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Mass Probation:  
Toward a More Robust Theory of State Variation in Punishment

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# **Mass Probation: Toward a More Robust Theory of State Variation in Punishment**

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## **ABSTRACT**

Scholarship on the expansion of the criminal justice system in the U.S. has almost exclusively focused on imprisonment, investigating why some states lead the world in incarceration rates while others have restrained growth. Yet for most states, the predominant form of punishment is probation, and many seemingly progressive states supervise massive numbers of adults on community supervision. Drawing on Bureau of Justice Statistics data from 1980 and 2010, I analyze this expansion of *mass probation* and develop a typology of control regimes that theorizes both the scale and type of formal punishment states employ. Mass penal control developed not just in states like Georgia and Texas, but also in surprising locales like Minnesota and Washington, which channeled that growth into probation. The results demonstrate that scholars' conclusions about the causes and consequences of the carceral state must be revised to take into account the expansion of probation.

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## INTRODUCTION

The rapid expansion of mass imprisonment in the U.S. stands as one of the most important social transformations of the past 40 years, changing the life course of a whole generation of Americans—particularly black male high school drop-outs (Western, 2006). In the process, mass imprisonment became an integral part of racialized social control (Alexander, 2010; Wacquant, 2009) and a subject of deepening scholarly inquiry (Garland, 2013); National Research Council, 2014). Much of this research focuses on the state level and concludes that harsh punishment is regionally distributed, with the highest concentration in the South and the Sunbelt (states that tend to have large minority populations, conservative politics, and a legacy of slavery) and lowest prevalence in the Northeast and Midwest (liberal states with a history of progressive penal moderation) (Campbell and Schoenfeld, 2013).

Throughout this state-level comparative work, it is often assumed that imprisonment rates—as the most extreme form of state correctional control—represent the expansion of the carceral state more broadly. Yet inmates in state and federal prisons are a *minority* (roughly 20 percent) of those under formal criminal justice supervision. Further, imprisonment rates poorly predict states' overall supervision rates. Instead, the results of this article document that states' supervision rates are driven by probation, the most common form of criminal justice control, under which individuals serve their sentences in their home communities under the supervision of a probation officer. Like parolees, who are released to community supervision after a period of incarceration in state or federal prisons, probationers are required to abide by a number of supervision restrictions and are often incarcerated for failing to meet those demands (Feeley and Simon, 1992; Klingele, 2013).

This article develops the concept of *mass probation* in the U.S. and explains its import for understanding state variation in the scale of punishment. Today, nearly 4 million—or 1 in 61—adults are on probation, compared to the 1.5 million incarcerated in state and federal prisons (Glaze and Herberman, 2013). In addition, many of the highest probation rates are found in liberal, racially homogenous states in the Northeast and Midwest that we associate with having resisted high crime politics, including Minnesota and Washington. While researchers have focused on the challenges facing returning prisoners (e.g. Simon, 1993; Petersilia, 2003; Travis, 2005) and the consequences of everyday surveillance and carceral control in poor neighborhoods (e.g. Brayne, 2014; Goffman, 2014; Harris, Evans, and Beckett 2010; Lerman and Weaver, 2014; Rios, 2011), scholars have not yet explored the broad implications of the rise of mass probation, and in particular, its spread across an unusual set of states.<sup>1</sup> As a result, scholars have produced a distorted picture of state variation—and, by extension, misunderstood the causes and consequences of the expansion of punishment.

Building on Zimring and Hawkins (1991) scale of imprisonment argument, I develop a typology of control regimes that theorizes both the scale and form of criminal justice supervision states employ. While some states rapidly increased both probation and imprisonment rates (“punitive control”), others restrained growth in both (“sparing control”), and still others came to specialize in probation (“managerial control”) or imprisonment (“incapacitative control”). Using Bureau of Justice Statistics (hereafter BJS) data on correctional populations, I then provide the first detailed account the expansion of mass probation nationally, investigating its demographic composition and proximal causes. Scoping down to the state-level, the results focus on the

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<sup>1</sup> However, this is not the first article to focus on community supervision and the carceral state. In particular, a group of European scholars have been developing the concept of “mass supervision” to denote the expansion of community supervision (Robinson, McNeill & Maruna 2012). As McNeill (2013) argues, ignoring community supervision “skews academic, political, professional and public representations and understandings of the penal field” (172).

relationship between mass probation and mass imprisonment across the decades from 1980 to 2010. Finally, I map heterogeneity in states' supervision rates in 2010 onto the control regime typology and examine how and why states sorted into these couplings.

The results support four conclusions. First, the national portrait reveals that mass probation exploded through the past three decades, driven primarily by an increase in the number of felony and misdemeanor convictions, and affected a more demographically representative swath of Americans than mass imprisonment. Second, as mass incarceration and mass probation both expanded after 1980, states' supervision rates decoupled and imprisonment rates grew increasingly less predictive of overall supervision rates. Third, this decoupling appears to be due in part to some high imprisonment rate states systematically under-reporting misdemeanor probation supervision rates to BJS. Fourth, this decoupling was also due to the massive increase in probation rates in some low imprisonment states (the managerial control regime), including Washington and Minnesota. In these states, probation rates seem to have absorbed the punitive excesses of criminalization in contexts where imprisonment rates were tightly managed through legislative and bureaucratic control. Yet these states show few social, economic, or political differences from states in which both probation and imprisonment rates were restrained (the sparing control regime), suggesting that future research is necessary to explain these states' divergent trajectories.

By focusing on the multiple, and sometimes contradictory, forms of state punishment, scholars can develop a fuller and more accurate picture of mass punishment. It is not only Southern states that embraced mass punishment, but rather, states across the country, with wildly different political and racial histories. Thus, the historical drivers and contemporary consequences of carceral expansion must be diverse.

## THE PUNITIVE TURN

Over the past decade, the causes and consequences of mass imprisonment have become a central concern for criminologists (Garland, 2013; National Research Council, 2014). A prominent trend in this literature has been to compare imprisonment rates across U.S. states. These studies are motivated by the empirical finding that punishment is often a local affair, structured by regional, demographic, and political factors (Barker, 2009; Lynch, 2009, 2011; Miller, 2008). Quantitative researchers analyzing state-level time-series data have found that expansions of imprisonment are correlated with greater crime rates and drug arrest rates; racial diversity (especially the percent of state residents identified as black); state revenues and spending patterns; and dominance of the Republican party (Beckett and Western, 2001; Greenberg and West, 2001; Jacobs and Carmichael, 2001; Spelman, 2009; Western, 2006). Qualitative researchers have demonstrated the import of special interest groups within states, including prison guards unions, prosecutors, and victims' rights groups, and the federalist system of U.S. governance (for a recent review, see Campbell and Schoenfeld, 2013).

