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

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Abstract

After four decades of steady growth, U.S. states' prison populations finally appear to be declining, driven by a range of sentencing and policy reforms. One of the most popular reform suggestions is to expand probation supervision in lieu of incarceration. However, the classic socio-legal literature suggests that expansions of probation instead widen the net of penal control and lead to higher incarceration rates. This article reconsiders probation in the era of mass incarceration, providing the first comprehensive evaluation of the role of probation in the build-up of the criminal justice system. 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 article presents a new theoretical model of the probation-prison link that examines the mechanisms underlying this dynamic. 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, reforms to probation can be part of the movement to reverse mass incarceration.

Introduction

After almost forty 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 U.S. state prisons decreased for the first time since 1972 (Pew Center on the States 2010). This decline continued into 2010, with twenty-five states reporting declines in prisoner populations between 2009 and 2010 (Guerino, Harrison, and 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 and 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 (Bushway 2011; Austin 2010; Steen and Bandy 2007; Jacobson 2005; Wool and Stemen 2004).

One of the most prominent themes in these reform efforts has been a push to divert prison-bound cases into noncustodial options, most commonly probation supervision (Austin 2010; King 2009).¹ Like parole (the other primary form of community supervision), probation involves the supervision of individuals in their home communities.² However, probation is a court-imposed sanction given in lieu of imprisonment rather than as a form of additional

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¹This article focuses exclusively on adult probation services and adult prisons. Juvenile probation and imprisonment have a distinct and separate system of adjudication and punishment and may function quite differently.

postrelease supervision. 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 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).³

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 (Tonry and Lynch 1996; Blomberg and Lucken 1994; Blomberg, Bales, and Reed 1993; Chan and Ericson 1981; Hylton 1981; Miller 1980; Blomberg 1977).

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 tempered the increases in imprisonment (though see Caplow and Simon 1999). This article 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, nor is it likely to be a simple panacea 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 article 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 contextual factors, including sentencing laws, election rules concerning justice officials, and the financial and bureaucratic arrangement of probation.

²Some 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 complete information reported, 22 percent were sanctioned with this kind of “split” sentence (Glaze and Bonzcar 2011).

³For 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)].

To investigate this model, this article provides the first comprehensive evaluation of the relationship between probation and incarceration in the contemporary era. First, to establish the basic patterns, 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 (Garland 2001; Savelsberg 1994) to historical accounts of national-level racial and political conditions (Tonry 2011; Wacquant 2009; Miller 2008; Simon 2007; Beckett 1977) and state-level accounts of the specific levers influencing this shift (Campbell 2011; Lynch 2011; Page 2011a; Schoenfeld 2010; Barker 2009; Lynch 2009). 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 percent Black; state revenues and spending patterns; political factors, particularly the partisanship of the legislature and governor; and economic trends, including poverty and unemployment rates (Spelman 2009; Western 2006; Beckett and Western 2001; Greenberg and West 2001; Jacobs and Carmichael 2001).

Most relevant to this article, 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—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, probation revocations became an increasing source of admissions. As evidence, Caplow and Simon (*ibid.*) 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 and Bandy 2007; Wool and Stemen 2004). However, researchers are also cautioning against being overly optimistic about a full reversal of 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 and Petersilia 2010; Wright and Rosky 2011).

This article contributes to this emergent literature by focusing on probation, a vital component in many states' visions of reform. In the next section, I outline the two perspectives on probation—one from reform 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 different 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 1960s, 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.”⁴ 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 pushes for diversion 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 Cullen, Wright and Applegate 1996; Byrne, Petersilia, and Lurigio 1992; Morris and Tonry 1990).

⁴Ibid.

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 and Simon 1992; McCorkle and Crank 1996). As rehabilitation increasingly reenters the correctional lexicon, ideas about how to reform probation by making it more supportive have become increasingly common in the correctional policy (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 and Holleran 2002; though see Green and Winik 2010).

In contrast, the critical scholarly literature on probation, which initially emerged in response to the push for probation in the 1960s, 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 (such as 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 (Harcourt 2001; Blomberg and Lucken 1994; Blomberg, Bales, and Reed 1993; Chan and Ericson 1981; Hylton 1981; Miller 1980; Blomberg 1977).⁵

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 and Applegate 1996; Petersilia 1999; Petersilia and Turner 1993).

