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The pandemic as an antidote to populism: Punishment, immobilisation, and COVID-19

Pandemia jako antidotum na populizm: karanie, unieruchomienie i COVID-19

Abstract: The contemporary rise of populism across much of Western society – especially the Anglosphere countries that are the main focus of this article – has threatened many of the protections and freedoms provided by the post-1945 commitment to a democratic political order: guarantees of human rights, adherence to the rule of law, and a media that is free to criticise governments and hold them to account. Populism has also come to be associated with a very different penal programme from that which, for several decades after 1945, characterised a given society's commitment to democracy. That pattern of justice – largely based on reason, liberalism, and expert knowledge – was significant beyond its operational boundaries. It symbolised the Western democratic order, standing out as a beacon of humanity against totalitarianism. The rise of populism, however, has helped to fashion a very different penal programme, associated with historic rises in imprisonment levels and the immobilisation of those who pose risks to public well-being – even if, in so doing, the foundations of criminal justice in the democratic world are undermined by the strategies employed. It might thus be supposed that governmental reactions to the COVID-19 pandemic pose a further threat to democracy and its criminal justice processes. Additional forms of immobilisation have been introduced to combat the spread of the virus: restrictions on freedom of movement in public spaces or stay-at-home orders equivalent to house arrest – controls which now cover entire nations rather than just individuals at risk of committing particular crimes. As such, this kind of 'rule by decree' might seem to be a blueprint for would-be autocrats wishing to subvert democratic processes and forms of accountability altogether. However, the article also argues that the pandemic provides very different possibilities of governance to populist authoritarianism. Indeed, the virus acts as an antidote to populism. COVID-19 has laughed in the face of populist demagogues. It shows them to

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be nothing more than incompetent, though usually malevolent, charlatans with some of the world's highest infection and fatality rates in their societies. Instead of their empty populist blustering, the pandemic can only be eliminated by science and expert knowledge, acting in conjunction with a strong but accountable central government amidst forms of immobilisation to which the general public have largely acquiesced – strengthening rather than weakening social cohesion in the process in many instances. As the virus has eaten into the support for populism, the dangers which the latter posed to democratic order have also been pushed back. Previous pandemics have been followed by dramatic social and economic changes. Such changes post-COVID-19 may now sever the links between populism and penal development, allowing for a different and more restricted penal framework.

Keywords: populism, COVID-19, immobilisation, punishment, security

Abstrakt: Współczesny wzrost populizmu w znacznej części społeczeństw zachodnich – zwłaszcza w krajach anglosaskich, na których koncentruje się niniejszy artykuł – zagraża wielu prawom i wolnościom wprowadzonym po 1945 roku do demokratycznego ustroju politycznego, w tym: gwarancjom praw człowieka, przestrzeganiu praworządności oraz swobodzie krytykowania rządu przez media i pociągania go do odpowiedzialności. Obecnie populizm zaczął być kojarzony z zupełnie inną polityką kryminalną, niż ta, która przez kilkadziesiąt lat przed 1945 rokiem charakteryzowała się zaangażowaniem społeczeństwa w demokrację. Ten wzorzec sprawiedliwości – w dużej mierze oparty na racjonalizmie, liberalizmie i wiedzy eksperckiej – miał znaczenie także poza granicami jego obowiązywania. Symbolizował zachodni porządek demokratyczny, wyróżniający się jako wzorzec przeciwko totalitaryzmowi. Jednak wzrost populizmu pomógł ukształtować zupełnie inną politykę kryminalną, związaną z historycznym wzrostem orzekanych kar pozbawienia wolności i izolacją tych, którzy stanowią zagrożenie dla dobrobytu publicznego – nawet jeśli obowiązujące strategie podważają taki sposób postępowania w sprawach karnych w demokratycznym świecie. Można zatem przypuszczać, że reakcje rządów na pandemię COVID-19 stanowią kolejne zagrożenie dla demokracji i procesów karnych. W celu przeciwdziałania rozprzestrzenianiu się wirusa wprowadzono dodatkowe ograniczenia mobilności: ograniczenie swobody poruszania się w przestrzeni publicznej lub nakaz pozostania w domu równoznaczny z aresztem domowym – a zatem kontrole, które obecnie obejmują całe społeczności, a nie tylko osoby mogące popełnić przestępstwo. Tego rodzaju rządzenie dekretami, pomijające parlamenty i oddające w ręce rządu władzę do przedłużania sytuacji wyjątkowych, mogą stanowić wzorzec dla niedoszłych autokratów, chcących całkowicie obalić demokratyczne procesy i formy odpowiedzialności. Jednak, jak wynika z niniejszego artykułu, pandemia daje również zupełnie inne możliwości rządzenia niż autorytarny populizm. Wirus działa jak antidotum na populizm. COVID-19 wyśmiał populistycznych demagogów, pokazując, że są tylko niekompetentnymi, choć zwykle wrogimi, szarlatanami, którzy jednak przyczynili się do jednych z najwyższych na świecie wskaźników zachorowań i zgonów w swoich społeczeństwach. Pandemia może zostać wyeliminowana nie dzięki ich pustym, populistycznym hasłom, a dzięki nauce i wiedzy eksperckiej, działającej w połączeniu z silnym, ale poddanym kontroli rządem. Będzie on decydował o ograniczaniu mobilności, jednak w sposób, na który zgodzi się ogół społeczeństwa, co w wielu przypadkach przyczyni się do wzmocnienia, a nie osłabienia spójności społecznej. Ponieważ wirus osłabił poparcie dla populizmu, zagrożenia, jakie ten ostatni stwarzał dla porządku demokratycznego, również zostały zminimalizowane. Po poprzednich pandemiach nastąpiły drastyczne zmiany społeczne i gospodarcze. Takie zmiany po COVID-19 mogą zerwać powiązania między populizmem a rozwojem polityki kryminalnej, pozwalając na wprowadzanie innych, bardziej ograniczonych ram dla tej polityki.

