UC Irvine
UC Irvine Electronic Theses and Dissertations

Title
The Great Experiment: California's Prison Realignment and the Legal Reform of Mass Incarceration

Permalink
https://escholarship.org/uc/item/882358mm

Author
Verma, Anjuli Catherine

Publication Date
2016

Copyright Information
This work is made available under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives License, availalbe at https://creativecommons.org/licenses/by-nc-nd/4.0/

Peer reviewed|Thesis/dissertation

eScholarship.org Powered by the California Digital Library
University of California

UNIVERSITY OF CALIFORNIA,
IRVINE

The Great Experiment:
California's Prison Realignment and the Legal Reform of Mass Incarceration

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

Anjuli C. Verma

Dissertation Committee:
Professor Mona Lynch, Chair
Professor Valerie Jenness
Professor John Hipp
Professor David Meyer
Associate Professor Geoff Ward

2016

© 2016 Anjuli C. Verma

DEDICATION

To

Justice Jagdish S. Verma and Professor Julian Bond

who left too soon

but not before making a difference using law

TABLE OF CONTENTS

	Page
LIST OF FIGURES	iv
LIST OF TABLES	v
ACKNOWLEDGMENTS	vi
CURRICULUM VITAE	vii
ABSTRACT OF THE DISSERTATION	ix
INTRODUCTION	1
CHAPTER 1: The Great Experiment	8
CHAPTER 2: Decarceration and Local Laboratories of Experimentation	24
CHAPTER 3: Results I – Local Variation and Legal Translation	35
CHAPTER 4: Results II – The Life Course of Local Variation	67
CHAPTER 5: The Great Experiment, Revisited – Legal Change and Local Legal Regimes	107
CHAPTER 6: The Great Reckoning	127
REFERENCES	133
APPENDIX A: Relative Distribution of *State Prison Admissions* (2000-2009)	151
APPENDIX B: Coding Frame Used to Analyze County Realignment Plans	152

LIST OF FIGURES

		Page
Figure 1.1	County Planning and Implementation Groups under Realignment	18
Figure 4.1	Annual State Prison Use Rate, by County	69
Figure 4.2	State Prison Use by California Counties, 2000-2009	83
Figure 4.3	Historical Trajectories of State Prison Use, Plotted by Mean, 2000-2009	86
Figure 4.4	County AB 109 Responses, by Trajectory Group, 2000-2009	98

LIST OF TABLES

		Page
Table 3.1	County Comparison Groups	42
Table 3.2	Comparative Characteristics of Legacy Groups	44
Table 3.3	Local Legacies and Legal Interpretations in California's Penal Field	48
Table 4.1	Summary Statistics for California Counties, 2000-2009	81
Table 4.2	Trajectory Group Profiles	85
Table 4.3	Multinomial Logistic Regression Results for Trajectory Group Membership	88
Table 4.4	Conceptual Summary of Potential Predictors of Imprisonment Trajectories	97
Table 4.5	Binomial Logistic Regression Models Predicting Decarceration under AB 109	100
Table 5.1	Conceptual Typology of Local Variation, Imprisonment Trajectories and Decarceration	108

ACKNOWLEDGMENTS

I extend my deepest gratitude to Professor Mona Lynch (chair) without whom I would never have applied to graduate school in the first place, or finished. In addition, each of the members of my dissertation committee have inspired me to keep going and dig deeper in their own ways, along the way making me a better scholar and a better person. Thank you, Professors Valerie Jenness, Geoff Ward, David Meyer and John Hipp.

I am also indebted to a number of faculty at UC Irvine, who will always constitute what I think of as my intellectual family: Professors Carroll Seron, Shauhin Talesh, Charis Kubrin, Bryan Sykes, Susan Coutin, Sora Han and Elliot Currie. Outside of UC Irvine, Ryken Grattet, Joan Petersilia, Margo Schlanger, Mia Bird, Sonya Tafoya, Magnus Lofstrom, Craig Reinarman and W. David Ball inspired me to find a niche in the burgeoning research field on California's Public Safety Realignment. I especially thank Professor Ball for sharing his compilation of county-level imprisonment data. In addition, Jonathan Simon, Joachim Savelsberg, Philip Goodman, Joshua Page, Heather Schoenfeld, Michael Campbell, Michelle Phelps and Tony Platt have inspired my work and the very questions I ask in my research. Not only have they engaged with various portions and iterations of this dissertation, they have been gracious with their advice and accessibility.

Not least, I wish to thank and acknowledge the county criminal justice practitioners who were willing and candid in speaking with me about their experiences with California's Realignment. I am also grateful to the state and local non-profit / advocacy groups that have worked so hard to make California's Realignment process transparent: in particular, the ACLU of Northern California's Criminal Justice & Drug Policy Project, California Forward, The Rosenberg Foundation, the Chief Probation Officers of California, and the Santa Cruz Smart on Crime group.

This dissertation was funded by the National Science Foundation Doctoral Dissertation Improvement Grant (Award #: 153551) and the National Institute of Justice Graduate Research Fellowship (Grant #: 2015-IJ-CX-0001). Research was also made possible with funding from UC Irvine's Center in Law, Society and Culture and its Microsemi/Peterson Fellowship and the National Science Foundation-sponsored "Realigning Corrections Workshop" in October 2014.

CURRICULUM VITAE

Anjuli Catherine Verma

2000	National Indian Human Rights Commission, Research Intern, New Delhi
2001	Southern Poverty Law Center, Community Affairs Intern, Montgomery, Alabama
2002	B.A. in Political and Social Thought, University of Virginia
2003-11	National Legal Department, American Civil Liberties Union, New York and San Francisco
2014	M.A. in Social Ecology, University of California, Irvine
2014	Public Policy Institute of California, Research Intern, San Francisco
2015-16	National Science Foundation Doctoral Dissertation Research Improvement Grant Recipient
2015-16	National Institute of Justice Graduate Research Fellowship Recipient
2016	Ph.D. in Criminology, Law and Society, University of California, Irvine
2016-17	Chancellor's Postdoctoral Fellow, University of California, Berkeley, Department of Jurisprudence and Social Policy

FIELD OF STUDY

The Governance of Crime and Punishment

SELECTED PUBLICATIONS

Verma, Anjuli. 2016. "A Turning Point in Mass Incarceration? Local Imprisonment Trajectories and Decarceration under California's Realignment," *The Annals of the American Academy of Political and Social Science* 664: 108-135.

Lynch, Mona and Anjuli Verma. 2016. "The Imprisonment Boom of the Late 20th Century: Past, Present and Future." In *The Oxford Handbook on Prisons and Imprisonment*, John Wooldredge and Paula Smith, eds. Oxford: Oxford University Press.

Verma, Anjuli. 2015. “The Law-Before: Legacies and Gaps in Penal Reform,” *Law & Society Review* 49(4): 847-882.

Sykes, Bryan, Anjuli Verma and Blackhawk Hancock. Forthcoming. “On the Limits of Generalizability in Mixed-Methods Research: Aligning Sampling and Case Selection in Quantitative-Qualitative Studies,” *Ethnography*.

Verma, Anjuli and Bryan Sykes. Forthcoming. *Monetary Sanctions and Legal Financial Obligations in California*. Washington, DC: Laura and John Arnold Foundation.

Verma, Anjuli. 2004. “Why Criticisms of SATURN Mirror Criticisms of Any Mandatory Student Drug-testing Policy,” *The American Journal of Bioethics* 4: 52-53.

ABSTRACT OF THE DISSERTATION

The Great Experiment:
California's Prison Realignment and the Legal Reform of Mass Incarceration

By

Anjuli C. Verma

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2016

Professor Mona Lynch, Chair

Despite vast expenditures on prison construction in the late 20th century, infrastructure has not kept pace with the dramatic growth of incarceration in the U.S. As a result, extreme prison overcrowding has led to humanitarian, legal and fiscal emergencies nationwide. These emergencies are especially pronounced at the state level, where the Great Recession most directly affected and severely curtailed public spending; today, more than a third of state prison populations exceed institutional capacity. In the present policy environment, rather than investing scarce capital on building more prisons, state-level legal reforms aimed at downsizing the prison population are widely seen as the more prudent solutions. Little is known, however, about the diffusion and implementation of prison reform laws among local criminal justice actors and their effects at the county level of practice, where the incarceration process begins for most inmates.

This project examines the 2011 "Realignment" of California's unconstitutionally overcrowded prison system as an empirical window into how legal interventions and policy innovations filter to lower levels of government and diffuse into local organizational and professional practices. Using multiple methods, the study investigates how differences

in local organizational culture shape the meaning of law on the ground in ways that bolster or undermine the reform goal of decarceration. The research focuses on two questions: (1) how do local criminal justice actors respond to, comply with, shape, and resist prison downsizing laws, and (2) what effect do these responses have on decarceration as a key metric of institutional change?

A combination of group-based trajectory modeling and institutional ethnographic methods are used to assess the proposition that local organizational culture mediates the implementation of prison downsizing laws and that variation in county organizational culture explains differences in the outcome of decarceration. These multiple methods enable to the study to: (1) specify the measures of local variation most salient in predicting decarceration, (2) identify processes by which local organizational culture mediates law, as well as variations in these processes across counties, and (3) relate these variations to the outcome of decarceration.

INTRODUCTION

The 44th President of the United States, Barack Obama, was the first sitting president to visit a federal prison in American history (Dodds 2015; Eilperin & Horwitz 2015). Yet just as President Obama set foot inside the El Reno Correctional Institution in Oklahoma on July 16, 2015, national data showed that more people were exiting or never reaching the prison gates than at any point since 1973, the year that marks the beginning of contemporary mass incarceration in the U.S. After three decades of virtually uninterrupted growth, national incarceration rates began declining in 2007, and the overall level of incarceration nationwide began declining in 2009 (Carson & Sabol 2012). Virtually all declines originated from state and local jurisdictions, while the federal prison population has continued to grow, with only the recent year's dip offering any sign of abatement. Growth in the state-level prison population, however, notably decelerated, increasing by only 1.1% over the last decade, compared to 71.7% in the previous decade (Carson & Sabol 2012), and for the first time since the beginning of the incarceration boom, a handful of states (Maryland, Michigan, New Jersey and New York) showed an overall decline in prison populations from 2000 to 2010 (Carson & Sabol 2012).

California, a state which operates one of the nation's and western world's largest prison systems, was a trailblazer in what President Obama called the "huge surge" in incarceration and "enormous overcrowding issues" during his recent prison visit (The White House 16 July 2015). Yet California has also become the nation's epicenter for prison downsizing and decarceration in the early 21st century. Reductions in this single state's prison population are mainly responsible for the observed nationwide imprisonment stabilization. Seventy percent of the decrease in U.S.

state-level imprisonment from 2010 to 2011, and over 50% in the following year, is attributed to California alone (Carson & Sabol 2012; Carson & Golinelli 2013).

Changes in criminal behavior do not explain the state's downward imprisonment trend, as crime and recidivism rates remained relatively stable at the turn of the century (see e.g., Austin 2016). Rather, changes in the "behavior of law" (Black 1976) are driving California's prison downsizing. Analysts attribute California's precipitous "decarceration" to three legal interventions: (1) the U.S. Supreme Court's order in *Brown v. Plata* (2011), which found extreme overcrowding in California prisons unconstitutional under the Eighth Amendment; (2) the state's enactment of Assembly Bill 109, "Public Safety Realignment," in 2011, which devolved significant criminal sanctioning and supervision responsibilities from the state's prison system to its 58 counties; and (3) Proposition 47, "The Safe Neighborhoods and Schools Act," a voter initiated ballot measure enacted in 2014 that reclassified six low-level drug and property felonies to misdemeanors (see e.g., Bird et al. 2016; Schlanger 2013; 2016).

California's "Realignment" (AB 109 2011) has been dubbed the "biggest criminal justice experiment ever conducted in America" (Petersilia 2012). *The Economist* (19 May 2012) has also called AB 109 "one of the great experiments in American incarceration policy," in part due to concerns about its effects on future crime levels, but also because whether it will in fact lead to decarceration, as many reformers have hoped (e.g., American Civil Liberties Union 2012; Californians United for a Responsible Budget 2012; 2015), remains an open question. Will what many saw as the historic promise of the *Brown v. Plata* (2011) ruling to downsize one of the world's largest prison systems be fulfilled? Will the ultimate effect of the *Plata* ruling—as it is mediated by the state's legislation of Realignment and, in turn, by its 58 counties' implementation of the law—be an overall decrease in incarceration or merely a relocation of

incarceration from state prisons to county jails? Put differently, might this Great Experiment turn out to be little more, or nothing less, than a great institutional migration?

The results of "The Great Experiment" (see Kubrin & Seron 2016) have been mainly assessed by measuring pre-AB 109 to post-AB 109 changes in discrete outcomes of interest, such as crime, recidivism and incarceration rates (e.g., Austin 2016; Bird & Grattet 2016; Lofstrom & Raphael 2013; Lofstrom & Raphael 2016; Males & Goldstein 2014; Verma 2016). However, the analysis presented in this dissertation takes a step back to consider how the original Great Experiment—America itself—informs these questions. Alexis De Tocqueville (1835) famously characterized America in experimental terms—"In that land the great experiment was to be made, by civilized man, of the attempt to construct society upon a new basis…" (20)—and observed colonial New England as "a region given up to the dreams of fancy and the unrestrained experiments of innovators" (27). De Tocqueville found the American experiment distinctive in several respects, chief among them the emphasis on local governance, enabled by what he viewed as the touchstones of American culture: anti-authoritarianism, rugged individualism and a society organized around neighborly associations and small sects. The lesser valorized premise of white supremacy by which the American experiment was undertaken entailed forced migrations of Native Americans and Africans, the racial fabric that wove this quintessentially American endeavor, and black, brown and other-than-white bodies as non-consenting subjects (see Mills 1997). The nation's original experiment gave way to an ongoing project in reckoning with its own results—results that include not only the ongoing intergenerational effects of state-organized racial violence, but also the legacies of governmental under-regulation of racial terror in locales left to administer their own self-determined brands of justice (see Ward 2014). This study conceives of Realignment's "great experiment" as part and

parcel of the original American experiment, and the project of reckoning with reform of a criminal justice system forged in the pathos of its distinctive democratic ideals.

Prison downsizing and decarceration are the substantive topics examined in this study; however, the analytic focus is legal change. Realignment raises specific policy questions about whether it will "work," but here I argue that "what works" cannot be gauged apart from the distinctive ingredients underlying the American ideal of law and legal change. Three facets are addressed: (1) the interplay of local variation and legal translation, (2) the life course of local variation over time, and (3) mechanisms of change within diverse local legal regimes. Each facet, and the particular data and methods deployed, reveals distinct dimensions of the central problematic of legal change and how to assess decarceration as one such case. The overarching research questions examined are: (1) how do local criminal justice actors comply with, shape, and resist prison downsizing laws, and (2) what effect do these responses have on decarceration as a key metric of institutional change? Using both quantitative and qualitative methods and modes of analysis, the project specifies the measures of local variation most salient in predicting decarceration, identifies processes by which local county organizational culture mediates law, variations in these processes across counties, and relates these variations to the outcome of decarceration.

Chapter 1, "The Great Experiment," delves into the three 21st century legal interventions in California as three kinds of "royal roads" (see Lopez 1956:26; Relph 1981:21) to reform—law from the courts, law from the legislature and law from the people—each paved with different potholes for compliance and lasting social change. The focus is then turned to the sociolegal questions raised by the legislature's enactment of Realignment (AB 109 2011), which localized the onus of legal compliance within designated county practitioner work groups and, in doing so,

raised the possibility of decarceration rather than prison expansion as a viable mode of compliance with federal court intervention for the first time in decades. Chapter 2, "Decarceration and Local Laboratories of Experimentation," recounts the twin American horror stories of mass incarceration and decarceration and revisits how the substantive question of decarceration has been theorized in sociological punishment literature. The chapter argues the need for theoretical development in the conceptualization of decarceration, as well as in its measurement and operationalization in empirical research and the policy domain. Realignment's "experiment" is then put in historical and policy context, pointing to the need for analyses of local variation given the American federalist structure and emanating logics of criminal justice.

Chapter 3, "Results I," presents a qualitative content analysis of the 2011-2012 county implementation plans mandated by AB 109 during the first year of Realignment's enactment. Plans are comparatively analyzed across two groups: counties that fell in the upper-quartile of state prison admissions rates for each of the years from 2000 to 2009 (the "High Imprisonment Legacy" group), and counties falling in the lower-quartile of state prison use during the same time period (the "Low Imprisonment Legacy" group). Counties within each group are found to have arrived at divergent interpretations of the law, as well as to have used several distinct legal translation processes to accomplish these interpretations based on their historical imprisonment legacies, which I discuss as the "law-before" (see also Verma 2015).

Chapter 4, "Results II," follows counties' historical development through to present-day responses to AB 109 and presents a quantitative analysis that operationalizes the "law-before" heuristic and refines how local variation in penal practice can be understood (see also Verma 2016). Group-based trajectory modeling reveals a more fine-grained account of the inter-county variation in California state prison reliance in the years leading up the Realignment's enactment.

The analysis identifies five statistically-derived groups of counties based on the distinctive imprisonment trajectories that emerged from 2000-2010 data: (1) High Increasing (five counties), (2) Middle Increasing (19 counties), (3) High Decreasing (three counties), (4) Low Increasing/Stable (16 counties), and (5) Middle Decreasing/Stable (15 counties). Multinomial and binomial logistic regression analyses then examine the association of a range of crime, demographic, political and jail capacity variables with both state prison use outcomes over time, as well as observed decarceration responses under AB 109.

Chapter 5, "The Great Experiment, Revisited," then reflects on theoretical implications of the previous empirical analyses for the problematic of legal change and existing conceptualizations of decarceration. The county practitioner work groups tasked with planning for and implementing Realignment are revisited as empirical and theoretical pivot points for understanding how legal reform is translated on the ground in distinctive locales. Based on a synthesis of findings from the dissertation's qualitative and quantitative examinations of local variation in work group culture and penal practice, a conceptual framework is presented which analyzes questions of legal change as potential legal "events" (see Sewell Jr. 2005) that take shape within local legal "regimes" (see Tilly 2006; Wilson 2000). The chapter concludes by proposing future qualitative field research within counties that could be probabilistically selected to represent the divergent trajectories of state prison reliance identified in Chapter 4. Such research could examine the proposition that local organizational culture mediates the implementation of legal reform on the ground, and that variation in county organizational cultures explains why the law changes under Realignment seem to have led to decarceration in some jurisdictions but not others.

Finally, Chapter 6, “The Great Reckoning,” returns to the overarching research questions about how local criminal justice actors respond to, comply with, shape, and resist prison downsizing laws, and the effects of those responses on decarceration. The dissertation concludes by highlighting the need for future research on the as-yet unknown practical results of decarceration in the 21st century as a way of reckoning with mass incarceration’s ongoing “slow violence” (Ward 2014) and the residue it will leave behind even if this may be the beginning of its end—the afterlife of mass incarceration.

Chapter 1

The Great Experiment

There it was that civilized men were trying to build society upon new foundations and that, applying for the first time theories unknown until then or considered inapplicable, they were about to give the world a sight for which the history of the past had not prepared it.

--Alexis De Tocqueville, *Democracy in America* (1835)

Despite vast expenditures on U.S. prison construction in the late 20th century, infrastructure has not kept pace with the punishment imperatives of mass incarceration. Dangerously overcrowded confinement conditions remain widespread in prisons and jails, raising recurring dilemmas about the judicial oversight and legal regulation of correctional policy. Perhaps no state better exemplifies the prison overcrowding crisis than California, which operates one of the nation's and western world's largest prison systems. After several decades of rapid growth, by 2011 the state incarcerated nearly twice the number of people its prisons were designed to hold. Despite these levels, California's recidivism rate remained one of the highest in the nation; roughly 60% of those released from prison reoffended within three years (Pew Center on the States 2011). Such extreme prison overcrowding combined with its lack of crime control efficacy led to historic intervention by the U.S. Supreme Court in *Brown v. Plata* (2011). In a 5-4 decision, the *Plata* court found California's conditions of confinement to violate the Eighth Amendment's prohibition on cruel and unusual punishment and ordered the state to reduce its prison population to 137.5% of capacity (amounting to roughly 40,000 people) within two years. Justice Antonin Scalia decried the order as "the most radical injunction issued by a court in our Nation's history" (*Brown v. Plata* 2011:1 of Scalia dissent).

Brown v. Plata has understandably been characterized as a "remarkable" case (Simon 2014). Even more remarkable is the chain of legal interventions the case seems to have spawned, first initiated by the state of California and then by its voters.

Three Roads to Reform

The Courts: Brown v. Plata (2011)

Against the decidedly grim backdrop of American jurisprudence on prisoners' rights, the *Plata* ruling and its strong invocation of human dignity in the majority opinion issued on May 23, 2011 came as both a surprise and a welcome sign of hope for many reform advocates. U.S. Supreme Court Justice Anthony M. Kennedy's words seemed to imbue the decision with particular moral force:

> Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. "'The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.'" *Atkins v. Virginia*…(quoting *Trop v. Dulles*…)...A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society (*Brown v. Plata* 2011:12 of Opinion of the Court).

Jonathan Simon (2013a:252) described the court order as possibly "marking a turning point in the history of mass incarceration in California and nationwide" and characterized it as "the sharpest shock to California's massive prison system in decades" (254). Simon argues that the *Plata* ruling may even go so far as to fundamentally reshape jurisprudential analyses of what constitutes cruel and unusual punishment under the Eighth Amendment, writing that the ruling may "increase the prominence of dignity as a value in American constitutional law" (2013b:58;

see also Simon 2014). News media outlets and advocacy groups echoed such sentiments (e.g., American Civil Liberties Union 2012; Hopper, Austin & Foreman 2014).

The Legislature: Public Safety Realignment (AB 109 2011)

Given its rampant prison construction history (Gilmore 2007), California might have been expected to comply with the *Plata* population cap order by simply expanding prison capacity, as states have so often done before (e.g., Feeley & Rubin 1998; Guetzkow & Schoon 2015; Schoenfeld 2010). Instead, California enacted Realignment. "Public Safety Realignment," or AB 109 (2011), localized the onus of compliance to individual counties (Schlanger 2013). AB 109 devolves the supervision of most non-violent offenders to the county level and, notably, delegates unprecedented discretion to local practitioners to either incarcerate those previously sent to state prison in local jails or to use alternative, community-based sanctions that do not entail incarceration (Pen. Code §1170(h); §17.5). California's unique response thus raises the possibility of decarceration—rather than prison expansion—as a viable mode of legal compliance with court intervention for the first time in decades.

Through multiple amendments to the California Penal Code, AB 109 shifts from the state to its 58 counties the responsibility for supervising non-serious, non-violent, non-sex-registerable offenders (known as "non-non-nons" in local parlance)—all of whom would have otherwise previously served felony sentences in state prison (Pen. Code §1170(h)). It should be noted that this distinction between "non-non-nons" and violent offenders is constructed through the legislation, which is itself the product of political compromise and coercion (see Schlanger 2013). Therefore, "non-violent" (and its logical reference group, "violent") should not be taken as *a priori* categories; some crimes which remain state prison felonies under Realignment may

not be reasonably considered “violent,” and some “non-violent” crimes subject to Realignment may be construed as having violent elements (see Byers 2011:120-123).

AB 109 also makes significant changes to state parole by shifting new post-release supervision responsibilities to counties, including the requirement that nearly all violations and revocations be processed and sanctioned locally (Pen. Code §3450 Tit. 2.05 of Pt. 3). Through this devolution, the state prison system expected to shed nearly one-fourth of its inmates and three-fourths of its parolees upon full implementation (California Legislative Analyst’s Office 2011). To put its magnitude in perspective, reform of the notorious “Three Strikes” law under Proposition 36 (2012) was estimated to affect an estimated 9,000 California inmates imprisoned for a third strike offense (California Legislative Analyst’s Office 2012a), and changes to the death penalty would affect approximately 725 inmates on the state’s death row (California Legislative Analyst’s Office 2012a)—the law changes under Realignment affect upwards of 120,000 inmates and parolees.

In a keynote address to the National Institute of Justice, criminologist Joan Petersilia (2012) made a bold claim about California’s Realignment: “It is the biggest criminal justice experiment ever conducted in America, and most people don’t even know it’s happening.” *The Economist* (19 May 2012) has also called AB 109 “one of the great experiments in American incarceration policy,” in part due to concerns about its effects on future crime levels, but also because whether it will in fact lead to decarceration, as many reformers have hoped (e.g., American Civil Liberties Union 2012), remains an open question. Emerging awareness of the underlying variation in California counties’ reliance on the state prison system in the decades leading up to Realignment has raised concerns that the relatively small number of historically high prison using counties—counties that disproportionately drove the state’s prison

overcrowding crisis in the first place (e.g., Ball 2012)—will use the discretion afforded to them under Realignment to either subvert the law's central mandates or to simply relocate the sites of incarceration from state prison cells to local jail cells (Lynch 2013; Petersilia & Snyder 2013).

The People: Proposition 47 (2014)

On November 4, 2014, three years after the enactment of Realignment, California voters passed Proposition 47, "The Safe Neighborhoods and Schools Act," a voter-initiated ballot measure that reduced certain low-level property and drug offenses from what are known as "wobblers" or felonies to misdemeanors. Some of these offenses were previously considered "wobblers" (California Legislative Analyst's Office 2015:6) because prosecutors could choose to charge them as either felonies or misdemeanors based on the details of the crime and the offending individual's criminal history. The changes made under Proposition 47 reduce penalties for the following kinds of crime: (1) *theft* – Proposition 47 limits when theft of property of $950 or less can be charged as a felony,[1] and shoplifting property worth $950 or less is now considered a misdemeanor and can no longer be charged as the "wobbler" offense of 2nd degree burglary; (2) *receiving stolen property* – Proposition 47 changes receiving stolen property worth $950 or less from a "wobbler" offense to a misdemeanor; (3) *writing bad checks* – under Proposition 47, writing a bad check under the amount of $950 is now considered a misdemeanor unless the individual has previously committed three forgery-related crimes, in which case the crime becomes a "wobbler" and may be charged as a felony or a misdemeanor;[2] (4) *check*

[1] "Specifically, such thefts cannot be charged as felonies solely because of the type of property involved or because the defendant had previously committed certain theft-related crimes" (California Legislative Analyst's Office 2015:6).

[2] "Previously, writing a bad check was a wobbler crime if the check was worth less than $450, or if the offender had previously committed a crime related to forgery" (California Legislative Analyst's Office 2015:7).

forgery – Proposition 47 makes forging a check worth $950 or less a misdemeanor unless identity theft was committed in connection with forging a check, in which case it may be prosecuted as a felony or misdemeanor (becoming a "wobbler"); and (5) *drug possession* – under Proposition 47, possession of most illegal drugs for personal use is a now misdemeanor rather than a felony, "wobbler" or misdemeanor depending on the amount and type of drug[3] (see generally California Legislative Analyst's Office 2015).

Approved by 60% of voters, Proposition 47 also provides for retroactive relief to individuals currently serving custodial sentences based on felony convictions for the specified drug or property offenses by directing judges to review resentencing petitions for those eligible. In addition, the law allows people with previous convictions to petition the court for reclassification of the named offenses from felonies to misdemeanors on their criminal records. The cost savings associated with the offense reclassification, estimated to be several hundred million dollars annually (California Attorney General 2014), are to be reinvested into school truancy and dropout prevention, mental health and drug treatment and victim services (see California Legislative Analyst's Office 2014; 2015).

Brown v. Plata (2011), AB 109 (2011) and Proposition 47 (2014) were not isolated occurrences but a related chain of events. The exigencies of a two-year time limit for compliance set by the *Plata* court led the state to enact AB 109, which would significantly and rather quickly reduce the prison population to court-mandated levels by devolving criminal supervision responsibilities for most non-violent offenders to counties. Unlike AB 109, Proposition 47 emanated from social movement advocates with the goal of system-wide decarceration (see e.g.,

[3] "The measure did not change the penalty for possession of marijuana, which is currently either an infraction or a misdemeanor" (California Legislative Analyst's Office 2015:6).

American Civil Liberties Union 2015). The shadow of *Brown v. Plata* allowed the voter initiative to be promoted, in part, as an instrumental prison reduction strategy that would aid the state's compliance with *Plata*. In this way, the historic victory by prisoner rights advocates in *Brown v. Plata* in 2011 seems to have provided important resources and new opportunities that helped advocates get Proposition 47 on the ballot three years later and win its passage.

Despite their interrelation, these legal reforms can also be differentiated in several respects. For example, by design, the *Plata* ruling and AB 109's "realignment" both left significant administrative discretion to those responsible for compliance and implementation even as the interventions imposed significant constraints on their previously discretionary behavior. The *Plata* order mandated that the state of California meet the specified prison population cap within two years yet deferred the methods and mode of compliance to state administrators, stating plainly, "[t]he order leaves the choice of means to reduce overcrowding to the discretion of state officials (2011:2 of Order of the Court). Similarly, AB 109 effectively constrained local officials' discretion by barring county governments from sending people convicted of "non-non-non" offenses and many post-release supervision violations to state prison, but at the same time, the law gave locals significant newfound discretion and resources to choose whether a term of incarceration for such crimes was necessary at all (Pen. Code §17.5; §1203.016). Additionally, although Sheriffs would now be responsible for housing a new class of "realigned" inmates sentenced to terms of incarceration in county jails rather than state prisons, AB 109 dramatically expanded Sheriffs' discretion to manage jail overcrowding through early-release and Sheriff-supervised community supervision mechanisms (Pen. Code §1203.018).

On the other hand, Proposition 47 was written to constrain such discretion by mandating as specifically as possible what "counts" as a felony versus a misdemeanor for a statutorily

itemized list of crimes. Proposition 47 was thus a substantive type of legal reform in that it altered the very definition and category of "felony" crime, removing the wobble from the "wobblers." AB 109 was a spatial type of reform in that, rather than changing the definition of felony crime itself, it mainly altered the location where certain felonies were to be punished (from the state to the counties). Unlike either AB 109 or Proposition 47, a distinctive feature of the *Plata* order was the invocation of human dignity as the jurisprudential basis for its finding. This differentiated analysis leads to one comparative interpretation of *Brown v. Plata* as a morally authoritative mandate that preceded the spatial and substantive mandates of AB 109 and Proposition 47, respectively.

These distinctive avenues to reform can be likened to juridical conceptions of the "public highway" as chronicled by historian R.S. Lopez (1956:26):

> In English law of the later Middle Ages not only military roads, but all roads leading to ports or markets were 'King's Highways' and enjoyed royal protection. In Italy the emperors asked the advice of merchants before granting sonorous and ineffective decrees of protection to certain roads. In France a thirteenth century jurist distinguished footpaths and secondary roads from 'the greater ones, which are called royal roads', but he also recognized that this usage took no account whatever of the purely legal distinctions established in antiquity.

From a human geography standpoint, Edward Relph (1981:21) expresses a decidedly cynical view of any such contemporary "King's Highway," writing that, "[p]eople will discover at last that royal roads to anything can no more be laid in iron than they can in dust; there are, in fact, no royal roads to anywhere worth going to."

Regardless of intentions, a series of earlier "royal roads" to reform by way of prisoner rights lawsuits, legislative enactments and voter initiatives are now understood—in hindsight—as key mechanisms in the *growth* of U.S. incarceration over the 1980s and 1990s (see National Research Council 2014 on legislation; see Feeley & Rubin 1998; Guetzkow & Schoon 2015;

Schoenfeld 2010 on litigation). Yet by the early 21st century as the U.S. prison population has stabilized, legal mandates in the same form (if not necessarily the same substance) appear to be triggering just the opposite: decarceration. Each of these legal forms creates its own kind of vulnerability for reform goals, whatever those goals may be. Top-down forms of legal regulation struggle to induce compliance (e.g., Edelman & Talesh 2011), while so-called grassroots laws struggle against cooptation (e.g., Selznick 1965). Rather than inherently failing to lead "anywhere worth going to" (Relph 1981:21), any legal road to reform, whether by the courts, the legislature or the people, appears paved with its own potholes and resulting experiments in compliance and lasting change.