Integrating these findings, Campbell and Schoenfeld (2013) argue that these interest groups created contexts which were favorable to the development of tough penal policy, particularly in the Sunbelt and South where punishment was historically "cheap and mean." The authors argue that states' early commitments to a penal-welfarist orientation directed later trajectories, protecting states in the Northeast (and, to a lesser extent, the Midwest) from the worst excesses of "high crime politics."<sup>2</sup> Scholars have also developed theoretical account of mass incarceration as a form of racial domination (Alexander, 2010; Wacquant, 2009). These accounts are supported by the extraordinary concentration of imprisonment in black communities

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<sup>2</sup> Though see Muller (2012) on expansion of imprisonment in Northeastern states in post-antebellum period.

(Sampson and Loeffler, 2010; Western, 2006) and the states that once relied on slave labor, including Mississippi (Oshinski, 1996), Texas (Perkinson, 2010), and Florida (Schoenfeld, 2014).

In recent years, scholarly attention has begun to shift from mass imprisonment toward other forms of control and broader accounts of the punitive turn. The first wave of this scholarship focused on the challenges facing returning prisoners on parole supervision (e.g. Simon, 1993; Petersilia, 2003; Travis, 2005). More recent ethnographic accounts have provided vivid descriptions of life for young minority men “on the run” and under the “youth control complex” in hyper-criminalized neighborhoods (Goffman, 2014; Rios, 2011). In addition, scholars have begun to look beyond felony offenses to note the massive expansion in misdemeanor convictions (Kohler-Hausmann, 2013, 2014; Natapoff, 2011) and their consequences on individuals’ trajectories, for example, the ability to get a job (Uggen et al. 2014). More broadly, Lerman and Weaver (2014) argue that we have produced a generation of “custodial citizens” who understand the state through criminal justice contact.

In much of this research, probation is right behind the scenes, providing the most prevalent form of criminal justice supervision. Probation in the U.S. was initially championed as the cornerstone or “exemplary penal form” of the penal-welfarist model of punishment (Simon, 2012; see also Garland, 1985). With the abandonment of the rehabilitative ideal and the rise of the “lock ‘em up” strategy, we might have expected probation rolls to empty (Robinson, McNeill & Maruna 2012). Yet instead we saw a rapid expansion in probation alongside imprisonment, with probation evolving into a “cost-effective” risk-management solution that increasingly adopted “tough” rhetoric and practices, including intensive supervision programs and electronic monitoring (Feeley and Simon, 1992). Even today, after nearly four decades of expansion,

reformers continue to advocate probation as a “sensible” alternative to imprisonment (e.g., American Civil Liberties Union, 2011; National Conference of State Legislators, 2011).

Probation supervision today for most supervisees involves very little active monitoring or support, yet can have devastating consequences for individuals’ life outcomes. On average, probation officers supervise caseloads of more than 100 (Taxman 2012). Private probation companies have also entered the fray, providing supervision primarily for low-level cases in which the collection of fees is the primary form of contact (or “pay only” probation) (Human Rights Watch, 2014). Particularly for the most disadvantaged probationers, meeting even the basic responsibilities—keeping scheduled appointments, finding or maintaining work, abiding curfews, avoiding other convicts, staying within city limits, and passing drug and alcohol screenings for years on end—can pose a formidable challenge. In addition, probationers are required to pay monthly supervision fees, which, together with restitution and other fines, can devastate vulnerable workers (Harris, Evans, and Beckett, 2010). Probationers often face many of the same collateral consequences and barriers to success as returning prisoners, including challenges finding work (Green and Winik, 2010; Loeffler, 2013; Uggen et al. 2014, though see Cochran, Mears, and Bales, 2014). Just as parolees are routinely unable to meet the demands of community supervision (Petersilia, 2003; Travis, 2005), so too do probationers often fail, resulting in the possibility of revocation to jail or prison. Over 30 percent of exiting probationers fail to successfully complete supervision every year (Maruschak and Bonczar, 2013). This means that probation is often a “delayed” path to imprisonment, constituting one of the largest sources of jail and prison admissions (Klinge, 2013).

## THE SCALE OF PUNISHMENT: A CONTROL REGIMES TYPOLOGY

In a prescient early text on the prison boom, Zimring and Hawkins (1991) argued that scholars should theorize and explain the “scale of imprisonment,” or the varied rate at which states imprison their residents. I argue that we must instead consider the *scale of punishment*, considering multiple forms of criminal justice supervision. This model draws from the insight of typologies in political science, including the “political cultures” (Elazar, 1966) and “welfare-state regimes” (Esping-Andersen, 1990) models, which highlight that states service must be considered in tandem. Rather than sorting states along a less-to-more punitive scale,<sup>3</sup> this article highlights the importance of considering multi-dimensional forms of punishment states employ.

The typology considers states’ imprisonment and probation rates, theorizing both *how* and *how much* states punish. While these two forms of punishment do not encompass every form of state control, they do represent the two largest forms of criminal justice supervision. They are also the two most dissimilar forms of punishment along the carceral continuum and represent the transformation from penal-welfarism to mass containment. The analyses also document how jail and parole populations fit into this typology; future work might add another layer of complexity by including individuals on the criminal justice periphery, including those awaiting trial, on pre-trial release, and subject to other administrative restrictions (Beckett and Murakawa, 2012).

As summarized in Figure 1, I divide the probation-prison space into four control regimes, according to whether each state has low (below the median) or high (above the median) supervision rates. Each regime can be thought of as a Weberian “ideal type,” rather than rigid empirical boundaries.

*Insert Figure 1 Around Here*

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<sup>3</sup> For examples, see Frost, 2006; Hamilton, 2014; Kutateladze, 2009.

The two regimes on the main diagonal are concordant, with either low-low or high-high distribution of probation and imprisonment rates. In these regimes, rates of supervision are consistent across punishment forms, which means that the expansion of probation can likely be tied to similar causes—and have similar macro-level consequences—as imprisonment. The upper right-hand corner of Figure 1 represents the punitive control regime, or high supervision rates. This regime most fully represents the carceral state, with a very high percent of the population under both forms of supervision (and imprisonment rates perhaps driven in part by high probation revocation rates).<sup>4</sup> Shifting across the diagonal brings us to low imprisonment and low probation rates, or the sparing control regime. This category represents states that formally supervise a relatively low percent of their population; thus, only the more serious crimes are likely to receive punishment, with both probation and imprisonment used sparingly.

