



KEY IDEAS IN
CRIMINOLOGY
SERIES

PENAL POPULISM

JOHN PRATT

PENAL POPULISM

Following the lead of the USA, prison rates in many Western countries have soared while crime rates have been declining. Governments have developed penal policies in line with the sentiments and aspirations of the general public rather than their own bureaucratic organizations. This penal populism has led to much stronger relationships between politicians and those who claim to speak for the public – such as anti-crime social movements, talk-back radio hosts, and victims' rights lobbyists.

This book argues that governments have increasingly allowed penal populism to impact on policy development and that there has been less reliance on the expertise of civil servants and academics. This fascinating book shows that the roots of penal populism lie in the collapse of trust in the modern institutions of government, the decline of deference and the growth of ontological insecurity, along with new media technologies helping to spread it. It has had most influence in the development of policy on sex offenders, youth crime, persistent criminals and 'incivilities', and anti-social behaviour. Nonetheless, it is by no means an inevitable phenomenon in modern penal systems – there are societies with strong central bureaucracies which have blocked it. There are also limits to penal populism – the public do not have an insatiable appetite for punishment – and there has been resistance to it from judges, lawyers, academics and the restorative justice movement.

The book is a fascinating exposé of current crime policy development and poses important questions for the future. It will be essential reading for students, researchers and professionals working in criminology and crime policy.

John Pratt is Professor of Criminology at the Institute of Criminology, Victoria University of Wellington. He has published extensively on the history and sociology of punishment, including *Punishment in a Perfect Society* (1992), *Governing the Dangerous* (1997), *Dangerous Offenders: Punishment and Social Order* (2000, joint editor), *Punishment and Civilization* (2002), *Crime, Truth and Justice* (2003, joint editor) and *The New Punitiveness* (2005, co-editor).

KEY IDEAS IN CRIMINOLOGY

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For Isabella, as always

‘Democracy which began by liberating men politically has developed a dangerous tendency to enslave him through the tyranny of majorities and the deadly power of their opinion.’

– Ludwig Lewisohn, *The Modern Drama*, p. 17

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I am delighted to be able to make this contribution to the *Routledge Key Ideas in Criminology* series. My interest in penal populism began while I was writing a previous book, *Punishment and Civilization*: it was obviously becoming an important new dynamic in penal development. It was then given extra stimulation by the force it began to have in New Zealand, where I live, and, with a graduate student, Marie Clark, I began to explore its local causes and consequences and published in *Punishment and Society*. The opportunity to put these explorations on a much bigger canvas came about through initial conversations with Philip Smith and encouragement from the series editor, Tim Newburn. I am grateful for the interest and support I have since received from Gerhard Boomgaarden and Constance Sutherland at Routledge.

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INTRODUCTION

A leading article in *The Guardian* (1 November 2001: 8) noted that the Lord Chief Justice, the Chief Inspector of Prisons and the Director General of Prisons had all complained about the growth of imprisonment in Britain. However, 'the response was abysmal. True to tradition, both major parties indulged in a round of penal populism.' Shortly afterwards, the same paper reported that 'scared of being seen to be weak on law 'n' order, [the Home Secretary has] opted for penal populism. In a system which already imprisoned more people than the most hardline states . . . he [has] opted to tighten the screw further' (*The Guardian* 12 December 2001: 18). *The Scotsman* (16 May 2005: 3) reported that Scotland's Young Thinker of the Year was interested in penal reform. She had said in a speech acknowledging her award that 'it appears to be a vote winner to say that a party will be tough on crime, but an urgent change of direction away from this "penal populism" is required.'