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 and 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.⁶ In addition, the enhanced monitoring by

⁵It 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 overgeneralizations (for instance, in using local case studies of particular institutions to draw conclusions for similar institutions in other contexts). McMahon (1992, 1990) 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).

probation officers (and in some cases, 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 (Stemen and Rengifo 2009; Blomberg 2003; Petersilia 2002; Petersilia 1999; Petersilia and Turner 1993; Lucken 1997; Blomberg and Lucken 1994; Lerman 1975).

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

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 1, these two key outcomes are driven by three central institutional practices, which are in turn shaped by larger state structures. Below, I discuss the proximal and distal drivers of both outcomes.

Starting with the first key outcome, diversion versus expansion, I argue that state characteristics structure the sentencing process, which in turn determines who is sentenced to probation or prison. Table 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 quite 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 vary. This variation then shapes the sentencing process—for example, scholars have found evidence that electing court actors through popular vote incentivizes more punitive sanctions (Pozen 2008; Gordon and Huber 2007, 2002). 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. Thus, judges may have an incentive to sentence individuals to prison, which is free for the county, instead of probation. 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

⁶These 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 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 thirty days, with 59 percent reporting that contact had been in the probation office and 12 percent reporting home visits (Bonczar 1997).

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 state characteristics that are filtered through institutional practices. Across states, probation is organized bureaucratically and fiscally in decidedly different ways. In some states, probation supervision is administered entirely through local counties; 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, twenty-nine states organized probation through the state department of corrections, eight through the state judiciary, seven 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 and 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. More narrow 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.⁷ 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 noninvasive), probation may be able to function more successfully as a prison diversion.

In addition to the monitoring and support services involved in probation supervision, the protocols and practices around probation violations and revocations are crucial. Probation departments vary in who makes these decisions (probation officers, probation supervisors, or judges) 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 to an automatic revocation to prison, 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.

⁷In 2010, the mean length of supervision for probationers was twenty-two months (Glaze and Bonczar 2011).

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 noncustodial 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, and Prins 2011).

Measuring The Probation-Prison Link Outcomes

For each of the two primary outcomes, the analyses focus on a key indicator. For the diversion versus expansion outcome, I use the percent of probationers convicted of 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 and Bonczar 2011).⁸ 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.

Data Sources And Methodology

To evaluate and illustrate the paradox of probation model, I present multilevel 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’ jurisdictions, and include prisoners housed in local jails or outside prison systems due to overcrowding. Probation

⁸The 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 felony 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 went back to the previous year’s data. For forty states, acceptable data was gathered from the 2010 figures. For another nine 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 was unavailable for all years.

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 essential 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 United States, 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 incarceration both through immediate impacts (through diversion) and longer-term influences (through revocations). Because the primary independent variable is a “stock” measure of probation population rates, the appropriate dependent variable should be the prison population rate (McMahon 1992, 1990). 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 (Marvell and Moody 2008). 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). The predictor variables are lagged by one 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. Perhaps most notable 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.⁹ 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.¹⁰ Data on index crime rates and arrest rates for drug offenses are culled from the Federal Bureau of Investigation's Uniform Crime Reports. 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.

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 fifteen to twenty-four 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). Data for these variables are 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 imputation with the Amelia II program (Honaker, King, and Blackwell 2011).¹¹ 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 and King 2010).

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, with increases in probation producing 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 by 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.¹² 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).

⁹This crime data is reported by local and federal law enforcement agencies. The trends are broadly consistent with statistics compiled from national victimization surveys (Lynch and Addington 2007).

¹⁰Due 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.

¹¹The most commonly missing values are for variables collected through periodic censuses, including percent urban, percent foreign, and prison crowding. There is also a nontrivial amount of missing data for the drug arrest rate. Lastly, the political partisanship of legislators variable is missing for Nebraska in all years.

¹²It 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 (1977-79), 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 and 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.

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 noncustodial 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).

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 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: 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.

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 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. 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 presents a visual investigation for this question, plotting whether there is a correlation across states in expansions in probation and imprisonment across time and place. The graphs present 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 across 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 for each decade. On the y-axis, the percent increase in incarceration rates is plotted. Thus, Figure 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 twenty-fifth and seventy-fifth percentiles corresponding to the lower and upper edges of the box, and the lower and upper adjacent values¹³ 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 (across 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 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.