The two off-diagonal, or discordant, regimes provide an empirical and theoretical puzzle: why would states invest heavily in one form of supervision but not another? This is particularly true for states at the edges of these regimes—with the greatest distance from the 45 degree line that would represent a perfect correlation between probation and imprisonment rates. The discordance suggests that in these regimes, the causes and consequences of the carceral build-up will vary considerably depending on whether the outcome is probation or imprisonment rates. States in the managerial control regime have restrained incarceration rates yet have very high probation rates. Thus, in this regime, probation is used liberally while imprisonment is more tightly moderated (and probation violations are addressed without extending the imprisonment rate). The final regime is “incapacitated control,” which has high imprisonment rates against low probation supervision rates. This regime may represent states where probation rates were tightly

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<sup>4</sup> Phelps (2013) demonstrates that probation is mostly likely to serve as a prison-expending “net-widener” in states where a lower percentage of probationers are under supervision for felony-level offenses and where revocation rates are higher.

regulated or departments were never fully established. Since probation is the much cheaper sanction, this regime is the most puzzling.

## **DATA AND METHODS**

The primary data are state-level counts of probation and prison populations between 1980 and 2010. These data are collected by the BJS and reported in the “Prisoners,” “Probation and Parole in the United States,” “Correctional Populations in the United States,” and “Census of Jails” series. The analyses begin at 1980, a standard starting point for the carceral build-up and near the start-point of the probation series. As with the traditional analyses of imprisonment rates, the state is the unit of analysis, both because sentencing policy is set at the state level and because the BJS data are only available nationally at this level of analysis.<sup>5</sup> Note, however, that substantial local-level variation exists within states (e.g. Ball, 2011), and that most states’ correctional populations are disproportionately drawn from urban counties.

The prison counts include adults sentenced to serve one year or more under a state’s jurisdiction, even those housed in local jails or other states’ prison systems. Probation totals include all adults reported as under supervision by state and/or local probation departments to BJS. I focus on rates of supervision (per 100,000 in the resident population) because this controls for differences in population sizes across states and years. I rely on U.S. Census data for population totals. For state characteristics, I draw on the Federal Bureau of Investigation’s Uniform Crime Reports, U.S. Census, American Community Survey, Bureau of Labor Statistics, Census of Government Finances, and State Partisan Balance Dataset (Klarner, 2003).

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<sup>5</sup> Probation varies in whether it is administered at the local or state level (or both), housed in either the department of corrections or the judiciary. In states with a central authority, probation data are only available at the state-level. In states with multiple authorities, the disaggregated data are available through the National Archives of Criminal Justice Data.

The results are organized into four sections. First, I define mass probation at the national level, documenting its growth and racial demographics. I use decompositions to explain mass probation's proximal causes, evaluating whether these expansions were due to misdemeanor vs. felony-level offenses and increases in sentencing rates vs. supervision term lengths. Second, I analyze the historical decoupling of probation and supervision rates at the state level, evaluating rates of both forms of supervision in each decade. The snapshot of states' rankings in 2010 is then mapped onto the typology of control regimes presented above, using the median rate of each form of supervision as the cut-point. Third, I compare and contrast control regimes to explain this variation, again decomposing the proximal causes into felony vs. misdemeanor offenses and sentencing rates vs. sentence length. Fourth, I explore the social, economic, and political characteristics of states in each control regime to test if these factors structure states' position.

The control regime analyses focus on exemplifying concordant versus discordant regimes while controlling for imprisonment rates—e.g. why some low imprisonment states have low probation rates (concordant) while others have high probation rates (discordant). To the extent that states cluster in the congruent regimes, there is less of a need to explain mass probation (because it correlates with imprisonment rates). If states instead cluster in the incongruent regimes, it suggests that mass probation had its own unique trajectory—and thus, we must investigate the causes and consequences of this form of supervision. When examining the average state characteristics across regimes, I conduct two-tailed t-tests for a range of key indicators shown to be associated with criminal justice outcomes: crime and drug arrest rates, racial composition, unemployment rates, state expenditures (per capita), party affiliation of the Governor and legislators, and state population size.

## RESULTS

### NATIONAL EXPANSION OF MASS PROBATION

The U.S. has embarked on an unparalleled criminal justice expansion since the 1980s, with much of that growth in community corrections (DeMichelle, 2014). Despite a small decline in correctional populations since 2008, we remain a world “leader.” Not only does the U.S. boast the highest imprisonment rate, but the rate of community supervision stands nearly seven times as large as the average among European countries.<sup>6</sup>

This system of control is not randomly distributed, but rather is shaped by existing patterns of inequality. In his definition of the term “mass imprisonment,” Garland (2001) highlighted both the unique scale of incarceration in the U.S. and its racial disparity, with imprisonment “a regular, predictable experience” in the life course for young, black men in urban centers (2001: 1-2). Mass probation can similarly be defined by its tremendous scale and concentration.<sup>7</sup> I estimate that in 2012, 1 in every 25 black adults (and 1 in 15 black men)<sup>8</sup> was under probation supervision. However, the disproportionality of probation rates is less severe than imprisonment. For 2012, the BJS reports that 54 percent of probationers were white (compared to 33 percent of prisoners), 30 percent Black or African American (36 percent), 13 percent Hispanic or Latino (22 percent), and 76 percent male (93 percent) (Carson and Golinelli, 2013; Maruschak and Bonczar, 2013). This is consistent with a large body of research on sentencing outcomes that suggests that more privileged defendants are more likely to be

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<sup>6</sup>The most recent comparable data are from 2011, for which the U.S. supervision rate was 1,560 per 100,000 resident population, compared to an average of 210 in European countries (Aebi and Marguet, 2013; Maruschak and Parks, 2012; American Law Institute, 2014).

<sup>7</sup> Both imprisonment and probation are also spatially concentrated. Although we do not have national statistics on the residence of probationers, a Pew Center report recently documented that on some blocks in Detroit, Michigan, 1 in 7 men is behind bars or under probation or parole supervision for felony-level offenses alone (2009: 9).

<sup>8</sup> This calculation assumes that the percent of black probationers identified as male is equivalent to the overall percent of probationers identified as male.

sentenced to probation rather than imprisonment (e.g., Gainey, Steen, and Engen, 2005; Kautt and Spohn, 2002; Mustard, 2001; Steffensmeier, Ulmer, and Kramer, 1998; Sutton, 2013).