Gauging "The Great Experiment": California's Realignment

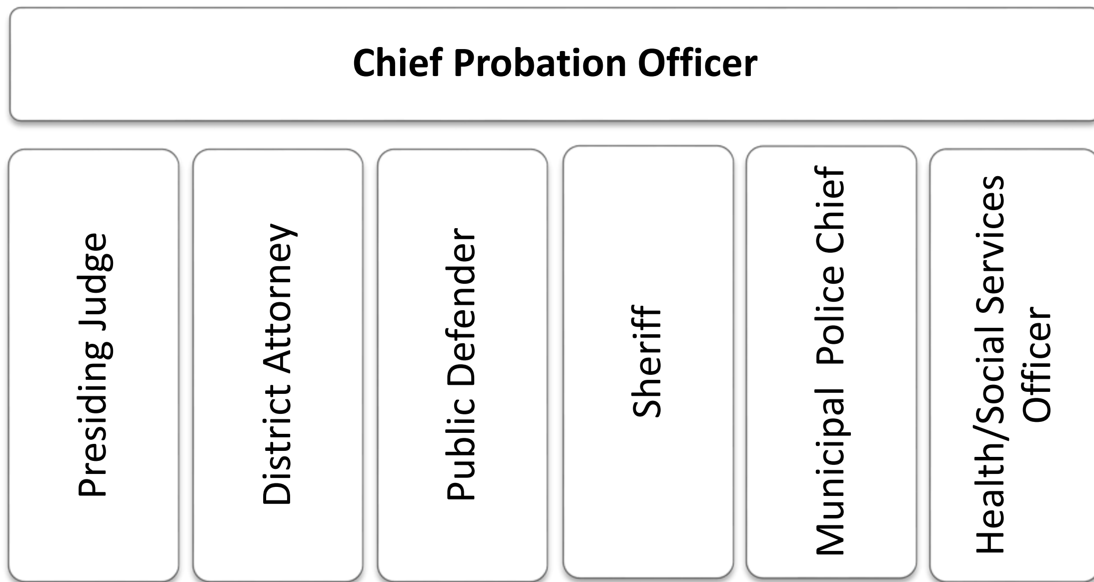
The distinctively American trope of experimentation in the face of vexing social problems appeals to what De Tocqueville (1835) observed as an ethos of innovation, the desire to buck tradition and shed yokes of the past, to independently chart the course of history as the manifest destiny of the nation. Such a mind frame underpins the U.S. federalist ideal, in which states are seen as promising laboratories of experimentation. In the oft-quoted words of U.S. Supreme Court Justice Louis Brandeis:

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country (*New State Ice Co. v. Liebmann* 1932, Dissent).

California's Realignment legislation illustrates how this experimental ideal infuses the state-level governance of counties as well. County-level practitioners are central to AB 109's implementation and, by implication, to the state's ultimate compliance with *Plata*. AB 109

explicitly calls for local customization and overtly appoints practitioners to shape the law's meaning. It does so by requiring a formal county-level planning process but specifying little programmatic substance for local implementation plans. This process required a standard practitioner group within each county to produce a written implementation plan, approved by the county's Board of Supervisors, delineating how it would exercise newly-acquired discretion and allocate state funding. By statute, each county's Chief Probation Officer chairs a group consisting of the Sheriff, District Attorney, Public Defender, Presiding Judge, a municipal Police Chief and a public health agency representative (Pen. Code §1230.1). The legislation designates this group as an "Executive Committee" of each county's pre-existing "Community Corrections Partnership" (CCP). CCPs consist of more than a dozen members and are also chaired by the Chief Probation Officer of each county. They were formed two years earlier under separate legislation to implement a state incentive program for counties to reduce the number of people returned to state prison for probation violations (SB 678 2009).

FIGURE 1.1
County Planning and Implementation Groups under Realignment



Source: California Penal Code §1230.1.

In selecting this particular subset of the CCPs to draft Realignment plans, AB 109 shaped a specific structure for the planning process by including certain actors while excluding others — notably, counties' chief fiscal agents, a number of broader social services department heads and community members with special interests in offender rehabilitation and victims' rights (Pen. Code 1230(b)(2)). At the same time, the statutory designation of this "Executive Committee" reflects (and was itself constrained by) institutional arrangements put in place by previous legislation, including the leadership designation of Chief Probation Officers as CCP chairs. The law imposed no state-level review, and no requirements or funding conditions on the plans' form or content, leading to wide inter-county variation in the final documents despite the standard group charged with drafting them (Abarbanel et al. 2013).

Spanning nearly 1,000 pages, AB 109's purposes, intents and many of its mandates were frustratingly ambiguous to practitioners (e.g., Petersilia 2014). While largely acknowledged as the state's central mode of compliance with *Plata*, its statutory language explicitly states that it is *not* intended to reduce state prison overcrowding (Pen. Code §17.5(b)). At the same time, its Legislative Findings include bold statements decrying the state's prison overcrowding problem and calling for reduced reliance on incarceration in favor of community-based alternatives (Pen. Code §17.5(a)). AB 109 is unusual less, however, in the ambiguity of its "true" purpose (e.g., Black 1972; Feeley 1976) than in its explicit award of local discretion and overt appointment of implementers to shape its very meaning.

Like previous "grassroots" governance strategies (Selznick 1965), the discretion and devolution of authority under Realignment come at a price to locals. AB 109's distinction, however, is that it exacts a different price from each county. AB 109 ends the longstanding correctional "free lunch" (Zimring & Hawkins 1991) by requiring counties to largely assume the costs of incarcerating realigned offenders. This yields unequal local costs because counties have historically depended on the state's "free lunch" to varying degrees. Annual data reveals wide variation in the rates at which counties sent people to state prison in the decades leading up to Realignment. This variation exhibits a pattern in the presence of two distinct, relatively small outlier groups: consistently "high prison using" and consistently "low prison using" counties (Ball 2012). This variation is not explained by differences in local crime rates. In an analysis of data from 2000-2009, W. David Ball (2012) shows that, net of local crime rates, the same "high use" counties repeatedly fell into the top quartile of state prison admission rates for nearly all ten years, as did the same "low use" counties fall into the lowest quartile.

Regardless of the range of possible explanations for this variation, it leads to what Magnus Lofstrom and Steven Raphael (2013:8) call different "doses" of Realignment. Historically high prison using counties experience high "doses" of AB 109's reforms because they must adapt to managing the large number of people otherwise sent to state prisons, while Realignment delivers a smaller reform "dose" to counties that originally sent relatively fewer to state prison. Michael Males and Brian Goldstein (2014) refer to these groups as "state-dependent" versus "self-reliant" counties, which signals the different local-state power relationships that may underlie local imprisonment practices and differences in associated legitimacy claims about the proper governmental level of imprisonment regulation. The variation in past imprisonment practices can be readily observed in counties' state prison use rates over time. The power arrangements enabling these practices are more difficult to measure.

Getting beyond the "Gap" to Confront Questions of Legal Change

AB 109 can be understood as legislation with a "gap" already written into it. Unlike centralized bureaucratic models of legal regulation premised on the Fordist-era ideal of uniformity and the standardization of practices within a regulatory field (e.g., Barron, Dobbin & Devereaux 1986; Jacoby 1985; Llewellyn 1957), California's Realignment takes for granted that standardization is not feasible (and may not be desirable). It even creates a statutory vehicle for discretionary local implementation in the mandated implementation plans. Sociology of law "gap" studies have classically conceptualized discretion, especially in concert with legal ambiguity, as a threat to the redistributive power of law, in part, because the implementation dilemmas it presents for front-line workers in local settings often lead to unintended policy

directions (e.g., Lipsky 1971). Discretion is by design, however, under AB 109, which recasts the very notion of the "gap" as a puzzle to be explained.

Related scholarship has raised normative questions about decentralized social policy in the context of American federalism, which places constitutional and political limits on federal intervention into state and local policymaking even as it facilitates a nationalized policy agenda (e.g., Feeley & Rubin 1998, 2008; Miller 2008). As a somewhat paradoxical regulatory model that descends directly from federal court intervention but in which compliance is premised precisely on county-level variations in implementation, Realignment complicates and raises the stakes of these questions for the reform goal of decarceration.

Neo-institutional analyses of how organizations reshape the meaning of legal regulations within their fields show that legal ambiguity leaves room for discretionary implementation, which facilitates the "endogenous" interpretation of law. Legal endogeneity is the process by which the meaning of law comes to be "generated within the social realm it seeks to regulate" (Edelman 2005:337). Accounts of legal endogeneity in the regulatory environment show that, from an organizational standpoint, "to comply or not to comply—that is not the question" (Edelman & Talesh 2011); rather, the question is how the very meaning of "compliance" gets defined, and by whom.

In studies of corporate compliance with public regulation, legal endogeneity begins through the "managerialization" of law (e.g., Edelman, Fuller & Mara-Drita 2001), where prototypical business logics such as efficiency and managerial discretion subsume the legal logics of due process and impartiality—in effect, reshaping the substantive meaning of legal rules to benefit corporate managers and elites (e.g., Krawiec 2003; Reichman 1992; Schneiberg & Bartley 2001; Talesh 2009, 2012). Organizational managers, as both the objects and

designated implementers of regulation, may thus subvert legal mandates by articulating in their own terms what it means to comply with the law. In turn, where courts formally adopt managerial interpretations in case law (for example, by deferring to internal corporate grievance procedures as evidence of compliance), law is ultimately rendered endogenous (e.g., Edelman, Uggen & Erlanger 1999; Edelman et al. 2011).

In the criminal justice context, which remains understudied in law and organizations literature (cf. Jenness & Smyth 2011), Grattet and Jenness (2005) identify legal "surplus" as another mechanism of legal endogeneity. In the case of hate crime policy, interpretations of an ambiguous California law filtered through numerous police agencies situated in diverse local contexts rather than through corporate managers articulating standard business logics. This led to a surplus in legal meaning, or "multiple legitimate expressions of the same rule"; importantly, however, Grattet and Jenness (2005:893) found that these expressions were not perfectly idiosyncratic to locale but "clustered" as a function of distinct policy diffusion processes that generate similarity in organizational practices as organizations struggle to maintain legitimacy within their fields (e.g., DiMaggio & Powell 1983). Organizational fields are defined in the neo-institutional literature as "a community of organizations that partakes in a common meaning system and whose participants interact more frequently and fatefully with one another than actors outside the field" (Scott 1995:56). Legitimacy is sustained, in part, by key actors who operate as "standards-bearers" (Crank 1994) with the power and influence to produce legitimate legal meaning within these fields. Valerie Jenness and Ryken Grattet (2005:339) bridge these insights with gap studies by articulating organizational fields as constituting a *law-in-between* stage, where law is subject to bureaucratic quests for legitimacy as actors translate law-on-the-books into law-in-action. This suggests that, while the surplus of viable interpretations of an

ambiguous law leads to variation in the law-in-between, the distinct processes by which actors sustain legitimacy within fields may ultimately render this variation patterned rather than perfect.

The characterization of Realignment as an especially "great" experiment seems to obscure the fact that the so-called "gap" between law-on-the books and law-in-action makes any legal reform an experiment. Realignment's greater distinction is its merging of legal and local organizational improvisation in a time of crisis. Unlike scientific experiments, which are to be painstakingly performed according to precisely specified procedures to answer a clear research question, California's AB 109 is politically performed according to an ambiguous goal and on a multitude of local stages. What is Realignment's "great experiment" meant to test? Which outcome is of interest, where and to whom? How should results be assessed? Even when the methodological rigor of the scientific experiment is sound, at least in the social scientific realm, the research question posed for investigation almost always derives from normative or political commitments. To the extent that public and policy discourse frames California's Realignment as a Great Experiment, this dissertation gauges whether or not it led to system-wide decarceration as the most significant and enduring result. To constrain Realignment's experiment to the results on crime and recidivism is to miss what may be truly "great" about its intervention, which is to offer a wider and more local set of sensibilities about what, for whom and where the criminal justice system "works."

Taken up in the next chapter is the particular risk that assessments of AB 109 may overlook the longer history of recurring "great American experiments" in institutionalizing, deinstitutionalizing, and reinstitutionalizing deviant populations by way of legal innovation, thus sidestepping the deeper temporal problematic of decarceration as a historical process that can only be gauged in a mirror of the incarceration that came before it.

Chapter 2

Decarceration and Local Laboratories of Experimentation

"Decarceration" is a word which has not yet entered the dictionary. But it is increasingly being used to designate a process with momentous implications for all of us.

-- Andrew Scull, *Decarceration: Community Treatment and the Deviant–A Radical View* (1977)

Experiments evoke a sense of possibility in discovering some great truth to benefit mankind—such is this nation's origin story as "the great American experiment" with democracy and a unique brand of federalism premised on individualism and local governance (De Tocqueville 1835). Experiments also conjure a sense of dread in the image of the mad scientist whose perverse fascination with discovery drives him to manipulate or harm research subjects, causing them discomfort at the very least, or worse. Like prisons, the asylum is a quintessential American site of horror, a place horrific in how the people it houses may be pictured from outside its walls, as well as horrific in the grotesque experiments that have been allowed to take place inside its walls (see Reiter 2009; see *Asylum* 2012, the second season of the television series *American Horror Stories* for a dramatic rendering). However, also like the prison horror stories of "Willie" Horton, who committed rape, assault and armed robbery while released on work furlough, or the abduction and murder of Polly Klaas by parolee Richard Allen Davis, the animating American horror story of asylums has much to do with the public's imagination, which can run wild, about what might happen on the *outside* if the people confined escape, or are simply set free.

The Mexican drug kingpin “El Chapo” Guzman will perhaps go down as the most infamous prison escapee in North American history, having dug a hole through the shower of his prison cell even while under 24/7 video surveillance, tunneling his way out of a maximum security prison in Mexico (Karimi 11 Jan. 2016). Among Californians, the motley crew of three inmates who escaped Orange County’s jail the same year, kidnapping a taxi driver along the way before being caught eight days later in San Francisco, may be just as memorable (*The Orange County Register* 1 Feb. 2016). However, even if news cycles fixate for a time on such dramatic jail breaks, the truth is that escapes remain rare. Panics among policy makers are not incited by the El Chapos that somehow find a way to break free of the prison gates, but the unforeseen and ultimately political consequences of the *intentional* choice to set inmates free: decarceration.

In “The Case for Decarceration,” Ta-Nehisi Coates (2015) writes about how the inability to convincingly explain crime rates implicates the current criminal justice reform “moment” and the future of decarceration:

> Let that crime start to rise and this moment will be vapor. This is scary because we don’t know why these things happen. We still don’t have a good explanation for why crime rose and fell. And so our current consensus is essentially rooted in the weather. If it’s sunny tomorrow we decarcerate. (Yes, it’s word!) If it thunders we retrench.

Wrapped up in the potential horror story of decarceration is both policy makers’ and social scientists’ uneasy confession that crime can be unpredictable. The panic around decarceration stems from fears of policy as well as scientific failure.

Decarceration’s twin horror story is mass incarceration. In *The Punishment Imperative*, Todd Clear and Natasha Frost (2013) argue that America’s move to mass incarceration from the 1960s to the early-2000s was more than just a response to crime or a collection of policies adopted in isolation—it was a grand social experiment in crime deterrence through punishment.

The National Academy of Sciences commissioned the National Research Council (2014) to conduct a comprehensive evaluation of the causes and consequences of this grand experiment after more than four decades of growth in U.S. incarceration rates. The results report a gaining consensus by the 21st century that mass incarceration's experiment is a grand failure and, moreover, that the experiment was carried out principally using the tools of law:

> Across all branches and levels of government, criminal processing and sentencing expanded the use of incarceration in a number of ways: prison time was increasingly required for lesser offenses; time served was significantly increased for violent crimes and for repeat offenders; and drug crimes, particularly street dealing in urban areas, became more severely policed and punished. These changes in punishment policy were the main and proximate drivers of the growth in incarceration (National Research Council 2014:30).

The National Research Council (2014:70-85) goes on to detail how sweeping Congressional and state-level laws enacted throughout the 1980s and 1990s facilitated a "historically unprecedented and internationally unique" (2) growth in U.S. incarceration rates.

If mass incarceration's failed experiment cannot be properly understood, or remediated, without appreciating that law was practically used as a power tool to expand and enhance the severity of punishment policy to new limits within a relatively brief period of time, nor can California's latest legal experiment in decarceration.

Decarceration: The Latest Legal Experiment

Though written nearly forty years ago, the opening lines of Andrew Scull's (1977) book, *Decarceration*, still apply today. Scull pointed out that "decarceration" was not yet a word in the dictionary. "Decarceration" is now defined in at least one dictionary, but as a tautology: "the opposite of incarceration" (Oxford Dictionary of Sociology 2009). An abolitionist-oriented interpretation of this definition designates "decarceration" as a process by which people are

removed or diverted from the brick and mortar institutions of state or federal prisons and returned to or remain in their communities. Many prisons could be closed, shuttered or repurposed as a result of such decarceration, leading to the downsizing of both the physical and social space that prisons occupy (see e.g., Davis 2003; Mathiesen 1974). An alternative definition of "decarceration" indicates a *trans*institutionalization rather than *de*institutionalization process of relocating the main site of incarceration from prisons to other penal institutions, such as local jails (see Simon 2016).[4]

Scull (1977) began to chronicle decarceration from state mental hospitals in the 1970s, the effects of which have over time revealed that "decarceration" is not only elusive, but that its competing definitions are not mutually exclusive; indeed, they may be mutually reinforcing. State mental institutions underwent a period of significant and sustained downsizing between 1955 and 1980 (see Grob 1991). However, in the absence of community treatment—and the mythically intact communities where individuals with mental illness supposedly enjoyed membership in the first place and could so seamlessly return—this decarceration eventually transferred the site of institutionalization to prisons and jails by the late-20th century rather than abolishing the institution of incarcerating deviance itself (see e.g., Harcourt 2006; 2011; Raphael & Stoll 2013).

Just as California blazed the trail for downsizing mental institutions nationwide (see Torrey 2014a),[5] California is the epicenter of the 21st century's prison downsizing phenomenon.

---

[4] The Oxford Dictionary of Sociology's complete online definition reads: "decarceration: The process of removing people from institutions such as prisons or mental hospitals—the opposite of incarceration. In the middle of the 20th century, this became a central feature in the reorganization of social control, and is closely allied to programmes of community care and community control. The reasons for this change are discussed in Andrew Scull's controversial book *Decarceration*. Another linked concept is transcarceration, in which people are moved sideways from one kind of institution to another." See http://www.oxfordreference.com/view/10.1093/oi/authority.20110803095705401 (accessed 25 May 2016).

[5] E. Fuller Torrey (2014a:96) details California's role as a "canary in the coal mine of deinstitutionalization": "Beginning in the late 1950s, California became the national leader in aggressively moving patients from state

Whether this observed stabilization portends a sustained era of prison downsizing or comes to qualify as "decarceration" remains to be seen (see Lynch & Verma 2016). The steep declines in mental hospital institutionalization did not reflect declines in diagnoses of mental illness in the latter half of the 20th century; nor does the state of California's downward imprisonment trend reflect significant reductions in today's crime and recidivism rates. Rather, analysts attribute California's relatively precipitous "decarceration" to the "behavior of law" (Black 1976) found among the three legal interventions examined in this dissertation: *Brown v. Plata* (2011), "Public Safety Realignment" (AB 109 2011) and Proposition 47, "The Safe Neighborhoods and Schools Act" (2014).

Both California's previous "decarceration" of state mental hospitals and its current "decarceration" of state prisons are cases of legal change. In lieu of a dictionary definition for decarceration, Scull's (1977:1) provisional definition decades ago lends a somewhat sinister shade to these legal experiments, the results of which evoke zombielike images of would-be inmates roaming a precarious wilderness:

> It is shorthand for a state-sponsored policy of closing down asylums, prisons and reformatories. Mad people are being discharged or refused admission to the dumps in which they have been traditionally housed. Instead they are to be left at large, to be coped with "in the community."

What will the frontiers of decarceration look like for the people and places "left at large" in these local laboratories? Will the integration of formerly incarcerated people "to be coped with 'in the

---

hospitals to nursing homes and board-and-care homes, known in other states by names such as group homes, boarding homes, adult care homes, family care homes, assisted living facilities, community residential facilities, adult foster homes, transitional living facilities, and residential care facilities. Hospital wards closed as the patients left. By the time Ronald Reagan assumed the governorship in 1967, California had already deinstitutionalized more than half of its state hospital patients. That same year, California passed the landmark Lanterman-Petris-Short (LPS) Act, which virtually abolished involuntary hospitalization except in extreme cases. Thus, by the early 1970s California had moved most mentally ill patients out of its state hospitals and, by passing LPS, had made it very difficult to get them back into a hospital if they relapsed and needed additional care. California thus became a canary in the coal mine of deinstitutionalization" (see also Torrey 29 Sept. 2014b).

community'" be real and sustained or amount to what Shadd Maruna (28 Mar. 2016) refers to as "virtual reentry"? Maruna (2011:4) writes that, "[i]f terms like 'reintegration' or 'reentry' are to be meaningful, this process presumably involves more than just physical resettlement into society after incarceration (e.g. a place to stay, a source of income – as important as those are), but also includes a symbolic element of *moral* inclusion."

The prospect of decarceration in California may stoke public panics about crime and policy maker panics about political consequences, both of which can be manufactured in service of other ambitions and agendas (see Beckett 1997). However, it would seem that decarceration as an experiment in being "left at large" stands to stoke a genuine *moral* panic of its own, and a uniquely American one in taking rugged individualism to its extreme and leaving local laboratories to their own devices (see De Giorgi 28 May 2014; Miller 2014).

Federalist Experimentation in Local Laboratories

The nationalization of crime policy is a key theme in the American story of mass incarceration (see e.g., Beckett 1997; Feeley & Sarat 1980; Garland 2001; Gottschalk 2006; Miller 2008; Murakawa 2014; Scheingold 1984; Simon 2007). A straightforward telling of the story is that until the 1940s, criminal justice had historically been a federalist policy ideal, remaining almost exclusively the domain of state and local government. However, post-war episodes of racial violence and political unrest invoked calls for an expanded role by the federal government. The swiftly rising crime rates of the 1960s further solidified the legitimacy of federal expansion into criminal justice and cemented crime's place on the national policy agenda.

Deeper accounts of the emergence of a national "war on crime" reveal a complex process where political and professional agendas and struggles for governmental power at the federal

level were as consequential as crime rates (Beckett 1997; Murakawa 2014; Scheingold 1984; Simon 2007). Additionally, federal expansion into criminal justice policy was not simply top-down, nor was it "democracy-at-work" (Cullen et al. 1985) as directly the product of a bottom-up grassroots campaign for harsher criminal punishments; it was a multi-directional process where social movements, including the victims' rights, women's rights, prisoners' rights and anti-death penalty movements, advocated contested policy positions from below as well as within *both* the federal and state governments to shape criminal justice policy agendas (see Gottschalk 2006; Miller 2008). Finally, as is characteristic of the federal-state interplay in the U.S., the nationalization of crime policy entailed the federal government's use of both carrots, such as funding incentives (e.g., Feeley & Sarat 1980), and the sticks of Congressional legislation and judicial intervention to induce state-level enactment (see Feeley & Rubin 1998; 2008). Regardless of the inherent complexity in telling America's mass incarceration story, the result was an expansion of the governmental capacity to pursue, prosecute and punish lawbreakers unprecedented in U.S. history (see National Research Council 2014).[6]

In tracing nationalization to the dramatic growth of incarceration, the story has largely focused on the front-end policy stages of agenda setting and policy formulation—stages in which Lisa Miller (2008) has highlighted the "perils" of federalism for poor and minority group representation in the political process. This dissertation pivots attention to local laboratories at the *implementation* stage, where national policy filters to lower levels of government and diffuses into local organizational practices. Recent scholarship demonstrates that even against the backdrop of nationalized crime policy, remarkable variation exists in the penal policies and

[6] Of the question about what caused the nationalization of crime policy in the U.S., Simon (2007:25) writes, "the question of causation is fascinating but ultimately less important than the question of what the 'war on crime' actually does to American democracy, our government and legal system, and the open society we have historically enjoyed."

practices of local laboratories at the county level, where the incarceration process begins for the vast majority of inmates (e.g., Barker 2009; Campbell & Schoenfeld 2013; Goodman, Page & Phelps 2014; Lynch 2011). This variegated implementation has revealed a related "paradox" of federalism: nationalization at the policymaking stage goes hand-in-hand with localization at the implementation stage. Under America's tripartite federalist structure and traditions, national crime policy has been overwhelmingly carried out by state and county governments with the practical effect of localizing the implementation of what has been otherwise conceived (and perhaps misspecified) as the "nationalized" policies that fueled mass incarceration.

In *Democracy in America*, De Tocqueville (1835:71-80) wrote:

> To examine the Union before the states is to follow a road strewn with obstacles…In America, not only do institutions belong in the community but also they are kept alive and supported by a community spirit.

As the nation reaches a potential turning point in the growth of incarceration, what are the implications for the reform goal of decarceration? California's "Realignment" (AB 109 2011) represents a distinctive response to federal judicial intervention in that the state localized the onus of legal compliance to counties. Rather than expanding prison capacity through new construction in response to a population cap ordered by the U.S. Supreme Court in *Brown v. Plata* (2011), the state opted to comply by enacting AB 109, which devolves the supervision of most non-violent offenders to the county level and delegates remarkable discretion to local practitioners to decarcerate those previously sent to state prison (Schlanger 2013). The decentralization of policy and "grass roots" governance strategies are by no means historically unprecedented in the U.S. (e.g., Selznick 1965), nor in California's history across multiple policy domains (California Legislative Analyst's Office 1991). Therefore, understanding the complexities of local implementation and how underlying local variation shapes the present-day

enactment of AB 109 has broader implications for assessing the prospects of regulatory models premised on localization well beyond this state and the domain of criminal justice.

Local Variation in Penal Policy

Punishment and society scholarship has drawn attention to the puzzle of local variation in penal law and practice as a defining characteristic of modern punishment (e.g., Hannah-Moffat & Lynch 2011). While recognizing the existence of a predominant penal order, such as "mass incarceration," this literature reveals the multiple, often contradictory, ways that punishment transforms over time and across place, including how law becomes mobilized in different settings. These settings are conceptualized geographically as well as jurisdictionally, and exhibit variation at multiple units of analysis, including among nations (e.g., Savelsberg 1994, 1999), states (e.g., Campbell & Schoenfeld 2013; Barker 2009), counties (e.g., Arvanites & Asher 1998; McCarthy 1990; Percival 2010; Weidner & Frase 2003) and court jurisdictions (e.g., Lynch & Omori 2014; Ulmer 2005).

As a result, punishment scholars confront persistent questions about why and how similar macro-level phenomena lead to varied punishment outcomes in specific places. Explanations have been predominantly variable-centered in showing that a range of spatial socio-demographic characteristics exert causal effects on incarceration levels even when jurisdictions operate under the same criminal codes and sentencing statutes. These studies overwhelmingly find, like Ball (2012), that differences in local crime rates do not adequately explain local variation; rather, it is the interaction of political ideology, racial demography, levels of urbanization and income inequality, prison and jail capacity factors and crime rates that produce high degrees of variation

in incarceration (e.g., Arvanites & Asher 1998; Jacobs & Carmichael 2001; McCarthy 1990; Percival 2010; Stucky, Heimer & Lang 2005; Weidner & Frase 2003).

Because these findings have falsified the hypothesis that imprisonment levels are merely the artifact of crime levels, suggesting instead that cultural differences underlie the ways that local jurisdictions translate penal law into local contexts, Mona Lynch (2011:674) has argued that the literature should move beyond variable-centered explanations and pay more systematic attention to "law as locale":

> how criminal and penal law *as practiced* is significantly shaped by the local (locale) such that, although law on the books might lead us to expect some homogenization of outcomes within state and federal jurisdictions, law in action indicates much more microlevel variation shaped by local norms and culture related to how the business of criminal justice happens in any given place.

Joshua Page (2013:152) makes the related argument that studies should focus analytic attention on the intervening mechanisms that translate large-scale phenomena, such as legal reform, into concrete outcomes in specific places; he offers the *penal field* concept as the "something missing" that explains this variation. Page (2013:162-3) stresses the need to account for the role that people play in making decisions that translate into penal policies on the ground, and in particular, "which actors are involved (or not involved) in the struggle over policy matter and what is the relationship between these actors' positions in the field." Philip Goodman, Page and Michelle Phelps (2014:1) synthesize this into an "agonostic" field analysis framework for explaining penal change, which "posits that penal development is fueled by ongoing, low-level struggle among actors with varying amounts and types of resources."

Punishment scholars have also applied historical institutionalist concepts to explain local variation, showing how legacies of lynching in Southern states (Fleury-Steiner, Kaplan & Longazel 2015; Jacobs, Kent & Carmichael 2005; King, Messner & Baller 2009; Petersen &

Ward 2015; Zimring 2004) and path dependence and policy feedback processes (Campbell & Schoenfeld 2013; Gottschalk 2006; Schoenfeld 2010) function to channel racialized social control and punitive penal policies over time. When Lynch and Marisa Omori (2014) tested the "law as locale" concept across federal court district responses to a line of potentially transformative U.S. Supreme Court rulings on criminal sentencing, they concluded that "local legal practices not only diverge in important ways across place but also become entrenched over time such that top-down legal reform is largely re-appropriated and absorbed into locally established practices." These findings provide empirical support for Joachim J. Savelsberg and Ryan D. King's (2007:202) observation that "legacies of the past enable and constrain government decision making" in the present-day creation and enforcement of law. Until now, these insights have been largely oriented to explaining the punitive turn to mass incarceration. However, California's Realignment presents the puzzle of local variation in explaining a different (potential) penal development: decarceration.

Chapter 3

Results I – Local Variation and Legal Translation

This chapter presents a qualitative content analysis of the 2011-2012 county implementation plans mandated by AB 109 during the first year of Realignment's enactment. Plans are comparatively analyzed across two groups: counties that fell in the upper-quartile of state prison admissions rates for each of the years from 2000 to 2009 (the "High Imprisonment Legacy" group), and counties falling in the lower-quartile of state prison use during the same time period (the "Low Imprisonment Legacy" group). Counties within each group are found to have arrived at divergent interpretations of the law, as well as to have used several distinct legal translation processes to accomplish these interpretations.

Realignment's "experiment" has attracted interest from public policy scholars (e.g., Bird & Grattet 2014) and legal scholars (e.g., Schlanger 2013). However, this is the first study to empirically address the sociolegal questions raised by this distinctive form of regulation, which renders legal compliance possible because of—not despite—local variations in front-line implementation. I analyze organizational documents known as "Realignment plans" produced by county officials in the aftermath of the *Plata* order and AB 109's enactment in 2011 as empirical windows into local legal interpretation and compliance. I compare plans from groups of historically high prison-using and low prison-using counties to answer emerging questions about AB 109's interpretation among counties with divergent histories of state prison reliance.

As discussed in Chapter 1, the statutory language of AB 109 renders its overarching goal(s) ambiguous. However, statements in the Legislative Findings section (Pen. Code §17.5(a)) suggest decarceration as one potential purpose of the law – for example, "Criminal justice

policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety" (Pen. Code §17.5(a)(3)) and "California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system" (Pen. Code §17.5(a)(4)). I find that historically low imprisoning counties interpret the law as mandating overall *decarceration* in both state prisons and county jails, while historically high imprisoning counties interpret the law as mandating a *relocation* of the predominant site of incarceration from state prisons to county jails. Beyond providing initial empirical support for the concern that practitioners in some locales will subvert the reform goal of decarceration under AB 109 (see e.g., American Civil Liberties Union 2012; Californians United for a Responsible Budget 2012; 2015), I identify mechanisms of legal translation that begin to shape divergent understandings of the law in the early planning stages of implementation. Specifically, I trace four distinct interpretative processes in the plans: *overwriting law,* in which local actors render law's authorship invisible by masking the legally-mandated origin of changes to local policy and practice; *underwriting law,* which alternatively entails openly relying on law's force to substantiate local policy changes; *selective magnification*, in which local actors emphasize certain statutory components to the exclusion of others; and *selective siting*, which locates the site of the problem law is meant to solve in ways that render certain interpretations coherent while rendering others illogical. These interpretive processes in turn reveal competing field-level logics about law and legal regulation with respect to both the fundamental legitimacy of law to regulate local penal practice (whether in the form of federal case law or state legislation) and the governmental origin of the penal policy failures that legal regulation attempts to mitigate.

I argue that, through the processes and according to the distinct logics reflected in these plans, local actors produce their own meaning of Realignment in ways that facilitate the continuation of previous imprisonment practices—and the power arrangements that enabled those practices—despite attempted reform. I conceptualize these past practices and power arrangements as constituting the *law-before* the law-on-the-books. By bringing together previous studies that explain the political development, reproduction and change-resistance of penal policy through historical institutional processes (e.g., Gottschalk 2006; King, Messner & Baller 2009; Savelsberg & King 2007; Schoenfeld 2010), I develop the law-before as an analytic device, or heuristic (Abbott 2004), to enhance explanations of legal reform. Beyond its heuristic value in drawing attention to a theoretical stage in the legal translation process, the law-before also gives name to the set of empirical conditions that exist at that stage and stand to shape successive stages.