Słowa kluczowe: populizm, COVID-19, ograniczenie mobilności, karanie, bezpieczeństwo

Introduction

The contemporary rise of populism across much of Western society – especially the Anglosphere countries that are the main focus of this article – has threatened many of the protections and freedoms provided by the post-1945 commitment to a democratic political order: guarantees of human rights, adherence to the rule of law and the separation of powers, and a media that is free to criticise governments and hold them to account. Populism – “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” (Shils 1956: 100–101) – has also come to be associated with a very different penal programme from the one which, for several decades after 1945, characterised a given society’s commitment to democracy.

This post war route followed a course that largely prohibited punishments involving excessive and inhumane use of state power, pursuant to Articles 5 and 7 of the 1948 United Nations Universal Declaration of Human Rights. Punishments to the human body all but came to an end in democratic society, as did indeterminate sentencing (Bottoms 1977) and the prosecution of status offences such as homelessness and begging, to a large extent in the USA especially – in this case because of the reform-orientated US Supreme Court (Pratt 2020). All such matters were seen as contravening the respect for human rights and due process that were meant to be embedded in the penal affairs of a democratic society. Thereafter, it was also recognised by those then driving policy – law professors, senior judges and civil servants, the staff of research institutes, and corrections representatives in conjunction with government – that the use of imprisonment should be restricted whenever possible: it was deemed too expensive, inhumane, and inefficient.

This pattern of justice – largely based on reason, liberalism, and expert knowledge – was significant beyond its operational boundaries. It symbolised the Western democratic order, standing out as a beacon of humanity against totalitarianism. The subsequent fall of the Iron Curtain in 1989 seemed to ensure the permanence of this mode of governance. As Francis Fukuyama (1989: 4) wrote,

what we may be witnessing is not just the end of the Cold War, or the passing of a particular period of post-war history, but the end of history as such: that is, the endpoint of mankind’s ideological evolution and the universalisation of Western liberal democracy as the final form of human government.

Central and East European countries not only joined the democratic world, but – with membership in the EU at stake – also agreed to reshape their own penal policies in conformity to its expectations.

