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John Pratt, Michelle Miao ■**The end of penal populism;
the rise of populist politics¹****Koniec populizmu penalnego
i rozkwit polityk populistycznych**

Abstract: Penal populism has radically reshaped and reorganised many aspects of punishment in modern society. It has also shifted the emphasis from protecting the rights of individuals from excessive use of the state's power to punish to using those powers to protect the public from individuals thought to put them at risk. In so doing, it has acted as a kind of dam, holding back the anxieties and uncertainties unleashed by the neo-liberal restructuring of these societies. However, the ascendancy of populist politics indicates that this containment role is ending. The toxic contents that had been stored behind the dam have now spread throughout the social body. This paper argues that the reasons for these developments lie in the effects of the 2008 global financial crisis and the mass movement of people around the globe. As this has occurred, penal populism has taken on a new role. It is incorporated within the broader thrust of populist politics and is used to punish and control its wider sweep of public enemies which it needs to sustain itself.

Keywords: penal populism, populism, risk, neo-liberalism, insecurity, immigration

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Abstrakt: Populizm penalny w ogromnym stopniu przeorganizował i zmienił podejście współczesnych społeczeństw do idei kary i karan. Zmienił także rozłożenie akcentów – rozpoczęło się odchodzić od zasady ochrony praw jednostki przed potencjalnym nadużywaniem przez państwo władzy wykorzystywanej w celu ukarania danej osoby na rzecz korzystania z tej władzy, by ochronić społeczeństwo przed jednostką, która zaczęła być postrzegana jako zagrożenie dla ogółu. Proces ten działał wówczas jak swego rodzaju tama – zatrzymywał obawy i niepewności społeczne, które zostały uwolnione w procesie neoliberalizacji społeczeństw. Jednak obserwowany obecnie wzrost polityk populistycznych wskazuje, że ta retencyjna rola się skończyła, a cała toksyczna zawartość zatrzymywana dotychczas przez tę tamę rozlała się po społeczeństwie i jego instytucjach. W tekście postawiono tezę, że przyczyn tej zmiany należy szukać w globalnym kryzysie ekonomicznym z 2008 r., który doprowadził do masowych migracji na świecie. Zauważono także, że populizm penalny ma nową rolę. Został on włączony w rozwój polityk populistycznych i jest używany do uzasadniania karan oraz kontrolowania coraz szerszego kręgu osób uznawanych za wrogów publicznych.

Słowa kluczowe: populizm penalny, populizm, niebezpieczeństwo, neoliberalizm, zagrożenie dla bezpieczeństwa, migracja

Introduction

Since the late 1980s, the penal expectations of many modern democratic societies have undergone dramatic changes. These include, on the one hand, large increases in imprisonment rates and, on the other hand, the growth of preventive criminal law, intended to control the conduct and movement of particular segments of the population thought to be at risk of committing crime, rather than sanctioning them for crimes they have actually committed. Much of this transformation of the mechanisms, parameters and expectations of punishment has been attributed to the phenomenon of penal populism. This emphasises the importance of common-sense approaches to controlling crime rather than the exclusivity of expert knowledge of the criminal justice establishment (senior civil servants, academics, judges and the like), that had previously driven policy and had come to be thought of in populist discourse as unduly favouring offenders rather than their victims. The range and extent of the impact of penal populism varies considerably, though, from society to society. Some, for reasons stemming from their own history, seem to have built-in resistances to this phenomenon.² Others have become much more vulnerable to it. This is particularly so in the Anglo-American world, where the US, the UK and New Zealand serve as exemplars.³ As an illustration, the rate of imprisonment in the US increased from 175 in 1975 to 755 per 100,000 of population in 2008, the highest ever known in the developed world; in the UK (England and Wales specifically here), it increased from 81 in 1975 to 153 in 2012, one of the

² J. Pratt, *Penal Populism*, Routledge, New York 2007.

³ Ibidem; D. Garland, *The Culture of Control*, University of Chicago Press, Chicago 2001.

highest rates in Western Europe; in New Zealand, it increased from 82 in 1975 to 214 in 2018, one of the highest rates in the OECD.⁴

Where penal populism does take effect, the previous emphasis on correctionalism as the cornerstone of policy gives way to much more punitive strategies intended to ensure public protection, as well as generating penal controls intended to eliminate crime risks: why bother to wait until a crime is actually committed before doing something about it, its common-sense discourse demands (irrespective of the way in which such measures erode the protections given to offenders against excessive use of the state's power to punish). Penal populism also privileges the rights of victims – but for their right to exact vengeance, rather than to receive redress from their offenders or some sort of reintegrative assistance from the state. Instead, it is as if vengeance through harsh punishment is the only way in which they can find redemption. Should sentencing then fall short of these expectations, the ensuing anger of victims provides further momentum for penal populism and its crusading zeal against what it sees as the pernicious liberalism of the criminal justice establishment. Such has been the prominence of these populist voices that political parties from both Right and Left have competed against each other to win a stamp of approval for their commitment to more punitive controls and sanctions, even if this has often meant disavowing their own experts and advisers in the process.⁵

Indeed, during the 1990s and early 2000s, these tactics proved to be a sure-fire way of winning electoral support and power – Clinton in the US, Blair in the UK and successive Labour governments in New Zealand from 1999 to 2005.⁶ However, we argue in this article that penal populism has had a function and significance that goes beyond these kinds of political calculations. What has made it so attractive to governments in the Anglo-American societies in particular was the role it was able to play as a shock absorber against the seismic events taking place elsewhere in the social fabric brought about by neo-liberal economic and social restructuring over the same period. Penal populism is able to act as a kind of dam that stores all the toxic waste, all the sediment from the anxieties and insecurities brought about by this restructuring: anxieties and insecurities that have since – because of the nature of public and political discourse in these societies – crystallized into convenient targets for reinvigorated penal controls, primarily against sex offenders and street people (beggars, vagrants, gang members and so on), for example. They have been the ones, it seems, who put the well-being of citizens at the greatest risk. By playing this containment role, penal populism then allowed

⁴ World Prison Brief, *World Prison Brief* data, <https://prisonstudies.org/world-prison-brief-data> [access: 7.08.2019].

⁵ J. Pratt, *Penal...*, op. cit.; D. Garland, *The limits of the sovereign state*, "British Journal of Criminology" 1996, vol. 36, no. 4, pp. 445–471.

⁶ J.V. Roberts, L. Stalans, D. Indermaur, M. Hough, *Penal Populism and Public Opinion*, Oxford University Press, New York 2003.

the neo-liberal mode of governance to continue apace. The very act of building the dam seemed to win legitimacy for this same mode of governance – it seemed to be a signal of strong government authority and a demonstration that politicians were listening to and responding to their citizens' concerns about what seemed to be the most obvious risks to them: even though, at the same time, its economic programme demonstrated the weakness of its authority (markets, not the government, would determine its course) and the way in which this lay behind so much of the surfeit of ontological insecurity⁷ experienced in these societies.