This chapter extends three bodies of law and society scholarship. I contribute to the gap study literature by articulating the law-before as a crucial prologue to the canonical law-on-the-books to law-in-action schematic. The study extends the neo-institutional literature on how legal meaning is shaped within organizational fields by applying insights about legal endogeneity (e.g., Edelman 2005; Edelman, Fuller & Mara-Drita 2001; Edelman & Talesh 2011) to the criminal justice field, which remains understudied in law and organizations research. In applying these insights, this chapter also contributes to the punishment literature on local variation in penal policy. While much of this recent scholarship aims to explain local variation in the development of mass incarceration (e.g., Barker 2009; Campbell & Schoenfeld 2013; Goodman, Page & Phelps 2014; Lynch 2011), this study is one of the first to examine local variation in the potentially emergent development of *decarceration*. I draw on and deepen Page's (2011; 2013)

account of the "penal field" by highlighting county-level practitioners as key field actors, as well as how the law-before in local penal fields shapes actors' relationships and struggles for power in responding to legal reform. Finally, my examination of the law-before adds to theoretical development in both the organizational compliance and punishment literatures by providing initial evidence for a typology of local legacies of penal practice and local orientations to the legitimacy of "higher order" law to regulate imprisonment (that is, interventions from higher governmental levels, such as federal judicial intervention).

Chapter 1 described AB 109's distinctive statutory features and the underlying variation in its field of implementation. Chapter 1 also reviewed theoretical perspectives on the difficulty of realizing legal reform; below, I discuss the law-before as an extension of that earlier discussion. I then describe my methodology before presenting findings, and I conclude with a discussion of practical and theoretical implications.

The Law-Before

AB 109 draws attention to a remaining limitation in theoretical perspectives on legal reform. The origin story of the "gap" in the law and society schematic begins with law-on-the-books, which obscures the salience of conditions that precede the codification of formal law. This schematic fails in particular to account for how past practices and power arrangements may shape gaps in implementation. Drawing on historical institutionalist accounts of social transformation (e.g., Savelsberg & King 2007; Sewell, Jr. 2005), I conceive of these past practices and power arrangements as much more than historical contextual factors fixed at a previous point in time, but as legacies that successively shape how local actors translate today's law-on-the-books into tomorrow's law-in-action. The law-before heuristic can enhance

explanations of legal reform by providing an analytic lens, as well as a concrete empirical starting point for observing and investigating the effects of these legacies.

California's Realignment highlights local variation as a salient feature of the law-before. The implication for understanding legal reform is that rather than a single "gap," many gaps may exist according to the degree of local variation in the law-before. At the same time, the different "doses" of reform AB 109 presents in counties with divergent historical patterns of imprisonment practice suggests that there may be patterns of variation in implementation, or multiple types of gaps, rather than perfectly idiosyncratic local responses. An "agonistic" perspective of the penal field (Goodman, Page & Phelps 2014) further leads to the proposition that a deeper order drives this pattern of variation: the different types of gaps observed will reveal the relationships and power arrangements among local actors that underlie responses to legal reform. These underlying arrangements contribute to explaining not only the variation in legal implementation of AB 109, but the local conditions under which different responses to reform are possible (or not).

This leads to the following research questions, refined in light of the law-before: How is AB 109 interpreted in counties with divergent historical patterns of past imprisonment practice? Do counties with historically high imprisonment rates interpret AB 109 differently than those with historically low imprisonment rates? If so, what processes do local actors exhibit in the plans to arrive at these interpretations?

Methodology

I analyzed 430 pages of county Realignment plans written in 2011, the first year of AB 109's enactment. I approached the analysis from an institutional ethnographic perspective.

Following Smith's (2006:67) elaboration of the "Act-Text-Act" sequence, I conceptualize these texts as important occurrences in and of themselves, and as embedded within a larger sequence of actions related to the local implementation of AB 109. This leads to my understanding of local practitioners' production of plans as an initial compliance effort in and of itself. Through mandating a specific process—but not specific content—for the development of these plans, AB 109 impelled a unique moment of "legal translation" (White 1990) among the practitioners appointed to write them. In this case, the Realignment plans serve as a canvas for local actors to construct the meaning of law for the purposes of implementation, or what Schoenfeld (2010:734) describes as "back end" legal translation. Besides each county's Board of Supervisors, audiences for the plans included the state agencies responsible for allocating Realignment funds, the press and, depending on local conditions, special interest and social movement advocacy groups (e.g., American Civil Liberties Union 2012). The plans are, therefore, expressive and symbolic as well as instrumental documents and should be understood as strategic vehicles that are products of particular local dynamics at one early stage in the implementation process rather than as strictly accurate records of action or intentions to take particular actions. Therefore, I analyze them as memorializing a potentially revealing point of translation between state and local articulations of the law and for their role in organizing—not actualizing—future paths to action.

I first gathered the complete universe of plans for the 2011-12 fiscal year (n=57)[7] from several websites: those of county governments, the Chief Probation Officers of California, and the non-profit Rosenberg Foundation and California Forward. The ACLU of California provided the plans not readily available online. The plans range from 3-120 pages, with an average of 34 pages.

[7] Alpine County does not operate a jail and therefore did not produce a plan.

I then developed two comparison groups by identifying the counties that fell into the upper- and lower-quartiles of *state prison admissions* for each of the years from 2000 to 2009. I define *state prison admissions* as the rate of each county's new felony admissions to California state prisons. I classified counties based on the new felony admissions rate as calculated in Ball's (2012) longitudinal data compilation, which merges annual California Department of Corrections and Rehabilitation (CDCR) and California Department of Finance population data. *State prison admissions* is standardized into an annual rate per 100,000 of each county's population. Following previous research, I measure county-originated prison *admissions* rather than *populations*. Prison admissions are "flow" rates of how many county residents enter prisons rather than "stock" rates of how many county residents are incarcerated in prisons at a given time. Flow rates capture and better isolate the organizational practices and decision making of county practitioners from the confounds that arise in stock measures of prison populations, which introduce the effects of state-level prison administrators' policies and practices as well (see McCarthy 1990:330; Weidner & Frase 2003:393). For the same reason, I did not include new parole violations leading to a new prison term in my measure, as parole determinations prior to AB 109 were made by state officials with minimal input from county officials.

Those counties with *state prison admission* rates in the lower-quartile (83 people or less per 100,000) for nine or more of the 10 years leading up to AB 109's enactment—what I call the Low Imprisonment Legacy group—represent an exemplary group of consistently low state prison using counties. Those counties with prison admission rates in the upper-quartile (172 people or more per 100,000) for nine of the 10 years during this period—the High Imprisonment Legacy group—by contrast, represent an exemplary group of consistently high state prison using

counties (Table 3.1).[8] Other measures of variation in relevant policy legacies at the county level might include prosecution rates for second- and third-strike offenses under California's "Three Strikes and You're Out Law," the prevalence of capital charges in death-eligible cases (e.g., Ganshcow 2008) and the proportion of drug arrests and racial disparities in arrests, prosecutions and prison admissions (e.g., King 2008). Here, however, I isolated rates of state prison use as the most directly relevant measure of the consonance or dissonance between previous county practice and the specific reforms under Realignment.

TABLE 3.1
County Comparison Groups

Low Imprisonment Legacy

	***State prison admissions* rate, 2000-09 avg.**
Marin	33
Contra Costa	41
Nevada	41
San Francisco	44
Santa Cruz	56
Imperial	67
Alameda	72
El Dorado	73
Sonoma	82

High Imprisonment Legacy

	***State prison admissions* rate, 2000-09 avg.**
Madera	184
San Bernardino	197
Kern	218
Yuba	226
Sutter	229
Shasta	233
Lake	234
Tehama	264
Kings	286

Each group exhibits distinct political, socio-demographic, jail capacity and crime characteristics. As shown in Table 3.2, high imprisonment counties demonstrate robust

[8] See Appendix A for the relative distribution of *state prison admissions*.

Republican party affiliation, low voter support for progressive criminal justice reform ballot measures and low per capita income levels throughout the 2000-2010 decade compared to low imprisonment counties. The groups converge more closely, however, in urbanization, racial/ethnic heterogeneity, income inequality, crime rates and pre-AB 109 jail capacity constraints.

TABLE 3.2
Comparative Characteristics of Legacy Groups

	Low Imprisonment	High Imprisonment	Statewide
Avg. *state prison admissions* rate, 2000-09	57	230	131
"Metropolitan" counties, 2000	89%	78%	64%
"Nonmetropolitan" counties, 2000	11%	22%	36%
Avg. registered voters Republican, 2000-09	28.1%	44.5%	38.6%
Voting for Proposition 66 to reform 3-strikes (2004, rejected)	54.2%	41.6%	47.3%
Voting for Proposition 83 to restrict sex offender residence (2006, approved)	63.1%	73.5%	70.5%
Voting for Proposition 5 to rehabilitate non-violent offenders (2008, rejected)	45.7%	33.4%	40.5%
Voting for Proposition 9 to promote victims' rights (2008, approved)	49.3%	57.7%	53.9%
Voting for Proposition 19 to legalize marijuana (2010, rejected)	52.0%	38.4%	46.5%
Voting for Proposition 36 to reform 3-strikes (2012, approved)	74.6%	58.0%	69.3%
Voting for Proposition 34 to repeal the death penalty (2012, rejected)	55.0%	32.5%	48.0%
Racial/ethnic heterogeneity index, 2000	43	48.4	44.5
Income inequality index, 2000	38.5	40.7	39.6
Avg. per capita income, 2000-09	$47,825	$26,187	$34,330
Occupancy of rated jail capacity, as of Sept. 2011	83.3%	87.1%	94.9%
Avg. Type-1 crime rate (violent, property, larceny-theft, arson), 2000-09	3,527	3,567	3,425

Note: Following Ball (2012), all rates are calculated per 100,000 of each jurisdiction's annual population. "Statewide" measures are an average of all county measures, except for the proposition voting percentages. "Metropolitan/nonmetropolitan" is assigned to counties by the U.S. Office of Management and Budget based on decennial census data. The "racial/ethnic heterogeneity index" is calculated based on five groupings (white, African American, Latino, Asian, and other races); the index scale is 0-100, where "0" represents no heterogeneity and "100" indicates maximum heterogeneity (all groups represent equal proportions of the population). The "income inequality index" is based on the Gini coefficient; the index scale is 0-100, where "0" represents complete equality (every individual earns the same income) and "100" indicates maximum inequality (one person earns all the income while everyone else earns none).

Sources: CDCR; California Secretary of State Elections Division; California Department of Finance; California Attorney General Statistics and Crime Reporting Database; California Board of State and Community Corrections; U.S. Decennial Census, 2000.

I did not include these measures in developing the comparison groups. This was an intentional choice. Prior studies suggest that a number of these underlying characteristics explain the variation in state prison use (e.g., Arvanites & Asher 1998). While an important research goal, the aim of this study, however, is not to explain observed variation in county imprisonment. Rather, I take this variation at face value (that is, as an empirical observation) and explore whether it is associated with different interpretations of AB 109. Findings of this association may very well be explained by the same characteristics and processes that, for example, led voters in low imprisonment counties to overwhelmingly support ballot measures to reduce penalties under the state's notoriously punitive Three Strikes law in 2004 and 2012 but led to weaker support among high imprisonment county voters in both elections. Variation could also be influenced by a number of "production process" factors (Krippendorff 2012), including but not limited to the idiosyncrasies of the local drafting procedures leading to final plans, which, in turn, may or may not be related to differences in past reliance on state prison use. Because this study is neither aimed nor designed to rule out such competing explanations, variations found within AB 109 plans cannot be exclusively or causally attributed to variations in historical state prison use.

Instead, my analysis pivots attention from the discrete characteristics of the jurisdictions in which plans were authored to the characteristics of the interpretive processes used in the plans to make sense of the law. The plans offer a rich data source for documenting the possible divergence of legal interpretations, and rather than explaining *why* such divergences exist, this study is designed to make mechanism-based inferences about *how* these interpretations are fashioned (e.g., Small 2013). The ability to engage in a deeper reading of plans within a distinct

group of counties based on empirical indicators of divergent imprisonment legacies better served this research objective than a quantitative content analysis of the complete universe of plans (see Abarbanel et al. 2013 and Bird & Grattet 2014 for such analyses). Because my aim was to compare and contrast both the content and the processes leading to local interpretations of AB 109, I used a combination of Qualitative Content Analysis (Schrier 2012) and Critical Discourse Analysis (Van Dijk 2008), which blends data-driven coding as a largely inductive method with the underlying constructivist assumption that language does not merely represent reality but also functions to help create it (see also Neunendorf 2001; Smith 2006).

I developed my coding frame (see Appendix B) through closed and open coding (Cope 2003; Schrier 2012). The closed stage began with conceptually identifying the following dimensions of how plans characterized AB 109 as a law: (1) terminology used to describe AB 109, (2) descriptions of statutory components, (3) references to legislative findings, (4) references to purposes and intents, (5) references to the magnitude of impact, (6) verbiage signifying attitudes towards AB 109, and (7) inclusion of direct quotations from the statute. I also listed each substantive statutory component and created codes to measure the extent to which the plans reference them in summaries and explanations of the law. Because some AB 109 components are required, while others are discretionary, creating particularly ripe space for multiple interpretations, I categorized coding of each component separately by whether the plans reference it as required or discretionary. I also developed sub-codes to capture verbiage indicating who or which parties were responsible for AB 109 and its implementation, as well as sub-codes about the people sentenced and punished under the law (those convicted of "realigned" offenses. During the open coding stage, I piloted my initial scheme on a subset of

plans not included within the comparison groups and added additional sub-codes that emerged. The final coding scheme was thus a product of both deductive and inductive processes.

Findings

Counties within the High and Low Imprisonment Legacy groups arrived at unique interpretations: low imprisonment counties interpret AB 109 as mandating overall *decarceration* in state prisons and county jails, while high imprisonment counties interpret AB 109 as mandating a *relocation* of the incarceration of realigned offenders from state prisons to county jails. These findings at an early stage in the implementation process support previous findings that organizational actors translate the meaning of legal interventions in ways that facilitate the historical continuity of penal practice (e.g., Schoenfeld 2010). More revealing, however, are the distinct processes by which these interpretations are accomplished—*overwriting* or *underwriting law, selective magnification* and *selective siting*—and the underlying logics and struggles for power they expose among county-level actors in the penal field (Table 3.3).

TABLE 3.3
Local Legacies and Legal Interpretations in California's Penal Field

LOCAL LEGACY	INTERPRETATIVE PROCESS	LOGIC ABOUT LAW	INTERPRETATION OF AB 109
High Imprisonment	*Overwriting law*	Law as threat to local governance	Mandates relocation of incarceration from state prisons to county jails
	Selective magnification	Legal ambiguity as opportunity to consolidate local power and autonomy	Enhances authority of local Sheriffs; applies to serious, violent and non-violent offenders
	Selective siting	Law as burdening locals with external policy failure	Designed to mitigate fiscal and legal costs of state-level policy failure of prison overcrowding
Low Imprisonment	*Underwriting Law*	Law as resource for local governance	Mandates system-wide decarceration
	Selective magnification	Legal ambiguity as opportunity for local experimentation and innovation	Mandates the use of alternatives to incarceration for non-violent offenders
	Selective siting	Law as inviting local contributions to solving shared problems	Designed to address the systemic, multi-sited problem of mass incarceration

Overwriting* or *Underwriting Law

Local practitioner groups in high imprisonment counties overwrite law when they remove and replace explicit AB 109 references and quotations in their plans, citing instead local actors as the originators and authors of policy change. These plans largely render law's authorship

invisible and obfuscate the legally-mandated nature of changes to local policy and practice, thus creating the appearance that local actors are the architects rather than the implementers of major organizational change. Local actors overwrite law when they redact the legal origin of policy choices even as they articulate the official substance of legal directives—in other words, removing the legal file path of regulation.

I found no low imprisonment plans to overwrite law. Rather, they underwrite law by extensively quoting AB 109 and prominently citing the statute as mandating policy change and specific local implementation steps. While the overwriting process appears to insulate local authority and prerogative from being perceived as subject to higher levels of governmental regulation, the underwriting process relies on higher order law as a source of local authority. Rather than using the law to deflect local responsibility (what might be thought of as "scapegoating" the law), local actors who underwrite law in these plans appear to "co-sign" onto AB 109 as a way of enhancing legitimacy.

As illustrated in the examples below, local actors use these processes to defend and enhance what Page (2013:159) describes as "penal capital – the legitimate authority to determine penal policies and priorities," as well as to elevate the "penal expertise" (161) of certain actors over others. The competing logics underlying the overwriting versus underwriting processes reveal that high imprisonment counties react to higher order law as a threat to local legitimacy, whereas low imprisonment counties draw on law as resource for accumulating local penal capital. This also reflects Garry C. Gray and Susan S. Silbey's (2014) finding from the organizational compliance context that actors develop distinct orientations to the regulator as a "threat," "ally" or "obstacle" according to different levels of autonomy, technical expertise and proximity vis-à-vis regulatory entities.

The overwriting and underwriting processes are observed in the relative presence or absence of legal references in the plans. State and federal laws play a starring role in low imprisonment plans but a minimal role in high imprisonment plans. All low imprisonment plans contain conspicuous references to institutional reform litigation and/or AB 109's specific statutory language. All of these plans also specifically reference the statutory requirement that standard local practitioner groups develop written implementation plans, and a majority directly and identically quote Penal Code §1230.1 on this point (Contra Costa, p.10; San Francisco, p.1; Santa Cruz, p.3; Sonoma, p. 11; El Dorado, p. 4). In contrast, only two high imprisonment plans (Sutter, p. 5; Yuba, p. 3) directly quote Penal Code §1230.1. The high imprisonment county of Shasta (p. 8) includes this language but does so without the use of quotation marks or any statutory references so as to depict a process for organizing a course of action that is, in fact, required by law, as if it emanates from local prerogatives. Similarly, all high imprisonment plans reference—often using terminology identical to that of the statute itself—specific elements contained in AB 109's Legislative Findings (Pen. Code §17.5), yet only two (Kern and Madera) cite or directly quote Penal Code §17.5.

This does not mean, however, that the substance of AB 109 is less present in high imprisonment plans. Like the Low Imprisonment Legacy group, all High Imprisonment Legacy plans clearly reference the law's major components. The difference is that they overwrite law in the process. A key accomplishment of overwriting is to elevate the authority and penal expertise of local Sheriffs by minimizing the legitimacy of state bureaucrats and federal judges as "counterfeit experts" (Page 2013:161). A prime example of how the overwriting of law functions to shore up Sheriffs' local authority in high imprisonment counties can be observed in Kern County's plan (p. 12), which, after explaining that "the existing capacity to manage the seriously

mentally ill (in a custody setting) is limited," goes on to declare that "[t]he Sheriff has consequently dedicated a portion of realignment funding to contract with the California Department of Corrections (CDCR) in anticipating this challenge." The plan obfuscates the fact that one of AB 109's major statutory components provides local correctional administrators new authority to contract back with CDCR to house inmates if local jail capacity is lacking (Pen. Code §2057); only in the final pages does the plan (p. 21) reference the law's creation of this option for counties. Similarly in this plan, even though AB 109's discretionary components are referenced by statute ("Penal Code 1203.018 allows the Sheriff to release prisoners being held in lieu of bail to an electronic monitoring program…" [p.11]), the reference is immediately overwritten by the Sheriff's authority to arbitrate these alternatives to incarceration: "The Sheriff will prescribe reasonable rules and regulations to provide a functional platform for the management of the program…" (p.12). Even while using language nearly identical to AB 109's statutory language, the plan omits citation or quotes of the statute, which, in fact, authorizes the Board of Supervisors, not the Sheriff, to make such decisions (Pen. Code §1203.018 2(d)).

A majority of the low imprisonment plans includes explicit references to the role of *Brown v. Plata* and/or other institutional reform litigation as catalysts for the enactment of Realignment and positions such litigation as a reflection of the state's problematic overreliance on incarceration. For example, in a section introduced by the statement, "Three primary factors have driven passage of this legislation:" and the subheading "Judicial," Marin County's plan (p. 1) explains:

> *The Coleman Plata lawsuit, filed in 2001, alleged significant deficiencies in the State's ability to provide adequate medical care to prison inmates...AB 109, or Public Safety Realignment is, in part, a response to these federal court orders.*

Nevada County's plan (p. 4) also describes institutional reform litigation in a section entitled, "California's Contribution to the Crisis" as follows:

> *…the state faced a series of class action lawsuits that were initiated in 1990 and 2001 by seriously mentally ill prisoners and prisoners with serious medical conditions. Finally, in 2009, a panel of three federal judges ordered California to reduce its prison population to 110,000 from 156,000 (the official state prison capacity is 80,000) (Liptak, 2011). In May, 2011, the federal ruling was upheld by the Supreme Court decision in Brown v. Plata No. 09-1233 where the Court noted that overcrowding is the "primary cause" of "severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care…leading to needless suffering and death (Liptak, 2011)." AB 109 represents the state's attempt to meet the mandated population reduction through increased local control supported by flexibility and fiscal appropriations…*

By contrast, only two high imprisonment plans reference the Plata order by name (Kings and Madera), and two of the plans generically reference conditions litigation (San Bernardino and Sutter). While Low Imprisonment Legacy plans tended to position institutional reform litigation as a corrective, Kings County's plan (p. 4), for instance, references the litigation as a potential threat to be avoided:

> *We will make sure we are compliant with Title 15 and Title 24 so we avoid what CDCR has gone through over the last 20 years that resulted in the Coleman-Plata ruling by the US Supreme Court.*

These characterizations echo Page's (2011) description of how federal court intervention figured into the struggle for penal capital by California correctional officers, who gained ascendancy in the field, in part, by depicting federal judges as caring more about prisoners' rights than about the practical exigencies and safety needs of officers who daily walk "the toughest beat." Low imprisonment counties' depiction of federal courts as sources of legitimate expertise and authority on California prison conditions as contrasted to high imprisonment counties' depiction of courts as threats or burdens demonstrates the persistence and depth of this struggle, and that it diffuses beyond state-level interest groups to county-level practitioners.

Selective Magnification

Selective magnification highlights certain statutory components to the exclusion of others. Both groups utilize selective magnification to arrive at their interpretations of AB 109. This process illustrates how the legal ambiguity of AB 109 created a window of opportunity for local actors to garner legitimacy in distinct ways. High imprisonment counties responded to this window by consolidating local power and autonomy from what they characterize as the threat of state intervention; they do so by selectively magnifying AB 109's realignment of especially dangerous offenders to local custody, which portrays state bureaucracy as incompetent and lacking credibility. Low imprisonment counties, on the other hand, seized on AB 109's ambiguity to bolster the legitimacy of decarceration-oriented reform policies by depicting them as stringent legal requirements.

The plans' depictions of which classes of offenders will be realigned to local supervision show how the selective magnification process accomplishes divergent meanings. Among all of the plans in both groups, only two (Lake and San Bernardino, both high imprisonment counties) used terminology other than "Public Safety Realignment," "AB 109" or simply "Realignment" to refer to the law. Both counties additionally refer to the law as "parole realignment." By (re)naming the law *parole* Realignment, they draw attention to and emphasize the post-release, or paroled, offender. While AB 109 specifies that one class of realigned offenders must be considered non-violent, non-serious, non-sex offender registerable and have *no serious, violent or sex-registerable prior offenses* (Pen. Code §1170(h)), the post-release class realigned to county supervision upon release from serving a term in state prison for a "non-non-non" offense

may have committed prior offenses deemed serious, violent and/or sex-registerable (Pen. Code §3450 Tit. 2.05 of Pt. 3).

By drawing attention specifically to the post-release class, San Bernardino's plan (p. 19) orchestrates a discussion of the actual dangerousness of locally-realigned offenders while minimizing references to the other class:

> *The Community Corrections Partnership is cautious about speculating the outcome of the parole realignment due to significant concerns on the types of offenders, the number of offenders, budgetary issues affecting county departments, and the potential for an increased crime rate*.

Even in the plan's exceptional reference to the 1170(h) provision (p. 18), the verbiage constructs an image of the locally-realigned offender as a truly dangerous criminal who has been misclassified by the state as "non-violent":

> *There is some solace in the concept that the offenders being directed to our local jurisdictions are "nons" – non-violent, non-serious, and non-sex offenders. However, as this plan has pointed out, CDCR classification of these offenders is based solely upon current convictions and offenses…*

Note that the plan appears to mischaracterize the law's designation of the locally-realigned offender as "based solely upon current convictions and offenses;" in fact, offenders who commit a new felony under Penal Code §1170(h) will *not* be realigned to local supervision if they have serious, violent, or sex-registerable prior offenses (see CDCR 19 Dec. 2013:3). Nevertheless, the plan (p. 18) goes on to fashion all realigned offenders in the image of the post-release class, which it decries as having disturbing criminal histories heretofore not contemplated by the law:

> *It is common for persons committed to state prison for a less serious offense to have significant, lengthy criminal histories that may encompass more serious or violent crimes; and to have a history of habitual non-compliant conduct and be resistive to community corrections interventions. The San Bernardino County criminal justice system should remain vigilant to potential increases in crime rates or incidents of criminal conduct that are the corollary of the re-introduction of these offenders into our communities.*

This process of subjecting the more problematic statutory component to the magnifying glass while omitting discussion of the less controversial component is further accomplished through subtle references that remind the reader of the state's apparent misclassification of offenders as non-violent ("The focus of AB 109 is on the California Department of Corrections (CDCR) parolees, who have been classified as 'low-level' offenders…" [note the use of quotation marks]; "This is accomplished by the release of those **deemed to be** low risk offenders by CDCR. Parolees **categorized as** low risk…after their current offense is **determined to be** non-serious, non-violent, and non-sex related" [emphasis added, p.4]). This demonstrates how the construction of the high versus low risk offender is premised on a lack of expertise among state-level bureaucrats.

Selective magnification is also used to arrive at shared legal interpretations among the groups. Despite its complexity, AB 109's statutory language makes clear which components are required as opposed to merely authorized (see Byers 3 December 2011). The most significant example is that the legislation authorizes and suggests—but does not require or attach funding conditions to—the use of alternatives to incarceration, a "justice reinvestment" approach and the use of "evidence-based practices" (Pen. Code §17.5; §1203.016; §1203.018). Both low and high imprisonment county plans, however, blur this line. Among the Low Imprisonment Legacy group, in line with the tendency to underwrite law as the means for implementing favored policy changes, plans depict the use of alternatives to incarceration in local jails as a necessary *requirement of the law*. The High Imprisonment Legacy group, in line with the tendency to overwrite law in portraying the policy changes introduced by Realignment as emanating from local prerogative, depicts the use of alternatives to incarceration as *locally-derived practical necessities* rather than legal mandates.

Marin County's plan illustrates how low imprisonment plans position these discretionary aspects as legal requirements by overstating AB 109's suggestion that counties implement alternatives to incarceration:

> *By fundamentally altering sentencing laws, expanding local responsibility for custody, and* ***requiring*** *the use of evidence-based correctional practices the 2011 Realignment reverses more than 30 years of increasing reliance in* [sic] *state prison* (p.1, emphasis added)…*The legislation does not intend for prison sentences to be simply replaced by jail sentences. Rather, it* ***requires*** *the use of evidence-based correctional sanctions and interventions to reduce the high rate of incarceration in California. It thereby* ***directs*** *a significant swing from emphasis on institutional corrections towards local, community-based strategies and interventions* (p. 2, emphasis added).

Similarly, Santa Cruz County's plan (p. 7) states that "[t]he enabling legislation for realignment specifies the use of Evidence-Based Practice (EBP) as **a requirement** for activities and services funded through AB 109" (emphasis added), and Imperial County's plan (p. 3) describes, "Key Features of AB 109" with the bullet point: "Requires Evidence-Based Practices: AB 109 **requires the adoption** of evidence-based practices **as a condition of receiving state [funding]** for realignment…" (emphasis added). Sonoma County's plan (p. 10) goes a step further by depicting alternatives to incarceration as central to the meaning of Realignment ("The implementation of EBP [evidence-based practices]…is **a cornerstone of Realignment legislation**…[emphasis added]) and characterizes the requirements of the law as directly confronting and fundamentally changing the state's historical use of incarceration:

> *Realignment legislation anticipates that local governments will handle their new offender population* ***in a manner different than CDCR*** *…it is clear that for any County to succeed with Realignment, it must be approached* ***in the manner the legislation envisions*** *– by using resources wisely, basing decisions on risk, and using evidence-based practices as much as possible. For, if a County treats offenders* ***in the same manner as the State, i.e. incarcerate for significant periods, leave criminogenic risks and needs unaddressed, and simply release****, the added resources will certainly not be adequate* (p.13, emphasis added).

High and low imprisonment county plans converge in their discussion of alternatives to incarceration as necessary. They diverge, however, in the stated logic behind this necessity. Whereas low imprisonment plans utilize the legal mandate as the organizing logic and, as reflected by the underwriting process, to bolster local authority and legitimacy, high imprisonment plans rationalize reducing reliance on incarceration through the lens of the practical local necessity of managing fiscal strain and public safety risk *despite* the legal mandate. San Bernardino County's plan demonstrates how this is done through a section dedicated to the Sheriff's "Issue Statement" (pp. 15-16):

> *The realignment of state prisoners and the shifting of parole violator housing to the county jails will logically increase San Bernardino County Sheriff's Department (SBSD) costs associated with housing, processing, feeding, and out-of-custody supervision…The retention of approximately eight thousand three hundred (8300) additional inmates per year within the jurisdiction of the Bureau of Detention and Corrections by virtue of AB 109 creates an enhanced need for alternative custody programs…The administration of these programs is vital for both inmate population management and the reduction of recidivism rates within the county.*

Here, the plan specifies a large number of new inmates that will come under local supervision "by virtue of AB 109," which will "logically increase" the Sheriff's need to utilize alternative mechanisms. The purpose behind utilizing alternatives to incarceration is not in order to comply with the law's mandates, or even its strong suggestion, but rather to address the "costs associated with housing, processing, feeding…" inmates and to manage risk through alternative custody programs. Kings County's plan (p.ii) similarly quantifies the practicalities at hand:

> *As a result of the State budget, AB 109 and AB 117 were passed in which counties assumed new corrections responsibilities for people convicted of certain non-serious, non-violent felonies and new community supervision and reentry assistance for people after they are released from prison and jail. It is projected that the Kings County Jail would receive approximately 321 of both male and female inmates within four years with an average of 3 parole violators per month and 21 newly sentenced inmates per month from October 2011 through June 2012. The plan also calls for rehabilitation and diversion giving the opportunity for these individuals to become law abiding citizens.*

Note also the distinction between what *the law* motivates ("new corrections responsibilities") and what *the plan* motivates ("rehabilitation and diversion") in this verbiage. Similar to another high imprisonment plan's discussion (Sutter County, p. 17), King County attributes its "new corrections responsibilities" to the state's law ("AB 109 and AB 117") and "State budget," numerically detailing the practical burden placed on local administrators as a result, while attributing the use of alternatives to incarceration to "The plan" as authored by local authorities who must manage this burden. Together, these plans illustrate how the languages of risk and cost combine to frame the use of non-incarcerative alternatives in high imprisonment counties as a matter of local—not legal—necessity, and to direct blame at higher governmental levels for burdening local jurisdictions with this budget dilemma.

Selective Siting

The final process, *selective siting*, refers to where plans locate the site of the problem the law is meant to solve. Here, both groups exhibit the same process in arriving at divergent interpretations. Low imprisonment plans provide robust and multi-dimensional discussions of the broader policy environment and legal landscape of Realignment, while high imprisonment plans tend to limit context-setting to the state's fiscal and overcrowding problems.

Some low imprisonment plans situate California's correctional system within what is depicted as the deeply problematic American criminal justice system writ large. For example, Nevada County's plan (p. 3) opens with the heading "California's Correctional Context," explaining that "the growth of U.S. prison populations and the related costs associated is well-documented. Over the past decade criminologists and legal scholars alike have repeatedly characterized the growth in prison population as 'unprecedented,' creating a dangerously

overcrowded system…" and that "California, one of the largest correctional systems, contributes greatly to the correctional crisis facing the U.S…" (p. 4). Sonoma County's plan (p. 10) goes even further in contextualizing the enactment of Realignment:

> *In the late 1970s, research indicating that 'nothing works' with offenders presented the criminal justice field with a serious challenge. This led to a period focused on increased sanctions for criminal offenders, leading to prison overcrowding, a problem targeted by Realignment.*

Madera County's (p.3) was the only high imprisonment plan to include this kind of broad contextualization. This suggests that high imprisonment counties may also, at times, locate the law's problem site in ecological, rather than local, terms.

A majority of low imprisonment plans explicitly frame the law's enactment as a direct response to the U.S. Supreme Court's ruling in *Brown v. Plata* (2011), and virtually all attribute one of Realignment's main purposes to solving the broadly constructed problem of state prison overcrowding. As demonstrated above, some plans go even further in constructing the prison overcrowding problem as systemic in nature—transcending levels of government. In this way, the Low Imprisonment Legacy group appears to frame Realignment as emerging from the multi-decade-long, multi-sited problem of over-incarceration, in addition to positioning the law change as a response to a federal court order. The construction of the problem as over-incarceration appears to lay the groundwork for low imprisonment plans' construction of the meaning of the law itself: decarceration.

