurisdiction of state prison system.
Probation Rate	Number of probationers under county and state-level supervision.

Federal Bureau of Investigation, Uniform Crime Reports

Index Crime Rate	Number of crimes per 100,000 residents for index offenses (murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny/theft, and motor vehicle theft).
Drug Arrest Rate	Number of arrests for drug crimes per 100,000 residents in jurisdictions with populations over 50,000.

U.S. Census

Percent of Population Aged 15 to 24 Years	% population aged 15 to 24 years.
Percent Black	% population identified as African American or Black.
Percent Hispanic	% of population identified as Hispanic.
Percent Foreign Born	% of population identified as foreign born.
Percent Urban	% of population living in a Standard Metropolitan Statistical Area (SMSA).
Gini Coefficient	Gini measure of inequality.
Total Population	End of year state population total.

Bureau of Labor Statistics

Unemployment Rate	% of labor force that is unemployed among civilian non-institutional population over 16 years.

U.S. Census, Survey of State Government Finances

Ratio of State Revenue-to-Debt	Ratio of annual state revenue (from all sources) to all outstanding debt.
Total State Expenditures Per Capita	Total annual amount for all general state expenditures per capita, in $1,000s of 2009 dollars.
Percent of State Spending on Police Services	% of general spending devoted to police services (including capital outlays).
Percent of State Spending on Welfare Services	% of general spending devoted to welfare services (including all means-tested cash assistance programs, public welfare institutions, and administrative costs).

Carl Klarner's State Partisan Balance Dataset

Percent Republican Legislators	% of legistlators in both houses that are identified as Republican.
Republican Governor	Political party of Governor.

Appendix B. Descriptive Statistics (Years 1980-2010)

	Obs.	Mean	Std. Dev.	Min	Max
Criminological Factors					
Probation Rate (per 100,000)	1,549	981	651	99	4,703
Incarceration Rate (per 100,000)	1,550	296	156	28	880
Index Crime Rate (per 100,000)	1,500	4,544	1,312	1,791	8,938
Drug Arrest Rate (per 100,000)	1,436	399	256	9	1,756
Percent of Population Aged 15-24 Years	1,500	15.2	1.8	11.7	20.3
State Budgets					
Ratio of State Revenue to Debt	1,500	2.5	1.8	0.4	33.9
Total State Expenditures Per Capita (in $1,000s)	1,500	4.2	2.2	1.8	27.6
Percent of State Spending on Police	1,500	0.9	0.3	0.0	2.2
Percent of State Spending on Welfare	1,500	7.6	3.0	3.0	19.5
Political Factors					
Percent Republican Legislators	1,470	44.0	16.9	2.9	88.6
Republican Governor	1,500	0.5	0.5	0	1
Social and Demographic Factors					
Percent Black	1,500	10.6	9.3	0.2	37.7
Percent Hispanic	1,500	6.6	8.4	0.1	45.6
Percent Foreign Born (census year only)	200	6.1	5.3	0.8	27.2
Percent Urban (census year only)	200	70.0	14.6	34.0	94.0
Unemployment Rate	1,500	5.9	2.1	2.2	18.0
Gini Coefficient of Income Inequality	1,500	42.9	3.1	34.8	51.9
Total State Population (in 1,000s)	1,550	5,302	5,803	402	37,338

NOTE: Summary statistics compiled for original data, before transformations and multiple imputation. Due to missing data, some of the variable counts do not add up to 1,550 state-years.