But what, then, is the relationship between penal populism and the rise of the more wide-ranging populist politics that we now see on the rise across much of democratic society, let alone these Anglo-American jurisdictions? Rather than seeking to sustain neo-liberal restructuring, populist politicians present themselves as the antidote to it, promising to reverse its main characteristics. Instead of neo-liberalism's emphasis on globalisation, populists insist on protectionism; instead of free movement of labour, there are reinforced border controls. While neo-liberalism exhorted individual entrepreneurs to take risks and shape the future, populism promises to recreate a mythical, serene past. While neo-liberalism saw market forces as the neutral arbiter of economic development, unflinchingly distributing both its rewards and losses, populism has emerged out of a revolt against all such uncertainty, most trenchantly felt and expressed by former manufacturing communities which neo-liberalism left behind because of their inability to reinvent themselves to suit its new demands for the service, tourism and finance industries; and by all those individuals who, after restructuring, find themselves marooned in modern society's bargain basement, while the winners in the casino economy⁸ that this has led to glide ever upwards on its escalator of success, enjoying new wealth and fame at each floor they arrive at.

This in turn means that the 'shock absorber role' played by penal populism is ending, at least in those societies where populist politics has established a stronghold. This does not mean, however, penal populism itself will disappear, and we will somehow revert to the pre-1980s correctionalist policies under the reign of a re-empowered criminal justice establishment. On the contrary – its punitive, vengeful, common-sense discourse at the expense of expert knowledge is incorporated into and helps to sustain the new programme of government that populist politicians demand in order to counter the threat from their expanding cluster of enemies who are seen as a threat to public well-being, and against whom some form of para-penal controls are thought essential if security, order and cohesion are to be restored.

⁷ A. Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age*, Polity Press, Cambridge 1991.

⁸ R. Reiner, S. Livingstone, J. Allen, *Casino culture: Media and crime in a winner-loser society* [in:] K. Stenson, R. Sullivan (eds), *Crime, Risk and Justice*, Willan Publishing, Cullompton, UK 2001, pp. 174–194.

Let us first consider, though, the interplay between neo-liberalism and penal populism. It was the political commitment to the former that made possible the emergence of the latter.

1. Conditions necessary for penal populism

Neo-liberal restructuring brought great benefits for many. One of the consequences of setting risk free from economic restraints in the course of this shift was the new ability of consumers to

buy a cornucopia of products from across the world at often astoundingly cheap prices. Consumer spending soared. Electronic goods, children's toys, clothing and a plethora of other commodities flowed from countries in East Asia undergoing unprecedented high rates of economic growth...⁹

In effect, restructuring and its attendant programmes of globalisation and deregulation appeared to make available new opportunities for wealth creation, consumption and pleasure, certainly to all who were prepared to embrace its attendant exhortations for initiative and enterprise and to embrace the way neo-liberalism prioritised the interests and priorities of the individual above all else. Previous encumbrances that might have held them back – community ties and responsibilities, family obligations, the reciprocity of loyalty between themselves and their employer – should thus all be cast aside as they now ideally made their journey through life ruthless and alone, but wealthy and successful. As Bauman indicates, 'individuals who are untied to place, who can travel light and move fast, win all the competitions that matter and count.'¹⁰

The growth of overseas travel is just one illustration of the way in which opportunities and experiences that had previously been reserved for a privileged minority then became a normative expectation for most of the population. Visits abroad by UK citizens increased from 11.6 million in 1980 to 38.5 million in 2014 (and in 2012, 1.6 million people in England and Wales owned a second home, 60 per cent of which were outside the UK). In the US, while 8 million people went overseas in 1980, this had increased to 15.7 million by 2014; in 1954, Americans flew, on average, once every four years; by 2005 this had increased to 2.5 times per year. The number of New Zealanders travelling overseas increased from 270,000 in 1980 to 1 million in 2014.

⁹ I. Kershaw, *Roller-Coaster. Europe 1950–2017*, Allen Lane, London 2018, p. 459–460.

¹⁰ Z. Bauman, *Liquid Modernity*, Polity Press, Cambridge 2001, p. 62.

Over the same period, though, taking the risks that neo-liberalism demands for economic success has only led to disaster for many others, as reflected in the growing number of personal bankruptcies in these three societies. In the UK, bankruptcies increased from 3,986 in 1980 to 58,801 in 2010. In New Zealand, the increase was from 608 in 1980 to 6,426 for 2010. In the US, it went from 241,431 in 1980 to 1,536,799 in 2010. This is just one example, though, of the way in which in the course of neo-liberal restructuring the conduct of everyday life became much more problematic and precarious¹¹ for so many. And those previous ties and encumbrances and bonds that might well get in the way of the enterprising subject but which in times of difficulty would have provided support and guidance have certainly become much weaker. Organic community life, for example, has largely dissolved.¹² In terms of community ties, civic duties and responsibilities, it has been reported that ‘nearly half of Britons socialise with family and friends only once a month or less... [and] the lack of human interaction is causing the nation’s sense of wellbeing to dwindle.’¹³ Family life has become much more tangential, with an increased likelihood of divorce, along with the growth of impermanent de facto relationships and dramatic increases in people living alone.¹⁴ Beck and Beck-Gernsheim thus pose the question:

Ask yourself what actually is a family nowadays? What does it mean? Of course, there are children, my children, our children. But even parenthood, the core of family life, is beginning to disintegrate under conditions of divorce. Grandmothers and grandfathers get included and excluded without any means of participating in the decisions of their sons and daughters.¹⁵

¹¹ G. Standing, *The Precariat: The New Dangerous Class*, Bloomsbury, London 2014.

¹² R.D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, Simon & Schuster, New York 2000.

¹³ Press Association, *Half of Britons socialise with family and friends at most once a month*, The Guardian, 17.06.2019, www.theguardian.com/world/2019/jun/17/half-of-britons-socialise-with-family-and-friends--at-most-once-a-month [access: 7.08.2019].

¹⁴ Marriage rates (i.e., the number of marriages occurring among the population of a given geographical area during a given year, per 1,000 midyear total population) are as follows: New Zealand, 1980, 7.3; 2014, 4.4; UK, 1980, 7.4, 2012, 4.4; USA, 1985, 10.1; 2012, 6.8. The ratio of marriages to divorces over the same period is as follows: New Zealand, 1980, 3:1; 2014, 2.5:1; UK, 1980, 2.7:1; 2012, 2.3:1; USA, 1980, 2:1; 2012, 2.2:1. Couples in de facto relationships in the UK increased from 8.9 per cent in 1996 to 16.4 per cent in 2014. One-parent families increased in New Zealand from 12 per cent in 1981 to 17.8 per cent in 2013; in the UK, 13.9 per cent in 1981 to 25 per cent in 2014; and in the USA, from 19.5 per cent in 1980 to 29.5 per cent in 2008. Meanwhile, the average household size declined across all these societies: in New Zealand from 3.0 in 1981 to 2.7 in 2013; in the UK, from 2.7 in 1981 to 2.4 in 2012; in the USA, from 19.5 in 1980 to 29.5 in 2008. In New Zealand, one-person households increased from 16 per cent in 1981 to 24 per cent in 2018; in the UK, from 22 per cent in 1981 to 28 per cent in 2017; and in the USA, from 23 per cent in 1980 to 28 per cent in 2017.