By contrast, few high imprisonment plans reference the role of institutional reform litigation in Realignment's enactment, while the majority attribute the law's purpose to the state-located problems of fiscal crisis and prison overcrowding. Sutter County's plan is instructive on this point in that it describes the county jail terms to be served by realigned offenders as "serving a state prison sentence in county jail" (p.6) and points out that "[t]here are difficult challenges

ahead in implementing widespread systemic change in order to avoid simply transferring the prison overcrowding problem to the local jail" (p.11). This language sites the problem at the state level and positions the county as the recipient of a *transferred* state problem. Additionally, the language of "state prison sentence in county jail" explicitly resists the law's redefinition of where sentences for specified felony sentences will be served—in local jails rather than state prisons. If, as this plan's language suggests, these sentences are actually "state prison sentences," then the law's requirement that they be served in county jails appears illogical and/or as a displacement of responsibility. The use of this language throughout the plan provides subtle but repetitive prompts for the reader to spatially organize the problem and the law's solution as top-down.

While the previous processes manifest as strategies that local actors use to garner legitimacy in the penal field by consolidating penal capital and elevating certain kinds of penal expertise, selective siting points to a related but distinct phenomenon. Local actors' different characterizations of the origin of the prison overcrowding problem as residing externally, at the state level, or as a problem shared across governmental levels, suggests another important "source of gravity" (Page 2013:153-4) in the penal field: "the taken-for-granted assumptions and categories that determine what is thinkable and unthinkable (or orthodox or heterodox) in a given field," or Bourdieu's (1977) *doxa*. While the relational struggle among actors for penal capital and legitimate penal expertise is more or less self-consciously and strategically waged, *doxa* is the very water in which actors swim; thus, they may not recognize the constraints its largely invisible logic imposes on their possible actions. In this case, the siting of the prison overcrowding problem selectively renders coherence to particular interpretations of AB 109 as, alternatively, a maneuver to displace responsibility for the state's prison overcrowding debacle onto counties, or as a promising solution to a crisis shared among governmental levels.

Conclusion

Nearly four years since the *Plata* order and AB 109's enactment, reformers' hopes appear largely—but not entirely—"hollow" (Rosenberg 1991). While it remains premature to definitively assess Realignment's "great experiment" on the reform goal of decarceration, there is reason to believe that the distinct legal interpretations found in this study at the initial planning phase have had practical implications. At present, the state has reduced its prison population to the court-mandated limit. Even so, California prisons remain among the nation's most dangerous and overcrowded (Carson 2014; Wilson 20 Sept. 2014). Overcrowding at the local level has exploded. The number of county jail systems operating above rated capacity almost doubled, from 11 in 2010 to 21 by 2014; thus, AB 109 appears to have merely relocated the sites of incarceration from state prisons to local jails in a sizeable number of counties, displacing the overcrowding problem downward (Lofstrom & Raphael 2013). This "dispersal" (Cohen 1979) may come as little surprise to social control scholars, but the puzzle of local variation remains: practitioners in some counties appear to have used their newfound discretion under AB 109 to reduce overall incarceration levels, rendering reform apparently successful in some places but not others.

I have analyzed the *law-before* AB 109 as one key to solving this puzzle. Because Realignment is premised on limiting the county "free lunch" (Zimring & Hawkins 1991), in this study I focused specifically on past imprisonment practices as measured by counties' state prison use rates. The local variation in this measure over time allows for a comparison of how different "doses" of reform are swallowed in places with relatively consonant or dissonant legacies of practice. In this case, implementation plans from counties with historically high or low

imprisonment patterns demonstrate local practitioners' divergent orientations to the legitimacy of law itself, the opportunities created by legal ambiguity and the governmental source of the prison overcrowding problem. These competing logics underlie the interpretive processes observed—*overwriting* or *underwriting law, selective magnification* and *selective siting*—which ultimately facilitate divergent interpretations of AB 109 as mandating either system-wide *decarceration* or the *relocation* of incarceration from state prisons to county jails. While this study demonstrates the salience of the law-before only on paper, the divergent interpretations contained in official planning documents rationalize—even if they do not determine—the allocation of fiscal and human resources either to build community-based capacities for alternatives to incarceration or to expand local jail capacity.

My focus on these processes contributes to the valuable research goal of explaining what drives local imprisonment variation in the first place by uncovering potential mechanisms that link predictive measures with key outcomes of interest. This may refine interpretations of results found in the variable-centered literature on inter-jurisdictional penal variation and extend the theories that underlie causal models, potentially revealing additional, alternative or more parsimonious explanations (e.g., Tavory & Timmermans 2013). By scoping my comparison to counties' state prison use rates based on AB 109's particular regulatory premise, I do not mean to imply that other local measures previously identified in this literature are irrelevant. Indeed, imprisonment is but one salient metric of the multiple practices and power arrangements that mutually constitute my conception of the law-before. The state prison use measure was pivotal in this study because it captured variation in a relational construct central to the reform in question: the relationship between county and state governments. My findings provoke future inquiry into the interaction of variation in this relational construct with the spatial socio-demographic

characteristics found to explain penal reform. The mechanism-based findings of studies such as this one that examine penal practice longitudinally can also help develop existing theory by illuminating the "historical transmission" (Petersen & Ward 2015) of local variation in both carceral outcomes and the variables hypothesized to explain them.

Simon's (2007:29) *Governing Through Crime* traces one account of how crime control policy served as a strategic vehicle for challengers of the New Deal political order in the 1960s, whereby the emergent national "war on crime" provided "a precious wedge" to rearrange and upend established governmental power relations spanning a vast terrain of contested economic and social issues (see also Beckett 1997; Cohen 1985; Feeley & Sarat 1980; Hall et al. 1978; Garland 2001; Scheingold 1984). Such accounts reveal that attempted legal reform should be analyzed beyond its specific policy context, and in light of its broader implications for governmental arrangements, including implementers' perceptions of the legitimacy of law to realign them at all. *Brown v. Plata* (2011) and AB 109 (2011) were critical events in California's massive criminal justice system; in the institutional crisis triggered by such events, windows of opportunity emerge for actors to build legitimacy and support for reforms previously dismissed as radical or impossible (Page 2013:163; Tonry 2004).

The notion of "legitimacy" within organizational fields is classically conceptualized as insulating organizations from the external pressures of critical events (e.g., DiMaggio & Powell 1983). However, under California's Realignment, "governing through crime" (Simon 2007) takes the shape of governing through the local, which may be breaking down the distinction between internal and external threats. While the *Plata* order can be classically understood as an "exogenous shock" (Edelman, Leachman & McAdam 2010:655) from the federal courts, AB 109 can be analyzed both as exogenous and as a shock from within. The dilemma of American

federalism is most often conceptualized as a binary between states' rights and the federal power to intervene (judicially, congressionally or through administrative regulation); in this account local government is "nested" within states (Feeley & Rubin 2008). However, in identifying the "perils" of federalism for poor and minority group representation, Miller (2008) reminds us that, even if the politics of crime are most consequentially forged at the federal level, it is at the county and municipal levels that the governance of crime is often most consequential in people's daily lives. The binary account of federalism as a state-federal balancing act has therefore obscured the reality that many local-state, as well as local-federal, balancing acts simultaneously take place on criminal justice and other policy issues. In this sense, federalism may be better understood as "fractal."

At a reform moment animated by governing through the local, the fractal nature of federalism is relevant for understanding the relational dynamics of penal change across governmental levels, including its role in structuring the conditions that made the county correctional "free lunch" possible in the first place. This study has illuminated county-level actors as key players in the penal field (Page 2011; 2013) and the "agonistic" (Goodman, Page & Phelps 2014) struggle that takes place within these fields. My findings about how the law-before shapes local variation in the taken-for-granted assumptions, or "rules," of the penal field (*doxa*) reflect part of the structuration or institutionalization of power arrangements in the field. A proposition for future inquiry is that the law-before also functions at the interactional level by shaping individual actors' intuitive understanding, or "feel," for how to be effective in the broader penal field they inhabit (*habitus*); this would help answer questions raised but not adequately answered in this study about the strategic rationales behind different interpretative processes.

Jenness and Grattet (2005:339) define the law-in-between as “organizational structures and policies that provide the intermediary linkage between state statutes and officer discretion” (2005:339). This study’s findings show that the law-in-between is itself variegated, and that distinct logics about the fundamental legitimacy of law to regulate policy and practice manifest in this intermediary stage, with practical implications for law-in-action. These variations can, in turn, be traced back to variations in the law-before, which leads to an understanding of the law-in-between as partially constituted by the legacies of past practice and power arrangements among organizational actors. This insight contributes to legal endogeneity studies by showing how underlying patterns of variation within organizational fields, as well as variations in the legacies of these fields, shape responses to legal regulation and definitions of compliance. In examining the penal field, which differs from corporate fields, I discovered distinct interpretive processes and competing field-level logics that may be applicable to understanding the endogeneity of law in other policy domains, especially those where regulatory dilemmas manifest predominantly at the county or municipal level.

Contemporary sociolegal scholarship recognizes the “gap” as conceptually problematic and has moved beyond the “theatrical” (Gould & Barclay 2010:331) revelation that a gap exists, training analysis instead on the conditions under which law is implemented and the processes and mechanisms that shape implementation gaps. Gap studies have thus decentered law in favor of examining the institutional factors that shape the cultural production of law. Franklin E. Zimring (2014:739-741) typologizes Realignment as a criminal sentencing reform mainly of “procedure” rather than “substance” in both its means and ends. In the context of a law where the “gap” functions as the foundation rather than the unintended consequence of its statutory framework, my findings provoke law and society scholars to consider whether contemporary

moves to decenter law have led gap studies to overlook the salient features of how a law is written and to consider that its statutory architecture provides important resources and constraints for actors who shape the meaning of compliance in the law-in-between. Rather than analyzing multiple interpretations of an ambiguous law as perversions, in some cases, the ideal of uniformity may itself hamper reform and complicate compliance. In this respect, California's Realignment may signal an evolving reform species that takes account of the local-state power struggles inherent in the U.S. governance of crime and punishment, implying the presence of not one, but multiple, types of "gaps" between law-on-the-books and law-in-action.

Chapter 4

Results II – The Life Course of Local Variation

This chapter presents a quantitative analysis that refines how local variation in penal practice can be understood. Group-based trajectory modeling reveals a more fine-grained account of the inter-county variation in California state prison reliance in the years leading up the Realignment's enactment. The analysis identifies five statistically-derived groups of counties based on the distinctive imprisonment trajectories that emerged from 2000-2010 data: (1) High Increasing (five counties), (2) Middle Increasing (19 counties), (3) High Decreasing (three counties), (4) Low Increasing/Stable (16 counties), and (5) Middle Decreasing/Stable (15 counties). Multinomial and binomial logistic regression analyses then examined the association of a range of crime, demographic, political and jail capacity variables with both state prison use outcomes over time, as well as observed decarceration responses under AB 109.

Crime and recidivism have so far been the main outcomes of interest in gauging the success of Realignment's "great experiment" in localization (*The Economist* 2012). However, this study is one of the first to analyze the outcome of *decarceration*: the system-wide reduction of incarceration in state prisons *and* local jails. Decarceration is an outcome of particular interest in addressing the prison overcrowding crisis because it aims to achieve deinstitutionalization rather than trans-institutionalization to jails or other locked institutions. As measured in this study, decarceration is distinctly revealing as a metric of institutional change in that it accounts for the possible displacement of incarceration to local jails—the concern that AB 109 will become a "shell game," having "simply changed the address where offenders live and report" (Petersilia & Snyder 2013:304). Unlike the outcomes of crime and recidivism, which aim to

assess the effects of Realignment on changes in individual behavior (but see Bird & Grattet 2016), decarceration aims to measure changes in *institutional* behavior. For this reason, I explore previous organizational practices and their enduring effects on decarceration in the present-day implementation of AB 109.

I approach local variation in counties' historical rates of state prison use from a life course perspective, which typologizes developmental processes by classifying variation into empirically-derived and theoretically meaningful categories (e.g., Nagin & Tremblay 2005). Through group-based trajectory modeling, I first demonstrate that the local imprisonment variation among California counties is historically patterned and can be grouped into five distinct trajectories. Second, I begin to explain these patterns by presenting results from multinomial logistic regression analyses of the relationship between a range of local characteristics and each trajectory type. Third, I relate these historical trajectories to present-day decarceration outcomes at the county level. I conclude with a discussion of implications for future research and policymaking.

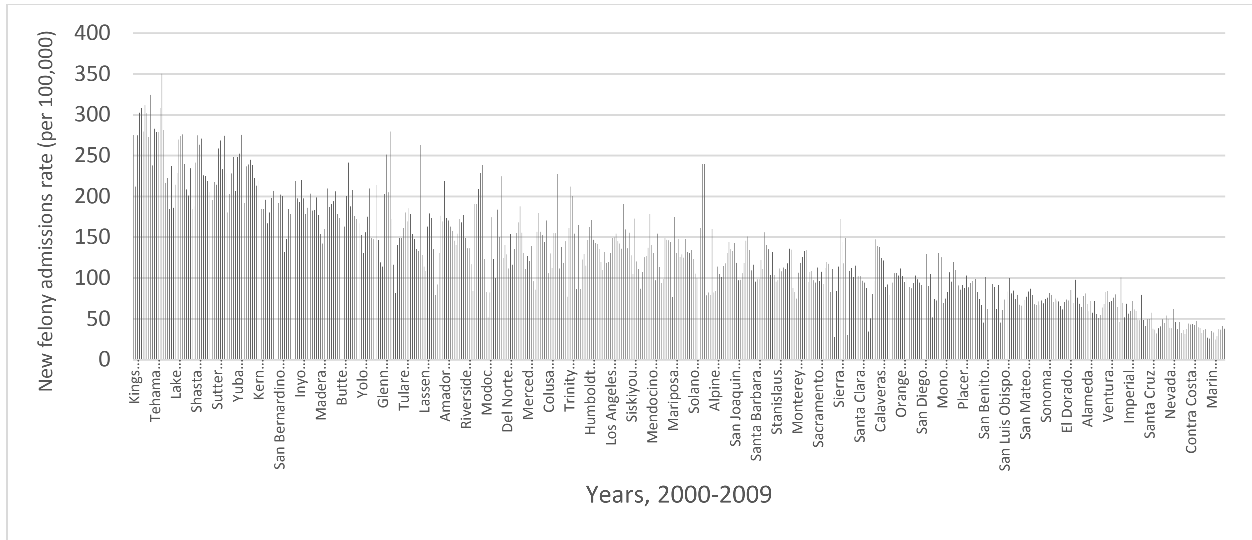
Local Variation and the Implementation of Realignment

Wide variation in county responses to AB 109 has been documented at the planning stage of implementation (Abarbanel et al. 2013; Bird & Grattet 2014; Verma 2015), as well as remarkable pre-existing variation in counties' reliance on state prisons prior to Realignment (Ball 2012; Males & Goldstein 2014). The underlying sources of these variations, and the relationship between them, have yet to be explained.

After standardizing for population size, and despite the fact that all counties adjudicate the same statewide penal code, data demonstrate remarkable inter-county variation in state prison

admission rates in the decade preceding Realignment. Figure 4.1 depicts this variation by county in each of the years from 2000-2009.

FIGURE 4.1
Annual State Prison Use Rate, by County



NOTE: Counties sorted by ten-year average new felony admissions rate.

These data clearly show heterogeneity in carceral behavior, but they do not reveal whether there are patterns and meaningful groupings among counties. Ball's (2012) analysis controls for local crime levels and finds that the same "high prison use" counties repeatedly fell into the top quartile of prison use for nearly all years, while the same "low use" counties repeatedly fell into the lowest quartile for nearly all years. These findings suggest that, despite variation, there are underlying county groupings to be identified.

Explaining local imprisonment variation

When incarceration is seen mainly as a tool for crime control, incarceration levels appear logically explained as responses to crime levels. However, research roundly rejects this

hypothesis (see National Research Council 2014:44-47). Studies of inter-jurisdictional penal variation demonstrate that, net of crime rates, socio-demographic, political and system capacity characteristics exert causal effects on incarceration levels even when jurisdictions operate under identical criminal codes and sentencing statutes. High degrees of poverty and income inequality are associated with high incarceration rates, as well as the percentage of the non-white population and overall racial/ethnic heterogeneity (e.g., Bridges & Crutchfield 1988; Greenberg & West 2001; Kane 2003; Percival 2010); these characteristics show especially strong effects in urban areas (e.g., Beckett & Western 2001). Conservative partisanship, approximated mainly through measures of Republican party affiliation, also consistently predicts high incarceration rates (e.g., Jacobs & Helms 1996; Stucky, Heimer & Lang 2005).

According to group threat theories (e.g., Blalock 1960), rather than functioning straightforwardly as a tool for crime control, incarceration is more adequately explained as a tool for controlling groups that threaten the dominant social order (the wealthy and the white). As the proportion of poor and minority groups grows, incarceration rates are hypothesized to rise in response to the dominant population's perception of social threat (see Liska 1992). As a political manifestation, Republican partisanship is understood to represent party alignment with punitive "law and order politics" (Jacobs & Carmichael 2001) mobilized in response to group threats (e.g., Percival 2010). Outside of the threat literature, organizational capacity theories of "prisons as self-regulating systems" (Berk, Messinger, Rauma & Berecochea 1983) suggest that high prison and/or jail occupancy rates impose structural limits on the institutional capacity to incarcerate and should be controlled for in analyses.

While these explanations may apply to the observed variation in California counties' historical use of state prison, do they apply to the outcome of decarceration? Lofstrom and

Raphael (2013a:23) found significant variation in county "jail-use responses" to AB 109, measured in the form of a ratio that reflects the change in a county's jail incarceration rate before and after AB 109 relative to the change in its state prison incarceration rate before and after AB 109. Ratios indicate "prison-to-jail transfer" (19), effects in 39 counties and overall decarceration effects in 18 counties. Lofstrom and Raphael (2013a:2) conclude that, "on average, a county's jail population increases by one for every three felons no longer assigned to state prison. However, the effect of realignment on jail populations differs across counties, with some counties incarcerating much higher percentages of their caseloads."

AB 109 has the potential to catalyze a genuine cultural shift in corrections that other states may emulate. However, without a theoretical framework for explaining why local systems react differently to the same legal intervention, as well as the processes that diverse institutional actors use to translate these interventions on the ground, the lessons of AB 109 may be missed in future sites.

Local Variation and the Life Course of U.S. Incarceration

The historical processes of policy development and, more specifically, the build-up of mass incarceration (e.g., Gottschalk 2006; Schoenfeld 2010), have been conceptualized in terms of *path dependence* or *policy feedback*, in which the past imposes constraints on what becomes understood as "possible"—but does not determine what is actually made possible—in the future (e.g., Pierson 1994; Skocpol 1994). *Legacy* is also a heuristic for explaining the continuation of policy and practice over time (e.g., King, Messner & Baller 2009; Verma 2015). Michael Campbell and Heather Schoenfeld (2011:1377) synthesize these concepts into a "historicized political sociology of punishment" to "explain both the consistent, persistent punitive shift and

the variation in the extent and timing of that shift" across states and regions (1383). California's Realignment, however, exposes *intra*-state variation as a more fine-grained dilemma of federalism, which in turn raises new questions about the county-level dynamics that drove the punitive turn to mass incarceration in the first place and how these factors or conditions might shape prospects for present-day decarceration.

Life course research on human development investigates patterns and subgroups of variation in order to reveal the distinct etiologies that underlie a given developmental process (Nagin 2005), including the contingent factors, or "turning points," that create opportunities for change (Laub & Sampson 1993). A life course perspective of county-level variation suggests the presence of underlying patterns, and that in different "types" of places policy followed distinct developmental pathways, leading to the observed variation in imprisonment. This study adds to historical explanations by systematically classifying "types" of local variation through the use of life course trajectory modeling methods and by examining the proposition that these local variants and etiologies of imprisonment, in turn, shape how counties respond to reform in the present tense. It also extends life course research, in which the predominant unit of analysis has been the individual. Following studies that apply life course methods to examine developmental trajectories of crime among geographical and jurisdictional units of analysis (e.g., Groff, Weisburd & Yang 2010; Schupp & Rivera 2010), this article examines imprisonment trajectories among counties as a way of understanding local variation in the "life course" of U.S. incarceration at the state level and the potential "turning point" of decarceration (see also Brown 2016).

Research questions

I examine the following questions: (1) Can counties be grouped according to distinct trajectories of state prison use over time; (2) if distinct trajectories are found, what explains them; and (3) how do these trajectories shape the local implementation of AB 109 with respect to decarceration?

Hypotheses

Ball (2012:998) identified 18 “high prison use” and 15 “low prison use” counties and considers the remaining 25 counties “middle use.” I examine the proposition that there are also meaningful groups within this middle range that reveal imprisonment trajectories distinct from those of outlier groups. I expect to find trajectories that differ by level, shape and direction, with some groups steadily increasing or decreasing state prison use throughout the decade and others changing course. I proceed on the theoretical basis that the characteristics explaining local imprisonment variation in cross-sectional studies also explain variation longitudinally. Therefore, I hypothesize these characteristics’ same direction of effects on county membership in a particular trajectory group over time—specifically, that high levels of poverty, income inequality, the proportion of the non-white population, racial/ethnic heterogeneity and conservative political partisanship will distinguish counties with high and/or increasing imprisonment trajectories from those with low and/or decreasing trajectories, controlling for crime, urbanization and jail occupancy.

The path dependence and policy feedback literature suggests that counties will largely follow their previous trajectories despite the reform intervention of AB 109, leading to the proposition that decarceration will be more likely in low and/or decreasing trajectory group

counties, while high and/or increasing trajectory group counties will be more likely to have displaced incarceration to local jails. Accordingly, I hypothesize that the characteristics found to explain local imprisonment variation will also explain the variation in decarceration (by mirroring effects in the opposite direction).

Data & Methodology

Data

Analyses deploy publicly-available federal and state administrative data on all county-level outcomes and characteristics. I developed a 2000-2009 panel data set, where "county" is the panel variable $i(=1 \ldots 58)$ and "year" is the time variable $t(=1 \ldots 10)$, yielding a total of 580 observations. The panel combines a subset of the "Tough on Crime" data compiled by Ball (2012), which includes annual county-level data reported by CDCR, the California Department of Justice, Department of Finance, and Secretary of State, with additional data from the State Elections Board, Board of State and Community Corrections (BSCC), the U.S. Decennial Census, 2000 and the U.S. Department of Agriculture (USDA). I use 2000 census data because the possible predictors of trajectory group membership should generally be established by the time of the initial period of trajectories (see Nagin 2005:96).

Dependent variables

I analyze two county-level outcomes: *state prison use* in the decade preceding AB 109's enactment and *decarceration* under AB 109.

State prison use is measured by the annual rate of "new felony admissions" from 2000-2009—"new felony admissions" is the annual number of individuals sent by each county to state prison for a new crime. Ball (2012) calculated the new felony admissions rate per 100,000 of each county's annual population. I use "new felony admissions" as the measure for two reasons: First, in line with previous research on inter-jurisdictional variation in penal practices, I measure the "flow" of people from county jurisdictions into state prison rather than the county origin of the "stock" of people in the state prison population; this isolates my main construct of interest (the propensity for a county to use state prison) without the confounds contained in "stock" measures, which reflect sentence lengths and state administrative release practices (see e.g., Schupp & Rivera 2013:58). Second, I do not include "new parole violations leading to a new prison term" because, prior to Realignment, parole determinations were made by state officials with less input from county officials.

Decarceration is measured as a dichotomous (0/1) variable, where "1" indicates that *both* jail and prison incarceration rates declined under AB 109. This measure is derived from my coding of counties according to a range of theoretically possible pre- to- post-AB 109 response scenarios. Because the legislation's central mandate rendered a sizeable class of offenses no longer eligible for incarceration in state prisons, scenarios in which a county's use of state prison increases are theoretically possible but virtually impossible in practice. One such scenario is an increase in both jail and prison incarceration (coded as *incarceration*); another is that jail incarceration decreases while prison incarceration increases, and yet another is that jail incarceration remains unchanged even as prison incarceration rises. The more likely scenarios entail the mandated reduction in county use of state prison, where jail incarceration could then increase, decrease or remain the same. In what I code as a *displacement* scenario, an increase in

jail incarceration accompanies a decrease in prison incarceration but not enough to offset the overall decline of incarceration. In what I code a *transfer* scenario, increases in the jail incarceration rate equal or exceed and offset declines in the prison incarceration rate, resulting in either a 1:1 transfer of incarceration from prison to jail or a net increase in overall incarceration. In what I code as a *decarceration* scenario, both jail and prison incarceration rates decline, which results in a net decrease in overall incarceration across both institutions. A net decrease in overall incarceration could also occur where jail incarceration remained unchanged while prison incarceration decreased, or where jail incarceration decreased while prison incarceration did not change. Such scenarios are not coded as *decarceration* because this study measures whether system-wide declines are observed across *both* prisons and jails. A final scenario is that incarceration in neither jails nor prisons changed from the pre- to post-Realignment periods.

I assess these scenarios using Lofstrom and Raphael's (2013b) calculation of the pre-post AB 109 change in county jail and prison incarceration rates for the pre-Realignment time period of September 2010-June 2011 and the post-Realignment time period of October 2011-June 2012: ΔJail Incarceration Rate$_{it}$ and ΔState Prison Incarceration Rate$_{it}$, where $i=(1,...57)$ indexes counties[9] and $t=(1,...9)$ indexes the first nine post-Realignment months (October 2011-June 2012). ΔJail Incarceration Rate$_{it}$ is the pre-post Realignment change in the jail incarceration rate (per 100,000 county residents) in county i in month t, and ΔState Prison Incarceration Rate$_{it}$ is the pre-post Realignment change in the rate of county residents incarcerated in state prison. To isolate changes in county jail and prison incarceration rates net of any seasonal variations, Lofstrom and Raphael calculate the pre-post Realignment changes relative to September 2011 for each post-Realignment month and then subtract corresponding changes that occurred in the

[9] This measure omits Alpine County because it does not operate a jail system.

previous year. The jail incarceration rate is measured using monthly BSCC data on the average daily jail population (ADP) in county *i* for month *t*. The prison incarceration rate is based on cumulative weekly CDCR counts of county-level prison admissions and releases, from which Lofstrom and Raphael calculate the monthly prison ADP for each county.[10]

I found four scenarios present in this data: system-wide *decarceration*, where both jail and prison incarceration rates declined, resulting in a net decrease in overall incarceration across both institutions; *displacement*, where jail incarceration increased as prison incarceration decreased but did not offset the overall decline of incarceration; *transfer*, where jail incarceration increased to the point of equaling or exceeding the decrease in prison incarceration; and *incarceration*, where both jail and prison incarceration rates increased.

Independent variables

My selection of crime, demographic, political and system capacity variables follows previous research on inter-jurisdictional penal variation (see generally Liska 1992):

Crime

I measure the *Type 1 crime rate* based on the FBI UCR's index of serious, reported violent and property crimes, which includes aggravated assault, forcible rape, murder, robbery, arson, burglary, larceny-theft, and motor vehicle theft.

[10] See Lofstrom & Raphael's (2013b) Technical Appendix for a more detailed discussion.

Demographics

I include *percentage in poverty* and an *income inequality index* as indicators of economic threat. I use the county poverty levels reported in the 2000 census; the income inequality index is based on a calculation of the Gini coefficient from the same census. The index scale is 0-100, in which "0" represents complete income equality and "100" indicates maximum inequality. I also include the population *percentage black* and *percentage Latino* and *racial/ethnic heterogeneity* from the 2000 census as indicators of racial threat. I measure racial/ethnic heterogeneity with a Herfindahl index based on five groupings (white, African American, Latino, Asian and other races). The index scale is 0-100, in which "0" represents a racially/ethnically homogenous population and "100" indicates maximum heterogeneity (i.e. all groups represent equal proportions of the population). *Urbanization* is a continuous measure that applies a more nuanced indicator of "metropolitan/nonmetropolitan" (see Lee, Maume & Ousey 2003, 117). The code ranks counties on a scale from 1-9 based on population data and adjacency to metropolitan areas. Higher continuum codes indicate more rural counties with lower degrees of urbanization.

Politics

I measure the annual *percentage of voters registered Republican* as an indicator of conservativism. I add to previous studies that examine the effects of Republicanism by measuring the annual *percentage registered to vote* as a gauge of political participation regardless of party affiliation.

In addition, California's voter initiative process enables a more specific measurement of "penal punitiveness" through voter support for particular penal policies on the ballot during this time period that reflect the "propensity, extensiveness and intensity" of support for incarceration

(see Schupp & Rivera 2010, 58). Therefore, I measure the percent voting "no" on relevant ballot initiatives in the decade preceding Realignment that entail reducing incarceration (Proposition 66 [2004] to reduce penalties under California's "Three Strikes" law, Proposition 5 [2008] to rehabilitate non-violent drug offenders and Proposition 19 [2010] to legalize marijuana) and the percent voting "yes" on initiatives to enhance incarceration (Proposition 9 [2008] to establish a crime victims' "bill of rights" to participate in criminal sentencing and prison release decisions).[11] To address multicollinearity among these measures, I performed a principal components factor analysis with promax rotation, which demonstrated that they load onto a single component, which I label *penal punitiveness*. I performed a second factor analysis that included percent Republican with the proposition measures, finding that they also load onto one component. I label this factor *conservative punitiveness.* While the inclusion of factors occurring during the time period analyzed may appear to undermine the time-order requirement for establishing causality, I treat measures of voter support for ballot initiatives at time points throughout the decade as reflecting already-established levels of punitiveness. In other words, I analyze punitiveness as a time-fixed rather than time-varying characteristic in this study.

Capacity constraints

I measure the annual *percentage of jail occupancy* to account for constraints on the local capacity to incarcerate as well as county propensity to use incarceration as a response to crime. I calculated the jail occupancy percentage by first determining the yearly average of each county's average daily jail population (ADP), which is reported monthly by the BSCC. I then divided the

[11] Except for Proposition 9, the other propositions failed. See Table 4.1.

yearly ADP by the rated capacity of all jail facilities within each county, as reported in December of each year.

Table 4.1 summarizes all variables.

TABLE 4.1
Summary Statistics for California Counties, 2000-2009

	Mean[a]	Standard Deviation
Dependent variables		
Annual state prison use rate	131.42	63.46
Decarceration under AB109[b]	.30	.46
Independent variables		
Crime		
Annual Type 1 crime rate	3342.88	1251.20
Demography		
Percentage in poverty, 2000	14.5	4.91
Income inequality index, 2000	39.60	3.46
Percentage black, 2000	3.15	3.45
Percentage Latino, 2000	24.71	16.72
Racial/ethnic heterogeneity index, 2000	44.54	12.13
Rural-urban continuum code, 2000	3.38	2.31
Politics		
Annual percentage registered to vote	72.89	7.40
Annual percentage registered voters Republican	38.60	9.00
Percentage "no," Proposition 66, 2004	53.10	8.45
Percentage "no," Proposition 5, 2008	61.92	7.45
Percentage "yes," Proposition 9, 2008	54.18	5.66
Percentage "no," Proposition 19, 2010	55.21	7.74
Capacity		
Annual percentage jail occupancy	87.83	24.28
Panel variable		
County	58	
Time variable		
Year	10	
N	580	

[a] Except for the voter proposition percentages, the mean reports the unweighted average of all county measures. The U.S. Census typically presents the weighted average of demographic measures to report statewide statistics. However, Table 4.1 summarizes county-level rather than individual-level data. For example, Table 4.1 reports a county mean of 3.15 for "percentage black, 2000," while the U.S. Census 2000 reports that blacks are 6.7 percent of the state of California's total (see e.g., U.S. Census Bureau, Race and Census 2000 Summary File 1, Matrix P8). The mean in Table 4.1 thus reflects the average percentage of California county populations identified as black, not the percentage of the statewide population identified as black.
[b] The proportion is reported for "decarceration under AB 109" (0/1). Alpine County not included.

Methods and Analytic Strategy

I use group-based trajectory modeling (GTM) to identify statistically meaningful relationships among counties based on their use of state prison over time. GTM situates each county within one of several distinct classes characterized by group homogeneity but

heterogeneity between classes. GTM is an application of the finite mixture modeling framework, which relies on the modeling assumption that the population comprises a mixture of a finite number of unobserved groups (see Nagin 2005). The Bayesian Information Criterion (BIC) is one of several measures used to guide model specification. The model with the smallest absolute BIC value is conventionally selected as best fitting. Once specified, GTM yields a "posterior probability" for each case (county), which reflects the certainty with which any given case is classified within a particular trajectory group. Cases are classified into the trajectory group for which they have the maximum posterior probability. GTM models require high probabilities (>.7) for classification of cases (see Nagin 2005:88), but many have imperfect classification certainty, which results in statistically-derived approximations of how many cases belong within a given class rather than providing clear cut-offs for cases with lower posterior probabilities. Therefore, the proper interpretation of trajectory groups is as a "statistical approximation to a more complex underlying reality" rather than as "literally distinct entities" (Nagin & Tremblay 2005:84).