However, Figure 2 also documents the substantial state-level heterogeneity in these relationships. In all three decades, the twenty-fifth to seventy-fifth 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 twenty-fifth and seventy-fifth 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

¹³The 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 first percentile, and the upper adjacent value is roughly the ninetieth percentile. Mathematically, the lower adjacent value is defined as the smallest value greater or equal to the twenty-fifth percentile minus 1.5 times the difference between the twenty-fifth and seventy-fifth percentiles, while the upper adjacent value is the largest value equal to or less than the seventy-fifth percentile plus 1.5 times the difference between the twenty-fifth and seventy-fifth percentiles.

gains in incarceration. The same results (of a small positive association, with substantial state heterogeneity) emerge if we instead look at the relationship between state-level variation in probation rates and the broader measure of 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 state-years. It can also 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, 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 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 marginally 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 0.01 to 0.04 percent *decline* in the incarceration rate. For the 1990s and 2000s, the models suggest a positive and significant 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 potential 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 3 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 (twenty) 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. 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 primarily used to supervise misdemeanants (individuals convicted of lower-level offenses) and alternative states where probation is primarily used to supervise individuals convicted of felony-level offenses.¹⁴

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 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. 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 primarily provides an alternative form of supervision for felony-level offenses, this relationship is negated. These relationships are replicated if I instead model the prison admission rate as the dependent variable (instead of the total prison population rate).¹⁵

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

¹⁴See note 8 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.

¹⁵Results 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.

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 2003 law 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 and 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 and Stemen 2010). 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 seen 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 (Clear 2011; Lynch 2011; Austin 2010; 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 boundary between probation and prison) sentenced to prison from 43 percent in 2001 to 33 percent in 2008 (Greene and 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. Again harnessing the fiscal power of the Community Corrections Act, the state Department of Corrections implemented a series of changes to probation supervision, introducing new risk-assessment tools to guide supervision-level assignment, improving probationer-probation officer interactions, and developing graduated sanctions. 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 and 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.¹⁶ In Kansas, legislators enacted the Safe Communities Act (SB 1476), which appropriated \$4 million to provide community development funds for local jurisdictions that pledged to reduce probation and parole revocation rates by 20 percent (Greene and Mauer 2010; Rengifo et al. 2010; Pew Center on the States 2008). 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 led to a dramatic change 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 and 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 increase 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 and 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 and Mauer 2010, 55). Thus, by changing probation practices (improving services and monitoring and revising revocation policies), Kansas 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 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

¹⁶Nationally, 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 (through incarceration, successful discharge, or other means). According to these data, the percent of probationers exiting probation through incarceration remained at 9 percent between 2007 and 2010 (Glaze and Bonczar 2011). However, for almost all states, one or more of the detailed exit 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.

sent to prison. The Pew Center on the States reports that the number of revocations to prison is down 48 percent over the last couple years (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 and 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 and 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 reduce the revocation rate (Greene and Mauer 2010).

Discussion

The goal of this article 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 article 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 a 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 might 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.

Scholars might also research 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 confines of the paradox of probation model, this work suggests that probation was and continues to be a vital component of the criminal justice system, worthy of the same scholarly attention as has benefited mass incarceration.

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 changes must be enacted within a broader framework of reform efforts, which often evolve in quite complex ways (Subramanian and Tublitz 2012). As Austin and Krisberg 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” (1981, 374). As reforms have swept across the nation in recent years, it seems we are beginning to reach this new consensus (Jacobson 2005; Wool and 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 rewriting the relationship between academics and policymakers (Gottschalk 2011; Lynch 2011; Page 2011b; Weisberg and Petersilia 2010). 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 and 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.