¹⁵ U. Beck, E. Beck-Gernsheim, *Individualization: Institutionalized Individualism and its Social and Political Consequences*, Sage, London 2001, p. 204.

And then, in terms of economic security, working in the public sector – which used to be a safe haven offering annual pay rises and a healthy pension on retirement – began to be scaled down, due to the growing privatisation of state services. From the beginning of restructuring in the 1980s, public-sector employment fell from 25.9 per cent of the workforce in New Zealand to 17.1 per cent in 2013; and from 27.4 in 1980 to 17.2 per cent in 2015 in the UK.¹⁶

Thus, notwithstanding the new opportunities for pleasure and excitement that had been made available, neo-liberal restructuring brought with it a pervading sense of isolation and precariousness. It was out of these tensions and dynamics that the constituent elements necessary for penal populism began to emerge. In ideal type characterisation rather than in any historical sequence, these constituents are made up of:

1.1. The decline of deference

The decline of deference refers to the way in which the values and opinions of elite social groups that used to frame public discourse are no longer accepted without question. Indeed they may provoke outrage and derision when aired.¹⁷ Before the 1980s, it was assumed that establishment figures – in the universities, the civil service and so on – formed a natural class of government on the basis of their lineage, education and wealth and on the positions of power that these characteristics thus guaranteed for them. Thereafter, however, those in government or governmental bureaucracies would no longer be viewed as the social superiors of the rest of society with the exclusive right to pronounce on issues of the day, and would accordingly be challenged by those outside these Establishment circles.

Neo-liberalism was instrumental in engineering these changes. Firstly, it had no interest in maintaining the status quo that allowed elites to hold on to their power and privileges. It insisted instead that rewards should go to the enterprising and the hard-working, irrespective of their backgrounds and origins. The uncertainties created by freeing the economy from risk controls were to be welcomed, since it was envisaged that opportunities would emerge from this and allow enterprise to succeed amidst the chaos. It might seem that, as Charles Handy wrote, with the removal of many previous guarantees of security provided by the state ‘we are entering an Age of Unreason’, but this also meant that ‘the future, in so many areas, is there to be shaped, by us and for us’,¹⁸ rather than the state. Secondly, elites, most often employed in some prestigious capacity in the public sector, were regarded as

¹⁶ Comparable data from the US on public-sector employment are not available.

¹⁷ N. Nevitte, *The Decline of Deference: Canadian Value Change in Cross National Perspective*, Broadview Press, Peterborough, Ontario, Canada, 1996.

¹⁸ Ch. Handy, *The Age of Unreason*, Arrow Books, London 1989, p. 4.

the enemies of neo-liberal reforms, and were thought to use their influence to resist or undermine them: ‘nowhere is this attitude of suspicion [of making money] more marked than in the cloister and common room. What these critics apparently can’t stomach is that wealth creators have a tendency to acquire wealth in the process of creating it for others.’¹⁹

The criminal justice establishment proved to be particularly vulnerable to these challenges. This was because of its apparent failure to address crime rates, rising since the 1950s, while simultaneously giving the impression that they would much prefer to attend to the rehabilitative reform of criminals instead.²⁰ In so doing, they seemed remote and detached from the concerns of ‘ordinary people’ (Margaret Thatcher’s successful use of ‘law and order’ in the 1979 British election was one of the first illustrations of the political potency of this issue). The subsequent decline in crime from the early 1990s across most of Western society²¹ could not displace the way in which rising crime had by then become taken for granted as a ‘social fact’ – to which the Establishment had no answer. Attempts by its members to explain that crime was in decline rather than rising simply became proof of their own irrelevance and duplicity.

1.2. The decline of trust in politicians and existing democratic processes

Electoralates grew increasingly cynical of politicians’ promises and guarantees of better futures when these regularly failed to materialise (especially when this was compounded by evidence of their own scandalous conduct, as with the revelations of extensive fraudulent expenses claims by British MPs in 2009). In the aftermath of economic restructuring, worthy citizens who had followed government advice and invested, often for the first time, on the stock market – this was described as ‘popular capitalism’ by Margaret Thatcher, where making fortunes in this way was advertised as no longer being the prerogative of the already rich – were likely to have been the ones hurt most when the first of the great post-restructuring economic crashes occurred in October 1987. “The Times” thus reported that

the record books were being rewritten in the City yesterday as share prices on the London stock market suffered their biggest ever one day fall, amid fears that one of the strongest bull markets in living memory had come to

¹⁹ M. Thatcher, *Speech to Conservative Central Council*, Newcastle, UK, 23.03.1985, Margaret Thatcher Foundation, <https://www.margaretthatcher.org/document/106000> [access: 7.08.2019].

²⁰ See: Home Office, *Penal Practice in a Changing Society*, HMSO, London 1959 [Cmnd. 645].

²¹ F.E. Zimring, *The City That Became Safe: New York’s Lessons for Urban Crime and its Control*, Oxford University Press, New York, NY 2012; G. Farrell, N. Tilley, A. Tseloni, *Why the crime drop?*, “Crime and Justice” 2014, vol. 43, no. 1, pp. 421–490.

an end... in Britain, millions of new investors are unfamiliar with losses and their reactions are unpredictable.²²

Rather than bringing better futures, government policies might only bring disaster to those citizens who had loyally adhered to the actions governments had been urging them to take. However, the politicians themselves, along with their advisers, seldom seem to suffer. When leaving government they are likely to be offered remunerative directorships, memberships of advisory bodies and so on. Unsurprisingly, in Ipsos Mori opinion poll surveys in the UK since 1983, politicians have nearly always been the least trusted profession. In the US, the average of opinion poll surveys between 1984 to 1995 showed a marked decline in trust in government: from a high of 44 per cent to a low of 22 per cent, at the beginning and end of this period.²³

In New Zealand, at the forefront of the restructuring since 1984 – as it was transformed almost overnight from being one of the OECD’s most heavily regulated societies to one of its most deregulated – the consequences of the 1987 crash and the shattered dreams of unparalleled, easily gained riches it left behind, then contributed to a dramatic decline of trust in both of its mainstream political parties that had been committed to the restructuring. Support fell to 9 per cent (Labour) and 12 per cent (Conservative) of the electorate, respectively, in opinion polling in the early 1990s.²⁴ This decline of trust simultaneously led to a surge of support for the populist, right-wing New Zealand First party. It promises to place ‘control of New Zealand’s resources in the hands of New Zealanders, by restoring faith in the democratic process’, alongside ‘common-sense decision-making in the best interests of all’.²⁵

Furthermore, the manifest decline of trust in the existing electoral system generated a referendum in 1993 where the public voted in favour of proportional representation rather than the previous ‘first-past-the-post’ system, in the expectation that this would bring wider representation in parliament rather than allowing the vested interests of the two main parties to dominate government. In reality, however, New Zealand First will almost always be able to attract sufficient numbers of a disaffected core of the electorate to take it over the 5 per cent threshold it now needs to gain parliamentary seats. On three occasions since the referendum (following the elections of 1996, 2005 and 2017), it has become ‘kingmaker’ in coalition

²² M. Clark, G. Foster, *Dealers Fear End of Bull Market*, “The Times”, 20.10.1987.