Like mass imprisonment, probation numbers rise and fall according to the “iron law” (Travis, 2005): the two key factors are how many people are sentenced and how long they remain under supervision. Mass incarceration was propelled primarily by policy changes that sent more felons to prison for increasingly long sentences (Blumstein and Beck, 1999; Raphael and Stoll, 2009; Tonry, 2011; Western, 2006). For probation, the expansion was almost entirely driven by increases in admissions, rather than supervision length. Between 1981 and 2012, entries to probation increased by 170 percent, rising from 753,500 to 2,048,300, which explains most of the 225 percent increase in the probation population.<sup>9</sup> This increase in admissions was not simply due to rising crime rates, as probation and imprisonment rates continued to climb after crime rates began to decline in the mid-1990s. This build-up in probation admissions was likely tied to increasing criminalization, as more kinds of misbehavior became criminal, police presence increased on the streets, penalties for criminal acts increased, and prosecutors were increasingly successful and likely to pursue multiple convictions (Stuntz, 2013).

This rise in criminalization can be documented in the expansions of convictions. According to the BJS “Felony Sentences in State Courts” series, an estimated 600,000 persons were convicted of felony offenses in 1986 (the first year of the data), compared to over 1.1 million by 2006. During the same period, the percent of sentences leading to state prison time *declined* from 46 to 41 percent, and sentences to probation hovered around 27 percent (Gaskins, 1990; Rosenmerkel, Durose, and Farole, 2009). Thus, the expansion in both probation and

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<sup>9</sup> Using Patterson and Preston’s (2007) recommended model for estimating sentence length, I find that over this same period the average sentence length increased 5 percent from 1.8 to 1.9 years.

imprisonment can be tied to the increasing number of convictions.<sup>10</sup> Unfortunately, national data on sentences for misdemeanor convictions are not collected, so we cannot directly examine misdemeanor conviction patterns. However, a National Center for State Courts survey of 16 states found that state courts on average saw four times as many misdemeanor filings as felony cases (Kohler-Hausmann, 2013). In addition, BJS data reveal that among adults currently on probation, 53 percent were convicted of a felony and 45 percent a misdemeanor.<sup>11</sup>

## EXPANSION ACROSS STATES

In this section, I turn to state variation in the expansion of mass probation. As states developed both mass imprisonment and mass probation, did they emerge in tandem or follow divergent paths? To summarize these expansions, Figure 2 presents the cross-sectional relationship between probation and imprisonment rates in the first year of each decade: 1980, 1990, 2000, and 2010.<sup>12</sup> Looking first at the changing axis scales, it is clear that rates of supervision rose dramatically across each decade. Between 1980 and 2010, the median state probation rate increased from 385 to 1,025 probationers (per 100,000 residents), while the median imprisonment rate increased from 105 to 385 prisoners (per 100,000 residents). Examining the regression line in each decades, we see that the relationship between probation and imprisonment rates declined in every snapshot. Whereas in 1980 the correlation between

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<sup>10</sup> Between 1980 and 2001, the rate of prison admission per reported offense increased from 13 to 28 percent for violent crime and 6 to 11 percent for property crime (Western, 2006: 45).

<sup>11</sup> We can further break down the population into offense categories. Among adult probationers in 2012, 19 percent were under supervision for a violent crime, 28 percent for property crime, 25 percent for drug offenses, and 15 percent for driving while intoxicated (Maruschak and Bonczar, 2013).

<sup>12</sup> This graph remains largely unchanged if jail populations are included. Jail inmates comprise roughly 10 percent of the national correctional population (Glaze and Herberman, 2013).

states' probation and imprisonment rates was moderate and statistically significant ( $r=0.4$ ,  $p<.01$ ), by 2010, the correlation coefficient had disappeared ( $r=0.1$ , n.s.).<sup>13</sup>

*Insert Figure 2 Around Here*

After three decades of expansion, probation and imprisonment were almost entirely decoupled. This decoupling was primarily due to expansions in mass probation, which followed a more unpredictable path (and produced more outliers) than imprisonment rates. Correlations for states' relative rate (or ranking)—from 0 (lowest rate) to 50 (highest rate)—in 1980 and 2010 shows a tight correspondence for imprisonment rates (0.7,  $p<.001$ ), but not probation (0.3,  $p<.05$ ). Some states nearly flipped locations in the probation rankings, from low to high or vice versa.<sup>14</sup> As a consequence, imprisonment rates became less reflective of states' overall supervision rates. Using the most recent count of all individuals under local and state-level penal control from 2005,<sup>15</sup> I find that the correlation between states' overall supervision rate and imprisonment rate is a low 0.3 ( $p<.05$ ), compared to 0.9 ( $p<.001$ ) for probation.

We can now map this decoupling onto the typology presented in Figure 1. Figure 3 overlays probation and imprisonment rate rankings in 2010 onto the regime quadrants.<sup>16</sup> States' position is noted by their state abbreviation, using rankings rather than raw rates to improve legibility. Figure 3 makes visible again the low correlation we see between probation and imprisonment rates in 2010. For example, Mississippi, Oklahoma, and Louisiana have the two

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<sup>13</sup> This finding is robust to alternate specifications, including logging both supervision rates and removing outliers (Idaho and Georgia).

<sup>14</sup> The biggest declines in probation rate rankings occurred in Nevada, South Carolina, Utah, South Dakota, and California, with changes as large as 36 ranking points. The sharpest increases in probation rate rankings occurred in Indiana, Arkansas, Michigan, Ohio, and Idaho, which saw gains of between 25 and 39. At the same time, a handful of states, including Arizona, Minnesota, and New Jersey, retained a relatively constant probation rate ranking.

<sup>15</sup> This number includes prisoners in jails and prisons and those supervised in the community through jails, probation, and parole authorities.

<sup>16</sup> Figures 3 and 4 use data from 2010 because it provides the end-point for the 2000s. However, states' relative locations on the typology are very similar for 2012. The one exception is California, which oversaw a substantial reduction in prison populations in 2011-2012 and moved into the sparing control regime.

highest incarceration rates, yet rank relatively low in probation rates. On the other side of the spectrum, Minnesota and Rhode Island retain two of the lowest incarceration rate rankings, yet have nearly the highest probation rate rankings.

*Insert Figure 3 Around Here*

As with the national story, we can decompose this trend in several ways that might reveal the proximal causes. First, we might look at variation in racial disparities across states and how these relate to overall supervision rates. Unfortunately, data on the racial composition of probationers are unavailable at the state-level. However, we can decompose state-level probation rates by the two key axes described above: felony versus misdemeanor probationers and probation entries versus sentence lengths. The analysis focuses particularly on explaining the discordant regimes (compared to their concordant counterparts). We turn first to high imprisonment states (incapacitated and punitive control regimes).