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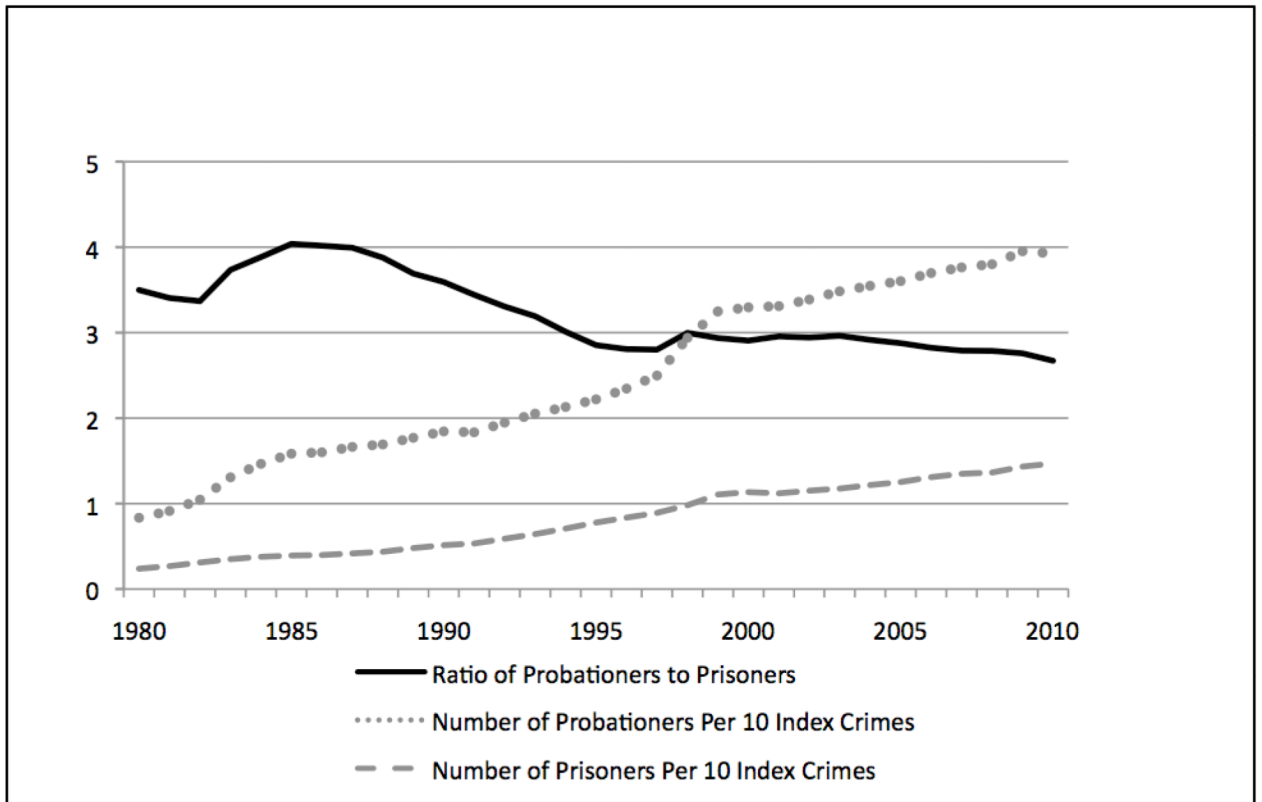


Figure 1. Probation and Incarceration Supervision Totals Relative to Index Crimes, 1998-2010