²³ British Social Attitudes, *British Social Attitudes 31*, <http://bsa.natcen.ac.uk/latest-report/british-social-attitudes-31/key-findings/britain-2014.aspx> [access: 7.08.2019]; *Public Trust in Government: 1958–2019*, Pew Research Centre, 11.04.2019, www.people-press.org/2019/04/11/public-trust-in-government-1958-2019/ [access: 7.08.2019].

²⁴ See: J. Pratt, M. Clark, *Penal populism in New Zealand*, “Punishment & Society” 2005, vol. 7, no. 3, pp. 303–322.

²⁵ New Zealand First, *Manifesto*, Government Printer, Wellington, NZ 2014.

governments. Much of this party's success has come through speaking to public anxieties about crime and immigration and proffering its magical but common-sensical solutions to these problems (more police, tougher sentencing, less immigration²⁶). The major parties have then been prepared to accede to these demands in order to win their support in parliament,²⁷ and thereby allow their centrepiece policies on these matters to become part of government policy. Furthermore, the popular appeal of 'law and order' that they had demonstrated encouraged the New Zealand mainstream parties (as in Britain and the USA²⁸) to compete with each other on these terms, again building penal populism into government policy.

1.3. The rise of global insecurities and anxieties

From the 1980s, the modern world is thought to have become a much riskier, threatening place,²⁹ in many ways a consequence of the same restructuring. If this has brought new possibilities of wealth creation (massive financial dealings can be made in a few seconds thanks to computer technology) and new opportunities for pleasure, fulfilment and self-enhancement to everyday life, it has also brought new risks –terrorism, new kinds of cancer, credit card fraud and so on and so forth. This has occurred in conjunction with the fragmentation or disappearance of many of the old and familiar symbols of security and stability: family and community life and the security and longevity of employment, as noted. In their absence, many others have become losers, existing as an entirely new class: the 'precariat,' experiencing a condition of existence without predictability or security³⁰ and knowing only temporary employment in the unpredictable private sector. While some, with dazzling stories of initiative and success written into their CVs, may be welcomed with 'golden hellos' when joining an organisation, many others find that they are reduced to the uncertainties of zero-contract hours,³¹ or life in the gig economy, neither of which provide any guarantees of a regular and reliable income.

In this context, concerns and perceptions about crime and disorder and insufficient punishment and control played an important role in stabilising and remedying these deficiencies in social capital. During the 1990s and the early part of the twenty-first century, it seemed that crime was the most obvious and immediate

²⁶ J. Pratt, M. Clark, *Penal...*, op. cit.

²⁷ N. Lacey, *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*, Cambridge University Press, Cambridge 2008.

²⁸ See: T. Jones, T. Newburn, *Policy Transfer and Criminal Justice*, Open University Press, London 2006.

²⁹ U. Beck, *Risk Society: Towards a New Modernity*, Sage, London 1992.

³⁰ G. Standing, *The Precariat...*, op. cit.

³¹ A zero-hour contract is one where the employer is not obliged to provide any minimum working hours for the employee.

source of risk and danger – it had indeed become a well-established social fact (notwithstanding the decline of crime rates) and the most obvious and immediate symbol of the inability of governments and their experts to do anything about making everyday life more secure.

1.4. The influence of the mass media

Giddens argues that one of the characteristics of modern society has been ‘the sequestration of experience’. That is, ‘the separation of day-to-day life from contact with those experiences which raise potentially disturbing existential questions – particularly experiences to do with sickness, madness, criminality, sexuality and death.’³² As most people in modern society have become uncomfortable in dealing with these aspects of everyday life, these matters have become hidden behind bureaucratic screens, with the mass media vicariously informing their publics about them. Or rather, for much of the twentieth century, what information they were provided with was shaped by authoritative sections of the media (such as “The Times” and the BBC in the UK), allowing the Establishment to remain largely in control of the public’s understanding of them.

However, since the 1980s structural changes in the media have meant this was no longer possible. Changes in technology, the advent of satellite television and the deregulation of broadcasting (as well as the abandonment of regulations requiring ‘balance’ in news reporting in the US in 1988) brought about a much more diverse and pluralistic set of understandings about the world – at a time when the decline of organic community life meant that individuals were becoming much more reliant on the news media rather than friends, family or colleagues to inform them about the world. These structural changes in the media also meant that the onset of the fall in crime had little public impact; it was not really newsworthy. Instead, crime continued to be reported as the most obvious and immediate source of risk and danger, rather than the less tangible and less obvious consequences of restructuring, such as the risks attached to investing in the financial market and the growing sense of individual isolation and detachment.

Furthermore, the deregulation of state broadcasting in conjunction with the advent of new media technology meant that news reporting became more simplified, more competitive, more readily available and more sensationalised: more than ever before, a sensational story about crime – its menace, not its decline – would beat off competitors, attract the public and thereby attract more advertising revenue.³³ Amidst this restructuring, the criminal justice establishment now found itself unable to control the parameters of public debate and knowledge about such

³² A. Giddens, *Modernity...*, op. cit., p. 244.

³³ Y. Jewkes, *Media and Crime*, Sage, London 2004.

matters. Instead, the terms and boundaries of public and political discourse were increasingly shaped by new media phenomena, throwing off previous proscriptions insisting on objectivity and neutrality. On talkback radio programmes, for example, those with grievances about what they saw as the growth of crime, the inadequacies of law enforcement and overly lenient judges could be given a platform to sound their views, spark debate, even become national figures, however detached from the reality of crime and punishment their opinions were.

1.5. The symbolic importance of crime victims

The importance of crime news in this new framework of knowledge also placed much greater emphasis on victims' accounts of their experiences, rather than the detached, objective analysis of experts. In this respect, victims of crime were given a new kind of authenticity and authority. In most cases, what happened to them was presented as something that could easily happen to anyone at any time: going to school, journeying home from work and so on became the starting point for a catalogue of horrors that were then inflicted on these unsuspecting victims, however rare and remote such incidents actually were.³⁴ When such catastrophes – and it is usually the extremely rare catastrophic crime that makes such headlines – could befall respectable, ordinary citizens in the banality of their everyday life, it was as if what had happened to them became a universal experience and a universal danger.

Hearing, reading, watching and learning about their traumas led to demands for more emotive and expressive punishments that sufficiently reflected public anger and revulsion at such incidents, as well as demands for more opportunities for victims to express their own anger at their suffering, as opposed to the carefully measured tones of courtroom professionals, who usually suppressed all such sentiments. In a number of jurisdictions, such demands have necessitated a spatial and emotional reorganisation of criminal justice proceedings. This now places victims rather than their offenders at the centre of proceedings, going through the detail of their victim impact statements (as for example, in the New Zealand *Victims' Rights Act 2002*). But when judges still seem more swayed by reason rather than the pain of victims when passing sentence (in reality their hands are tied by legal constraints on what they can do), this further separates the criminal justice establishment from victims or potential victims and their expectations of justice. For the latter, this disjuncture is more evidence of how out of touch such elites are from everyday life: victims' or their representatives' anguish and outrage at the end of such proceedings might then be picked up by eager journalists waiting for just such a sensational story at the courthouse. This can then be written up and presented as another betrayal of ordinary people by imperious elites, oblivious to the pain of innocents.