At the opposite end of the globe, the *Adelaide Review* (28 September 2004: 6) noted that the South Australia Labour Government had 'wholeheartedly embraced "penal

populism", largely through an aggressive policy of longer sentences.' Writing in the *Sydney Morning Herald* (13 November 2003: 10), a former Western Australia Premier complained that 'too many politicians have been seduced into implementing costly and ineffective policies; they have embraced penal populism, enacting policies which are based primarily on their anticipated popularity rather than their effectiveness.' Similarly, *The Australian* (30 December 2005: 4) stated that '[the] Western Australia Attorney-General has denied the Government's approach to justice issues amounts to little more than "penal populism" and has rejected claims it treated the state's parole board as a political football.' It must be quite rare for an important criminological concept to find its way into popular journalism and everyday discourse. Nonetheless, as we can see from this range of reports, this is what has happened to penal populism.

It is a concept with a short history. Its origins lie in the work of Sir Anthony Bottoms (1995) who coined the term 'populist punitiveness' to describe one of the four main influences which he saw at work on contemporary criminal justice and penal systems in modern society. As such, it was 'intended to convey the notion of politicians tapping into and using for their own purposes, what they believe to be the public's generally punitive stance' (Bottoms 1995: 40). Thereafter, populist influences on penal policy and thought have been detected by numerous other scholars in a broad range of countries – all the way from Sweden (Tham 2001) to New Zealand (Pratt and Clark 2005) in fact. At some point, the expression 'populist punitiveness' largely gave way to 'penal populism' – Newburn (1997) being one of the first to use this latter terminology – as the means to identify these tendencies. However, for all intents and purposes, it would seem that those who use these different terms are writing about the same events, which normally have the identifying features outlined in the above newspaper reports.

For example, very similar to Bottoms (1995), Roberts *et al.* (2003: 5, my italics) state that '*penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness*. In short, penal populism consists of the pursuit of a set of penal policies to win votes rather than to reduce crime or to promote justice.'

The argument developed in this book, however, is that penal populism should not be understood merely in terms of local political opportunism, which 'buys' electoral popularity by cynically increasing levels of penal severity because it is thought that there is public support for this, irrespective of crime trends. Obviously, politicians do exploit these opportunities, but penal populism itself represents much more than this. As Chapter 1 explains, it is the product of deep social and cultural changes which began in the 1970s and which now extend across much of modern society. The rise of penal populism is the reflection of a fundamental shift in the axis of contemporary penal power brought about by these changes, even if the extent of the shift differs from society to society, depending on their local impact. Beginning around the mid 1980s, but becoming a more clearly recognizable force in the early 1990s and then quickly gathering pace thereafter, what this has led to is a much stronger resonance between governments and various extra-establishment individuals, groups and organizations which claim to speak on behalf of 'the people' in relation to the general development of penal policy; as this has happened, establishment advisers to governments have increasingly had to share the previously exclusive role they enjoyed with these new forces; indeed, they are sometimes sidelined or ignored altogether as policy is developed. The consequences of penal populism are thus more far reaching than politicians simply 'tapping' into the public mood as and when it suits them. It is not something they can simply turn off at will. Because of the power realignment that penal populism

represents, they may be just as likely to lose control of it as to be able to manipulate it for their own purposes.

What are, though, these social and cultural changes that lie behind the rise of penal populism? Chapter 2 argues that its rise has been only tangentially linked to crime levels, in so far as perceptions of rising crime become one contributor – probably one of the most visible – to the sense that modern society is changing in ways that are threatening and unwanted by many. More generally, it is as if the pillars on which the security and stability of modern life had been built are fragmenting, while at the same time the authority of the state and its representatives has been declining. This has been because of disillusionment with existing political processes and declines in deference to elite opinion-formers. This can then lead to a dramatic redrawing of the processes of government and democracy, with the effect that ‘people are less and less prepared to leave questions, including difficult *penal* questions to their masters’ (Ryan 2004: 9). Instead, they now insist on having some sort of ‘say’ in this themselves; or they give their support to populist organizations or politicians who seem to be speaking for them and offering simple, understandable solutions to crime and other problems. By so doing, populists hold out promises of being able to repair the declines in authority and social order, thereby providing a vision of the future that seems less fraught with menace and uncertainty.