As noted above, roughly 50 percent of probationers nationally are under supervision for a felony-level offense. However, this percent varies widely across states, ranging from 20 to 100 percent.<sup>17</sup> While these data are not available at the state-level before the 2000s (so we cannot track changes longitudinally), it nonetheless allows us to decompose the 2010 probationer population into misdemeanor and felony probationers. Since both imprisonment rates and felony probation rates are driven by felony-level sentencing we would expect these two forms of state supervision to have a stronger correlation than imprisonment rates and overall probation supervision rates. Indeed, the correlation between felony probation rates and imprisonment rates is positive and significant, although still moderate ( $r=0.3$ ,  $p<.05$ ).

*Insert Figure 4 Around Here*

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<sup>17</sup> This calculation adopts Phelps' (2013) methodology for calculating this statistic, using data from earlier years for states with substantial missing data.

This suggests that the decoupling between probation and imprisonment rates at the state level is in part explained by the ways states experience and respond to misdemeanor-level crimes. Figure 4 replicates Figure 3 but uses only felony probation rates. Notably, the incapacitated control regime hollows out. With the exception of Nevada, all of the states in the most extreme corner of this regime, including Oklahoma, Mississippi, Missouri, and Louisiana, shift to the right. While a handful of states remain in the boundaries of this control regime, their location in the typology moves much closer to the 45 degree line that represents a perfect correlation between probation and imprisonment rates. This hollowing out of the regime is because states in this regime have a very high percentage of probationers under supervision for felony-level offenses, with a mean of 85 percent (compared to a 53 percent among all others,  $t=4.6$ ,  $p<.001$ ), as summarized in Table 1.

*Insert Table 1 Around Here*

This would suggest that the states in the incapacitated control regime simply do not provide much formal punishment for misdemeanor-level offenses. However, we know that probationers are a more ambiguous population total, which may or may not include individuals under alternative forms of community control, including diversion programs and court-based probation monitoring, private probation, drug court participants, and others (Taxman, 2012).<sup>18</sup> This is particularly true for misdemeanor probation since it generally entails less supervision; what might be treated as a suspended sentence in one locale might instead be treated as “informal” or “inactive” probation in another. The official probation counts thus are likely a lower bound of the true estimate.

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<sup>18</sup> Some of these categories, e.g. prosecutorial diversion, are explicitly excluded in the BJS survey.

Perhaps what distinguishes the incapacitated control states is not the degree to which misdemeanants are spared formal control, but the way in which such misdemeanants are (not) counted. To investigate, I called the department of corrections for each state in the incapacitated control regime to ask about misdemeanor probation.<sup>19</sup> Nearly all reported having local community supervision programs for misdemeanants whose populations were not included in formal probation counts.<sup>20</sup> States refer to such community supervision by a variety of names, including city (or county) probation, bench probation, or private probation. Thus, the explanation for the incapacitated control regime is in large part that as supervision rates in these states grew, their reported probation totals became increasingly underestimated. This is consistent with the much lower probation admission rate in incapacitated control (as compared to punitive control) states reported in Table 1.

As summarized in Table 1, while the felony/misdemeanor break-down does little to explain variation among low imprisonment states, probation admission rates vary tremendously across managerial versus sparing control states. Managerial control regime states on average have admission rates nearly double that of sparing control states ( $t=3.5$ ,  $p<.001$ ). For example, in 2010 the probation entry rate was over 1,200 (per 100,000 residents) in Minnesota, yet just 175 (per 100,000) in New York. In contrast, there is no difference in supervision length across the regimes (averaging 2.2 years for both groups). Thus, for low-imprisonment states, the decoupling between imprisonment and probation rates was driven by a difference in criminalization—or the number of cases funneled into probation supervision.

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<sup>19</sup> I was able to reach seven of these states by phone (Alaska, Missouri, Mississippi, Nevada, Oklahoma, South Carolina, and Virginia).

<sup>20</sup> These programs were always present in states that reported that all (or nearly all) of their probationers were felons.

These results suggest that in managerial control states increasing criminalization drove probation rates while imprisonment rates were restrained. This trajectory was likely shaped by policy efforts to curb the imprisonment rate, which ignored (if not encouraged) the parallel growth in probation. For example, in states like Minnesota with very strong sentencing commissions explicitly designed to reduce the use of imprisonment, the guidelines say nothing about misdemeanor sentencing or the length of supervision for probation terms for felony-level offenses (American Law Institute, 2014; Dailey, 1998; Frase, 2005). Even in the legislation aimed at community corrections (often titled Community Corrections Acts)<sup>21</sup> that most states enacted in the 1980s and 1990s, the focus is on diverting felons from prison, not reducing punishment rates overall. As Rothman (2002) notes, probation has always been tremendously convenient for justice officials who benefit from having a “diversion” option on the books. Probation allows criminal justice actors—from legislators crafting tougher laws, to negotiating prosecutors, to sentencing judges—to expand control without substantially increasing budgets or physical capacities. This logic is particularly clear in managerial control states, which clearly had the political and bureaucratic power to avoid high imprisonment rates, yet nonetheless relied on probation as a population safety-valve.

Finally, the growth of probation in managerial control states was likely conditioned by broader institutional contexts that favored probation sentences. Cunniff and Shilton (1991) find that local courts in states with determinant sentencing structures are more likely to sentence convicts to probation (perhaps because judges know that early release through parole is not an option). Similarly, I find that managerial control states have double the percentage of states with determinant sentencing structures compared to the sparing control regime, which is marginally

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<sup>21</sup> For a list, see the “Community Corrections Acts by State” (last updated in 2007), available at <http://centerforcommunitycorrections.org> (last accessed July 29, 2014).

significant in a one-tailed test ( $t=-0.2$ ,  $p=0.1$ ). However, indeterminate sentencing is still more common in both regimes as summarized in Table 1.<sup>22</sup> Petersilia (2002) argues that high probation admission rates may also be a sign of probation's perceived success, with judges more likely to sanction serious cases with probation if they believe that probation departments provide adequate supervision.

### **THE SOCIOLOGICAL CAUSES OF MASS PENAL CONTROL**

In the previous section, the analyses revealed that mass probation emerged in some surprising states—and failed to emerge in some others where mass imprisonment boomed. The proximal determinants of this decoupling were an under-reporting of misdemeanor probationers in the incapacitative control regime as well as the massive expansion of criminalization in managerial control states. This decoupling suggests that our understanding of the causes and consequences of the penal state need to be revised. For example, in one of the best examples of state-to-state historical 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.<sup>23</sup> 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, Washington's inclusive democracy did not prevent mass penal control.

A look back to Figure 3 reveals how much of our standard narrative about the broader social explanations for mass penal control is tainted by the exclusion of probation supervision.

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<sup>22</sup> Data on sentencing structure are from Harmon (2013).

<sup>23</sup> 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.