³⁴ Ibidem.

2. The consequences of penal populism

The coalescence of these forces has brought into existence a new axis of penal power, revolving around governments and law and order pressure groups, the latter often campaigning with the tabloid media and talkback radio hosts around the need for tougher sentencing and greater protection for the law-abiding public, as well as social movements claiming to speak on behalf of crime victims. Concomitantly, the influence of the criminal justice establishment has been greatly reduced. As such, penal populism needs to be clearly distinguished from two other variants of populism that are regularly used to characterise this era.

First, *authoritarian populism*, a phrase coined by Stuart Hall to characterise what he saw as being the essence of the Thatcherite mode of governance:

by this means – first, forming public opinion, then, disingenuously, consulting it – the tendency to ‘reach for the law’ above is complemented by a popular demand to be governed more strictly from below. Thereby the drift to law and order above secures a degree of popular support and legitimacy amongst the powerless, who see no other alternative.³⁵

After blaming the previous social democratic trajectory of governance for the ills that the Thatcherite version of neo-liberalism was intended to correct, Hall then saw Thatcher’s authoritarian populism attempting to impose ‘a new regime of social discipline and leadership from above in a society increasingly experienced as rudderless and out of control’.³⁶ In other words, it is as if the public have no opinion other than that which is constructed for them (from ‘above’). But the public are not dummies. Indeed, changes in the structure of the media, apart from anything else, have meant that it is no longer possible for governments to act as their ventriloquists. Instead, *penal populism* encapsulates the way in which popular movements beyond government have come to capture the views of ‘the people’, with governments then running to try and catch up with them and incorporate them into their own programme, rather than speaking on their behalf.

Second, penal populism should be distinguished from ‘populist punitiveness’:³⁷ that is, politicians ‘tapping into’ what is perceived to be the public’s punitive stance on crime for their electoral advantage, then throwing it aside as it suits them. Again, the assumption seems to be that governments speak on behalf of the people, rather than ‘with’ the people, and are able to change their policies and programmes

³⁵ S. Hall, *The great moving right show*, “Marxism Today” 1979, no. 23, p. 2.

³⁶ S. Hall, C. Critcher, T. Jefferson, J. Clarke, B. Roberts, *Policing the Crisis: Mugging, the State and Law and Order*, Palgrave Macmillan, New York 1978, p. 24.

³⁷ A.E. Bottoms, *The philosophy and politics of punishment and sentencing* [in:] C. Clarkson, R. Morgan (eds), *The Politics of Sentencing Reform*, Clarendon Press, Oxford 1995, pp. 17–49.

as it pleases them – as if public opinion can be cynically exploited and manipulated at election time, but then disregarded by the government of the day whenever it chooses to do so. In contrast, penal populism is much more directly tied into perceived public views about crime and punishment, as presented on their behalf by forces extraneous to government – law-and-order lobbyists, victims' rights groups, etc. Politicians have no monopoly on discourse on these matters and instead allow themselves to become hostages to whatever fortune brings as a result of making alliances with these lobbyists and pressure groups.

The consequences of being prepared to make these alliances can be seen in the transformations to the framework of punishment that penal populism has been able to bring about. In lieu of the fixed and certain punishments that avoided excess and arbitrariness (previous cornerstones of modern penal arrangements), there has been a resurgence of indeterminate prison sentences.³⁸ Furthermore, changes at each end of the penal system – to both bail and parole laws – have also helped to swell prison populations in this era of declining crime. This is because both these processes are now driven by the applicant's perceived risk to the public if released. For example, remands in custody in New Zealand have increased from 479 or 13 per cent of the total prison population in 2000 to 2,987 or 29 per cent in 2017. In practice, this has made remands in custody much more likely while getting parole has become much more difficult. Previous remission of sentence for 'good behaviour' – usually one-third of the sentence – was abolished here in 2002. Good behaviour in itself is no longer sufficient to allow release – there must be a much broader assessment of risk before this can be allowed, with parole mechanisms in place to provide for a return to prison when there is thought to be a risk of further crime (of which non-criminal activities are thought to be signifiers – changing one's address or locality without permission, for example).

Prior to the rise of penal populism, it had been generally recognised, in Establishment circles at least, that prisons were too expensive, inhumane and inefficient and should be the penal option of last resort.³⁹ Alternative, non-custodial sanctions were to be preferred in most cases. Thereafter, however, politicians have boasted of their growing prison populations, seeing them as indicators of their successes in the fight against crime that they have joined, and of their commitment to protecting the public – once again, irrespective of the reality of declining crime.⁴⁰

What was it that had made penal populism such an attractive option to governments committed to economic rationalism except when it came to their expanding

³⁸ B. McSherry, *Managing Fear*, Routledge, Oxford 2014; J. Pratt, J. Anderson, 'The beast of Blenheim', *risk and the rise of the security sanction*, "Australian and New Zealand Journal of Criminology" 2016, vol. 49, no. 4, pp. 528–545.

³⁹ See, for example: American Friends Service Committee, *Annual Report 1971*, <https://www.afsc.org/sites/default/files/documents/1971%20Annual%20Report.pdf> [access: 7.08.2019]; *Report of the Penal Policy Review Committee, 1981*, Government Printer, Wellington, NZ 1982.

⁴⁰ J. Pratt, M. Clark, *Penal...*, op. cit.; J. Pratt, *Penal...*, op. cit.

penal systems for seemingly limitless amounts of money? The answer is very straightforward. The appearance of 'getting tough on crime' helped to keep them in power. They could show they were still in charge of events and restore their weakened authority by introducing innovative and more extensive punishments that seemed to address growing public anxieties, not just about crime but about the government's ability to govern. Indeed, as they distanced themselves from their own criminal justice experts, as they introduced initiatives that disregarded previous commitments to safeguard individual rights in the criminal justice process and the more they seemed to be placing themselves on the side of 'the people' and their expectations and understandings, the stronger their credentials with the electorate became.

Here was a simple way to unify the population against those thought likely to pose the biggest risks to its well-being. The developing area of risk control measures in the form of penal sanctions on the disorderly and disruptive, even though they had not actually committed any crime, became one such unifying signal. Introducing British anti-social behaviour legislation, the Home Secretary stated that the act 'represent[ed] a triumph of community politics over detached metropolitan elites' (310 Parl. Deb. H.C. [6th ser.] [1998] col. 370). As Tyler and Boeckmann⁴¹ demonstrate, the more social cohesion seems to be unravelling, the more likely it is there will be support for severe punishments and more exclusionary restrictions and controls on conduct that might constitute such a risk – not simply as a response to these specific concerns, but as a way of providing consensus and solidarity and of restoring the authority which seemed to be missing elsewhere in the social fabric. The intensity and ferocity of the new language of punishment ('three strikes', 'life without parole', 'life means life', etc.) reflected the enhanced and extended role punishment had to play in these societies in this regard. It was also a reflection of the way in which penal populism propelled these new penal forms through the paradigmatic barriers that had previously encased and limited the nature and the role of punishment in democratic society.