However, democracy has since gone sour in some of these recent converts. Hungary, for example, now espouses an “illiberal democracy”. But in addition, it has even come under severe pressure in some of the Western societies previously

thought to be amongst its exemplars – societies such as the UK and the USA, where the rise of populism has been exemplified by “Brexit” in the former and the presidency of Donald Trump in the latter. Well prior to those events, however, populism had helped to fashion a different penal programme from that which had been envisaged in the post-war era in Anglo-American society. This new programme is probably most dramatically associated with the language of punishment that it brought into existence (“zero tolerance”, “three strikes and you’re out”, etc.), in conjunction with historic rises in imprisonment levels. At the same time, though, the rise of populism has also been associated with the emergence of what has been referred to as “the security sanction” (Pratt, Anderson 2016; Pratt 2020). Here, the central task of criminal law is not to punish those who have committed a crime, but to prevent particular crime risks from eventuating. The way to do this is by *immobilising* those who pose such risks – even if the strategies employed undermine the foundations of criminal justice in the democratic world.

In Anglosphere democracies, these have been implemented across a broad spectrum of threats and fears. They take the form of restrictions on movement and conduct in public spaces through the use of civil injunctions and the like, backed up by criminal penalties for breaching these injunctions (including imprisonment, even though no crime has been committed) for those whose status or presence seems to signify future crime. In addition, for those suspected of or charged with particular types of crime – especially sexual or violent crimes – they are now likely to have to prove that they are not a risk to the public (rather than be released because of previous presumptions of bail) or face being remanded in custody. For those imprisoned for crimes which they *have* committed, the security sanction in some jurisdictions allows for them to be detained indefinitely if they are thought to be at risk of committing further crimes on release – especially sex offenders and terrorists. It can further allow for their effective *reimprisonment* at the end of a finite term, when they are then held indefinitely in “civil detention” until their risk ceases. Measures such as these have been steadily put in place since the late 1980s through mechanisms that have variously involved retrospective and hybrid legislation, lower standards for the burden of proof, relaxations of the rules of evidence to facilitate the establishment of a risk, and (for all intents and purposes) the use of double punishment for the same crime – all of which have steadily undermined the primacy previously given to the rule of law.

Given the way in which these measures point to important shifts away from democratic norms, it might be supposed that governmental reactions to the COVID-19 pandemic pose a further threat to democracy and its criminal justice processes. Additional forms of immobilisation have been introduced to combat the spread of the new coronavirus: restrictions on freedom of movement in public spaces or stay-at-home orders equivalent to house arrest – controls which now cover entire nations rather than just individuals at risk of committing particular crimes, with police (and sometimes the military) given powers of enforcement. The mechanisms used to give effect to these controls may simply take the form of

a declaration of a “state of emergency”, as in New Zealand in March 2020, or in the UK, through the provisions of the Public Health (Control of Disease) Act 1984 that gives government ministers “extraordinary powers” if they judge the need to be “urgent”. As such, this kind of “rule by decree” might seem to be a blueprint for would-be autocrats wishing to subvert democratic processes and forms of accountability altogether. *The Guardian* (2021) thus editorialised that “even in the most extreme emergency, the [UK] prime minister does not have the power to make law by himself, live on television. The pandemic [however] has sometimes created the impression that something along those lines is happening.”

Yet it might also be the case that, in spite of these forebodings, the pandemic will provide different possibilities of governance to this kind of populist authoritarianism. These are not certainties, but are possibilities all the same, emerging from the way in which the virus, or at least the struggle to contain and restrict it, acts as an antidote to populism. The latter is premised around nationalistic visions of a glorious future, that only “strongman” leadership can provide, with demagoguery blustering its way past science, reason, and expertise: hence the attraction of such leaders, as well, to rule by decree rather than the rule of law. This can then more readily allow them to bring “enemies of the people” under control, immobilising them and their menace to the public good as necessary. COVID-19 has become one such enemy, but this is one that laughs in the face of populist demagogues. It shows them to be nothing more than incompetent, though usually malevolent, charlatans with some of the world’s highest infection and fatality rates in their societies.¹ It is also an enemy that can only be eliminated by science and expert knowledge, acting in conjunction with a strong but accountable central government amidst forms of immobilisation to which the general public have largely acquiesced – strengthening rather than weakening social cohesion in the process. Previous pandemics were followed by dramatic social and economic changes (Snowden 2019). In these ways, the virus has generated a range of interventions and reactions – science, expertise, and social cohesion rather than division – that fundamentally challenge and undermine the belief systems of populism and its supporters. This has not been a uniform pattern, of course – indeed, in some instances, suspicions of the cause of the virus, of vaccines, of medical experts, and so on would seem to have solidified some levels of support for the strongman demanding that he be placed at the helm of society. However, where science and expertise in conjunction with clear, concentrated governmental action have been demonstrably successful in controlling the virus, the dangers populism has posed to democratic order have been pushed back. One of the consequences of this may then be that the primacy given to public health can sever the links that populism had been able to make with penal development.