For example, looking from top to bottom, it is obvious that more conservative states (especially in the South) have the highest incarceration rates, while traditionally liberal states (especially in the Northeast) have lower incarceration rates. Yet, if we examine variation across the x-axis, conventional categories are upturned.<sup>24</sup> In particular, blue states with relatively small minority populations, such as Massachusetts, Minnesota, Washington, and Delaware, all have low imprisonment rates yet also have some of the highest probation (and overall supervision rates) in the country. Conversely, some high imprisonment rates have low probation rates, although this is in part due to the under-reporting of misdemeanor probationers.

While we can definitively say that this calls for a reconsideration of the history of mass penal control, we still know little about the origins of mass probation. Appendix 1 provides a descriptive start to this endeavor by splitting states into the four regimes from Figure 3 and summarizing differences in mean economic, political, and social characteristics from 2009.<sup>25</sup> These standard markers of states' punishment rates do little to distinguish low vs. high probation states within low or high imprisonment states, in large part due to the tremendous variation within control regimes.<sup>26</sup> For high imprisonment states, probation totals may not be very comparable due to reporting differences; it is not surprising that we see few differences between

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<sup>24</sup> We can see this by examining regional variation. In 2010, the mean incarceration rate was more than twice as high in the South than in other regions, averaging 535 prisoners per 100,000, compared to a mean of 260 in the Northeast, 360 in the Midwest, and 390 in the West. However, in stark contrast, 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 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 (especially pronounced in some Northeastern states), this pattern reversed direction by 2009.

<sup>25</sup> The choice of year is fairly arbitrary since most of these characteristics are relatively stable across years. In fact, even going all the way back to 1980 makes little substantive difference.

<sup>26</sup> A few of the differences reach statistical significance at the .10 level, but none provide a coherent explanation for differences. Among high imprisonment states, the incapacitated control regime is *more* likely to have a Republican leader (82 percent) than punitive control states (43 percent) ( $t=-2.1$ ,  $p<.1$ ), which is the opposite of what we would expect. Among low imprisonment states, sparing control states have nearly twice as many Republican legislators on average as states with high probation rates (48 vs. 28 percent;  $t=-3.6$ ,  $p<.01$ ), which perhaps suggest Democrats' enthusiasm for probation, although it is inconsistent with the findings for Governors in high imprisonment states. Sparing control states also have marginally higher unemployment rates, although the difference is not substantively meaningful (8.8 vs. 7.1 percent;  $t=2.6$ ,  $p<.1$ ).

the incapacitative and punitive regimes. For low imprisonment states, we might expect differences in crime rates given the differences in conviction rates, yet neither violent nor property crime rates show strong differences across the two regimes (although there is a slight trend toward higher crime rates in managerial states).<sup>27</sup> Given the lack of clear findings even with simple cross-sectional analyses, it seems premature to use time series models to estimate these differences. Future research might begin by estimating more complete (or comparable) probation rates and exploring the historical trajectories of mass probation within states.

## DISCUSSION

Over the past decade, criminologists have become increasingly concerned about the dramatic expansion of mass imprisonment. Yet in terms of sheer scale, this expansion was eclipsed by the rise of *mass probation*, which brings state agents into individuals' neighborhoods and homes. Propelled by the massive increases in the number of adults convicted of misdemeanor and felony-level offenses, probation rates exploded alongside imprisonment, often in the same states but also in states that otherwise appear to have resisted the punitive turn. I argue that a focus on mass probation changes our conclusions about the penal boom, including the import of region (punishment is highest in the South), politics (punishment was driven by conservative politics), and race (punishment is primarily about racial domination). Instead of the monolithic rise of mass imprisonment, instead, multiple forms of punishment have proliferated across radically different state contexts.

Developing a typology of states' control strategies in late modernity, this article outlined four ideal types: states that heavily increased imprisonment but not probation (incapacitative

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<sup>27</sup> This is true for the entire period under study. In 1980, managerial control states had slightly higher violent and property crime rates, with the property crime rate difference achieving statistical significance ( $t=2.7$ ,  $p<.05$ ). By 1990, managerial control states also had higher drug arrest rates ( $t=2.6$ ,  $p<.05$ ).

control), states that embraced both forms of supervision (punitive control) or neither (sparing control), and states that specialized in probation (managerial control). Rather than one pathway toward mass probation, each regime type experienced a unique historical trajectory. I focused in particular on explaining discordant regimes—those with low rates of control for one form of supervision and high rates of control for the other. In the case of incapacitated control states, this variation appears to be largely a byproduct of reporting procedures that exclude certain kinds of misdemeanor probationers from official counts. For most states with high imprisonment rates, probation supervision rates are likely also very high—Southern states such as Louisiana, Mississippi, Texas, and Georgia manage an even larger population than is apparent from imprisonment rates alone. For managerial control states, including Minnesota and Washington, the decoupling explanation is explained by the rapid expansion of probation admission rates. This suggests that rather than avoiding high crime politics (like sparing control states), states in this regime instead developed high conviction rates and channeled them into probation.

How could states leaders and scholars ignore this dramatic expansion in state control? I argue that in both cases, the myopic focus on imprisonment as *the solution* or *the problem* blinded observers to the reality of expanding probation rolls. Yet, probation is not a trivial sanction. In fact, there are enormous costs for embracing mass probation, especially for the individuals (and neighborhoods) subject to control. Probationers are not simply given a “slap on the wrist,” but are subject to the marking of a conviction, its attendant consequences, and the onus of abiding by the conditions of supervision. Many of the stigmas that constrain ex-felons’ lives apply to probationers and ex-probationers as well, generating a massive socially excluded class. In addition, probation inserts the criminal justice system into the community (Cohen, 1985), which likely has negative effects on neighborhood dynamics. Studying the juvenile