In so doing, governments were then able to maintain legitimacy for their own neo-liberal-influenced economic programmes that further undermined the essential structures on which cohesion and solidarity had previously been cemented into the fabric of modern society. While they perpetuated growing insecurities and anxieties, their new penal arrangements could soak up these worries and store them in the dam that they had built for the storage of toxic waste.

⁴¹ T. Tyler, R. Boeckmann, *Three strikes and you are out, but why? The psychology of public support for punishing rule breakers*, "Law and Society Review" 1997, vol. 31, no. 2, pp. 237–265.

3. The rise of populist politics

However, it has become apparent that penal populism is no longer able to play this containment role. The dam it created has overflowed and its waste floods across the entire social body. In spite of its attempts to hold the framework of some modern societies together, it can no longer do so, as divisions have become more obvious and cohesion and stability more fragmented. There are two inter-related reasons for this. First, the endemic economic insecurity and uncertainty which has been in place since the post-1970s restructuring has been further exacerbated by the consequences of the 2008 global fiscal crisis and recession. The aftereffects have further stretched the social and economic divisions that now exist between the winners and the losers in modern society's casino economies. Those trapped in the bargain basement not only have no way out but now they also *know* they have no way out, even as its foundations seem to be crumbling beneath their feet. The dream offered to them by neo-liberalism that they might one day travel on the upwards escalator has vanished. As reflected in opinion poll surveys,⁴² trust in central government has continued to decline, as they feel more and more aggrieved by mainstream political parties that show so little interest in even stabilising their current predicament.

This points to the way in which the consequences of the 2008 crash have been spread very unevenly. Those able to pick up cheap mortgagee property sales or otherwise able to buy their way into rapidly advancing property markets continue to increase their wealth simply by virtue of being homeowners; those unable to do so remain marooned in the uncertainty of private rental arrangements. For them especially, the general expectations of the inexorable progress associated with modernity, of betterment, of ever-improving living standards, have also evaporated. The Governor of the Bank of England thus warned that 'Britain is experiencing its first "lost decade" of economic growth for 150 years [and that] real incomes had not risen in the past ten years'.⁴³ This 'precariousness' has deepened the already existing distrust of Establishment elites and supra-national governmental organisations, such as the IMF, the EU, the World Bank and so on (for Donald Trump, the UN has become nothing more than 'a good time' club⁴⁴). These bodies are seen as either lacking the ability to prevent the 2008 crash, having been helplessly caught

⁴² 2019 Edelman Trust Barometer, www.edelman.com/trust-barometer [access: 7.08.2019].

⁴³ S.P. Chan, P. Foster, *Mark Carney warns Britain is suffering first lost decade since 1860 as people across Europe lose trust in globalisation*, The Telegraph, 5.12.2016, <https://www.telegraph.co.uk/business/2016/12/05/mark-carney-warns-first-lost-decade-150-years-brands-eurozone> [access: 7.08.2019].

⁴⁴ Associated Press, *Donald Trump says United Nations is 'just a club for people to have a good time' - and warns that when he takes office 'things will be different'*, Daily Mail, 27.12.2016. <http://www.dailymail.co.uk/news/article-4067588/Donald-Trump-says-United-Nations-just-club-people-good-time.html> [access: 7.08.2019].

up in it or even being responsible for it – but still flourishing themselves, all the same. The expertise they profess and its associations with reason, rationality and science is not even considered worthless any more. It has a negative value instead. It damns and condemns its purveyors in the eyes of the public at large. ‘People in this country have had enough of experts’, was the claim made by Michael Gove, a leading campaigner for Britain to leave the EU in 2016.⁴⁵

Furthermore, in the UK and New Zealand especially, governments have blamed the 2008 crash on out-of-control public expenditure rather than bankers’ greed and their own incompetence. Their solution was to further cut, limit and restrict welfare benefits and other forms of social assistance and state provision of public services—while simultaneously cutting top rates of taxation. Such developments have further burnt away previous political loyalties, leading to more disenchantment with mainstream politics and even parliamentary democracy itself. In Britain, elections to the European parliament have turnouts of less than 50 per cent, while the first elections there in 2012 for local police commissioners saw less than a ten per cent turnout in some constituencies. It seems as if it is only in plebiscites, referenda and, in the US, citizens’ propositions – which are understood and trusted as authentic expressions of public will – this form of direct democracy has authority and a morality that is superior to that of the representative democracy on which parliamentary government is based. The 2016 British EU referendum had a voter turnout of 72 per cent, compared to 66 per cent in the general election of 2015, and only 59 per cent in that of 2001. Alternatively, electorates may be prepared to give their support to aspiring politicians who claim to speak on behalf of ‘the people’ rather than the establishment, who present themselves as independent-minded ‘strong men’ rather than party loyalists. As with Trump, these ‘anti-politicians’ promise to ‘drain the swamp’ of central government and career politicians altogether rather than add more layers to the existing democratic process.

The second reason is that there has been an emergence of a new kind of victimhood. This has been brought about by the mass movement of people around the globe – and the way this has in turn increased fears about the risks such levels of immigration (legal or otherwise) pose to national identity itself, something that many citizens now feel is all that they have left, in the midst of their own dissolving fortunes and all the uncertainties and insecurities around them. They envisage governments giving assistance to all such unwelcome newcomers while they themselves are left further behind. This new kind of victimhood thus represents something more than individuals becoming a victim of crime, or their fear of becoming one. This latter types of fears, particularly of sexual predators and paedophiles, have not gone away but have rather assumed a dramatically greater presence in

⁴⁵ H. Mance, *Britain has had enough of experts, says Gove*, The Financial Times, 3.06.2016, <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c> [access: 7.08.2019].

public discourse in recent years.⁴⁶ However, they have also been joined by, or sometimes conflated with, more general fears and intolerance of difference and otherness: as if the social structure of such societies has become so fragile that any presence of strangers, foreigners, immigrants, asylum seekers, refugees and the like further pulls it apart.⁴⁷

In the UK, these concerns were promoted primarily by the sudden and growing presence of Central European migrants there – Poles especially (from 58,000 migrants in 2001 to 676,000 in 2011), followed by Bulgarians and Rumanians, all of whom have been allowed to settle there without restriction under EU regulations since 2004. For UK populists and their supporters, all such legal immigrants are seen as coming from ‘the East’, the antipathy of the West and the civilised life that used to be lived there, but which their presence is thought to corrode. In Central European countries themselves, Hungary especially, on the frontline of the border between the West and the darkness that lies beyond, it is fear of asylum seekers and refugees from the Middle East, as would-be immigrants head towards what they hope is a better, safer life there. In the US, it is fear of Mexican ‘rapists and murderers’ crossing the border in the south and Muslim (which for many Americans is synonymous with terrorist) immigration in general. In New Zealand, it has been fear first of Asian and then of Muslim immigrants. It would be possible to continue collating this inventory of fear and suspicion, moving from one modern democracy to another.