It is also clear, though, that perceptions about crime and the relationship these then have to penal populism have been influenced by the mass media and the impact of new information technology. Chapter 3 argues that the media can have the effect of both shaping, solidifying and directing public sentiment and opinion on crime and punishment, while simultaneously reflecting it back as the authentic voice(s) of ordinary people (Hall 1979). At the same time, the new technology compresses the news media into an

ever-more simplistic form, so that it becomes something between information and entertainment. This makes it more susceptible to commonsensical populist accounts and explanations at the expense of the more elaborate, involved and thereby indigestible opinions of elitist experts. Indeed, the channels of influence and authority of the latter have been steadily retracting as this has happened. In contrast, the public at large are regularly invited to 'have their say', to quote the phrase regularly thrown out by BBC newsreaders to their audience: to put forward their own point of view about the news by e-mail or fax, put forward their own point of view to talk-back radio, even help to make the news itself by transmitting photographs via their mobile phones 'as news breaks' to television companies, or be interviewed themselves as on the spot witnesses through the same channel of communication. Overall, decisions about reporting, commenting, even deciding what actually constitutes the news have become much more democratized and diversified. And as part of this process, there is a much greater credence given to the accounts of ordinary individuals rather than to elite opinion. Those of the victims of crime are now likely to outweigh the more abstract analytical comments of experts: with concomitant effects on the way in which the news is reported and understood and penal populism fuelled.

What has this actually meant, though, in terms of the development of crime control policy? One thing is clear: it has not led to the growth of some all-embracing 'war on crime', on all crime, big or small, notwithstanding some of the wilder aspirations and expectations that emanate from populist politicians or self-acclaimed spokespeople of the public from time to time. Instead, as is explained in Chapter 4, populist responses to crime are strongest and would seem most likely to influence policy when they are presaged around a common enemy, a group of criminals who seem utterly different from the rest of the population, and

whose presence when it comes to light unites the rest of the community in outrage against them: a common enemy whose activities only add to the pervading sense of anxiety and tension characteristic of everyday life in late modernity (Giddens 1990) – hence concerted measures against sex offenders, particularly child sex offenders. Or around those who, through their conduct, endanger the *precarious* quality of life that most of us have had to strive and struggle for (in the market-driven societies that many Western countries have become since the 1970s, it is no longer provided for us as of right by the state): in these respects, recidivist offenders, juveniles who seem beyond the law and even minor criminality, such as ‘anti-social behaviour’ in Britain, have all come under the populist spotlight.

Nonetheless, penal populism is not the only force at work on contemporary penal strategy and thought. Bottoms (1995) identified three others in competition with it: just deserts/human rights; managerialism and invocations of ‘community’. Chapter 5 reviews the positioning of these forces a decade or so later, alongside two new ones that have since emerged: incapacitatory and restorative penalties. In contrast to the limited possibilities that Bottoms then identified for populist punitiveness/penal populism, I argue that this has since become one of the most significant of these influences – sometimes at the expense of these others, sometimes in association with them. However, this does not mean that its growth is boundless once it is able to put down roots in a given jurisdiction. There are in-built defences that can contest and restrict it. Furthermore, the resources that are needed to fuel its demands also have their limits.

Is it the case, though, given that its causes are related to deep structural change across modern society rather than the duplicities of individual politicians, that penal populism is an inevitable characteristic of late modernity? As Chapter 6 illustrates, it is not inevitable: there are modern societies

(illustrative reference is made to Canada, Germany and Finland) where these changes have yet to take hold, or where social arrangements have acted as barriers which can be successfully placed in front of it: although these barriers are not innate characteristics of these societies. If they come down, or the social arrangements that built them are changed so that gaps appear in them, then this is likely to provide the opportunities for penal populism to make its entrance. This does not then mean, though, that there are no possibilities of resistance to this phenomenon once it does take hold, with the potential it then has to 'overwhelm and undermine the institutional architecture of liberal democracy' (Loader 2005: 23). But this of necessity also means engaging with the new terms of penal debate that these changes have produced.