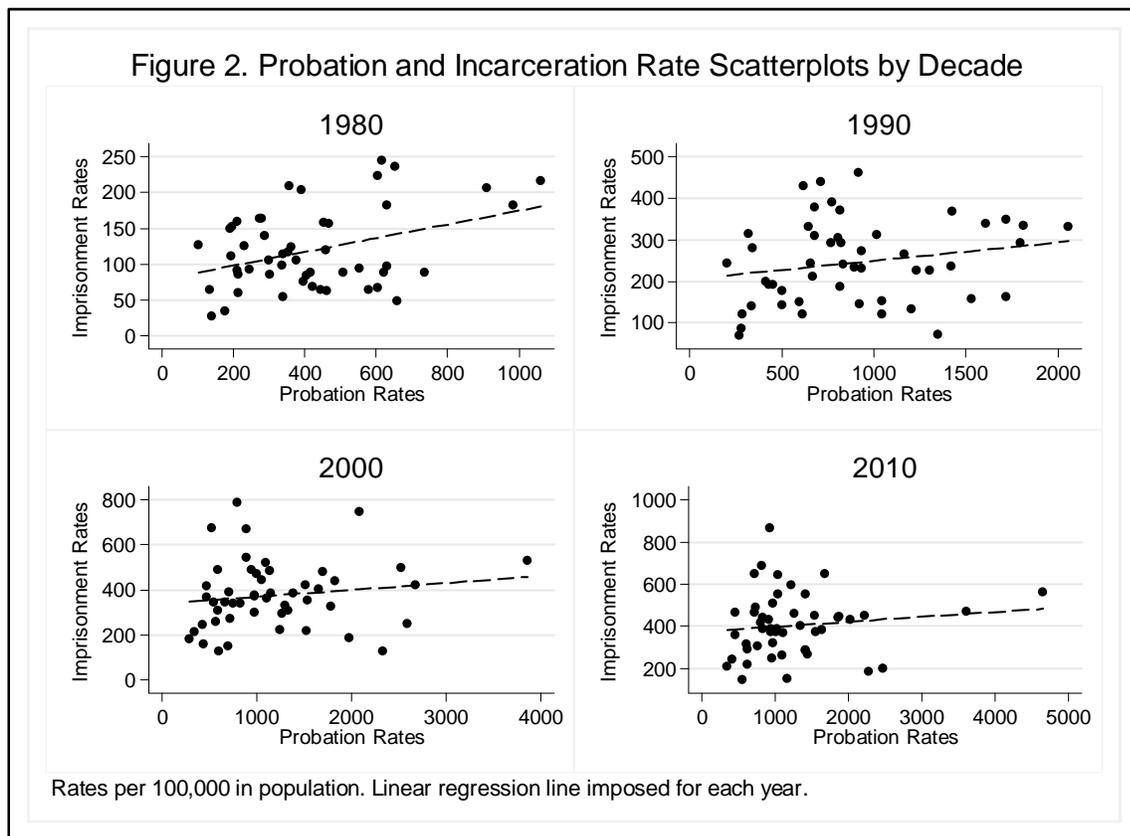
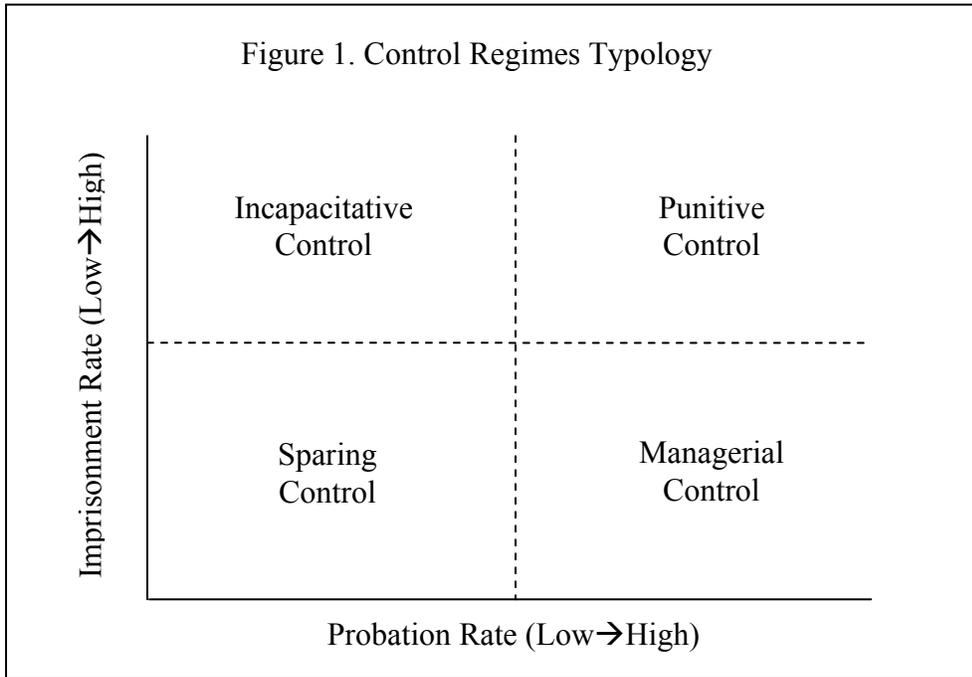
system, Rios (2011) documents that the expansion of probation into disadvantaged communities created a “youth control complex” that criminalized young men’s interactions with neighborhood centers, schools, and even their own parents. Mass probation represents a critical extension of the state into the lives of citizens, yet we know little about how this system of control developed or its implications for inequality.