These anxieties that reports of immigration generate (often amongst those sections of society that have the least to do with immigrants) are then periodically fuelled by terrorist outrages that give further justification to such concerns and to the horrendous dangers that these outsiders might be capable of, while reminding potential victims of their helplessness in their own countries on such occasions. Notwithstanding the greater level of harm caused by white nationalist terrorists (in the US especially⁴⁸), the framing of public discourse around immigration and terrorism has ensured that such fears continue to demand not only more punishment but that more innovative controls be put in place to protect the public: asylum seekers, refugees, unwanted foreigners and all the rest of these strangers – build barriers, walls and fortifications to keep them out; turn rescue boats away; protect the borders so they cannot come in; speed up deportation processes once they

⁴⁶ J. Pratt, J. Anderson, *The beast...*, op. cit.

⁴⁷ T. Gillespie, *T. Beggars Belief – Disabled Limping Migrant Who Uses a Crutch While Begging in London is Exposed as a Fraud When He Is Seen Strolling off to Buy a Takeaway*, The Sun, 16.09.2016, <https://www.thesun.co.uk/news/1764495/beggars-belief-disabled-limping-migrant-who-uses-a-crutch-while-begging-in-london-is-exposed-as-a-fraud-when-he-is-seen-strolling-off-to-buy-a-takeaway/> [access: 21.09.2019].

⁴⁸ M. Boot, *Trump is leading our country to destruction*, The Washington Post, 4.08.2019, https://www.washingtonpost.com/opinions/2019/08/04/anything-real-say-about-shootings-mr-president/?utm_term=.5cadd19b28c6 [access: 7.08.2019].

are caught; call upon the National Guard to defend the border against a ‘caravan’ of these foreign hordes – and bypass legal channels and human rights concerns if these get in the way.⁴⁹

Furthermore, these anxieties continue to erode trust in supranational organisations and establishment elites who seem slow to act or refuse to even countenance these demands. Having positioned themselves, once again, above the everyday chaos and insecurity that they helped to create, they are seen as weakening the nation-state by imposing foreign, alien and unwanted values and practices on it. Haney⁵⁰ writes of Central European states’ fears of losing control over national interests as a consequence of joining the EU and the economic and social norms it seeks to impose on these societies, proudly embracing a form of ‘illiberal democracy’ in response, as in Hungary. Nor are longstanding members of the EU immune from such developments. In Italy, disenchantment with EU budgetary stipulations and its supposedly liberal policy on immigration has brought about the election of a populist government – an alliance between the Five Star Movement and the League. In the UK, the European Court of Human Rights has become one of the most prominent signifiers of the imposition of unwanted European difference on British values and understandings. It seemingly has the power to insist that Britain should be ‘Europeanised’ as it sees fit, with its intervention in criminal justice matters symbolising such dangerous intrusion. Notably, the Court’s declaration that the British ‘blanket ban’ on all convicted prisoners’ voting rights, regardless of the gravity or circumstances of their offences, violates Article 3 of the European Convention on Human Rights (*Hirst v. United Kingdom*, [No. 2] [2005] E.C.H.R. 681). It has been the same with regard to ‘whole life sentences’ (*Vinter and Others v. United Kingdom*, [2013] E.C.H.R.), a decision that reflected – it was claimed – a European ‘rights madness’, as opposed to British common sense.⁵¹

At the same time, the continuing consequences of deregulation and technological advancement enhance the power of the media to highlight these apparent and ongoing corrosions of local and national landscapes and the social distance that exists between the ineffectual, dilettante elites responsible for this and ‘the people’. The response of the British “Daily Mail” to the Court of Appeal judges, who ruled

⁴⁹ This is a reference to the response of Trump to a ‘caravan’ of about 1,000 migrants, including 300 women and 400 children, mostly from Central America and heading through Mexico to seek asylum in the USA. See: M. Boot, *The ‘caravan’ of migrants is not a threat but Trump would rather ignore real crises*, The Washington Post, 4.04.2018, https://www.washingtonpost.com/opinions/the-caravan-of-migrants-is-not-a-threat-but-trump-would-rather-ignore-real-crises/2018/04/04/765b775a-380d-11e8-acd5-35eac230e514_story.html [access: 7.08.2019].

⁵⁰ L. Haney, *Prisons of the past: Penal nationalism and the politics of punishment in Central Europe*, “Punishment & Society” 2016, vol. 18, no. 3, pp. 346–368.

⁵¹ M. Hastings, *The danger is we’ve become immune to Human Rights lunacy: It’s vital we stay angry*, says Max Hastings, Daily Mail, 10.07.2013, <http://www.dailymail.co.uk/debate/article-2359048/The-danger-weve-immune-Human-Rights-lunacy-Its-vital-stay-angry-says-MAX-HASTINGS.html> [access: 7.08.2019].

that the vote to leave the EU following the 2016 referendum had to be ratified by parliament rather than given effect by the administrative fiat of the prime minister, was to label them ‘Enemies of the People’ and ‘out of touch judges’ who ‘had declared war on democracy.’⁵² As this example shows, news making and reporting has broken out of the paradigm of reason, rationality and truth in which it had been expected to operate in modern, democratic societies, however elasticated this concept might previously have been. It now has no limits, no ethical standards, no set direction to constrain it or which it must follow. Demands that the truth be told, as some journalists tried to insist during the 2016 US election, were dismissed with rejoinders by the Trump campaign that this was simply evidence of ‘bias’ against him in the mainstream media. Indeed, for Trump himself, the journalists at CNN and the “New York Times”, who stood by the standard of truth, were ‘the lowest form of humanity.’⁵³ Thereafter, Trump’s approach to mainstream journalism has been mirrored by populist politicians around the world: any reporting that contradicts their view of reality can be summarily dismissed as ‘fake news’, as they continue to invent their own version of the truth to suit them.

Furthermore, the ability of the central state and the criminal justice establishment to control the terms of public debate about punishment has continued to be diminished with the rise of social media (Facebook since 2004 and Twitter since 2008). Because of these innovations, individuals have moved away from their reliance on the daily news media for information anyway. They can create and fabricate their own news, then publish it before vast audiences online rather than in the printed press. Such material is avidly read by those for whom the world is made up of conspiracies – supposedly consisting of the Establishment, of civil servants, of the mainstream media itself, of Jews and other ethnic minorities who are thought to lie behind the basement-level existence of many of their conspiracy victims. As Trump (with over 51 million followers on Twitter) has done, such people can create their own reality and deny the existence of what they do not want to see. Thus, for Trump, the crowds in Washington to witness his presidential inauguration in 2016 were the biggest ever, rather than being significantly smaller than those for Obama, while the crowds in London to protest against his state visit in 2019 did not exist, rather than consisting of the hundreds of thousands who did actually march against his presence there.

⁵² J. Slack, *Enemies of the people: Fury over ‘out of touch’ judges who have ‘declared war on democracy’ by defying 17.4m Brexit voters and who could trigger constitutional crisis*, Daily Mail, 4.11.2016, <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html> [access: 7.08.2019].

⁵³ A. Burns, N. Corasaniti, *Donald Trump’s Other Campaign Foe: The ‘Lowest Form of Life’ News Media*, The New York Times, 12.08.2016, <https://www.nytimes.com/2016/08/13/us/politics/donald-trump-obama-isis.html> [access: 7.08.2019].