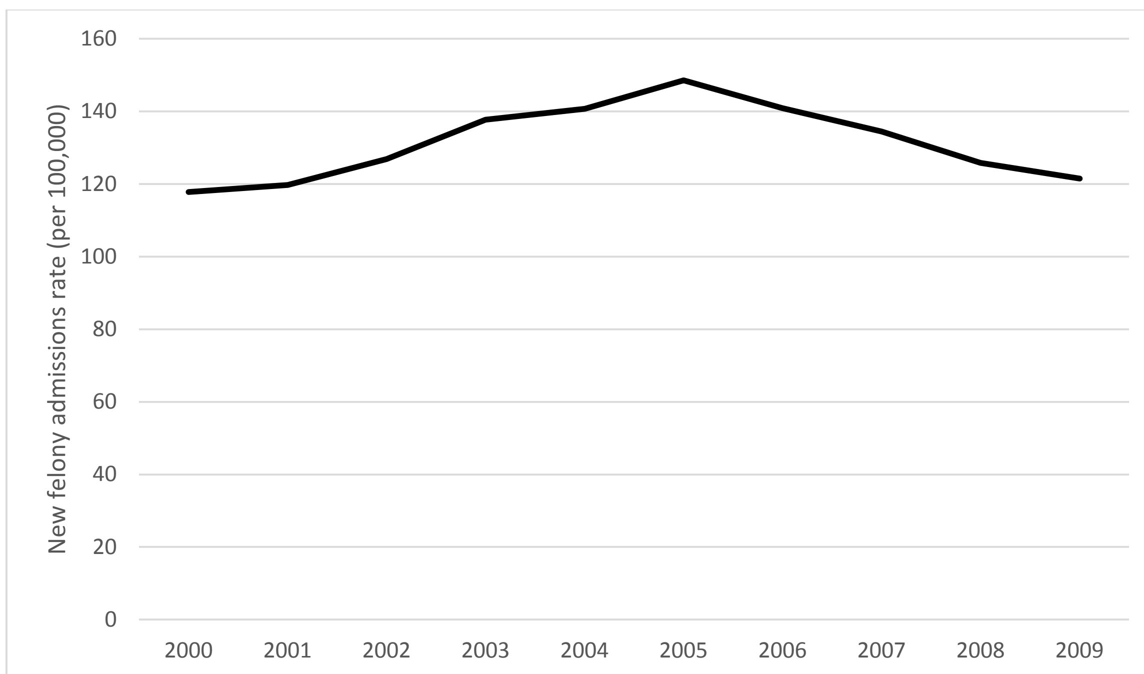
This analysis proceeds in three steps. First, after describing the univariate growth curve of state prison use, I present GTM results from a 5-class linear solution. Second, I examine the association of county characteristics with membership in a given trajectory group by cross tabulating county trajectory group assignment with explanatory variables to generate a basic profile of the groups. I then specify multinomial logistic regression models to test the prevalence and intensity of associations. Third, I relate counties' classification within distinct trajectory groups to decarceration under AB 109 through binomial logistic regression models.

Results

Trajectories of State Prison Use

Figure 4.2 depicts the univariate (or single-class) model by plotting the mean state prison use rate for all counties for each of the years in question. State prison use rates averaged from a low of 117 in 2000 to a high of 148 in 2005, and the overall county imprisonment trajectory rose steadily throughout the first half of the decade before declining steadily after 2005.

FIGURE 4.2
State Prison Use by California Counties, 2000-2009



I specified a group trajectory model using the MPlus statistical package to test the hypothesis that the single-class model masks significant heterogeneity. GTM yielded a 5-class solution, which indicates five distinct imprisonment trajectories underlying the statewide trend. Table 4.2 reports the mean of each variable by trajectory group, the number and proportion of

counties in each group, and the average assignment probability for counties classified within a given group. In an ideal model, the posterior probability for each county would equal 1, resulting in an average class probability of 1. The average class probabilities shown in Table 2 nearly approach 1 and remain well above the minimum cut-off (.7) for all groups. With the exception of five counties, all maximum posterior probabilities were well over .7, with many at or approaching 1.[12]

[12] Napa and Orange counties' assignment to Group 4 was the most questionable, with posterior probabilities of .53 and .59, respectively. The next highest probabilities were for their assignment to Group 2 (.47 for Napa and .41 for Orange). They remain classified in Group 4 according the maximum probability assignment rule and because it leaves open the possibility that additional analyses may reveal what distinguishes them from the counties falling more clearly into the reference group. Trajectory group membership and posterior probabilities for all counties on file with author.

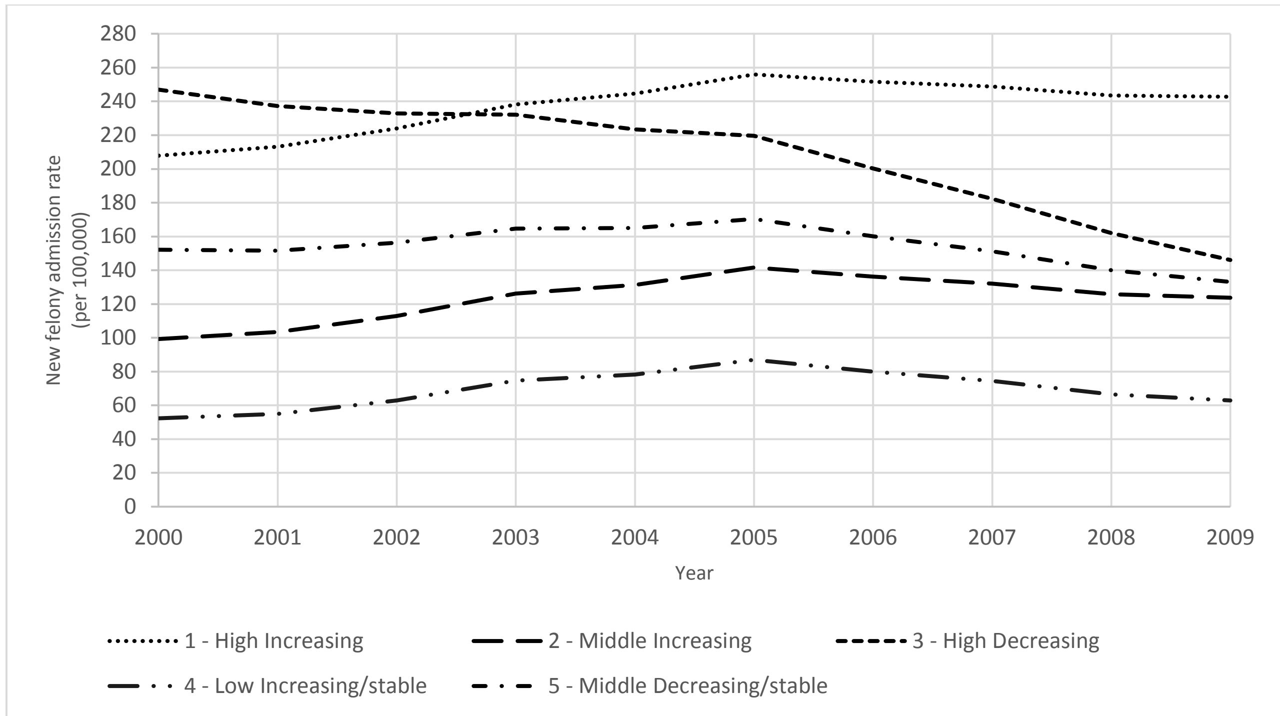
TABLE 4.2
Trajectory Group Profiles

	1 - High Increasing	2 - Middle Increasing	3 - High Decreasing	4 - Low Increasing/ stable	5 - Middle Decreasing/ stable
Dependent variables					
State prison use	241.49	124.71	210.15	68.09	155.05
Decarceration under AB 109	.40	.11	.33	.34	.43
Independent variables					
Crime					
Type 1 crime	3412.76	3384.85	3316.62	3126.03	3820.05
Demography					
% poverty	17.76	13.34	19.87	10.16	18.44
Income inequality	40.43	39.27	42.77	37.92	40.92
% black	4.38	2.78	2.02	2.73	3.88
% Latino	21.72	23.93	25.17	23.71	27.67
Racial/ethnic heterogeneity	47.45	43.87	40.23	43.88	46.00
Rural-urban continuum	3.2	3.74	4.00	2.06	4.27
Politics					
% registered to vote	67.10	73.85	69.87	76.01	70.84
% registered Republican	43.69	39.05	46.85	32.56	41.14
% ‘no’ Prop. 66	57.60	53.69	56.97	49.71	53.68
% ‘no’ Prop. 5	65.80	62.24	69.93	57.18	63.68
% ‘yes’ Prop. 9	56.74	52.86	59.60	51.59	56.68
% ‘no’ Prop. 19	60.80	55.11	62.10	50.03	57.62
Capacity					
% jail occupancy	81.74	91.27	78.57	92.52	82.35
N	*5*	*19*	*3*	*16*	*15*
Percentage of state	8.62	32.76	5.17	27.59	25.86
Average class probability	0.99	0.89	1.00	.91	.95

NOTE: Except for “decarceration under AB 109,” for which the proportion is reported, entries for dependent and independent variables report mean values by group. Except for the voter proposition percentages, means report the unweighted average of county-level measures.

Figure 4.3 depicts the trajectories by plotting the mean state prison use rate for each group in each year.

FIGURE 4.3
Historical Trajectories of State Prison Use, Plotted by Mean, 2000-2009



All but one group (Group 3) tracks the shape of the univariate trajectory, but the groups notably diverge in their levels of state prison use. Group 1 tracks the shape of the overall imprisonment trajectory shown in the univariate model but at exceptionally high levels and with a steeper increase in the first half of the decade, followed by a shallower decline in the last half of the decade. Groups 2, 4 and 5 show the same overall shape but at significantly lower levels, with Group 4 being the lowest, Group 2 in the middle, and Group 5 being the highest of the three. Under GTM, Group 2 is considered normative because it contains the largest number of cases

and tracks the overall trend shown in the univariate model; thus, Group 2 serves as the reference group for further analyses (see Nagin 2005). I summarize these groups as:

- **Middle Increasing** (Group 2, the normative reference group)
- **Middle Decreasing/stable** (Group 5, conforming somewhat to the norm)
- **Low Increasing/stable** (Group 4, deviating)
- **High Increasing** (Group 1, deviating)
- **High Decreasing** (Group 3, deviating)

Explaining Imprisonment Trajectories

Life course studies position the characteristics that predict membership within a certain trajectory group as "risk" factors, and each trajectory group is understood to have a distinct "risk profile" (Nagin 2005). The group profiles presented in Table 4.2 offer initial insight into how group membership probability varies with each county characteristic; however, they do not convey the statistical significance of observed differences, nor do they specify the mathematical relationship between individual county characteristics and group membership.

Table 4.3 reports results from four multinomial logistic regression models that assess the effects of each county characteristic on the probability of group membership across the five groups. The first model includes the percentage of voters registered Republican and the penal punitiveness factor. To address multicollinearity, the second and third models include one or the other of these measures. The fourth model uses the conservative punitiveness factor instead, which captures both Republican partisanship and support for punitive ballot propositions.

TABLE 4.3
Multinomial Logistic Regression Results for Trajectory Group Membership

1 - High Increasing	MLogit 1	MLogit 2	MLogit 3	MLogit 4
Type 1 crime	-.003***	-.002***	-.003***	-.003***
	.997	.998	.997	.997
	(.001)	(.000)	(.001)	(.001)
% poverty	2.704***	1.407***	2.172***	1.711***
	14.942	4.082	8.772	5.533
	(.447)	(.186)	(.370)	(.261)
Income inequality	1.225***	.422*	1.169***	.827***
	3.405	1.526	3.217	2.287
	(.318)	(.166)	(.297)	(.234)
% black	.966***	.685***	.898***	.761***
	2.626	1.984	2.254	2.141
	(.230)	(.133)	(.215)	(.175)
% Latino	-.931***	-.406***	-.825***	-.624***
	.394	.666	.438	.536
	(.151)	(.050)	(.134)	(.089)
Racial/ethnic heterogeneity	.145*	.127**	.104	.108
	1.156	1.136	1.110	1.114
	(.067)	(.048)	(.069)	(.063)
Rural-urban continuum	-3.636***	-1.803***	-3.351***	-2.603***
	.026	.165	.035	.074
	(.636)	(.321)	(.596)	(.452)
% registered to vote	-.261**	-.382***	-.292***	-.338***
	.770	.683	.747	.713
	(.083)	(.072)	(.076)	(.076)
% registered Republican	-.151	.304***		
	.860	1.355		
	(.119)	(.058)		
Penal punitiveness	13.819***		11.079***	
	1002998.000		64818.230	
	(2.842)		(2.149)	
Conservative punitiveness				7.218***
				1363.364
				(1.364)
% jail occupancy	-.166***	-.099***	-.151***	-.124***
	.847	.906	.859	.883
	(.030)	(.020)	(.029)	(.024)
Intercept	-29.372	-2.969	-23.545	-6.356
	(14.081)	(10.027)	(13.483)	(11.516)

3 - High Decreasing	MLogit 1	MLogit 2	MLogit 3	MLogit 4
Type 1 crime	-.001	-.001**	-.001	-.001*
	.999	.999	.999	.999
	(.001)	(.000)	(.001)	(.001)
% poverty	3.018***	1.511***	2.402***	2.010***
	20.461	4.530	11.047	7.460
	(.674)	(.222)	(.470)	(.360)
Income inequality	.931**	.363*	.695*	.515*
	2.537	1.437	2.004	1.673
	(.304)	(.173)	(.272)	(.214)
% black	.237	.488**	.407*	.428*
	1.268	1.630	1.502	1.535
	(.228)	(.161)	(.184)	(.172)
% Latino	-1.043***	-.251***	-.732***	-.499***
	.352	.778	.481	.607
	(.229)	(.046)	(.130)	(.085)
Racial/ethnic heterogeneity	-.107	.013	-.057	-.022
	.899	1.013	.945	.978
	(.069)	(.049)	(.069)	(.063)
Rural-urban continuum	-.532	-1.144***	-.736	-1.211*
	.587	.318	.479	.298
	(.659)	(.296)	(.642)	(.545)
% registered to vote	-.045	-.181*	-.142	-.110
	.956	.834	.868	.896
	(.145)	(.080)	(.135)	(.108)
% registered Republican	-.866**	.496***		
	.421	1.641		
	(.269)	(.095)		
Penal punitiveness	40.592***		21.596***	
	4.250		2.390	
	(10.370)		(4.368)	
Conservative punitiveness				12.456***
				256872.800
				(2.270)
% jail occupancy	-.070*	-.071**	-.060*	-.065*
	.932	.931	.941	.937
	(.028)	(.023)	(.029)	(.029)
Intercept	-35.879	-31.309	-43.480	-29.749
	(17.105)	(10.914)	(14.697)	(12.495)

4 - Low Increasing/stable	MLogit 1	MLogit 2	MLogit 3	MLogit 4
Type 1 crime	.000	.000	.000	.000
	1.000	1.000	1.000	1.000
	(.000)	(.000)	(.000)	(.000)
% poverty	-.333***	-.305***	-.268***	-.273***
	.717	.737	.765	.761
	(.063)	(.061)	(.059)	(.059)
Income inequality	.180*	.123	.066	.069
	1.200	1.131	1.069	1.072
	(.076)	(.071)	(.065)	(.066)
% black	-.054	.010	.084	.079
	.947	1.010	1.088	1.082
	(.079)	(.073)	(.063)	(.065)
% Latino	.055***	.061***	.060***	.061***
	1.057	1.062	1.061	1.063
	(.014)	(.014)	(.014)	(.014)
Racial/ethnic heterogeneity	-.081***	-.079***	-.057**	-.062**
	.922	.924	.944	.940
	(.021)	(.021)	(.019)	(.020)
Rural-urban continuum	-.557***	-.510***	-.447***	-.448***
	.523	.601	.640	.639
	(.138)	(.132)	(.112)	(.116)
% registered to vote	.069*	.071*	.076**	.075**
	1.072	1.073	1.079	1.078
	(.031)	(.030)	(.028)	(.028)
% registered Republican	-.191***	-.121***		
	.826	.886		
	(.037)	(.021)		
Penal punitiveness	.699*		-.618***	
	2.011		.539	
	(.291)		(.160)	
Conservative punitiveness				-.726***
				.484
				(.164)
% jail occupancy	-.015	-.015	-.009	-.010
	.985	.985	.991	.988
	(.008)	(.008)	(.008)	(.008)
Intercept	4.262	2.859	-2.375	-1.999
	(3.848)	(3.742)	(3.268)	(3.322)

5 - Middle Decreasing/stable	MLogit 1	MLogit 2	MLogit 3	MLogit 4
Type 1 crime	-.001**	-.001**	-.001**	-.001**
	1.000	1.000	1.000	1.000
	(.000)	(.000)	(.000)	(.000)
% poverty	.935***	.943***	.898***	.910***
	2.547	2.568	2.455	2.484
	(.112)	(.111)	(.107)	(.108)
Income inequality	.403**	.370***	.443***	.433***
	1.496	1.448	1.557	1.542
	(.133)	(.111)	(.129)	(.126)
% black	.622***	.624***	.572***	.583***
	1.863	1.867	1.771	1.791
	(.095)	(.092)	(.090)	(.090)
% Latino	-.137***	-.128***	-.155***	-.150***
	.872	.880	.856	.861
	(.026)	(.020)	(.024)	(.023)
Racial/ethnic heterogeneity	.021	.024	.028	.029
	1.022	1.024	1.029	1.029
	(.029)	(.027)	(.029)	(.029)
Rural-urban continuum	-.380*	-.371**	-.386**	-.398**
	.684	.690	.680	.672
	(.149)	(.144)	(.147)	(.148)
% registered to vote	-.167***	-.168***	-.153***	-.153***
	.847	.845	.859	.859
	(.046)	(.044)	(.045)	(.045)
% registered Republican	.066	.117***		
	1.068	1.124		
	(.053)	(.030)		
Penal punitiveness	.586		1.366***	
	1.798		3.919	
	(.631)		(.371)	
Conservative punitiveness				1.320***
				3.744
				(.346)
% jail occupancy	-.043***	-.040***	-.044***	-.042***
	.958	.961	.957	.959
	(.011)	(.011)	(.011)	(.011)
Intercept	-13.953	-15.341	-13.253	-13.272
	(6.925)	(6.557)	(6.881)	(6.763)

Legend: β/RRR/(se).

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

NOTE: Standard errors are reported for coefficients.

The coefficients estimate how each characteristic influences the probability of membership in the particular trajectory group relative to the Middle Increasing reference group (Group 2). Because the parameter estimates are relative to the referent, the standard interpretation of coefficients is that for a unit change in the predictor variable, the logit of falling into the comparison group versus the reference group is expected to change by its respective parameter estimate, holding all other variables in the model constant. Table 4.3 also reports the relative risk ratio (RRR), which offers another interpretation. The RRR indicates how the "risk" of falling into the comparison group versus the "risk" of falling into the reference group changes with the variable in question. An RRR of greater than 1 indicates that the comparison outcome is more likely, while an RRR of less than 1 indicates that the outcome is more likely to be in the reference group. While the coefficients most directly estimate the *direction* of effects, the RRRs help communicate the *intensity* of effects.[13]

Across all groups in all models, the Type 1 crime rate demonstrates minimal effects on assignment relative to the Middle Increasing group, holding all other factors constant. These results support previous findings that crime rates alone fail to adequately explain the variation in local penal practice. Similarly, the percentage of jail occupancy just slightly reduced the relative risk of assignment to a given group relative to the reference group, except for the Low Decreasing/stable group, in which jail occupancy lacked statistical significance in all models. Counties might have been expected to increase reliance on the state prison system if their local jail capacities were highly strained; however, based on results from this analysis, I conclude that jail occupancy was not a significant factor in shaping different trajectories of state prison use in the decade prior to Realignment. Rather, individual differences in county economic and racial

[13] Based on fit statistics from likelihood ratio and Wald tests on all combinations of categories, I rejected the hypothesis that the variables included do not differentiate between categories.

demography, urbanization and politics appear to have distinguished high, middle and low imprisonment trajectory groups from the statewide norm.

"Risk" factors for high incarceration

Across all models, high poverty rates, income inequality and the percentage of the black population are associated with assignment to the High Increasing and High Decreasing groups relative to the reference group (Middle Increasing). High degrees of urbanization also increase the likelihood of assignment to a high-level group, with a one unit increase along the rural-urban continuum (indicating greater rurality) reducing the likelihood of assignment to either group. Across Models 2-4, the risk of assignment to one of the high groups is anywhere from 4 to 11 times that of the referent for every one percent increase in poverty, holding the other variables constant. A one unit increase in the degree of income inequality increases these group assignments' likelihood by as much as 3.217 that of the reference group. The percentage of the black population made assignment to the High Increasing group approximately twice as likely as assignment to the referent and assignment to the High Decreasing group slightly greater than to the referent.

On the other hand, an increase in the percentage of the Latino population consistently reduces the likelihood of these group assignments to roughly half that of the referent, with the likelihood of assignment to the High Increasing group ranging from .438 to .666 across all models and, for the High Decreasing group .352 to .778. Racial/ethnic heterogeneity was not statistically significant with respect to the High Decreasing group in any model. While greater racial/ethnic heterogeneity increased the relative risk of assignment to the High Increasing group

in Model 2, when the factors that capture penal punitiveness were included in the other models, its effects failed to reach statistical significance.

Regarding politics, the construct of “penal punitiveness” appears more clearly indicative of high incarceration group assignment than Republican party affiliation. Model 4 demonstrates that the combination of both Republican affiliation and penal proposition voting contained in the conservative punitiveness factor offers the most predictive value for assignment to each of the groups relative to the reference group. However conflating these constructs may mask important differences. In Model 1, which attempts to isolate the effects of each separately, the percentage of voters registered Republican is not statistically significant for the High Increasing group, while the penal punitiveness factor appears to increase the likelihood of assignment exponentially. For the High Decreasing group, both measures are statistically significant but exert effects in opposing directions, and in Model 2, the Republican coefficient changes signs when penal punitiveness is not controlled.

Like the proportion of the Latino population, political participation regardless of political affiliation may serve as a “protective” rather than “risk” factor for high state prison use relative to the norm. An increase in the percentage of the population registered to vote made assignment to the High Increasing group less likely at statistically significant levels across models, and less likely to the High Decreasing group at statistically significant levels in Model 2.

Factors associated with mid-range incarceration

Many of the same demographic characteristics found to be risk factors for high incarceration also predicted membership in the Middle Decreasing/stable group relative to the reference group. However, the intensity of economic risk factor effects (increased poverty and

income inequality) was notably less for the mid-range group, as was the intensity of "protective" factor effects. The percentage of the black population exerted similarly intense positive effects on group assignment. However, the negative effects of the percentage Latino were less drastic in reducing the likelihood of mid-range group assignment (with RRRs from .856 to .880 across all models, compared to RRRs falling below 4 in some high incarceration group models). Similarly, while increased rurality and the percentage registered to vote consistently reduced the likelihood of mid-range group assignment, the intensity of each variable's effects was less than for the high-level groups.

Unlike model results for the high incarceration groups, the Republican, penal punitiveness and conservative punitiveness measures appear to tell the same story across all models for the Middle Decreasing/stable group. In Model 1, neither of the estimates for the percent of voters registered Republican nor the penal punitiveness factor rose to statistically significant levels, yet they each exerted significant, positive effects in Models 2 and 3. The similarly significant, positive effects for the conservative punitiveness factor shown in Model 4, which captures both measures, indicate that they approximate the same general construct rather than meaningfully distinct constructs. Thus, while I found penal proposition voting behavior more dispositive in predicting high incarceration group membership—and Republican affiliation to be an insufficient predictor on its own—such disaggregation is not necessary in models predicting membership in the mid-range group.

Factors that distinguish relatively low incarceration

As expected, results for the models predicting membership in the Low Increasing/stable group (the only group that deviates downward from the reference group) show effects in the

opposite direction. The same characteristics that serve as “risk” factors for high incarceration decrease the likelihood of membership in the low-level group. Likewise those factors that “protect” against high incarceration increase the likelihood of membership in this group.

Only the political characteristics appear to take on different meanings. The percentage of Republican voters is a negative predictor of low group assignment, while punitive voting patterns on penal ballot initiatives appear to positively predict low group assignment, net of Republican affiliation. However, when each measure is included separately, or combined into one factor, the results replicate the significant, negative effects of the Republican measure. When the Republican and penal punitiveness measures are combined via the conservative punitive factor in Model 4, the RRR falls to .484 – making it less than half as likely that a county with relatively high conservative punitiveness would fall within the Low Increasing/stable group. This suggests that, for relatively low imprisonment groups, while Republicanism and penal punitiveness are distinct constructs with divergent effects, levels of Republicanism in general tend to overshadow the effects of penal punitiveness in particular. Therefore, Republican measures may be more reliable for predicting low imprisonment trajectories; however, such measures may mask an important nuance of the relationship between penal punitiveness and low imprisonment trajectories: even in counties with relatively low Republican partisanship, support for punitive penal policies at the ballot box may be strong – in other words, party affiliation does not necessarily track “law and order” politics in liberal counties.

Table 4.4 presents a conceptual summary of the potential predictors of high, middle and low imprisonment trajectories based on these findings. In this table “high” imprisonment trajectories refer to High Increasing (1) and High Decreasing (3) trajectory group assignments;

“middle” refers to Middle Increasing (2) and Middle Decreasing/stable (5) trajectory group assignments; and “low” refers to Low Increasing/stable (4) trajectory group assignment. The symbol “+” indicates a statistically significant positive association; “-” indicates a statistically significant negative association; and “.” indicates no found statistical significance. The “*” symbols indicate that the percentage of voters registered Republican is a better predictor of mid-range (“+”) and low imprisonment (“-“) trajectories than the percentage who votes ‘yes’ on punitive penal propositions, whereas for high imprisonment trajectories, the percent voting ‘yes’ on punitive penal propositions is the superior predictor.

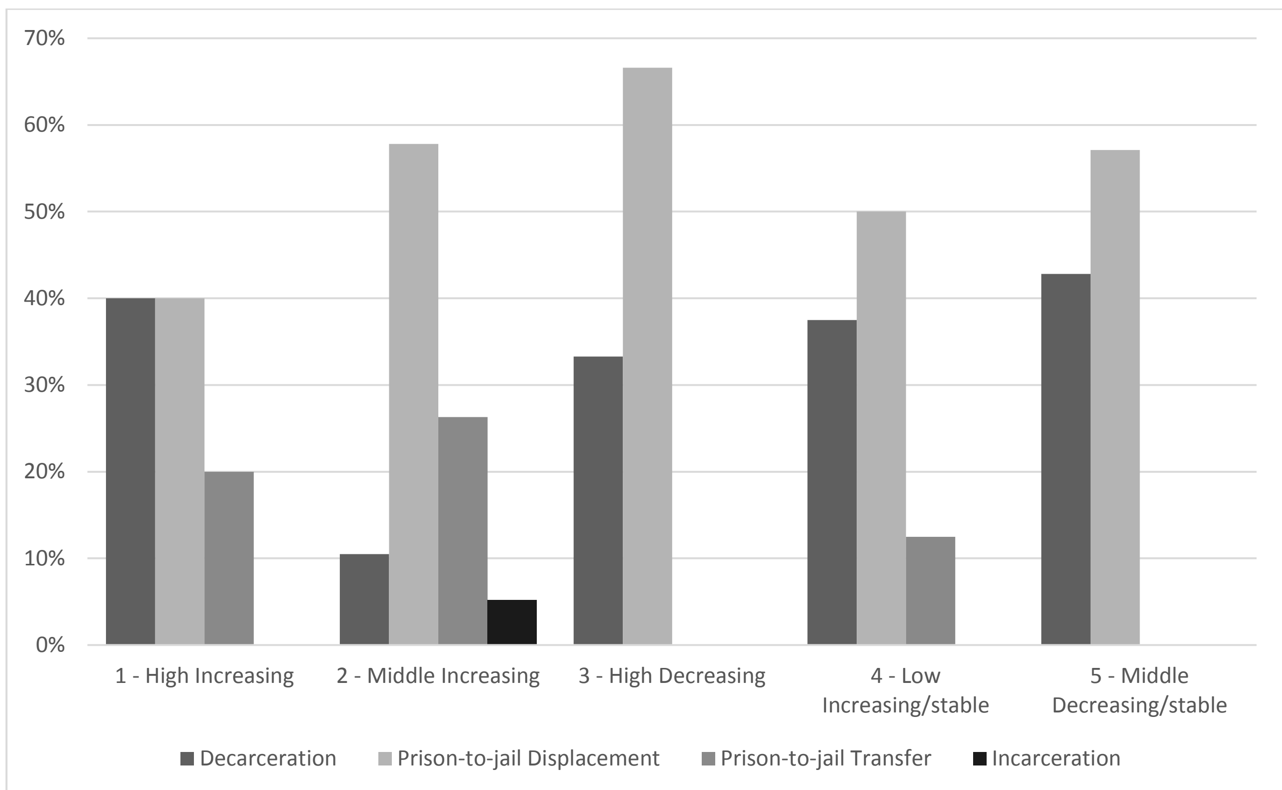
TABLE 4.4
Conceptual Summary of Potential Predictors of Imprisonment Trajectories

	“High” Imprisonment	**“Middle” Imprisonment**	**“Low” Imprisonment**
Type 1 crime rate	.	.	.
% poverty	+	+	-
Income inequality	+	+	-
% black	+	+	-
% Latino	-	-	+
Racial/ethnic heterogeneity	.	.	.
Degree of urbanization	+	+	-
% registered to vote	-	-	+
% registered Republican	.	+*	-*
% ‘yes’ on punitive penal propositions	+*	+	+
% jail occupancy	.	.	.

Trajectories of State Prison Use and Decarceration under AB 109

Figure 4.4 depicts the distribution of the four observed AB 109 responses across groups (system-wide decarceration, prison-to-jail displacement, prison-to-jail transfer or an increase in system-wide incarceration). The 17 counties in which decarceration was observed were distributed as follows: the Middle Decreasing/stable (Group 5) and Low Increasing/stable group (Group 4) each contained six decarcerating counties; the High Increasing (Group 1) and Middle Increasing group (Group 2) each contained two decarcerating counties, and the High Decreasing group (Group 3) contained one county that decarcerated.

FIGURE 4.4
County AB 109 Responses, by Trajectory Group, 2000-2009



Results from a bivariate analysis (Fischer’s exact test) of the relationship between trajectory group membership and decarceration show that differences in decarceration across the groups, as of June 2012, are statistically significant. However, a bivariate approach does not control for alternative explanations and, in particular, the possibility that the same characteristics found to explain trajectory group membership adequately explain decarceration under AB 109, net of the different developmental paths counties took with respect to state prison use in the decade prior to Realignment.

Table 4.5 reports results from four sets of binomial logistic regression models. Within each set, a model was estimated with and without the inclusion of dummy variables for membership within each of the trajectory groups 1, 3, 4 and 5. Group 2 (Middle Increasing) is once again used as the reference group, and the parameter estimates for each trajectory variable are interpreted as comparing a given group to the referent on the outcome of decarceration. As with the previous analysis, each set of models controls for the same crime, demographic and capacity variables but differs in the political variables included.

TABLE 4.5
Binomial Logistic Regression Models Predicting Decarceration under AB 109

	Model 1a	Model 1b	Model 2a	Model 2b	Model 3a	Model 3b	Model 4a	Model 4b
Type 1 crime	.00**	.00*	.00**	.00	.00**	.00*	.00**	.00*
	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	(.00)	(.00)	(.00)	(.00)	(.00)	(.00)	(.00)	(.00)
% poverty	.15***	.18**	.14***	.15**	.16***	.18**	.16***	.17**
	1.16	1.20	1.15	1.17	1.17	1.20	1.17	1.18
	(.03)	(.06)	(.03)	(.06)	(.03)	(.06)	(.03)	(.06)
Income inequality	.04	.02	.06	.07	.03	.02	.03	.03
	1.04	1.02	1.06	1.07	1.03	1.02	1.03	1.03
	(.05)	(.05)	(.04)	(.05)	(.04)	(.05)	(.04)	(.05)
% black	-.08	-.14*	-.09	-.17**	-.06	-.14**	-.07	-.15**
	.92	.87	.91	.84	.94	.87	.93	.86
	(.05)	(.05)	(.04)	(.05)	(.04)	(.05)	(.04)	(.05)
% Latino	-.01	.01	-.01	-.00	-.01	.01	-.01	.01
	.99	1.01	1.00	1.00	.99	1.01	.99	1.01
	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)
Racial/ethnic heterogeneity	.01	.03	.01	.03	.01	.03	.01	.03
	1.01	1.03	1.01	1.03	1.01	1.03	1.01	1.03
	(.01)	(.02)	(.01)	(.02)	(.013)	(.02)	(.01)	(.02)
Rural-urban continuum	.20**	.59***	.19**	.51***	.19**	.59***	.20**	.58***
	1.22	1.81	1.21	1.67	1.21	1.81	1.22	1.78
	(.08)	(.11)	(.08)	(.10)	(.074)	(.11)	(.07)	(.11)
% registered to vote	-.00	.00	.00	.01	.00	.00	-.00	.00
	1.00	1.00	1.00	1.01	1.00	1.00	1.00	1.00
	(.02)	(.02)	(.02)	(.02)	(.02)	(.02)	(.02)	(.02)
% registered Republican	-.05	.01	-.07***	-.07***				
	.95	1.01	.94	.94				
	(.03)	(.03)	(.01)	(.02)				
Penal punitiveness	-.23	-.84**			-.58***	-.80***		
	.80	.43			.56	.45		
	(.23)	(.32)			(.13)	(.18)		
Conservative punitiveness							-.62***	-.78***
							.54	.46
							(.13)	(.17)

% jail occupancy	.01	.01	.01	.01	.01	.01	.01	.01
	1.01	1.01	1.01	1.01	1.01	1.01	1.01	1.01
	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)	(.01)
1-High Increasing		3.05***		2.69***		3.1***		3.02***
		21.15		14.77		21.10		20.47
		(.64)		(.60)		(.64)		(.63)
3-High Decreasing		1.62*		1.15		1.61*		1.55*
		5.03		3.15		4.99		4.71
		(.71)		(.68)		(.71)		(.70)
4-Low Increasing/stable		3.52***		3.25***		3.5***		3.41***
		33.77		25.85		32.97		30.24
		(.47)		(.45)		(.44)		(.44)
5-Middle Decreasing/stable		2.02***		1.97***		2.03***		2.05***
		7.52		7.16		7.59		7.79
		(.50)		(.49)		(.50)		(.50)
Intercept	-2.88	-9.97	-2.64	-8.12	-4.67	-9.77	-4.51	-9.83
	(2.80)	(3.19)	(2.79)	(3.05)	(2.63)	(2.95)	(2.63)	(2.95)

Legend: β/OR/(se).