¹ Rates of COVID-19 infection and deaths per capita are amongst the highest in those countries where populism has had the greatest political successes: the UK, the USA, Brazil, and India.

1. The renaissance of populism

How, though, was populism able to make its renaissance? It has indeed been a renaissance, since in the post-1945 era it seemed that the victory of the Western democracies over the Axis powers had ended any further prospects for the pre-war type of demagogues. As President Truman explained on 16 August 1945, the day after Japan's capitulation,

this is the end of the grandiose schemes of the dictators to enslave the peoples of the world, destroy their civilisation, and institute a new era of darkness and degradation. This day is a new beginning in the history of freedom on this earth.

This new freedom was to be built around the post-war "solidarity project" (Garland 1996) and the welfare-driven mode of governance associated with it. Notwithstanding the higher taxes needed, it initially engineered high levels of social cohesion and trust in government, while removing great human sores that had previously been in place on the social body – homelessness and begging, for example (see Home Office 1974).

However, early criticisms from neoliberal ideologues such as Friedrich Hayek (1944, 1960) and Milton Friedman (1962) that this governmental form was both inefficient and oppressive gathered force during the 1970s. Neoliberalism, its supporters claimed, would not only restore individual liberty and freedom of choice, but would also bring a greater sense of responsibility to the conduct of everyday life. The election victories of Margaret Thatcher in the UK in 1979 and Ronald Reagan in the USA in 1980, as well as subsequent programmes of economic restructuring, sowed the first seeds of populism's renaissance. Now, an individual's fate and prospects would be in their own hands rather than having this entrusted to the cushioning that careful state planning had previously provided. In the course of the restructuring many government services were privatised. Financial and service industries became the focus of economic development rather than manufacturing, along with a reliance on market forces. Reagan's observation in his 1981 inaugural address that government was "the problem, not the solution" was illustrative of the growing distrust of the state which such politicians cultivated. Individual risk-taking and self-reliance, rather than reliance on the state, was to be encouraged and rewarded. As Charles Handy (1989: 9) contemptuously argued in *The Age of Unreason*, "discontinuous change is the only way forward for a tramlined society, one that has got used to its ruts and its blinkers and prefers its own ways, however dreary, to untrodden paths and new ways of looking at things." Such ideas helped to build a habitus that was moulded on individual risk-taking and self-reliance rather than reliance on the state. It became second nature for individuals to serve as their own risk managers, as reflected in the growth of private insurance schemes, pensions, health care, education, etc. from the 1980s onwards.

Risk-takers were lauded now rather than looked upon as eccentric outsiders, as they had previously been (Pratt 2020). The more successful one's risk-taking, the more this could herald entry to a world of fabulous wealth and fame, riches set free by neoliberal economics. The emergence of entrepreneurs such as Richard Branson and Donald Trump was emblematic of the changing values of these societies: celebrity status was more desirable than conformity; individualism was more important than solidarity. Indeed, to maximise the opportunities for wealth creation and the fame this now brought with it, it was best to be free of ties and encumbrances that might otherwise impede this travel in the fast lane to success. As Zygmunt Bauman (2002: 62) wrote of this time, "individuals who are untied to place, who can travel light and move fast, win all the competitions that matter and count."

Inevitably though, this encouragement of risk-taking and enterprise led to great social divisions: neoliberalism contained no guarantees that all would enjoy prosperity. While some certainly did become winners of massive fortunes in the casino-style economies that had been brought into existence, the previous pillars of security and stability began to crumble away: norms regarding the permanence of family life, with the decline of marriage and the growth of divorce and cohabitating practices; norms regarding community living, as local cultures disintegrated in the face of advancing redevelopment and electronic and private security replacing informal modes of surveillance and control; and norms regarding employment, with continuity and collegiality giving way to impermanence and competition with rivals for bonuses (Pratt 2020).