4. Populism and the revolt against uncertainty

This great surge of popular discontent against the Establishment and its modes of governance represents, as it were, a revolt against the uncertainty that has gripped much of modern society during the course of economic and social restructuring, with demands for the restoration of a more familiar social order. In populist discourse, this can be bolstered as necessary by laws that do not just punish to excess. They should also have public protection as their priority and be able to prevent the risks of crime and disorder and otherwise shut out the threatening presence of those who are different or unwanted in some way or other. The demands for order rather than uncertainty run through many modern societies, helping to bring some of the ascendant populist political parties to power. In the Anglo-American world, the constant replay of populist tropes during Donald Trump's campaign led to his presidential election in the US. In the UK, it was anti-Establishment populism that led both to demands for a referendum on Britain's membership in the EU in the first instance and to the subsequent successful 'Leave' vote. Anti-immigration issues also played a role in the 2017 New Zealand election, leading to a governmental alliance between Labour and the New Zealand First party.

Certainly, the dynamics and level of support for populist politicians, as with penal populism, varies from society to society, depending on how far economic inequalities and/or immigration concerns have eaten into the social fabric. Nor is populism necessarily a right-wing political movement. In Greece, Syriza came to power in 2015 as a protest against the EU's imposition of a neo-liberal-influenced programme of economic restructuring there. Nonetheless, to put populist aspirations into effect necessitates bringing sweeping changes to the structure and expectations of democratic society itself: restricting immigration, limiting and even dismantling the power of Establishment elites and organisations and businesses that thrive on free trade whilst simultaneously standing outside of and above national boundaries (Amazon, for example). Changes such as these, it is claimed, will magically rid the social body of corruption and inefficiency and will bring about a brighter future through a reassertion of state authority and nationhood.

Take the British EU referendum. 'Leave' campaigners used the logo 'Take Back Control', as if by voting to leave, it would be possible to retrieve all that had been lost or stolen – presumably as a result of EU membership; it would be possible to restore national identity and rid the country of corrupting and 'un-British' foreign influence; and it would be a gesture of defiance against the EU – favouring the British Establishment. A vision of a completely mythical and irretrievable past of security and cohesion was conjured, when British people were masters of their own destiny. When was this supposed to have been? Just before Britain joined the EU in 1973? But that was a period of massive industrial conflict, rising inflation

and growing racial tensions⁵⁴ – it was a time when government had *lost* control – it cannot have been then. Maybe when there was an Empire, or maybe when there was a powerful White Commonwealth, or maybe when Britain (and its colonies) fought alone against Nazi Germany – rather than being subject to EU rules, laws and regulations? It was never articulated by those campaigning to leave. Whatever, the certainty now is that the route to this Nirvana involves walking away from Europe, not into a glorious past but towards a troubled and darkly uncertain future.

Take Trump's slogan, 'Make America Great Again'. Here too, the theme conveys the sense of loss and betrayal – variously blamed on corruption in central government, international financiers, Muslims, Mexicans, globalisation and the infamy of wicked, elitist individuals (such as 'Crooked Hillary Clinton') – hence the need to 'drain the swamp', 'build a wall', 'lock up' Clinton and so on. This kind of purification process was necessary, it seemed, if the glorious past was to be recreated – although, again, exactly when this was remained unspecified. Nonetheless, it was as if a society could be rebuilt around dominant white men, where jobs that used to exist (as with coal mining and steel manufacturing) before globalisation made them redundant would somehow reappear, and where dangerous foreigners would be kept out. In such ways, the implied promise of both 'Take Back Control' and 'Make America Great Again' was that not only would the nation be secure against insidious threats to its well-being that the Establishment had allowed to fester, but that individuals would also be given back what they think has been taken from them: familiarity, certainty and security.

However, promises based on fundamentally flawed attempts to recreate a mythical past can never materialise. And the failure of such promises can only add to uncertainty amidst growing fears of what the future might hold, and growing distrust of politicians and the existing democratic processes that have brought them to power. Despite its regular claims to speak on behalf of 'ordinary people', to be putting the 'will of the people' into effect and to favour electoral forms such as plebiscites that seem to give effect to this, populism itself is profoundly anti-democratic. The attempts by Trump (and others in some European countries who have also climbed aboard this vehicle on the way to power) to subvert existing democratic processes and conventions demonstrate this: silencing (or attempting to silence) critical media, undermining the independence of the judiciary, threatening political rivals and so on.

The rise of this populist politics also means that penal populism now has a new role to play. The rise of populist politics does indeed spells its end – at least in relation to the containment role penal populism had been playing – soaking up anxieties and insecurities stemming from restructuring while allowing governments to storm ahead with the neo-liberal restructuring agenda. Now, though, it

⁵⁴ S. Hall, C. Critcher, T. Jefferson, J. Clarke, B. Roberts, *Policing the Crisis: Mugging, the State and Law and Order*, Palgrave Macmillan, New York 1978.

is being incorporated into the new modes of populist governance. In continuing to reflect 'the public will', this is likely to mean that the emphasis on public protection will further override concerns about individual human rights along with extra demands on punishment to provide certainty and security. The penal processes of such societies will thus have to broaden out still further if they are to hunt these enemies down and successfully control or remove them. This is because populism itself is nothing without its conniving enemies (real or imagined) and aggrieved victims whom it pledges to protect from them – to the ends of the earth if necessary. Indeed, Trump continually projects himself as a victim – of clandestine FBI investigations, of the Washington elite who tried to shut out this man from Queens, NYC, of corrupt journalists peddling fake news about him, of 'so-called' judges who rule against him, and so on. He becomes the foremost victim in the US, ready to lead a host of other victims – individuals and communities left behind, along with racists, conspiracy theorists and the like whom he picks up along the way – in their march against the litany of enemies that he conjures: 'drain the swamp', 'send them back', 'lock her up.'

These new demands also mean that punishment in the democracies is being asked to play a role that it was never designed for: other social mechanisms – extensive welfare and education programmes, forms of central and local government infrastructure and more permanent social relations between individuals – were intended to provide cohesion, solidarity and certainty. Now however, the fundamental features of punishment in modern society are likely to crumble still further – in the name of trying to restore a sense of security, well-being and safety that becomes ever more elusive and distant. Perhaps some comfort can be taken from the way in which populism was rebuffed in elections in Denmark, Slovenia and Czechia in 2019 (and the imprisonment rates of these three societies have remained stable in the last two decades: from 63 in to 60 in 2016; from 58 in 2000 to 64 in 2016; and from 210 in 2000 to 203 in 2018, respectively⁵⁵). It is not the case, then, that the liberal democracies are not all travelling in the same direction towards the triumph of populism.

It remains, though, that the electoral victory of Trump and his subsequent strategies employed to garner public support in the US provides a blueprint for would-be demagogues to follow elsewhere: abandon science and reason; lie, lie and lie again, while abusing and debasing truth; target immigrants and any other categories of the unwanted that can be dredged up from grievances and resentment that democratic values had previously smothered for short-term victories. In so doing, who knows what torrents of anger, what economic and other disasters this will have unleashed in the long term? Yes, penal populism's role in the legitimisation

⁵⁵ World Prison Brief, *World Prison Brief data*, <https://prisonstudies.org/world-prison-brief-data> [access: 7.08.2019].

of neo-liberalism has come to an end. Instead, it now sustains the brand of populist politics to which neo-liberalism has led us.

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