*$p < .05$ **$p < .01$ ***$p < .001$.

In addition to coefficient estimates, which are interpreted as in the previous multinomial models, Table 4.5 also reports the odds ratio for each variable. An odds ratio of greater than 1 indicates that the decarceration outcome is more likely than all other observed AB 109 responses with a one-unit increase in the variable, while a ratio of less than 1 indicates that decarceration is less likely. I also examined y-standardized coefficients, which indicate that unobserved heterogeneity has not undermined the comparisons I make across models (see Mood 2010).

The results of Models 1a-4a, which do not include the trajectory variables, diverge somewhat from previous analyses. Across these models, increased poverty and rurality are consistently associated with decarceration under AB 109 at statistically significant levels, while an increase in the crime rate shows a slightly negative effect across models. The percentage of voters registered Republican, the penal punitiveness factor and the conservative punitiveness

factor achieved statistical significance in Models 2a, 3a and 4a, respectively, each predicting less decarceration. While the penal punitiveness and conservative punitiveness factors appear to make decarceration approximately half as likely as the other scenarios, holding all other variables constant, an increase in the percentage of voters registered Republican exerted weaker effects, reducing the odds of decarceration to slightly below 1. In my previous analysis, I found high poverty rates and degrees of urbanization to predict high and/or increasing imprisonment trajectories in the decade preceding Realignment; paradoxically, here, high poverty increases the likelihood of decarceration as well. I did not find a clear association between crime rates and trajectories of state prison use, nor do these models indicate a clear directional association with decarceration under AB 109. Additionally, my previous analyses found a positive association between the percentage registered to vote and lower and/or decreasing trajectories of state prison use; however, this variable was not significant in explaining decarceration. While the effects of the percentage of the population African American and the percentage Latino were significant in explaining previous trajectories of state prison use (with the percentage African American predicting high or increasing trajectories and the percentage Latino predicting low and/or decreasing trajectories), neither variable exerted statistically significant effects in Models 1a-4a.

When the trajectory variables are added in Models 1b-4b, the percentage in poverty and the degree of rurality remain positively associated with decarceration at statistically significant levels, and the direction and significance of effects for the Republican, penal punitiveness and conservative punitiveness variables remain unchanged. However, the percentage of the black population demonstrates significant negative effects, reducing the ratio of the odds of decarceration versus all other observed AB 109 responses to between .84 and .87 across models. In comparison to the Middle Increasing reference group, counties falling within the High

Increasing and Low Increasing/stable groups demonstrated the greatest odds of decarcerating across all models, regardless of differences in crime, demographics, politics and jail occupancy. While counties falling within the High Decreasing and Middle Decreasing/stable groups were also more likely than the reference group to have decarcerated under AB 109, membership within one of these groups appears to make decarceration only slightly more likely in comparison to the High Increasing and Low Increasing/stable groups.

These results suggest that previous trajectories of state prison use that were are already at relatively low levels compared to the norm (the Low Increasing/stable group) made decarceration the most likely response to AB 109, regardless of differences individual county characteristics. At the same time, exceedingly high levels of state prison use that had been on an increasing trajectory (the High Increasing group) *also* appear to have the greatest odds of decarcerating. Counties with trajectories that had already declined in the decade prior to Realignment (the High Decreasing and Middle Decreasing/stable groups) were less likely than the rest to respond to the reform by decarcerating, net of local differences. These results provide evidence that historical imprisonment trajectories exert significant, independent effects on the outcome of decarceration under AB 109. While certain county demographic and political characteristics remain important factors, the distinct developmental pathways that counties followed with respect to state prison use in the 2000s are just as—perhaps more—important in explaining decarceration in the wake of Realignment.

Conclusion: Toward a Typology of Local Variation

The National Research Council's (2014:430) proposed agenda on incarceration calls for "studying the cluster of conditions and variations in the cluster across time and space" and

describing “variation in the pattern of correlations…in a way that would be useful for analysis.” The present study begins to answer this call.

Results from the multivariate analysis of California counties’ reliance on state prisons in the decade leading up to Realignment may build toward a more general typology that associates local characteristics with comparatively high, middle and low imprisonment trajectories. In this case, I found poverty, income inequality, the percentage of the black population, urbanization and the percentage of voters registered Republican to be strongly associated with high prison use. Conversely, the percentage of the Latino population and the percentage registered to vote were strongly associated with comparatively low prison use. Crime did not figure into this typology as clearly associated with any particular trajectory, providing additional evidence that imprisonment does not function as a straightforward tool for crime control. I also found that, while jail capacity constraints should be controlled for in assessing the effects of other predictors, they explained relatively little about the distinct trajectories of state prison use from 2000-2009.

Results further indicate that explanations for the phenomenon of decarceration do not precisely mirror those of incarceration. For example, high poverty rates are at once distinguishing characteristics of counties with high and/or increasing imprisonment trajectories as well as those most likely to decarcerate in response to AB 109. I also found many of the variables significant for explaining incarceration to appear irrelevant as explanations for decarceration. An increase in the percentage of African Americans notably distinguished high imprisonment trajectory group counties but appeared to play a role in distinguishing counties on the basis of decarceration only when previous imprisonment trajectories were controlled for. Conversely, while high Latino percentages were among the most consistent distinguishing

characteristics of counties with relatively low imprisonment trajectories, they did not demonstrate an association with decarceration. While the political variables diverged across trajectory groups with respect to explaining state prison use, whether measured in terms of Republican partisanship or, more specifically, penal punitiveness or conservative punitiveness, these variables were consistently significant negative predictors of decarceration.

Current theories do not explain these divergent findings, nor the characteristics that emerged as “protective” factors against high imprisonment trajectories and the displacement of incarceration to local jails. In particular, theoretical emphases on conservative political partisanship and “law and order” politics may have overlooked the local dynamics of political participation in general and, perhaps relatedly, voter engagement with penal policy in particular (as reflected in the respective measures of the percentage registered to vote and patterns of support for relevant voter propositions). I also found models that included developmental variables for previous imprisonment trajectories to better explain decarceration under AB 109 than the time-fixed county characteristic variables. Such developmental variables that capture the potential path dependencies of organizational patterns of past practice may enhance existing explanations of incarceration as well.

This study’s findings are limited to demonstrating associations between historical imprisonment, local characteristics and decarceration under AB 109. Future research should examine the causal connections and mechanisms that explain these relationships. This will necessarily entail accounting for other plausible predictors of carceral behavior and legal implementation, including policy and fiscal developments in domains seemingly unrelated to criminal justice (see e.g., Campbell 2016), as well as the human agency displayed by individual practitioners and politicians who make decisions and take concrete action under idiosyncratic

local conditions and contingencies in the penal field (see Goodman, Page & Phelps 2014). At the same time, these limitations should be considered in light of the National Research Council's (2014:430-431) rationale for promoting such research:

> …it is not a score on a scale but the strength of association of incarceration with other variables that may be consequential for social science and for policy. Motivation for examining the pattern of correlation—rather than trying to isolate the effects of individual factors—might derive from both a high level of interaction operating with incarceration and its correlates and a high level of feedback of endogeneity operating among the factors. In this context, efforts to assess individual causal effects will result in misspecification. Studying the cluster of conditions and variations in the cluster across time and space emerges as an important research priority.

The developmental process, or life course, of U.S. incarceration delivers an interactive context for legal interventions, whether by courts, as in *Brown v. Plata* (2011), legislatures, as with AB 109 (2011), or more recently, by voters, as with Proposition 47 (2014). While the path dependencies and legacies of past policy and practice may constrain future reform implementation, the life course perspective draws attention to the possible turning points and opportunities for change that the contingencies of history and local context create. Realignment has presented one such turning point in California. The federalist paradox is that even if a national policy shift to decarceration comes to fruition, it will diffuse and filter in distinct ways to the local level, where its implementation is contingent on a range of local conditions, including the local legacies of organizational practice left behind by mass incarceration.

Chapter 5

The Great Experiment, Revisited – Legal Change and Local Legal Regimes

This chapter reflects on theoretical implications of the previous empirical analyses for the problematic of legal change and existing conceptualizations of decarceration. The county practitioner work groups tasked with planning for and implementing Realignment (see Figure 1.1) are revisited as empirical and theoretical pivot points for understanding how legal reform is translated on the ground in distinctive locales. Based on a synthesis of findings from the qualitative (Chapter 3) and quantitative (Chapter 4) examinations of local variation in work group culture and penal practice, a conceptual framework is presented, which analyzes questions of legal change as potential legal "events" (see Sewell Jr. 2005) that take shape within local legal "regimes" (see Tilly 2006; Wilson 2000). The chapter concludes by proposing future qualitative field research within counties that could be probabilistically selected to represent the divergent trajectories of state prison reliance identified in Chapter 4. Such research could examine the proposition that local organizational culture mediates the implementation of legal reform on the ground, and that variation in county organizational cultures explains why the law changes under Realignment seem to have led to decarceration in some jurisdictions but not others.

Synthesis of Findings on Local Variation, Imprisonment Trajectories and Decarceration

Synthesizing results from the empirical analyses presented in Chapter 4 (see Table 4.4), Table 5.1 depicts a conceptual typology that relates the associations found between county characteristics, imprisonment trajectories in the decade preceding Realignment (2000-2010) and decarceration responses under AB 109 (2011).

TABLE 5.1
Conceptual Typology of Local Variation, Imprisonment Trajectories and Decarceration

	"High" Imprisonment	"Middle" Imprisonment	"Low" Imprisonment	Decarceration
Type 1 crime rate	.	.	.	.
% poverty	+	+	-	+
Income inequality	+	+	-	.
% black	+	+	-	+/-
% Latino	-	-	+	.
Racial/ethnic heterogeneity	.	.	.	.
Degree of urbanization	+	+	-	.
% registered to vote	-	-	+	.
% registered Republican	.	+*	-*	-
% 'yes' on punitive penal propositions	+*	+	+	-
% jail occupancy	.	.	.	.

These results lead to several surprising findings with respect to previous research on inter-jurisdictional penal variation and current theories of punishment and social control. First, common predictors of incarceration may not be consistent across groups of counties with comparatively high, mid-range and low imprisonment trajectories over time. In my analysis of the 2000-2010 time period, Republican voter affiliation was insignificant as a predictor of high imprisonment trajectories but significant in predicting mid-range and low trajectories. For counties with high imprisonment trajectories, the measure of Republican affiliation appeared to mask the more significant political predictor (indicated by the "*" symbol in Table 5.1): the percentage of voters who supported punitive ballot propositions (what I refer to as *penal punitiveness* in my study). However, Republican voter affiliation remained a better predictor for counties with comparatively mid-range or low imprisonment trajectories than the more specific measure of penal punitiveness (indicated by the "*" symbols in Table 5.1). These findings challenge an assumption underlying political measures as sometimes deployed in quantitative punishment research (e.g., Jacobs & Carmichael 2001): that the meaning of political affiliation is derived exogenously and holds constant across local political cultures, where Republican party affiliation may not map neatly onto the local politics surrounding crime control.

Additionally, analyses revealed that higher proportions of Latinos and registered voters, regardless of political affiliation, predicted lower imprisonment trajectories during this time period. This suggests that political participation is itself a salient feature of local jurisdictions that may reflect the degree of openness or closure in the political cultures that shape county-level criminal justice practice. In turn, relatively open or closed political cultures stand to shape the political opportunity structures in which legal mobilization takes place on the ground in local communities. These localized political opportunity structures may have particularly significant

implications for the prospects of criminal justice reform advocacy by people of color at the county or municipal governmental levels (see Miller 2008), as well as for whether and how decarceration is articulated and interpreted as a reform goal at the local level (see Schept 2015).

While I found that a higher proportion of the African American population was a significantly positive predictor of high and mid-range imprisonment trajectories, echoing previous findings in support of racial threat theories (see generally, Liska 1992), the strong relationship I found between high proportions of Latinos and comparatively low imprisonment remains unexplained. An emerging wave of research has engaged with the complexity of group threat theory (see Blalock 1960; 1967; Blumner 1958) and its application across variant local settings by examining how the mechanisms and processes that relate race, crime, neighborhoods and social control might differ across contexts (e.g., Jackson 1992; Ward, Farrell & Rousseau 2009) and how the very meaning of racial categories relates to varying political opportunity structures (Lyons, Vélez & Santoro 2013; Owens, Cunningham & Ward 2015; Vélez, Lyons & Santoro 2015). The work of Vélez and colleagues (2015) draws on political opportunity and political process models from social movements theory (e.g., Meyer 2004; McAdam 1982; 1996) to contextualize race as a relational construct depending on local regime receptivity or vulnerability to racial demands, which social movement scholars refer to as "open" versus "closed" regimes (e.g., Eisinger 1973; Tilly 1978). The findings of my current study point to the need for future examinations of the differences between African American and Latino political opportunities and racial category constructions within county-level regimes, and especially how inter-county variation shapes differences in the relational construct of race and the political opportunities that attach.

The results reported in Chapter 4 also indicate that explanations for the phenomenon of *decarceration* do not precisely mirror those of incarceration, providing an empirical counterpoint to the existing dictionary definition of decarceration as “the opposite of incarceration” (Oxford Dictionary of Sociology 2009). Research uses a variety of quantitative indicators to measure the outcome of incarceration—in this study, rates of new felony admissions to California state prisons and the average daily populations (ADP) of county jails are examined. Regardless of the particular measure chosen, the incarceration outcome variable used in any study originates from a conceptualization of the *process* of incarceration. So too, decarceration is not a self-evident outcome variable but measured according to a theoretical or observed *process* of decarceration. My empirical analysis suggests that incarceration and decarceration are distinct processes and that the distinctions between their processes may be as consequential as their divergent outcomes.

Clear and consistent definitions of decarceration remain as elusive as its process. As discussed in Chapter 2, decarceration has been straightforwardly defined as “the process of removing people from institutions such as prisons or mental hospitals,” but in the same dictionary entry defined through a process of displacement, “in which people are moved sideways from one kind of institution to another” (Oxford Dictionary of Sociology 2009). Scull (1977:1) offers yet another definition of decarceration as the process of being “left at large.” Results from Chapter 4 are limited to quantitative assessments of decarceration as an outcome measured by calculating the pre-post AB 109 change in county jail and state prison ADPs (see also Lofstrom & Raphael 2013; Verma 2016). Despite the preliminary nature of results based on a relatively brief time period (the pre-AB 109 time period of September 2010-June 2011 and the post-AB 109 time period of October 2011-June 2012), even these early findings contribute to an

underdeveloped empirical picture of decarceration, which informs how decarceration may be theoretically defined, conceptualized and ultimately gauged in its 21st-century manifestation as a kind of "great experiment."

My findings for the outcomes of incarceration and decarceration converged in some respects. A wide body of research has shown that crime rates do not adequately explain incarceration rates (see National Research Council 2014:44-47); my study replicates these findings with respect to incarceration while also providing empirical evidence that crime rates are insignificant in explaining the outcome of decarceration. Although Coates (2015) writes that the prospect of decarceration "is essentially rooted in the weather" of crime rates, my analysis suggests that, like the process of incarceration, crime may be a distal rather than the proximate condition for decarceration. In addition, the jail capacity constraints of counties, which might have been predicted to positively affect both the use of state prisons and decarceration as different kinds of county responses to the problem of jail overcrowding, indicated no significant effects on either outcome.

However, my divergent findings provide evidence for meaningful distinctions between incarceration and decarceration as social and institutional processes. The poverty rate demonstrated the significant positive effects on incarceration as predicted in previous studies yet was also found to be a significant positive predictor of decarceration in my study. While the proportion of the African American population yielded consistently positive effects on high and mid-range imprisonment trajectories, also in line with previous research, my findings were mixed as to its effects on decarceration, as the percentage black variable only appeared to distinguish counties on the basis of decarceration when previous imprisonment trajectories were controlled for in models. In the same vein, while the proportion of Latinos was a significant and

consistently negative predictor of high imprisonment, it was not found to be statistically significant in predicting decarceration. Regarding politics, decarceration appears not to be influenced in either direction by the percentage of the population registered to vote, whereas the percentage registered to vote demonstrated a significant negative effect on high and mid-range imprisonment trajectories. Finally, the statistically significant negative relationship between decarceration and the targeted measure of voters' penal punitiveness was stable and consistent with that of the traditional Republican voter affiliation measure.

These divergences lead to several hypotheses about distinctions in the process of decarceration. First, poverty may play a different role in shaping decarceration than it does in shaping high incarceration; whereas incarceration is theorized as a process to contain social threats posed by the poor (see e.g., Rusche & Kirchheimer 1939), decarceration may be a process that cannot as easily insulate itself from the lack of county-level resources needed to sustain high levels of jail confinement. The mixed or insignificant role of racial and ethnic demographics in predicting decarceration may also reflect that the political economy of decarceration at the local level is premised more on practical resource constraints than on the racialized cultural punitiveness theorized to drive disproportionately high incarceration of people of color (see e.g., Gilmore 2007; Wacquant 2001). A competing hypothesis arising from my findings with respect to the Latino population is that, by the 21st century, the political and institutional locus of social control over this population has effectively migrated away from the criminal justice system to the immigration detention and deportation system. Accordingly, the variation among local-federal law enforcement agency cooperation and inter-governmental collaboration in the immigration field may reveal patterns in county responses to the state's mandates under Realignment in the criminal justice field. This relates to my qualitative findings in Chapter 3 about differences

between High Imprisonment Legacy and Low Imprisonment Legacy counties' legal logics and their interpretations of the legitimacy of legal regulation from higher levels of government (see Table 3.3). Decarceration may also be a process that is less sensitive to popular politics and more influenced by relatively internal legal, professional and organizational cultures within counties, which could explain the insignificance of the percentage registered to vote variable, as well as the finding that voter proposition measures are no more predictive than party affiliation on the outcome of decarceration.

The initial results presented in Chapter 4 do not lead to firm or final conclusions about AB 109's effect on the outcome of decarceration, or any effects the law may have had in shaping the process of decarceration itself. In tracing the interpretive processes used by county practitioners at an early stage of AB 109's planning and implementation, the qualitative results presented in Chapter 3 suggest fruitful lines of inquiry for future research on these mechanisms. Taken together, the main contribution of my qualitative and quantitative analyses so far has been to provide empirical support for theoretical development and future examinations of decarceration as a process distinct from that of incarceration, as well as to motivate a set of hypotheses about its particular dimensions of distinction. Even with these limitations, however, my research speaks to preliminary results of Realignment's "experiment" on the particular outcome of decarceration, which risks becoming overshadowed by overwhelming interests in the outcomes of crime and recidivism. What my research has not been able to so far gauge is the "greatness" of Realignment's experiment, regardless of its particular results. The problematic of legal change remains.

Gauging the "Greatness" of Realignment as an Experiment in Legal Change

Change is common. Transformation is rare. William Sewell Jr. (2005) distinguishes transformation as the durable transformation of structures—whether material, institutional or cultural—that shape and constrain human action. The discourse of "social change" expresses the ideal of reform as transformation, not common change. When institutions and organizations "change," they often change in the common sort of way that resists threats to survival by adapting so as to maintain and reproduce basic structures (see generally Powell & DiMaggio 1991). Therefore, isomorphism (or stasis) itself does not call for explanation so much as the precise and previously unseen ways that it manifests (see e.g., DiMaggio & Powell 1983). Instances of transformative change despite the proverbial "iron cage," however, need to be explained: Why here? Why now? By what means and under which conditions?

The "eventful sociology" described by Sewell, Jr. (2005) differentiates "events" from "most happenings": "events" are "that relatively rare subclass of happenings that transforms structures," while "most happenings…reproduce social and cultural structures without significant changes" (2005: 100). Do the three legal interventions explored in this study, *Brown v. Plata*, AB 109 and Proposition 47, qualify as legal "events"?

My empirical examination of California's Realignment began with a focus on the county work groups tasked with planning for and implementing AB 109 (see Figure 1.1) as empirical and theoretical pivot points for understanding how legal reform is translated on the ground in distinctive locales. I approached the analysis presented in Chapter 3 from an institutional ethnographic perspective and, in particular, Dorothy Smith's (2006:67) elaboration of the "Act-Text-Act" sequence, wherein texts are analyzed as themselves important occurrences and embedded within a larger sequence of actions related to local legal implementation. Below, I

sketch out a conceptual framework that extends this institutional ethnographic approach to the problematic of legal change.

A Conceptual Framework for the Problematic of Legal Change

The starting point for institutional ethnographic research is identifying a practical "rupture" or "disjuncture" in day-to-day institutional settings that potentially conveys important dimensions of the social organization of a broader "problematic" (Smith 2005). Such an approach situates the dilemmas experienced by county criminal justice practitioners in the wake of three 21st century legal interventions into California's prison overcrowding as such disjunctures with the potential to shed light on the broader problematic of prison downsizing, or decarceration, through top-down legal intervention. The normative orientation of this project is to reveal how the reform of mass incarceration "works" (or does not) in order to benefit people who are incarcerated and their efforts to reform criminal justice and resist systematic oppression; this orientation is pursued from the *empirical* standpoint of the everyday work of criminal justice practitioners who implement law and policy reform at the organizational level.

A *disjuncture* is understood by institutional ethnographers as a moment that "chafes" in the everyday world of people in the study. Disjunctures can be thought of as the many small or provisional "problematics" that are eventually discovered as fully encompassed by *the* problematic. From a data collection and analysis perspective, disjunctures are empirical breadcrumbs on the trail to crystallizing this problematic. The disjunctures revealed by "studying up" (see Nader 1972) from the standpoint of criminal justice practitioners are distinct from the "chafes" experienced by those imprisoned and potentially illuminate a new dimension of how mass incarceration policy is organized, and particularly in response to reform attempts.

The recent legal reforms to mass incarceration in California came in three forms: a judicial mandate (*Brown v. Plata* 2011), a legislative mandate (AB 109 2011) and a voter initiative (Proposition 47 2014). The emerging research on California's prison downsizing provides empirical evidence that these distinct legal forms, which conceptually present distinct disjunctures for criminal justice practitioners, have "chafed" practitioners with certain roles and at different governmental levels in particular ways (see e.g., Pennypacker & Thompson 2014; Petersilia 2014; Schlanger 2013). For example, the practical "rupture" for the Governor and state prison administrators was how to comply with the *Plata* order, which necessitated a nearly 40,000-person reduction in the state prison population within two years. As a response to the *Plata* "rupture," the AB 109 legislation created an array of disjunctures for county-level practitioners, and particularly sheriffs, who had to find space for a sizeable class of new inmates in already-overcrowded local jails (see e.g., Chapter 3; Verma 2015). Most recently, the passage Proposition 47 has been decried by police chiefs as contributing to an uptick in crime (see e.g., American Civil Liberties Union 2015; Bird et al. 2016).

Taking these disjunctures seriously, including their differences in kind and their dynamics across governmental levels, not only adds to a more nuanced specification of how the reform of mass incarceration is socially organized but also complicates the standpoint of criminal justice practitioners as "rulers" and not, in certain respects, themselves "ruled." Liebling (2001: 473) provokes: "What if we sympathize with everyone—offenders (the subordinates), and those who label, convict them, and wield power over them (the superordinates) too?" This study does not "sympathize" with the organizational actors examined; it does aim to provide a necessary empirical treatment of their work.

Governmental changes in particular policy domains can be windows into the social organization of that policy area, and of "policy" itself. How do problems become defined as "policy" problems and thus sites of governmental intervention? By whom, and to serve which interests? The social organization of governmental policy, put differently, is no less than the social organization of governmental power. Social organization entails patterning in both the activities and relations that lead social life to happen the way it does. Seeing how people's seemingly individual, ordinary activities are socially organized and coordinated by common structures reveals what Smith (2005) calls the "ruling relations" of society and "technologies" of ruling by which power exercised in local settings accomplishes extra-local interests. Without understanding the larger social organization of governmental power, one cannot explain governmental change and the conditions that make reform possible, nor distinguish transformation from mere adaptation. For this reason, the study of policy reform cannot be divorced from the study of how governmental power is legitimated and sustained in the first place; only then can it be understood how power is organized in the face of attempted reform.

Regimes are a way of conceptualizing structures of power. Regimes can exist within geographical or jurisdictional areas, certain policy or topical domains and/or particular historical eras (Wilson 2000). *Regimes* refer to the social organization of governmental power, and transformations in governance can be conceived in terms of *regime change* (or *regime shifts*) (see Tilly 2006). Charles Tilly (2006:19) writes: "A *regime* means repeated, strong interactions among major political actors including a government...When interactions between a pair of actors recur in similar forms, we begin to speak of a *relation* between the actors. We then describe a regime in terms of prevailing relations among political actors, including the government."

Mass incarceration can be analyzed as a particular "policy regime," in which the arrangements of power, policy paradigm, organization within government and substantive policies that define the regime contribute to its long-term stability (see Wilson 2000). California is a main exemplar of the mass incarceration policy regime. The notoriously overcrowded and dangerous conditions of penal confinement in California have become indicative of the most persistent and problematic dimensions of the nationwide growth in incarceration. California has also been dubbed "the mass incarceration state" because it operates one of the largest prison systems in the western world and blazed the trail for laws and policies that fueled the surge in incarceration throughout the 1980s and 1990s. These and other such laws can be specified as the state's *legal regime* of mass incarceration. This legal regime is coupled with continuity in the policy regime, but legal changes can also trigger stages of overarching regime change by introducing stressors or enablers; paradigm shifts; power shifts; legitimacy crises and/or organizational changes (Wilson 2000:260; see also Edelman, Leachman & McAdam 2010).

In Tilly's (2006:34-35) "regimes and repertoires" framework, *Brown v. Plata* (2011), AB 109 (2011) and Proposition 47 (2014) can be viewed as specific "performances" of law, or legal mobilization. These legal repertoires reflect, generally, that people use law to innovate within the limits established by time and place to make collective claims in the contemporary U.S. governmental regime; the particular forms of legal contention used also have the potential to reveal the more specific parameters of time and place imposed by the legal regime of mass incarceration.

These theoretical perspectives engage the conceptual conundrum of change in ways that can enhance law and society scholarship on penal change. The "eventful sociology" described by Sewell Jr. in *Logics of History: Social Theory and Social Transformation* (2005) draws

attention to the temporal dimensions, or diachronicity, of social life—that is, the ways in which previous conditions shape and constrain future possibilities for change. Temporal analyses that explain legal institutions and penal practices through a related set of historical institutionalist frameworks, such as path dependency, policy feedback and legacy effects, appear in sociolegal scholarship (e.g., Campbell & Schoenfeld 2013; Gottschalk 2006; Lynch & Omori 2014; Petersen & Ward 2015; Schoenfeld 2010; Savelsberg & King 2007; Verma 2015; 2016). However, Sewell Jr. (2005:100) puts forth a distinctive account of temporality by theorizing "events." Rather than the inexorable channeling of the past forward in time through institutionalizing processes, Sewell Jr. argues that "events," though rare, have the power to change history. Through this lens, the question of legal change becomes a question of whether a legal "event" has occurred, which pivots analyses of penal change from assessing changes in punishment's operational practices to assessing durable transformations in the *structures* that constitute punishment.

While Sewell Jr.'s focus is the temporal dynamics of social structure, Tilly's (2006:22) theory of change emphasizes the relational dynamics of power between the state (the "rulers") and its people (the "ruled"). Tilly articulates these state-people power configurations in terms of "regimes" and "repertoires of contention." "Regimes" are conceptualized across multiple literatures (see also Wilson 2000); in Tilly's distinction, regimes reflect not only the structures but also the prevailing *relations* of power among political actors, *including the government*. "Repertoires" are the performative claims-making routines used in the contentious politics of regimes. Just as regime types vary according to the prevailing form of power relations, the repertoires of contention performed within the limits established by those regimes vary. Law is a key mechanism that organizes the power relations of regimes in the first place, and accordingly,

the performances of contention enacted in those regimes. Regime types can be characterized by the laws that constitute them, or their *legal regimes*. Repertoires of contention include the *legal repertoires* engendered by particular legal regimes. In Tilly's framework, the struggle for power between the state-as-ruler and the people-as-the-ruled ("contentious politics") is constant; the particular form of power ("regimes") and contention ("repertoires") is what matters for explaining social transformation. Law, as a mechanism of power, then, "matters"; what may matter most for explaining change, however, are the *forms* rather than the social facts of law.

The conceptual framework for analyzing legal change I describe here proceeds on the theoretical premise that law can be an "event" that disrupts the flow of history and radically transforms it. Its empirical approach operationalizes the theoretical premise of "events" by investigating measures of durable change in structures, not just operational practices. In assessing such empirical evidence, the methods of this "eventful" kind of sociology of law tend to begin at the local, human level as a way of getting a handle on the grand scale of "regimes" and "regime change." To specify change in terms of "regimes," one can begin at the most practical level: the people that enact regimes through their relations. The seed of this conceptual framework grows from the individual-level conundrum of power and time—how to be agentic (powerful) going forward without really ever understanding what is happening. Extrapolating to law, policymakers and reformers make decisions about which legal forms to advocate and enact based on an imperfect understanding of their future consequences.

Finally this conceptual framework recognizes of the limits of just *one* assessment of legal change. An eventful perspective makes room for simultaneously competing answers to the question of change. Rather than framing penal change as a question of whether this is the beginning of the end of mass incarceration, examinations at the county level cases strive to

approach such a grand question from a local, practical and organizational standpoint. This orientation is pursued empirically from the standpoint of the everyday work of criminal justice practitioners who implement law and policy reform at the organizational level. Analyses according to this framework proceed from the standpoint of the state's criminal justice practitioners, where I hypothesize that the legal, fiscal, humanitarian and political crises of prison overcrowding and overincarceration have converged by the 21st century into an essentially *organizational* problem—the overarching problematic has become how to respond to legal reforms that threaten organizational (including professional) survival. The problematic, put differently, is how practitioners improvise around legal reforms in ways that maintain the time- and locally-relative arrangements of power that institutionalize mass incarceration.

In sum, my aim in fleshing out this conceptual framework is to suggest that it is not just the "what" and "how" of legal change (or, the "gap" between law-on-the-books and law-in-action) that we must interrogate, but also the "when," and no less, the "where" and from whose particular standpoint. Perhaps obviously, the implication is that legal change is necessarily relative. Sociolegal scholarship on penal change, then, can offer modest yet sincere findings that assess the occurrence and durability of transformations in structure only with the familiar caveat, "relatively speaking."

Proposed Future Research

This chapter concludes with a proposal for future qualitative research to examine the proposition that local organizational culture mediates the implementation of legal reform on the ground, and that variation in county organizational cultures explains why the law changes under Realignment seem to have led to decarceration in some jurisdictions but not others. In this

dissertation, multiple methods have been used to examine the overarching research questions—how do local criminal justice actors comply with, shape and resist prison downsizing laws; and what effect do these responses have on decarceration as a key metric of institutional change? Quantitative data and methods were used previously in Chapter 4 to investigate the causal dimensions of these questions; future county case studies could build on the qualitative insights presented in Chapter 3, which focus on the processual dimensions of these questions. Rather than treating the quantitative and qualitative strands as separate self-contained components, the goal of deploying multiple methods in this dissertation has been to optimize the breadth, or generalizability, of findings derived from quantitative analyses with the depth that can be uniquely gained from fine-grained small-*n* qualitative case studies (see Sykes, Verma & Hancock forthcoming).