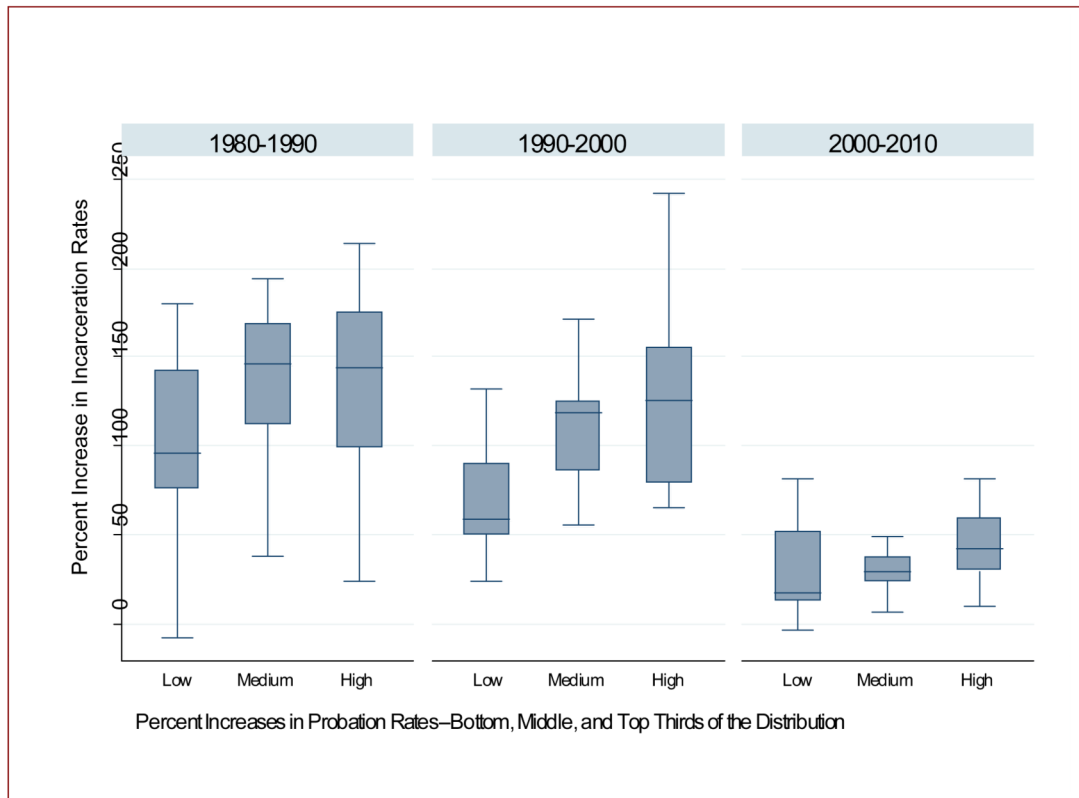


Figure 2. Box-Plots of State Variation in Incarceration Rate Growth By Growth in Probation Rate and Decade

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

Table 1

The Paradox of Probation Model: Understanding the Probation-Prison Link

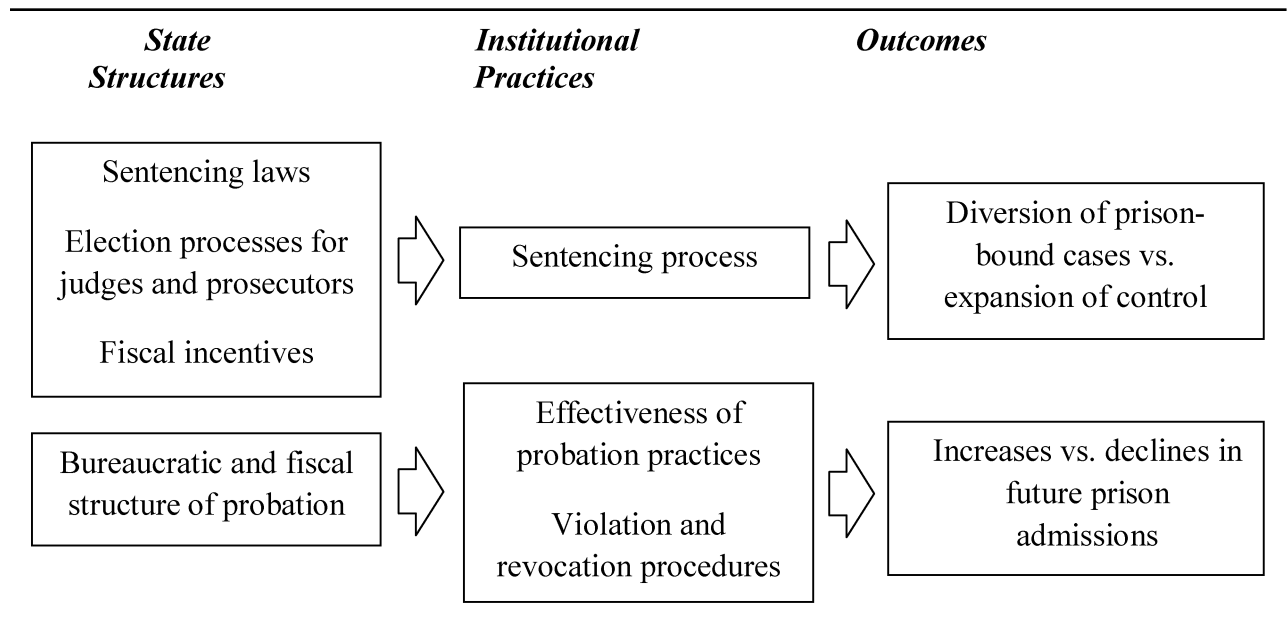


Table 2

Log-Log Model Estimating Effect of Probation Rate Changes on Incarceration Rates, 1980-2009 (standard errors in parentheses)

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

Note: 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 fifteen to twenty-four 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.

p < .01

**
p < .05

*
p < .10.