Finally, the book analyses penal populism *as a general phenomenon* and the consequences and implications that this then has for penal development in modern society as a whole, rather than analysing its characteristics and dynamics in any one particular society. At the same time, specific examples are given from those countries where it has been particularly influential, and from those countries which have proved more resistant to it.

1

WHAT IS PENAL POPULISM?

Despite widespread usage of the term ‘penal populism’ in much analytical work on contemporary punishment, what populism *might actually be* has to date received very little consideration, as both Sparks (2001) and Matthews (2005) have observed. Instead, it is usually treated as a commonsense given, a label to attach to politicians who devise punitive penal policies that seem to be in any way ‘popular’ with the general public. However, penal populism is both a more complex issue than is acknowledged in those commentaries in which it is seen in this rather limited way; and more structurally embedded, representing a major shift in the configuration of penal power in modern society, rather than something within the purview of politicians to tinker with as they please. This becomes clear when we grasp the sociological significance of populism itself. From there, we can then assess what it is that is specifically populist about *penal* populism, and consider the implications and consequences that then follow from these identifying parameters.

POPULISM

In one of the first examinations of the term, Shils (1956: 100–1, my italics) observed that ‘populism exists wherever there is an ideology of popular *resentment* against the order imposed on society by a long established, differential ruling class which is believed to have a monopoly of power, property, breeding and fortune.’ Similarly Canovan (1981: 9, my italics) noted that populism should be understood as a ‘particular kind of political phenomenon where the *tensions* between the elite and the grass roots loom large.’ What they are saying, then, is that populism represents in various guises the moods, sentiments and voices of *significant and distinct segments of the public*: not public opinion in general, but instead those segments which feel that they have been ignored by governments, unlike more favoured but less deserving groups; those segments which feel they have been disenfranchised in some way or other by the trajectory of government policy which seems to benefit less worthy others but not them. It speaks specifically *for* this group who feel they have been ‘left out’ and is thus a reflection of their sense of alienation and dissatisfaction.

By corollary, it also speaks out *against* those other sectors of society which it judges to have been complicit in allowing this lack of representation to occur, in engineering this marginalization and disenfranchisement of ‘ordinary people’ who have usually made no claims on the state other than to be allowed to live their lives as such. Those thought to be responsible for this are to be found in the government’s own bureaucratic organizations; sometimes the entire parliamentary process which is seen as self-serving rather than public serving; sometimes various elite groups outside of government but which periodically advise it – academics, the judiciary, some sections of the media, all thought to be out of touch with the everyday realities and concerns of the

public at large. Taken together, they represent a loose fitting coalition of forces which make up 'the establishment'. As, such, rather than populism merely being a device to bring political popularity, its central aim is 'to inject the will of the people into the democratic decision-making process' (de Raadt *et al.* 2004: 3), or at least the will of those people whom governments are thought to have previously taken for granted and ignored. To do this, it also has to break down those barriers represented by the establishment that might prevent this from happening.

By the same token, in a bid to re-establish their credentials with this diffuse but voluble constituency, populist politicians in mainstream political parties choose to distance themselves from their own traditional constituencies of support (indeed, these are often turned into implacable enemies) and demonstrate that they are on the side of 'the people' rather than vested interest groups within their own parties. In Britain, we saw this in relation to the Conservative Party during the Thatcher era and we have also seen it, from the early 1990s, with New Labour. In both cases, to win over previously unsympathetic sections of the electorate, their leaders spoke of the aspirations of 'ordinary people' over the heads of 'One Nation' Tory 'grandees' in the first example, trade unions in the second.

However, it would also seem that the gulf that has opened up between mainstream politics and this sizeable if diffuse constituency of dissatisfaction and disenchantment can often no longer be bridged simply by representatives of mainstream politics making overtures to it. Instead, this constituency has played an important role in the development of a new politics. We see this reflected in two ways. First, the development of new political parties that are *specifically* populist, campaigning for election on such matters as immigration and asylum seekers, while often also promising to reduce the size of the state by cutting down the privileges of