Future research could begin to sketch out an overarching gestalt of how the three 21st-century legal interventions examined in this project—*Brown v. Plata* (2011), Realignment (AB 109 2011) and Proposition 47 (2016)—unfold across distinctive locales and among the Executive members of each county's local Community Corrections Partnership (CCP)—Probation, Sheriff, the Courts, District Attorney, Public Defender, Police and Mental/Behavioral Health. Observational analyses could reveal the interplay of these institutional actors in routine appearances in local spaces and performances on local stages, including in Superior Courts, county Board of Supervisors meetings, CCP meetings and jail facilities. Comparisons across county cases would identify points of convergence as well as meaningful differences across sites, potentially yielding a broader set of conclusions about legal change and local legal regimes. Given the geographical distribution of inter-county variation in state prison use and decarceration responses under AB 109 identified in my previous analyses, case selection should be sure to

capture counties in the "other" California, including the Central Valley, which "most hip coast-dwelling Californians see as that hot flatness to be traversed as rapidly as possible to get somewhere worth their trip" (Haslam 1990, Prologue by Jean Sherrell), and where one county alone is home to more than 16,304 prisoners housed in six state prisons and two federal correctional facilities (CDCR 2016).[14]

It would be tempting to collect data from the more familiar field sites of Los Angeles and the San Francisco Bay Area, where both classic and contemporary ethnographic accounts have illuminated many of the canon's central insights about the social organization of crime, policing, punishment and mass incarceration (e.g., Comfort 2003; Harcourt 2005; Irwin 1985; 1987; Lara-Millán 2014; Lynch et al. 2013; Page 2011; Rios 2011; Roussell 2015; Roussell & Gascón 2014; Wacquant 2002). Not only are Los Angeles and San Francisco's Bay Area among the state's most populous urban centers, and therefore more generalizable cases from the standpoint of representing the general population, they are also often convenient sites where the longstanding co-location of researchers at major universities and research institutes has routinized empirical examination. This is certainly not to say that collecting data from such sites is necessarily routine or even convenient, but simply that studies of these coastal California hubs are prevalent in the mass incarceration literature. At the same time, some researchers have purposively selected more rural, adjacent or isolated locales as cases that represent the range and variation of penal phenomena rather than its modal manifestations (e.g., Linnemann & Wall 2013; Lynch 2010; Schept 2014; 2015), a strategy described by Mario Luis Small (2009:13) as "sampling for range."

[14] California City Correctional Facility (State-leased), California Correctional Institution, Wasco State Prison, Kern Valley State Prison, North Kern State Prison, McFarland Community Correctional Facility (State-leased), Taft Correctional Institution (Federal-leased) and Mesa Verde Detention Facility (Federal-leased) are located in Kern County.

Here, however, I promote a systematic random sampling scheme for the proposed future research. The limits of generalizability in ethnographic and qualitative small-*n* research remain a familiar and perennially contested dilemma in the social sciences (see e.g., Cohen 2015; Desmond 2014; Duneier 2004; 2006; 2011; Klinenberg 2004; 2006; Lewis-Kraus 2016; Lubet 2015; Ralph 2015; Rios 2015; Sánchez-Jankowski 2002; Sharkey 2015; Small 2009; 2013; Tavory & Timmermans 2013; Wilson 2014). This dilemma can become particularly acute in mixed-methods studies, where qualitative observations from single cases or a small number of cases may inform quantitative strands of research that are extrapolated to larger populations (see Small 2011; Sykes, Verma & Hancock forthcoming).

A random stratified sampling scheme as commonly described in research methods textbooks (e.g., Frankfort-Nachmias & Nachmias 2008) could be used to randomly select cases from within each of the five trajectory groups identified in Chapter 4. An alternative approach, deployed in previous research with similar breadth-depth optimization aims (e.g., Harris et al. 2005; Howes & Lanjouw 1998), would be to use a systematic random sampling scheme with implicit stratification (see Piazza 2010) to make the selection of cases within the trajectory groups containing fewer counties less likely. This would potentially limit one's ability to "sample for range" in smaller groups but could be chosen as a tradeoff in order to select cases that tell for a more general story about the processes and mechanisms within the state of California while keeping intact a significant capacity for comparative analysis across cases from different trajectory groups—even if not all five of them.

Future qualitative case studies could confront the limits of generalizability in ethnographic research by using a probabilistic sampling scheme, in which the probability of each county's selection is known and equal. Probabilistic sampling enables the processes and

mechanisms observed in these field sites to be properly generalized to a larger population of counties within the state (see Lucas 2014). It also facilitates valid comparisons of cases across trajectory groups, because each case had an equal probability of being selected. If cases are selected using a non-probabilistic sampling scheme (i.e., convenience), the generalizability of findings stand to be hampered by selection bias, the parameters of which would remain unknown, because the probability of county case selection would not be specified. The benefit of the design I propose here is that, should qualitative findings from these qualitative case studies be tested in future quantitative research, the parameters on quantitative estimates could be mathematically derived based on the known probability of each county's selection (see Lucas 2014; Lucas & Szatrowski 2014; Solon, Haider & Woolridge 2013; Sykes, Verma & Hancock forthcoming). This enables transparency about the degree to which findings based on cases in the particular sample are likely to differ from those that would have been observed by studying the entire population. In research designs that use purposive sampling, even when cases are not randomly selected, they could still be probabilistically selected if the population distribution is known. In such designs, where the probability of each case's selection is known but not equal, sampling weights could be assigned to adjust for unequal selection probabilities. However, the future study I proposed would use random probabilistic sampling (where the probability of selection is both known *and* equal for all cases) to achieve both *comparative* and *generalizable* findings.

In traveling the roads to counties according to this case selection procedure, future researchers would know they were traveling the roads necessary to discover the processes and mechanisms that have the potential to help explain other locales within the state as well, and especially those with comparatively low or high historical reliance on the state prison system.

Chapter 6

The Great Reckoning

America's latest "Great Experiment," whether or not an apt metaphor for California's prison Realignment, calls for a similarly "great" reckoning—one that must take place on multiple fronts. Assessing the results of prison downsizing in the 21st century and California's Realignment is at its core about reckoning with the American ideal of law and legal change. Legal change is always an experiment (hence the "gap"), and the results of legal change in the criminal justice policy area have historically led to their own kinds of horror stories, including mass incarceration. Reckoning with Realignment as an experiment in legal change leads to the question of whether Realignment can be empirically delineated as a legal "event" that led to a durable transformation in structures (Sewell Jr. 2005), as well as whether the answer to that question differs according to one's standpoint within a particular local legal "regime" (Tilly 2006; Wilson 2000). Assessing the results of prison downsizing under California's Realignment also requires us to reckon no less with mass incarceration as, in part, a result of the great American tradition of federalist experimentation in local laboratories. In turn, this leads to a future research agenda on mass incarceration's "afterlife" and the practical implications of 21st century decarceration in the wake of the horror story that came before it.

This dissertation has used the 2011 "Realignment" of California's unconstitutionally overcrowded prison system through Assembly Bill 109 (AB 109) as one empirical window to examine how legal interventions and policy innovations filter to lower levels of government and diffuse into local organizational and professional practices. While sociological scholarship on mass incarceration in the U.S. has surged in recent decades, this project pivots attention to the

phenomenon of prison downsizing and investigates the potential for system-wide *decarceration* as an emergent 21st-century transformation. This possible turning point in the trajectory of mass incarceration raises timely yet perennial questions about the social organization of institutions and the conditions under which they change (and resist change). For example, a key question about California's prison downsizing is whether it will result in system-wide decarceration or merely relocate incarceration to alternative institutional sites, such as local jails (e.g., Hopper, Austin & Foreman 2014; Petersilia & Snyder 2013; Schlanger 2013).

Neo-institutional perspectives on law and organizations and the social movements literature on legal mobilization provided the initial theoretical foundation for my analysis of the California case, wherein the state's prison realignment legislation (AB 109 2011), and the federal judicial intervention that preceded it (*Brown v. Plata* 2011), are conceptualized as mobilizations of law that hold the potential to trigger transformative change while at the same time remain subject to classic institutional processes that resist transformation (e.g., Edelman, Leachman & McAdam 2010). Despite the common understanding of mass incarceration as a sweeping national phenomenon, this study also addressed related and outstanding questions about why some jurisdictions have relied more (or less) heavily on prisons and jails during an era of "mass" incarceration and how this historical variation shapes responses to legal reform. In this respect, the dissertation aims to make a theoretical linkage between the neo-institutional and legal mobilization literatures and punishment and social control scholarship about how underlying variation and contestation in the particular field of criminal justice shapes organizational practice in the domain of penal policy (see e.g., Goodman, Page & Phelps 2014; Lynch 2011; Verma 2015).

The overarching research questions examined were: (1) How do local criminal justice actors comply with, shape, and resist prison downsizing laws, and (2) What effect do these responses have on decarceration as a key metric of institutional change? Using both quantitative and qualitative methods and modes of analysis, the project aimed to specify measures of local variation most salient in predicting decarceration, to identify processes by which local organizational culture mediates law (and variations in these processes across counties), and to relate these variations to the outcome of decarceration.

Chapter 3, "Results I," presented a qualitative content analysis of the 2011-2012 county implementation plans mandated by AB 109 during the first year of Realignment's enactment. Plans were comparatively analyzed across two groups: counties that fell in the upper-quartile of state prison admissions rates for each of the years from 2000 to 2009 (the "High Imprisonment Legacy" group), and counties falling in the lower-quartile of state prison use during the same time period (the "Low Imprisonment Legacy" group). Counties within each group were found to have arrived at divergent interpretations of the law, as well as to have used several distinct legal translation processes to accomplish these interpretations. This chapter introduced the *law-before* as an analytic tool for enhancing explanations of legal reform. I define the law-before as the past organizational practices and power arrangements that precede law-on-the-books and shape present day implementation. The law-before was used as a heuristic and empirically-observable concept to investigate the legacy effects of variations in local practice on the implementation of the prison downsizing law, AB 109, or "Realignment," in California. I found that practitioners in counties with divergent historical imprisonment patterns enact four processes (*overwriting* or *underwriting law*, *selective magnification* and *selective siting*) to arrive at distinct interpretations of AB 109 as mandating system-wide decarceration or the relocation of incarceration from state

prisons to county jails. Although my data in this chapter did not speak to the ultimate implementation of AB 109, I argue that the processes revealed have practical implications for the reform goal of decarceration by rationalizing distinct resource allocations at an early stage in the implementation process.

Chapter 4, "Results II," presented a quantitative analysis that refines how local variation in penal practice can be understood. Group-based trajectory modeling revealed a more fine-grained account of the inter-county variation in California state prison reliance in the years leading up the Realignment's enactment. The analysis identifies five statistically-derived groups of counties based on the distinctive imprisonment trajectories that emerged from 2000-2010 data: (1) High Increasing (five counties), (2) Middle Increasing (19 counties), (3) High Decreasing (three counties), (4) Low Increasing/Stable (16 counties), and (5) Middle Decreasing/Stable (15 counties). Multinomial and binomial logistic regression analyses then examined the association of a range of crime, demographic, political and jail capacity variables with both state prison use outcomes over time, as well as observed decarceration responses under AB 109. The point of departure for this chapter was to explore the commonly articulated premise of mass incarceration as a sweeping national policy development, which I argue has obscured remarkable local variation at the policy implementation stage. California's "Realignment" (AB 109 2011) is a reform that exploits this variation by design. Previous research consistently finds that, net of crime, demographic, political and system capacity characteristics explain the variation in incarceration across local jurisdictions. Chapter 4 investigated whether they also explain *decarceration*? Distinct "risk" factors for high and/or increasing imprisonment trajectories were identified, as well as apparent protective factors. A clear association was found between previous trajectories and decarceration, but county-level characteristics did not demonstrate the predicted

effects. Results indicate that decarceration cannot be explained as merely the mirror image of incarceration and should be examined as a distinct phenomenon.

Chapter 5, “The Great Experiment, Revisited,” then presented theoretical reflections on legal change and local legal regimes in light of results from the empirical analyses presented in Chapters 3 and 4. I revisited the characterization of California’s prison Realignment (AB 109 2011) as a “great experiment” (e.g., *The Economist* 19 May 2012; Petersilia 2012) and argued that the experimental metaphor may be apt but that the “greatness” of the experiment has yet to be thoroughly interrogated or empirically assessed. Findings from my study offered a partial view of the results of Realignment’s experiment, but future research remains necessary for an accounting of durable results. I describe how the “greatness” question is much more difficult to gauge conceptually and empirically than results from the experimental set of questions around Realignment and then sketch out a conceptual framework for approaching the problematic of legal change. Based on this conceptual framework, Chapter 5 concluded by proposing a future qualitative examination of the proposition that local organizational culture mediates the implementation of legal reform on the ground, and that variation in county organizational cultures explains why the law changes under Realignment seem to have led to decarceration in some jurisdictions but not others. I described how such a study could be carried out within a sample of counties probabilistically selected to represent the divergent trajectories of state prison reliance identified previously in Chapter 4, and I argued that the legal and institutional change processes identified through future research based on this probabilistic sampling design could be generalizable beyond single case sites and to broader groups of counties following similar trajectories.

This dissertation is not the first nor will it likely be the last to gauge California's latest "Great Experiment." However, it is the first I am aware of (and may be the last) to ask a deeper set of theoretical, methodological, practical and, I would argue, ethical questions about how such an assessment should proceed, keeping in mind that even—and especially—failed experiments have something worthwhile to teach. Indeed, reckoning with the results of America's failed experiments as much as its successful ones remains a central job of publicly engaged social science scholarship. Therefore, this dissertation does not present a definitive statement as to the results of Realignment's great experiment, but takes a step, like President Obama, the first sitting president to set foot inside the federal prison gates, in a new direction for thinking about the legal reform of mass incarceration in America.

References

Abarbanel, Sara, Angela McCray, Kathryn McCann Newhall and Jessica Snyder. 2013. *Realigning the Revolving Door: An Analysis of California Counties' AB 109 2011-2012 Implementation Plans*. Stanford Law School Criminal Justice Center. Palo Alto, CA.

Abbott, Andrew. 2004. *Methods of Discovery: Heuristics for the Social Sciences*. New York: W.W. Norton & Company.

American Civil Liberties Union. 2012. *Public Safety Realignment: California at a Crossroads.* March. San Francisco: ACLU of California.

American Civil Liberties Union. 2015. *Changing Gears: California's Shift to Smart Justice: Prop 47 Year One.* November. San Francisco: ACLU of California.

Arvanites, Thomas M. and Martin A. Asher. 1998. "State and County Incarceration Rates: The Direct and Indirect Effects of Race and Inequality," *American Journal of Economics and Sociology* 57(2): 207-221.

Asylum. 2012. Season Two. *American Horror Story*. Brad Falchuk and Ryan Murphy, creators. FX Network.

Austin, James. 2016. "Regulating California's Prison Population: The Use of Sticks and Carrots," *Annals of the American Academy of Political and Social Science* 664: 82-107.

Ball, W. David. 2012. "Tough on Crime (on the State's Dime): How Violent Crime Does Not Drive California Counties' Incarceration Rates – and Why It Should," *Georgia State Law Review* 28: 987.

Barker, Vanessa. 2009. *The Politics of Imprisonment*. New York: Oxford.

Barron, James N., Frank R. Dobbin and P. Deveraux Jennings. 1986. "War and Peace: The Evolution of Modern Personnel Administration in U.S. Industry," *American Journal of Sociology* 92: 350-383.

Beckett, Katherine. 1997. *Making Crime Pay: Law and Order in Contemporary American Politics.* New York: Oxford University Press.

Beckett, Katherine and Bruce Western. 2001. "Governing Social Marginality Welfare, Incarceration, and the Transformation of State Policy," *Punishment & Society* 3(1): 43-59.

Berk, Richard A., Sheldon L. Messinger, David Rauma and John E. Berecochea. 1983. "Prisons as Self-Regulating Systems: A Comparison of Historical Patterns in California for Male and Female Offenders," *Law & Society Review* 17:547-86.

Bird, Mia and Ryken Grattet. 2014. *Do Local Realignment Policies Affect Recidivism in California?* August. Sacramento: Public Policy Institute of California.

Bird, Mia and Ryken Grattet. 2016. "Realignment and Recidivism," 664 *Annals of the American Academy of Political and Social Science* 176-195.

Bird, Mia, Sonya Tafoya, Ryken Grattet and Viet Nguyen. 2016. *How Has Proposition 47 Affected California's Jail Population?* San Francisco: Public Policy Institute of California.

Black, Donald. 1976. *The Behavior of Law*. New York: Academic Press.

Blalock, Hubert M. 1960. "A Power Analysis of Racial Discrimination," *Social Forces* 39: 53–9.

Blalock, Hubert M. 1967. *Toward a Theory of Minority-Group Relations.* Hoboken, NJ: John Wiley.

Blumner, Herbert. 1958. "Race Prejudice as a Sense of Group Position," *Pacific Sociological Review* 1:3-7.

Bourdieu, Pierre. 1977. *Outline of a Theory of Practice.* Cambridge: Cambridge University Press.

Bridges, George S. and Robert D. Crutchfield. 1988. "Law, Social Standing and Racial Disparities in Imprisonment," *Social Forces* 66(3): 699-724.

Brown, Elizabeth K. 2016. "Toward Refining the Criminology of Mass Incarceration: Group-Based Trajectories of U.S. States, 1977-2010," *Criminal Justice Review.* Published online before print.

Byers, Garrick. 2011. "Realignment," *Continuing Education of the Bar* website. State Bar of California and the University of California, December 3. Available at: http://ceb.com/lawalerts/Criminal-Justice-Realignment.asp (accessed 30 May 2016).

California Attorney General. 2014. *Proposition 47 Title and Summary/Analysis.* Sacramento: State of California.

California Department of Corrections and Rehabilitation. 2013. *Realignment Fact Sheet.* Dec. 19. Sacramento: State of California. Available at: http://www.cdcr.ca.gov/realignment/docs/realignment-fact-sheet.pdf.

California Legislative Analyst's Office. 1991. *Realignment Revisited: An Evaluation of the 1991 Experiment in State-county Relations.* Sacramento: State of California.

California Legislative Analyst's Office. 2011. *Governor's Realignment Plan—Criminal Justice.* Jan. 25. Sacramento: State of California. Available at: http://www.lao.ca.gov/handouts/crimjust/2011/CJ_Realignment_Plan_01_25_11.pdf.

California Legislative Analyst's Office. 2012a. *Proposition 36*. 18 July. Sacramento: State of California. Available at: http://www.lao.ca.gov/ballot/2012/36_11_2012.aspx.

California Legislative Analyst's Office. 2012b. *Proposition 34*. 18 July. Sacramento: State of California. Available at: http://www.lao.ca.gov/ballot/2012/34_11_2012.aspx.

California Legislative Analyst's Office. 2014. *Proposition 47*. November. Sacramento: State of California.

California Legislative Analyst's Office. 2015. *2015-16 Budget: Implementation of Proposition 47.* February. Sacramento: State of California.

Californians United for a Responsible Budget. 2012. *Annual Report.* CURB: Los Angeles and Oakland, CA.

Californians United for a Responsible Budget. 2015. *Decarceration Report Card - #ALLJAILSAREFAILS.* CURB: Los Angeles and Oakland, CA.

Campbell, Michael C. and Heather Schoenfeld. 2013. "The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment," *American Journal of Sociology,* 188(5): 1375-1423 (5).

Carson, E. Ann. 2014. *Prisoners in 2013.* NCJ 247282. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Carson, E. Ann and Daniela Gollineli. 2013. *Prisoners in 2012 – Advance Counts*. NCJ 242467. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Carson, E. Ann and William J. Sabol. 2012. *Prisoners in 2011*. NCJ 239808. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Clear, Todd and Natasha Frost. 2013. *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America.* New York: New York University Press.

Coates, Ta-Nehisi. 2015. "The Black Family in the Age of Mass Incarceration," *The Atlantic*. October.

Cohen, PN. 2015. Survey and ethnography: Comment on Goffman's "On the Run." 28, June. Available at https://familyinequality.wordpress.com/2015/05/28/on-the-ropes-goffman-review/.

Cohen, Stanley. 1979. "Punitive City: Notes on the Dispersal of Social Control," *Contemporary Crises* 34: 339-363.

Cohen, Stanley. 1985. *Visions of Social Control: Crime, Punishment, and Classification.* Cambridge, UK: Polity Press.

Comfort, Megan L. 2003. "In The Tube at San Quentin: The 'Secondary Prisonization' of Women Visiting Inmates," *Journal of Contemporary Ethnography* 32(1): 77-107.

Cope, Meghan. 2003. "Coding Transcripts and Diaries," in *Key Methods in Geography*, N. Clifford and G. Valentine, eds. Pp. 445-459. Thousand Oaks, CA: SAGE Publications.

Crank, John P. 1994. "Watchmen and the Community: Myth and Institutionalization in Policing," *Law & Society Review* 28: 325-51.

Cullen, Francis, Gregory A. Clark, and John F. Wozniak. 1985. "Explaining the Get-Tough Movement: Can the Public Be Blamed?" *Federal Probation* 452: 16–24.

Davis, Angela Y. 2003. *Are Prisons Obsolete?* New York: Seven Stories Press.

De Giorgi, Alessandro. 2014. "Reentry to Nothing: Urban Survival after Mass Incarceration," *Social Justice Blog*, May 28. Available at: http://www.socialjusticejournal.org/reentry-to-nothing-urban-survival-after-mass-incarceration/ (accessed 3 July 2016).

De Tocqueville, Alexis. 1835. *Democracy in America*. 2 vols. New York: Vintage.
Desmond Matthew. 2014. Relational ethnography. *Theoretical Sociology* 43: 547-579.

DiMaggio, Paul J. and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48(2): 147-60 (2).

Dodds, Eric. 2015. "Obama to Make History with Prison Visit," *Time Magazine*, July 10.

Duneier, Mitchell. 2004. "Scrutinizing the Heat," *Contemporary Sociology* 33: 139--50.

Duneier, Mitchell. 2006. "Research Note: Ethnography, the Ecological Fallacy, and the 1995 Chicago Heat Wave," *American Sociological Review* 71: 679-688.

Duneier, Mitchell. 2011. "How Not to Lie with Ethnography," *Sociological Methodology* 41:1-11.
The Economist. 2012. "California's Overcrowded Prisons: The Challenges of 'Realignment,'" May 19. Available at: http://www.economist.com/node/21555611.

Edelman, Lauren B. 2005. "Law at Work: The Endogenous Construction of Civil Rights," in L.B. Nielsen, ed., *Handbook of Employment Discrimination Research*, The Netherlands: Springer.

Edelman, Lauren B., Sally Riggs Fuller and Iona Mara-Drita. 2001. "Diversity Rhetoric and the Managerialization of Law," *American Journal of Sociology* 106: 1589-1641.

Edelman, Lauren B., Linda H. Krieger, Scott R. Eliason, Catherine R. Albiston and Virginia Mellema. 2011. "When Organizations Rule: Judicial Deference to Institutionalized Employment Structures," *American J. of Sociology* 117(3): 888-954.

Edelman, Lauren B., Gwendolyn Leachman and Doug McAdam. 2010. "On Law, Organizations and Social Movements," *Annual Rev. of Law and Social Science* 6: 653-85.

Edelman, Lauren B. and Shauhin Talesh. 2011. "To Comply or Not to Comply—That Isn't the Question: How Organizations Construct the Meaning of Compliance," in eds., C. Parker & V.L. Nielsen, *Explaining Compliance: Business Responses to Regulation,* Chletenham, UK and Northampton, MA: Edward Elgar.

Edelman, Lauren B., Chris Uggen and Howard S. Erlanger. 1999. "The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth," *American J. of Sociology* 105(2): 406-54.

Eisinger, P. 1973. "The Conditions of Protest Behavior in American Cities," *American Political Science Review* 81: 11-28.

Eliperin, Juliet and Sari Horwitz. 2015. "Obama to Visit Federal Prison in Oklahoma on Thursday," *The Washington Post,* July 10.

Feeley, Malcolm M. 1976. "The Concept of Laws in Social Science: A Critique and Notes on an Expanded View," *Law & Society Review* 10: 497-523.

Feeley, Malcolm M. and Edward L. Rubin. 1998. *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons*. Cambridge: Cambridge University Press.

Feeley, Malcolm M. and Edward L. Rubin. 2008. *Federalism: Political Identity and Tragic Compromise.* Ann Arbor: University of Michigan Press.

Feeley, Malcolm M. and Austin D. Sarat. 1980. *The Policy Dilemma: Federal Crime Policy and the Law Enforcement Assistance Administration, 1968-1978.* Minneapolis: University of Minnesota.

Fleury-Steiner, Benjamin, Paul Kaplan and Jamie Longazel. 2015. "Racist Localisms and the Enduring Cultural Life of America's Death Penalty: Lessons from Maricopa County, Arizona," in *Studies in Law, Politics, and Society* 63-85. Emerald Group Publishing Limited.

Frankfort-Nachmias, Chava & David Nachmias. 2008. *Research Methods in the Social Sciences*, 7th ed. New York: Worth Publishers.

Ganschow, Romy. 2008. *Death by Geography: A County by County Analysis of the Road to Execution in California.* San Francisco: ACLU of Northern California.

Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society.* Chicago: University of Chicago Press.

Gilmore, Ruth Wilson. 2007. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley and Los Angeles: University of California Press.

Goodman, Philip, Joshua Page and Michelle Phelps. 2014. "The Long Struggle: An Agonistic Perspective on Penal Development," *Theoretical Criminology* (published online 8 September).

Gottschalk, Marie. 2006. *The Prison and the Gallows: The Politics of Mass Incarceration in America*. Cambridge: Cambridge University Press.

Gould, John B. and Scott Barclay. 2012. "Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship," *Annual Review of Law and Social Science* 8: 323-335.

Grattet, Ryken and Valerie Jenness. 2005. "The Reconstitution of Law in Local Settings: Agency Discretion, Ambiguity, and a Surplus of Law in the Policing of Hate Crime," *Law & Society Rev.* 39(4): 893-942.

Greenberg, David and Valerie West. 2001. "State Prison Populations and their Growth, 1971-1991," *Criminology* 39(3): 615-654.

Gray, Garry C. and Susan S. Silbey. 2014. "Governing Inside the Organization: Interpreting Regulation and Compliance," *American Journal of Sociology* 120(1): 96-145.

Grob, Gerald. 1991. *From Asylum to Community: Mental Health Policy in Modern America*. Princeton University Press.

Groff, Elizabeth R., David Weisburd and Sue-Ming Yang. 2010. Is It Important to Examine Crime Trends at a Local 'Micro' Level? A Longitudinal Analysis of Street to Street Variability in Crime Trajectories," *Journal of Quantitative Criminology* 26: 7-32.

Guetzkow, Joshua and Eric Schoon. 2015. "If You Build It, They Will Fill It: The Consequences of Prison Overcrowding Litigation," *Law & Society Review* 49(2): 401-432.

Hall, Stuart, Charles Critcher, Tony Jefferson, John Clarke and Brian Robert. 1978. *Policing the Crisis: Mugging, the State and Law and Order.* London: Palgrave Macmillan.

Hannah-Moffat, Kelly and Mona Lynch. 2012. "Theorizing Punishment's Boundaries: An Introduction," *Theoretical Criminology* 16(2): 119-121.

Harcourt, Bernard E. 2005. "Policing L.A.'s Skid Row: Crime and Real Estate Development in Downtown Los Angeles," *University of Chicago Legal Forum*. University of Chicago Public Law and Legal Theory Working Paper No. 92.

Harcourt, Bernard E. 2006. "From the Asylum to the Prison: Rethinking the Incarceration Revolution," *Texas Law Review* 84: 1751-1786.

Harcourt, Bernard E. 2011 "Reducing Mass Incarceration: Lessons from the Deinstitutionalization of Mental Hospitals in the 1960s," *U. of Chicago Law & Economics, Olin Working Paper* 542.

Haslam, Gerald W. 1990. *The Other California: The Great Central Valley in Life and Letters.* Santa Barbara, CA: Capra Press.

Hopper, Allen, James Austin and Jolene Foreman. 2014. "Shifting the Paradigm or Shifting the Problem? The Politics of California's Criminal Justice Realignment," *Santa Clara Law Review* 53. Howes, Stephen, and Jean Olson Lanjouw. 1998. "Does sample design matter for poverty rate comparisons?" *Review of Income and Wealth* 44.1: 99-109.

Irwin, John. 1985. *The Jail: Managing the Underclass in American Society*. Berkeley: University of California Press.

Irwin, John. 1987. *The Felon*. Berkeley: University of California Press.

Jackson, Pamela I. 1992. "Minority Group Threat, Social Context, and Policing," in A. E. Liska, ed., *Social Threat and Social Control*. Albany: SUNY Press.

Jacobs, David and Jason T. Carmichael. 2001. "The Politics of Punishment across Time and Space: A Pooled Time-Series Analysis of Imprisonment Rates," *Social Forces* 80: 61–89.

Jacobs, David, Stephanie L. Kent and Jason T. Carmichael. 2005. "Vigilantism, Current Racial Threat, and Death sentences," *American Sociological Review* 70(4): 656-677.

Jacoby, Sandford. 1985. *Employing Bureaucracy: Managers, Unions, and the Transformation of Work in American Industry 1900-45*. New York: Columbia University Press.

Jenness, Valerie and Ryken Grattet. 2005. "The Law-In-Between: The Effects of Organizational Perviousness on the Policing of Hate Crime," *Social Problems* 52(3): 337-59.

Jenness, Valerie and Michael Smyth. 2011. "Passage and Implementation of the Prison Rape Elimination Act: Legal Endogeneity and the Uncertain Road from Symbolic Law to Instrumental Effects," *Stanford Law & Policy Review* 22: 489.

Kane, Robert J. 2003. "Social Control in The Metropolis: A Community-Level Examination of the Minority Group-Threat Hypothesis," *Justice Quarterly* 20: 265-295.

Karimi, Faith. 2016. "'El Chapo' Secretly Met Sean Penn in Mexican Jungle before His Arrest," *CNN.com,* 11 Jan. Available at: http://www.cnn.com/2016/01/10/americas/el-chapo-sean-penn-rolling-stone-interview/ (accessed 3 July 2016).

King, Ryan S. 2008. *Disparity by Geography: The War on Drugs in America's Cities.* Washington DC: The Sentencing Project.

King, Ryan D., Steven F. Messner and Robert D. Baller. 2009. "Contemporary Hate Crimes, Law Enforcement, and the Legacy of Racial Violence," *American Sociological Review* 74: 291-315.
Klinenberg, Eric. 2004. Overheated. *Contemporary Sociology* 33(5): 521-528.

Klinenberg, Eric. 2006. "Blaming the Victims: Hearsay, Labeling, and the Hazards of Quick-Hit Disaster Ethnography," *American Sociological Review* 71(4): 689-698.

Krawiec, Kimberley. 2003. "Cosmetic Compliance and the Failure of Negotiated Governance," *Washington University Law Review* 81: 487-544.

Krippendorff, Klaus. 2012. *Content Analysis: An Introduction to Its Methodology*. Los Angeles: SAGE Publications.

Kubrin, Charis and Carroll Seron. 2016. "The Prospects and Perils of Ending Mass Incarceration in the United States," editorial introduction to *The Great Experiment: Realigning Criminal Justice in California and Beyond*. *Annals of the American Academy of Political and Social Science* 664: 16-24.

Lara-Millán, Armando. 2014. "Public Emergency Room Overcrowding in The Era Of Mass Imprisonment," *American Sociological Review* 79(5): 866-887.

Laub, John H. and Robert J. Sampson. 1993. "Turning Points in the Life Course: Why Change Matters to the Study of Crime," *Criminology* 31: 301.

Lee, Matthew R., Michael O. Maume and Graham C. Ousey. 2003. Social Isolation and Lethal Violence across the Metro/Nonmetro Divide: The Effects of Socioeconomic Disadvantage and Poverty Concentration on Homicide," *Rural Sociology* 68(1): 107.
Lewis-Kraus G. 2016. "The Trials of Alice Goffman," *New York Times Magazine,* Jan. 12. Available at http://www.nytimes.com/2016/01/17/magazine/the-trials-of-alice-goffman.html?_r=0.

Liebling, Alison. 2001. "Whose Side Are We On?" *British J. Criminology* 41:472-484.

Liptak, Adam. 2011. "Justices, 5-4, Tell California to Cut Prisoner Population," May23. Available at: http://www.nytimes.com/2011/05/24/us/24scotus.html?_r=0.

Linnemann, Travis and Tyler Wall. 2013. "'This Is Your Face on Meth': The Punitive Spectacle of 'White Trash' in the Rural War on Drugs," *Theoretical Criminology* 17(3): 315-334.

Lipsky, Michael. 1971. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. New York: Russell Sage Foundation.