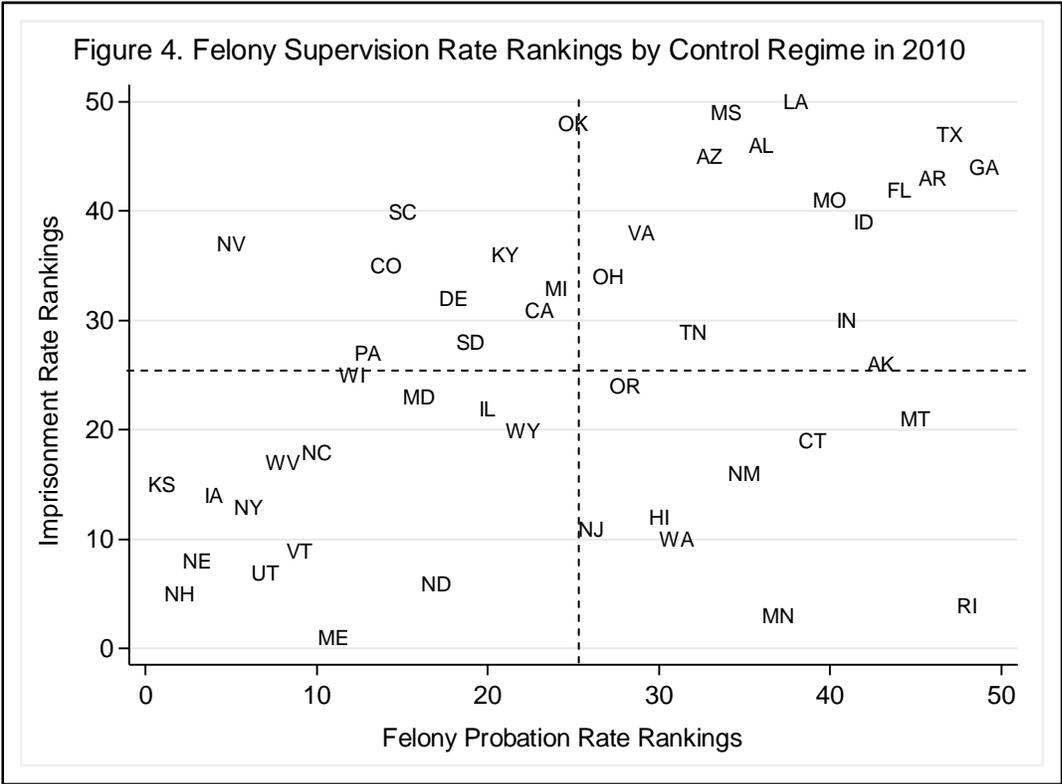
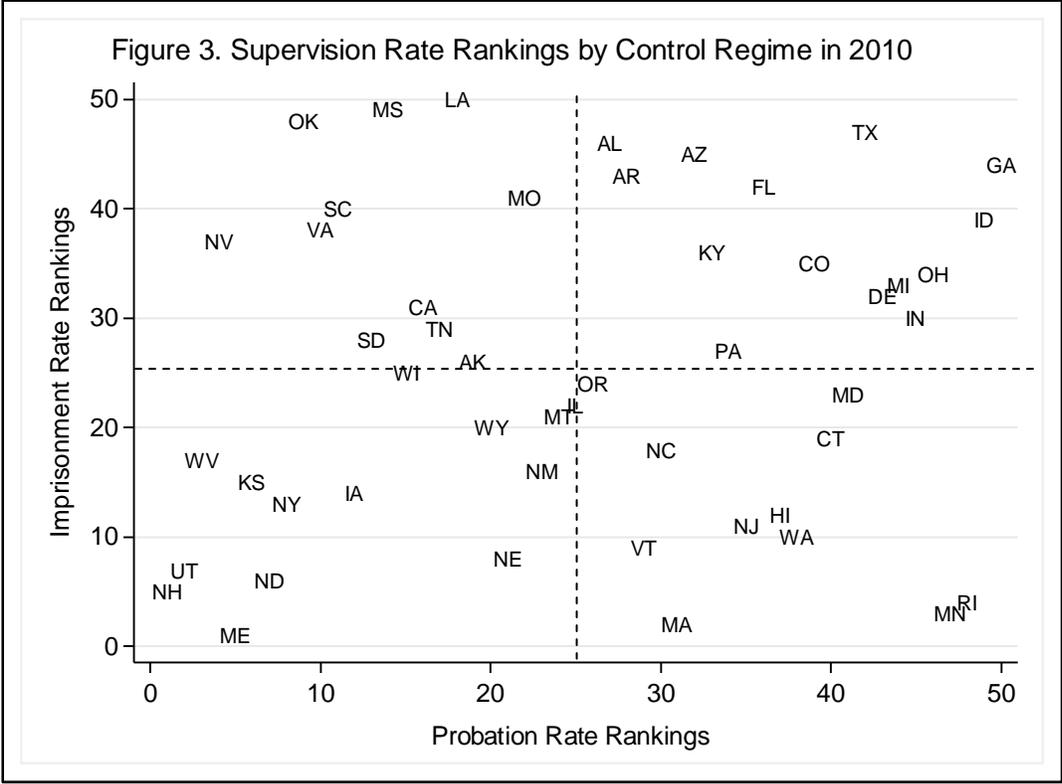
In addition, we risk misestimating mass punishment and misunderstanding its historical roots. Most notably, probation reframes the racialized narrative of the penal state. There were far more white Americans—often in predominantly white states—caught up in the carceral boom that we recognize when focusing on imprisonment alone. In fact, today there are more white probationers than there are inmates in state and federal prisons (of any race). This challenges accounts of the carceral state as primarily a mode of racial domination (Alexander, 2010; Wacquant, 2009). The massive number of white probationers must be considered more than “collateral damage” (Forman, 2012) and suggests that researchers have overlooked a critical mechanism in the reproduction of racial inequality in criminal justice contact. In addition, this expansion of mass probation in unlikely states suggests that researchers still have much to learn about the antecedents of the carceral build-up. Future research might productively examine why managerial control regime states experienced the wave of criminalization that sparing control states seem to have avoided. In addition, this regime prompts the question of how such large probation rates were maintained without bloating the prison system. Future research might also look to states like Nevada and Oklahoma, which disproportionately rely on imprisonment over probation.

Much as we have spent the past two decades exploring mass imprisonment, this article is intended to spur researchers to begin to investigate the causes and consequences of mass

probation. As outlined above, future research might proceed at every level of analysis, including individual-level effects of probation, local and state-level sentencing and revocation patterns, and state and national historical trajectories. Together, such scholarship would bring probation into the mainstream punishment research, providing a more robust conceptualization of the state and its capacity to punish.

## FIGURES & TABLES





**Table 1**  
**Proximal Determinants of Mass Probation in 2010 by Control Regime**

	<i>Sparing Control</i>	<i>Managerial Control</i>	<i>Incapacitative Control</i>	<i>Punitive Control</i>
Average % Felony Probation	61%	49%	85%	49%
Probation Admission Rate	392	746	323	1,136
Average Probation Term Served (in years)	2.2	2.2	2.8	1.9
% of states with Determinant Sentencing	21% (3/14)	45% (5/11)	27% (3/11)	43% (6/14)

**Appendix 1**  
**Social, Demographic, and Political Characteristics for States in 2009**  
**by Control Regime in 2010**

	<i>Sparing Control</i>	<i>Managerial Control</i>	<i>Incapacitative Control</i>	<i>Punitive Control</i>
<i>Probation Rates:</i>	Low	High	Low	High
<i>Imprisonment Rates:</i>	Low	Low	High	High
	Mean (SD)	Mean (SD)	Mean (SD)	Mean (SD)
Violent Crime Rate	299 (135)	323 (123)	496 (188)	422 (121)
Property Crime Rate	2,621 (510)	2,867 (599)	3,112 (662)	3,184 (648)
Drug Arrest Rate	406 (276)	426 (202)	552 (177)	447 (149)
Percent Black	5 (5)	10 (9)	17 (12)	14 (9)
Percent Hispanic	10 (11)	9 (4)	10 (11)	12 (11)
Unemployment Rate	7 (2)	9 (2)	9 (2)	10 (2)
Expenditures per Capita (log)	1.7 (0.2)	1.8 (0.2)	1.7 (0.4)	1.5 (0.2)
Percent Rep. in Legislature	48 (14)	28 (13)	50 (9)	50 (13)
Republican Governor	0.21 (0.4)	0.54 (0.5)	0.82 (0.4)	0.43 (0.5)
State Population (in 1,000's)	4,082 (5,461)	4,784 (3,006)	6,998 (10,181)	8,547 (6,712)
N	14	11	11	14

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