Liska, Allen E., ed. 1992. *Social Threat and Social Control*. Albany: SUNY Press.

Llewellyn, Karl N. 1957. "Why We Need the Uniform Commercial Code," *U. Florida Law Rev.* 10: 367.

Lofstrom, Magnus and Steven Raphael. 2013a. *Impact of Realignment on County Jail Populations*. June. Sacramento: Public Policy Institute of California.

Lofstrom, Magnus and Steven Raphael. 2013b. *Technical Appendix: Impact of Realignment on County Jail Populations*. June. Sacramento: Public Policy Institute of California.

Lofstrom, Magnus and Steven Raphael. 2016. "Incarceration and Crime: Evidence from California's Public Safety Realignment Reform," *The Annals of the American Academy of Political and Social Science* 664: 196-220.

Lopez, R.S. 1956. "The Evolution of Land Transport in the Middle Ages," *Past & Present* 9: 17-29.

Lubet S. 2015. Ethics on the run. *The New Rambler*. Available at http://newramblerreview.com/book-reviews/law/ethics-on-the-run.

Lyons, Christopher J., María B. Vélez & Wayne A. Santoro. 2013. "Neighborhood immigration, violence, and city-level immigrant political opportunities." *American Sociological Review*.

Lynch, Mona. 2010. *Sunbelt Justice: Arizona and the Transformation of American Punishment.* Palo Alto, CA: Stanford University Press.

Lynch, Mona. 2011. "Mass Incarceration, Legal Change and Locale: Understanding and Remediating American Penal Overindulgence," *Criminology & Public Policy* 10: 671-98.

Lynch, Mona. 2013. "Realigning Research: A Proposed (Partial) Agenda for Sociolegal Scholars," *Federal Sentencing Reporter* 25(4): 254.

Lynch, Mona, Omori, Marisa, Roussell, Aaron and Valasik, Matthew. 2013. "Policing the 'Progressive' City: The Racialized Geography of Drug Law Enforcement," *Theoretical Criminology* 17(3): 335-357.

Lynch, Mona and Anjuli Verma. 2016. "The Imprisonment Boom of the Late 20th Century: Past, Present and Future." In *The Oxford Handbook on Prisons and Imprisonment*, John Wooldredge and Paula Smith, eds. Oxford: Oxford University Press.

Lucas S.R. 2014. "Beyond the Existence Proof: Ontological Conditions, Epistemological Implications, and In-Depth Interview Research," *Quality & Quantity* 48(1): 387-408.

Lucas, Samuel R. and Alisa Szatrowski A. 2014. "Qualitative Comparative Analysis in Critical Perspective," *Sociological Methodology* 44: 1-79.

Males, Michael and Brian Goldstein. 2014. *California's 58 Crime Rates: Realignment and Crime in 2012.* January. San Francisco: Center on Juvenile and Criminal Justice.

Maruna, Shadd. 2011. "Reentry as a Rite of Passage," *Punishment & Society* 13(1): 3-28.

Maruna, Shadd. 2016. "Virtual Reentry: What If We were Serious about Wanting to Reintegrate Ex-Prisoners?" Hoffinger Criminal Justice Forum, New York University Law School. 28 Mar.

Mathiesen, Thomas. 1974. *The Politics of Abolition.* London: Routledge.

McAdam, Doug. 1982. *Political Process and the Development of Black Insurgency, 1930-1970.* Chicago: Chicago University Press.

McAdam, Doug. 1996. "Political Opportunities: Conceptual Origins, Current Problems, Future Directions," pp. 23-40 in *Comparative Perspectives on Social Movements*. McAdam, D, McCarthy, JD & Zald, MN, eds. Cambridge, UK; Cambridge University Press.

McCarthy, Belinda R. 1990. "A Micro-Level Analysis of Social Structure and Social Control: Intrastate Use of Jail and Prison Confinement," *Justice Quarterly* 7(2): 325-340.

Meyer, David S. 2004. "Protest and Political Opportunities," *Annual Review of Sociology* 30: 125-145.

Miller, Lisa. 2008. *The Perils of Federalism: Race, Poverty and the Politics of Crime Control*. Oxford: Oxford University Press.

Miller, Reuben J. 2014. "Devolving the Carceral State: Race, Prisoner Reentry, and The Micro-Politics of Urban Poverty Management," *Punishment & Society* 16(3): 305-335.

Milman, Oliver. 2016. "Venomous Sea Snakes Washes up on California Beach in El Nino-linked Event," 15 Jan. *The Guardian*.

Mills, Charles W. 1997. *The Racial Contract.* Ithaca, NY: Cornell University Press.

Murakawa, Naomi. 2014. *The First Civil Right: How Liberals Built Prison America*. Oxford: Oxford University Press.

Nader, Laura. 1972. "Up the Anthropologist: Perspectives Gained from Studying Up." Available at www.ed.gov.

Nagin, Daniel S. 2005. *Group-Based Modeling of Development*. Boston: Harvard University Press.

Nagin, Daniel S. and Richard E. Tremblay. 2005. "What has been Learned from Group-Based Trajectory Modeling?" *Annals of the American Academy of Political and Social Science* 602: 82-117.

National Research Council. 2014. *The growth of incarceration in the United States: Exploring causes and consequences.* J. Travis, B. Western, and S. Redburn, eds. Washington, DC: The National Academies Press.

Neunendorf, Kimberley. 2001. *The Content Analysis Guidebook*. Los Angeles: Sage Publications.

The Orange County Register. 2016. "O.C. Jail Escape: What Happened during Eight Days on the Run? A Fight, a Hostage and a Trip North," Feb 1.

Owens, Peter B., David Cunningham & Geoff Ward. 2015. "Threat, Competition and Mobilizing Structures: Motivational and Organizational Contingencies of the Civil Rights-Era Ku Klux Klan," *Social Problems* 62(4): 572-604.

Page, Joshua. 2011. *The Toughest Beat: Politics, Punishment, and the Prison Officers' Union in California*. New York: Oxford University Press.

Page, Joshua. 2013. "Punishment in the Penal Field," in J. Simon and R. Sparks, eds., *The SAGE Handbook of Punishment and Society*. Los Angeles, CA: SAGE Publications.

Pennypacker, Philip H. & Alyssa Thompson. 2014. "Realignment: A View from the Trenches," *Santa Clara Law Rev.* 53: 991-1038.

Percival, Garrick L. 2010. "Ideology, Diversity, and Imprisonment: Considering the Influence of Local Politics on Racial and Ethnic Minority Incarceration Rates," *Social Science Quarterly* 91(4): 1064-1982.

Petersen, Nick and Geoff Ward. 2015. "The Transmission of Historical Racial Violence: Lynching, Civil Rights–Era Terror, and Contemporary Interracial Homicide," *Race and Justice* 5(2): 114-143.

Petersilia, Joan. 2012. *Looking Back to See the Future of Prison Downsizing in America*. Keynote address, National Institute of Justice Conference.

June, http://nij.ncjrs.gov/multimedia/video-nijconf2012-laub-petersilia.htm#petersilia1 (accessed 28 Jan. 2015).

Petersilia, Joan. 2014. *Voice from the Field: How California Stakeholders View Public Safety Realignment*. Stanford Criminal Justice Center. January. Palo Alto, CA: Stanford Law School.

Petersilia, Joan and Jessica Snyder. 2013. "Looking Past the Hype: 10 Questions Everyone Should be Asking About California's Prison Realignment," *California J. of Politics and Policy* 5(2): 266.

Pew Center on the States. 2011. *The State of Recidivism: The Revolving Door of America's Prisons*. Washington, DC: Public Safety Performance Project, Pew Charitable Trusts.

Piazza, Thomas. 2010. "Fundamentals of Applied Sampling," pp. 139-168 in *Handbook of Survey Research*, Peter V. Mardsen & James D. Wright, eds. Bingley, UK: Emerald Publishing Group Limited.

Pierson, Paul. 1994. *Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment*. Cambridge, MA: Cambridge University Press.

Powell, Walter W. and Paul DiMaggio. 1991. *The New Institutionalism in Organizational Analysis*. Chicago: Chicago University Press.

Ralph L. 2015. "The Limitations of a 'Dirty' World - A Review of Alice Goffman's *On The Run* and Victor M. Rios' *Punished*," *DuBois Review* 12(2): 441-451.

Relph, Edward. 1981. *Rational Landscapes and Humanistic Geography.* New York: Routledge.

Raphael, Steven and Michael A. Stoll. 2013. "Assessing the Contribution of the Deinstitutionalization of the Mentally Ill to Growth in the US Incarceration Rate," *The Journal of Legal Studies* 42(1): 187-222.

Reichman, Nancy. 1992. "Moving Backstage: Uncovering the Role of Compliance in Shaping Regulatory Policy," in eds., Schlegel, K. & Weisburd, D. *White Collar Crime Reconsidered*. Boston: Northeastern University Press. Pp. 244-268.

Reiter, Keramet. 2009. "Experimentation on Prisoners: Persistent Dilemmas in Rights and Regulations," *California Law Review* 97 (2): 501-566.

Rios, Victor M. 2015. "Review: *On the Run: Fugitive Life in an American City*, by Alice Goffman," *American Journal of Sociology* 121(1): 306-308.

Rios, Victor M. 2011. *Punished: Policing the Lives of Black and Latino Boys*. New York: New York University Press.

Rosenberg, Gerald. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.

Roussell, Aaron. 2015. "Policing the Anticommunity: Race, Deterritorialization, and Labor Market Reorganization in South Los Angeles," *Law & Society Review* 49(4): 813-843.

Roussell, Aaron & Daniel Luis Gascón. 2014. "Defining "Policeability": Cooperation, Control, and Resistance in South Los Angeles Community-Police Meetings," *Social Problems* 61(2): 237-258.

Rusche, Georg and Otto Kirchheimer. 1939. *Punishment and Social Structure.* London: Transaction Publishers.

Sánchez-Jankowski, M. 2002. "Representation, Responsibility and Reliability in Participant-Observation," pp. 144–160 in *Qualitative Research in Action*. May T, Ed. London: Sage.

Savelsberg, Joachim J. 1994. "Knowledge, Domination and Criminal Punishment," *American Journal of Sociology* 994: 911-943.

Savelsberg, Joachim J. 1999 "Knowledge, Domination and Criminal Punishment Revisited: Incorporating State Socialism," *Punishment & Society* 1(1): 45-70.

Savelsberg, Joachim J. and Ryan D. King. 2007. "Law and Collective Memory," *Annual Rev. of Law and Social Science* 3: 189-211.

Scheingold, Stuart A. 1984. *The Politics of Law and Order: Street Crime and Public Policy.* New York: Longman.

Schept, Judah. 2014. "(Un)seeing Like a Prison: Counter-Visual Ethnography of the Carceral State," *Theoretical Criminology* 18(2): 198-223.

Schept, Judah. 2015. *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of Carceral Expansion*. New York: New York University Press.

Schlanger, Margo. 2013. "*Plata v. Brown* and Realignment: Jails, Prisons, Courts, and Politics," *Harvard Civil Rights-Liberties Law Rev. 48:* 166-215.

Schlanger, Margo. 2016. "The Just Barely Sustainable California Prisoners' Rights Ecosystem," *Annals of the American Academy of Political and Social Science* 664: 62-81.

Schneiberg, Marc and Tim Bartley. 2001. "Regulating American Industries: Markets, Politics and the Institutional Determinants of Fire Insurance Regulation," *American Journal of Sociology* 107: 101-46.

Schoenfeld, Heather. 2010. "Mass Incarceration and the Paradox of Prison Conditions Litigation," *Law & Society Review* 44(3/4): 731-68.

Schrier, Margrit. 2012. *Qualitative Content Analysis in Practice.* Los Angeles: Sage Publications.

Schupp, Paul and Craig Rivera. 2010. "Identifying Imprisonment Patterns and their Relation to Crime among New York Counties 1990-2000: An Exploratory Application of Trajectory Modeling," *Criminal Justice Policy Review* 211: 50-75.

Skocpol, Theda. 1994. *Social Policy in the United States: Future Possibilities in Historical Perspective*. Princeton, NJ: Princeton University Press.

Scott, Richard W. 1992. *Organizations: Rational, Natural and Open Systems*, 3rd ed. Englewood Cliffs, NJ: Prentice Hall.

Scull, Andrew. 1977. *Decarceration: Community Treatment and the Deviant–A Radical View.* New Brunswick, NJ: Rutgers University Press.

Selznick, Philip. 1965. *TVA and the Grass roots: A Study of Politics and Organization.* Berkeley: University of California Press.

Sewell Jr., William H. 2005. *The Logics of History*: *Social Theory and Social Transformation.* Chicago: University of Chicago Press.

Sharkey, Patrick. 2015. "*On the Run: Fugitive Life in an American City*. By Alice Goffman," *Social Service Review* 89(2): 407-412.

Simon, Jonathan. 2007. *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press.

Simon, Jonathan. 2013a. "From Health to Humanity: Re-Reading *Estelle v. Gamble* after *Brown v. Plata*," *Federal Sentencing Reporter* 25(4): 276-279.

Simon, Jonathan. 2013b. "The Return of the Medical Model: Disease and the Meaning of Imprisonment from John Howard to *Brown v. Plata,*" *Harvard Civil Rights-Liberties Law Review* 48: 218-256.

Simon, Jonathan. 2014. *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America.* New York: The New Press.

Simon, Jonathan. 2016. "The New *Gaol*: Seeing Incarceration like a City," *The Annals of the American Academy of Political and Social Science* 664: 280-301.

Small, Mario Luis. 2009. "'How Many Cases Do I need?': On Science and the Logic of Case Selection in Field-based Research," *Ethnography* 10(1): 5-38.

Small, Mario Luis. 2013. "Causal Thinking and Ethnographic Research," *American Journal of Sociology* 119(3): 597-601.

Smith, Dorothy E. 2005. *Institutional Ethnography: A Sociology for People*. Oxford: Alta Mira Press.

Smith, Dorothy E. 2006. "Incorporating Texts into Ethnographic Practice," in D.E. Smith, ed., *Institutional Ethnography as Practice*. Oxford: Rowman & Littlefield Publishers, Inc.

Solon, Gary, Steven J. Haider and Jeffrey M. Wooldridge. 2013. "What are We Weighting for?" *Journal of Human Resources* 50(2): 301-316.

Stucky, Thomas D., Karen Heimer and Joseph B. Lang. 2005. "Partisan Politics, Electoral Competition and Imprisonment: An Analysis of States over Time," *Criminology* 43(1): 211-248.

Sykes, Bryan, Anjuli Verma and Blackhawk Hancock. Forthcoming. "On the Limits of Generalizability in Mixed-Methods Research: Aligning Sampling and Case Selection in Quantitative-Qualitative Studies," *Ethnography*.

Talesh, Shauhin. 2009. "The Privatization of Public Legal Rights: How Manufacturers Construct the Meaning of Consumer Law," *Law & Society Review* 43(3): 527-561.

Talesh, Shauhin. 2012. "How Dispute Resolution System Design Matters: An Organizational Analysis of Dispute Resolution Structures and Consumer Lemon Laws," *Law & Society Rev.* 46(3): 463-496.

Tonry, Michael. 2004. *Thinking about Crime: Sense and Sensibility in American Penal Culture.* New York: Oxford University Press.

Torrey, Fuller E. 2014a. *American Psychosis.* New York: Oxford University Press.

Torrey, Fuller E. 2014b. "Ronald Reagan's Shameful Legacy: Violence, the Homeless, Mental Illness," *Salon.com.* 29 Sept. Available at: http://www.salon.com/2013/09/29/ronald_reagans_shameful_legacy_violence_the_homeless_mental_illness/ (accessed 18 Aug. 2016).

Tavory Iddo and Stefan Timmermans S. 2013. "A Pragmatist Approach to Causality in Ethnography," *American Journal of Sociology* 119(3): 682-714.

Tilly, Charles. 2006. *Regimes and Repertoires.* Chicago: University of Chicago Press.

Ulmer, Jeffery T. 2005 "The Localized Uses of Federal Sentencing Guidelines in Four U.S District Courts: Evidence of Processual Order," *Symbolic Interaction* 28: 255-279.

Van Dijk, Teun A. 2008 "Critical Discourse Analysis" in D. Schiffrin, D. Tannen and H.E. Hamilton, eds., *The Handbook of Critical Discourse Analysis*. Oxford: Blackwell Publishers.

Vélez, María B., Christopher J. Lyons & Wayne A. Santoro. 2015. "The Political Context of the Percent Black-Neighborhood Violence Link: A Multilevel Analysis," *Social Problems*. Forthcoming.

Verma, Anjuli**.** 2015. "The Law-Before: Legacies and Gaps in Penal Reform." *Law & Society Review* 49(4): 847-882.

Verma, Anjuli**.** 2016. "A Turning Point in Mass Incarceration? Local Imprisonment Trajectories and Decarceration under California's Realignment." *The Annals of the American Academy of Political and Social Science*, 664: 108-135.

Wacquant, Loïc. 2001. "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society* 3(1): 95-134.

Wacquant, Loïc. 2002. "The Curious Eclipse of Prison Ethnography in The Age of Mass Incarceration," *Ethnography* 3(4): 371-397.

Ward, Geoff. 2014. "The Slow Violence of State Organized Race Crime," *Theoretical Criminology* 19(3): 299-314.

Ward, Geoff, Amy Farrell and Danielle Rousseau. 2009. "Does Racial Balance in Workforce Representation Yield Equal Justice? Race Relations of Sentencing in Federal Court Organization," *Law & Society Review* 43: 757-806.

Weidner, Robert R. and Richard S. Frase. 2003. "Legal and Extralegal Determinants of Intercounty Difference in Prison Use," *Criminal Justice Policy Review* 14(3): 377-400.

White, James Boyd. 1990. *Justice as Translation: An Essay in Cultural and Legal Criticism.* Chicago: University of Chicago Press.

The White House. 2016. *President Obama Visits the El Reno Federal Correctional Institution*. Video, July 16. Available at https://www.youtube.com/watch?v=3hGZ7AMk39Q (accessed 4 July 2016).

Wilson, Carter A. 2000. "Policy Regimes and Policy Change," *Journal of Public Policy* 20(3): 247-274.

Wilson, Reid. 2014. "Prisons in these 17 states are over capacity," *The Washington Post.* 20 Sept.

Wilson, William J. 2014. "The Travails of Urban Research," *Contemporary Sociology: A Journal of Reviews* 43: 824-28.

Zimring, Franklin E. 2004. *The Contradictions of American Capital Punishment*. New York: Oxford University Press.

Zimring, Franklin E. 2014 "Substance and Procedure in the Reform of Criminal Sentencing," *McGeorge Law Review* 46: 735-747.

Zimring, Franklin E. and Gordon J. Hawkins. 1991. *The Scale of Imprisonment*. Chicago: University of Chicago Press.

Cases Cited

Brown v. Plata, 131 S. Ct. 1910 (2011).

New State Ice Co. v. Liebmann, 285 U.S. 262, 52 S.Ct. 371, 76 L.Ed. 747 (1932).

Statutes and Laws Cited

Assembly Bill No. 109 (2011) Public Safety Realignment, California Assembly 2011-2012 Regular Session, Ch.15. See also, California State Penal Code.

Assembly Bill No. 117 (2011) Public Safety Realignment, California Assembly 2011-2012 Regular Session, Ch.15. See also, California State Penal Code.

Proposition 66. 2004. Limitations on "Three Strikes" Law. Ballot Measure by Voter Initiative. California General Election, Nov. 2. Rejected.

Proposition 83. 2006. Sexual Predator Punishment and Control Act: Jessica's Law. Ballot Measure by Voter Initiative. California General Election, Nov. 7. Approved.

Proposition 5. 2008. Nonviolent Offender Rehabilitation Act. Ballot Measure by Voter Initiative. California General Election, Nov. 4. Rejected.

Proposition 9. 2008. Victims' Rights and Protection Act of 2008: Marsy's Law. Ballot Measure by Voter Initiative. California General Election, Nov. 4. Approved.

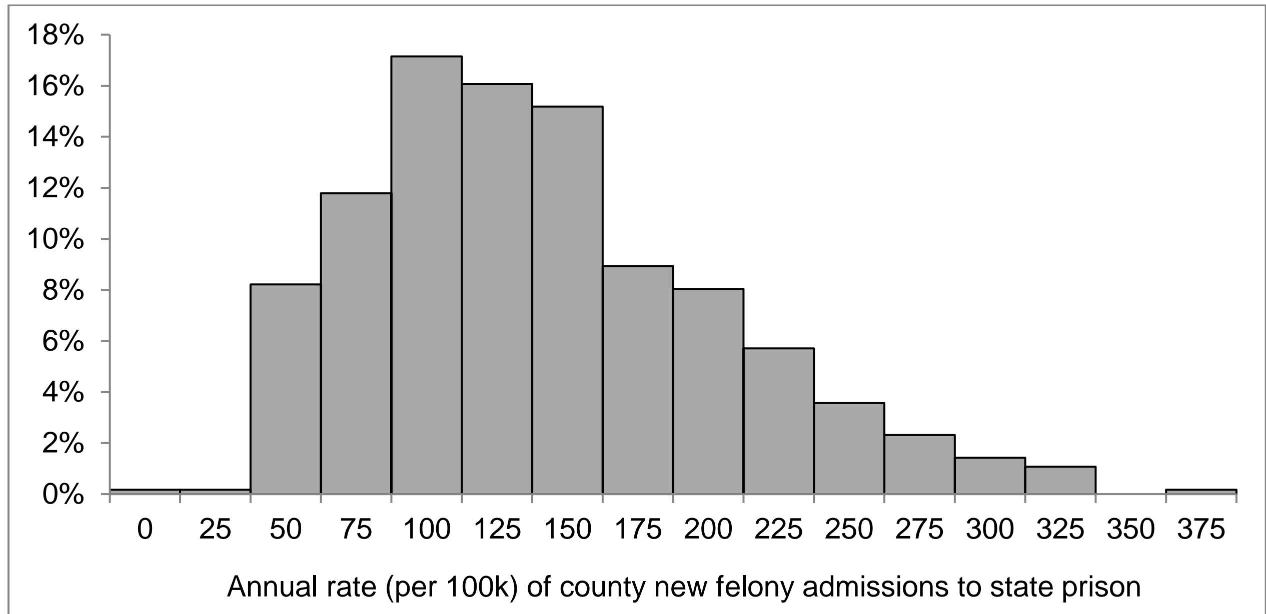
Proposition 19. 2010. Regulate, Control and Tax Cannabis Act. Ballot Measure by Voter Initiative. California General Election, Nov. 2. Rejected.

Proposition 34. 2012. Savings, Accountability, and Full Enforcement for California Act. Ballot Measure by Voter Initiative. California General Election, Nov. 6. Rejected.

Proposition 36. 2012. Three Strikes Reform Act of 2012. Ballot Measure by Voter Initiative. California General Election, Nov. 6. Approved.

Proposition 47. 2014. The Safe Neighborhoods and Schools Act. Ballot Measure by Voter Initiative. California General Election, Nov. 6. Approved.

Appendix A: Relative Distribution of State Prison Admissions (2000-2009)



Appendix B: Coding Frame Used to Analyze County Realignment Plans

Coding Dimension	Codes
(1) Terminology used throughout plan for new law	
	"Public Safety Realignment" – 0 / 1
	"AB 109" – 0 / 1
	"Realignment" – 0 / 1
	"Criminal Justice Realignment" – 0 / 1
	"Criminal Justice Alignment" – 0 / 1
	"Alignment" – 0 / 1
	Different terms used interchangeably – 0 / 1
	Other – (fill in)
(2a) References to REQUIRED substantive statutory components of AB 109:	
Redefinition of certain felonies as supervised by county and punishable in local jails rather than state prison (Pen. Code § 1170[h][3])	New offender population will no longer go to state prison, but rather will be supervised by county (Redefines "felony" to include that a felony is punishable by imprisonment in county jail for more than one year) – 0 / 1
	If "1", accurately described as required – 0 / 1
	Subject to the following exceptions, felonies are punishable by 16 months, or 2 or 3 or more years in county jail – 0 / 1
	If "1", accurately described as required – 0 / 1
	References to exceptions to the redefinition of the "felonies" that will now be supervised by county include:
	Serious felonies – 0 / 1
	Violent felonies – 0 / 1
	Felonies requiring registration as a sex offender – 0 / 1
	When the offender has a prior conviction for a serious or violent felony, or a felony requiring registration as a sex offender – 0 / 1
New misdemeanor created re: Electronic Monitoring (Pen. Code § 4532)	A new misdemeanor crime is created for inmates who are put on electronic monitoring and fail to comply with terms (imposition of a state-mandated local program) – 0 / 1

	If “1”, accurately described as required – 0 / 1
New procedures for good time credits/time served credits (Pen. Code § 2900.5 [f])	Time served in a home detention program shall qualify as mandatory time served in jail – 0 / 1
	If “1”, accurately described as required – 0 / 1
(Cal. Code Regs. tit. 15, §§ 1080 to 1084)	County correctional administrators must notify inmate if they lose “good time” credits for violations of specified terms of behavior (imposition of a state-mandated local program) – 0 / 1
	If “1”, accurately described as required – 0 / 1
	Inmates who have stayed on good behavior will have 4 days counted for every 2 days they spent in local custody, with the exception of inmates who have a limit of 15% good time credit – 0 / 1
	If “1”, accurately described as required – 0 / 1
Creates bifurcated post-release supervision (Pen. Code § 3450 Tit. 2.05 of Pt. 3)	Enacts Postrelease Community Supervision Act of 2011 – 0 / 1
	With exceptions, any person released from state prison after October 1, 2011 shall be subject to supervision by the county – 0 / 1
	Supervision term by county shall not exceed 3 years – 0 / 1
	Exceptions are parolees eligible for release who were serving a term for a serious or violent felony, a term imposed because of 2 or more prior felony convictions ("lifers" or "3rd strikers"), is classified as a High Risk Sex Offender or who is required to undergo treatment as "Mentally Disordered" – 0 / 1
	Local courts must process revocations instead of state parole system – 0 / 1
	If “1”, accurately described as required – 0 / 1
	revocation custody is capped at 180 days (6 months)

Establishment of local justice workgroup (Pen. Code § 1230.1)	Establishes an Executive Committee within each county's Community Corrections Partnership to recommend a local plan to county boards of supervisors on how 2011 Public Safety Realignment should be implemented within that county – 0 / 1
	If "1", accurately described as required – 0 / 1
Discharging registered sex offenders	Courts, rather than the parole board, will be responsible for discharging registered sex offenders from prescribed periods of parole and making determinations as to whether there is good cause not to release the offender from parole – 0 / 1
	If "1", accurately described as required – 0 / 1
	The required period of continuous parole time for sex offenders is increased from 6 to 6 ½ years from the date of prison release and from 20 to 20 ½ years for specified sex offenses – 0 / 1
	If "1", accurately described as required – 0 / 1
CDCR-County communication	CDCR must provide specified information to counties about all offenders who are released from state prison on postrelease community supervision – 0 / 1
	If "1", accurately described as required – 0 / 1
	Counties must respond to CDCR requests for information on offenders who have been released from prison on postrelease community supervision (new state-mandated local program) – 0 / 1
	If "1", accurately described as required – 0 / 1
	Number of references to broad category "CDCR-County communication" #
Funding Contingencies	This law will become operative only upon the creation of a community corrections grant program to assist in implementation and appropriation to fund the program – 0 / 1
	If "1", accurately described as required – 0 / 1
	The state will reimburse counties for certain of the state-mandated local programs – 0 / 1

	If “1”, accurately described as required – 0 / 1
	Number of references to broad category "Funding contingencies" #
Fiscal emergency response	This bill addresses the fiscal emergency declared by the Governor by proclamation on January 20, 2011 – 0 / 1
	If “1”, accurately described as required – 0 / 1
	Number of references to broad category "Fiscal emergency response" #
Other - anything else plans reference as REQUIREMENTS of the law	Other (fill in)
(2b) References to DISCRETIONARY substantive statutory components of AB 109:	
Contracting with CDCR for bed space - the state is not abandoning counties that cannot manage offender populations within local jails (Pen. Code § 2057)	Counties may contract with CDCR for beds in state prison for the commitment of persons from the county convicted of a felony – 0 / 1
	If “1”, accurately described as discretionary – 0 / 1
	Number of references to broad category "Contracting with CDCR for bed space" #
Alternatives to jail custody (Pen. Code § 1203.016)	Enhances county correctional administrator authorization to offer voluntary or involuntary home detention for offenders subject to confinement in county jails – 0 / 1
	If “1”, accurately described as discretionary – 0 / 1
	Inmates being held in lieu of bail may be placed in an electronic monitoring program 0/1
	If “1”, accurately described as discretionary – 0 / 1
	Other alternatives to jail custody referenced – 0 / 1
	If “1”, list
	If “1”, characterization as required or discretionary or unclear
	Number of references to broad category "Alternatives to jail detention" #

Denial of good time credits	"Good time" credits may be denied to county jail inmates who violate specified terms of behavior – 0 / 1
	If "1", accurately described as discretionary – 0 / 1
	Number of references to broad category "Denial of good time credits" #
Other - any other component of law referenced and depicted as DISCRETIONARY	Other (fill in)
Presence of erroneous interpretation (other than mischaracterization of discretionary/requirement)	Presence of erroneous interpretation (other than mischaracterization of discretionary/requirement) - 0/1
	AB 109 requires the release of offenders from state prison – 0 / 1
	Other – (fill in)
(3) References to Legislative Findings contained within statute (stated in new Pen. Code § 17.5)	References to items covered by Legislative Findings contained within statute (stated in new Pen. Code § 17.5) - 0/1
	If "1", Reference to legislative findings *as such* – 0 / 1
	Reference to legislative finding elements at all (not as formal reference to legislative findings) – 0 / 1
Legislative finding elements stated in new Pen. Code § 17.5:	(1) The Legislature reaffirms its commitment to reducing recidivism among criminal offenders - 0 / 1
	(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average. – 0 / 1
	(3) Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. – 0 / 1

	(4) California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system. – 0 / 1
	(5) Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society. -0 / 1
	(6) Community-based corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for low-level offender populations. Each county's Local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders. – 0 / 1
(Pen. Code § 17.5(a)(7))	(7) Fiscal concerns and programs should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.- 0 / 1
	(8) "Community-based punishment" means evidenced based correctional sanctions and programming other than jail incarceration alone or traditional routine probation supervision. Intermediate sanctions may be provided by local public safety entities directly or through community-based public or private correctional

	service providers, and include, but are not limited to, the following: - 0 / 1
	(A) Short-term flash incarceration in jail for a period of not more than 7 days. – 0 / 1
	(B) Intensive community supervision. – 0 / 1
	(C) Home detention with electronic monitoring or GPS monitoring. – 0 / 1
	(D) Mandatory community service. – 0 / 1
	(E) Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation. – 0 / 1
	(F) Work, training, or education in a furlough program pursuant to Section 1208. – 0 / 1
	(G) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2. – 0 / 1
	(H) Day reporting. – 0 / 1
	(I) Mandatory residential or nonresidential substance abuse treatment programs. – 0 / 1
	(J) Mandatory random drug testing. – 0 / 1
	(K) Mother-infant care programs. – 0 / 1
	(L) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these
	(9) “Evidence-based practices” refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or post release supervision. – 0 / 1
	(b) The provisions of this act are not intended to alleviate state prison overcrowding. -0 / 1
(4) References to purposes/intent of law change - how much context do plans provide about why this law was enacted?	References to purposes/intent of law change - 0/1
	Brown v. Plata – 0 / 1

	Fiscal crisis – 0 / 1
	To address state prison overcrowding (as separate from a specific reference to *Plata*) - 0/1
	State's supervision has resulted in too high a recidivism rate - 0/1
	State thinks that Local entities are better positioned to supervise this offender population - 0/1
	Over-incarceration - 0/1
	Other – (fill in)
(5) References to magnitude of impact of law change	References to magnitude of impact of law change - 0/1
	If "1", list words used with respect to impact on COUNTY IN GENERAL
	If "1" list words used with respect to SHERIFF
	If "1" list words used with respect to DISTRICT ATTORNEY
	If "1" list words used with respect to PUBLIC DEFENDER
	If "1" list words used with respect to COURTS
	If "1" list words used with respect to PROBATION
	If "1" list words used with respect to PUBLIC HEALTH/TREATMENT SERVICES
	If "1" list words used with respect to LAW ENFORCEMENT
	If "1" list words used with respect to impact on STATE GOVERNMENT
	If "1" list words used with respect to impact on PEOPLE SENTENCED/PUNISHED UNDER NEW LAW
	If "1" list words used with respect to impact on THE SYSTEM AS A WHOLE
(6) Verbiage depicting overall attitude towards new law indicates	Verbiage depicting overall attitude towards new law – 0/1
	Positive attitude – 0 / 1
	If "1" list words
	Negative attitude – 0 / 1

	If “1” list words
	Neutral - 0/1
	If “1” list words
(7) Direct quotations from the statute	Direct quotations from the statute - 0/1
	If 1, list