In effect, as the restructuring brought about the assembly of lives free to enjoy its economic rewards, it also brought about the assembly of lives without attachments, lives that no longer had any familiar roadmaps to guide the individuals making their solitary travels along the route to success. Events such as the stock market crash of October 1987 quickly demonstrated how precarious this route might be: many were destined to become losers rather than winners, with the state now unable or unwilling to protect them from personal disaster, as they encountered unnerving risks and dangers along the way. When asked about the crash at a press conference, President Reagan (1987) said "I think everyone is a bit puzzled [...]. I have no more knowledge of why it took place than you have." Nothing seemed certain anymore, except that individuals would have to take responsibility for any ensuing misfortunes themselves.

Consequentially, vastly increased social distances began to appear in those societies that were most committed to neoliberal restructuring – Anglo-American democracies especially. These distances reflected both the rewards now to be won and the consequences of failure that might come with any such attempts. "Gated communities" became one of the architectural features of post-1970 urban life at one end of this spectrum. Here was the opportunity, for those who could afford it, to insulate themselves from all that was unknown and uncertain beyond the boundaries this design provided:

The prices for properties in gated communities [in the UK] show no signs of slowing down. Developers are reporting increasing demand for homes surrounded by high walls and security gates [...]. There is a definite trend towards more security. People want to feel secure and the perceived safety of walls and even porters adds value to the developments [...]. [S]ecurity is one of the top priorities for today's buyers. (Gardner 2000: 3)

At the other end of this spectrum, a “cardboard city” existence beckoned with the resurgence of homelessness, begging, and those otherwise living on the street. In the UK, it was reported that

there are now twice as many people officially homeless than in 1979, one in five of the rentable homes has vanished from the stock, projected [state-sponsored] house building is at its lowest ebb, and foreign television crews find it all too easy to mark down our nation as uncaring with documentaries showing the 4,000 or so of London's homeless who regularly sleep rough. (James 1989: 12)

In effect, the break-up of the solidarity project and the vastly different futures that might now befall each individual generated a sense of perpetual anxiety and insecurity – even amongst the casino economy's winners. New media outlets, especially cable/satellite television and phone-in radio programmes – all products of deregulation and technological development and all dependent for their existence on advertising revenue that in turn necessitated them having large audiences – both articulated and responded to these concerns. Whatever the depth and breadth that this anxiety and insecurity might be in reality for each individual, the new media largely defined them in terms of the fear of crime and crime risks: crime and risks that would cause irreparable harm if they eventuated (the more extensive the risks were purported to be, the more this was likely to attract audiences and advertising revenue) and which were the product of *individual* irresponsibility or wickedness. In such ways, the complexity of these existential anxieties was compressed, while providing foes that the rest of the public could unite against.

One such category came to be the homeless and other such street people. They were thought to pose a threat to quality of life, meaning a “safe haven”, a sanctuary free from such disturbing sights (Bauman 2000). As James Q. Wilson and George L. Kelling (1982: 29–30) put the matter,

many citizens are primarily frightened by crime [...] involving a sudden, violent attack [...] but we tend to overlook another source of fear – [that] of being bothered by disorderly people. Not violent people, not necessarily criminals but disreputable or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers [...] loiterers, the mentally disturbed.

Another came to be “strangers”, because of anxieties that they might, in reality, be paedophiles, sexual predators, or terrorists: “Locals detain[ed] innocent tourists

on Southend [UK] seafront after mistaking them for paedophiles. One of the locals uploaded pictures of the tourists onto Facebook claiming a 'paedophile ring' had been 'smashed' (Sims 2016: 1). Or sexual predators:

No sinister old man in white van [say] Invercargill [New Zealand] police [...]. [A] 17-year-old girl who said she had been grabbed by a man with silver-grey hair in a white van admitted making it up. Police took the reports seriously, warning schools about stranger danger and asking the public to be vigilant. However, there were some reports of vigilante behaviour. (Fensome 2012: 1)

Or terrorists:

thousands of shoppers [were] evacuated from London's Regent Street over [a] 'suspicious taxi' – which had been left there while the driver went Christmas shopping. (Linning, Duell, Tonkin 2015)

What prompted these suspicions? Growing individualism in conjunction with a distrust of government and its organisations had led to fewer and weaker community ties and responsibilities. The absence of informal controls and warning mechanisms that had previously been provided (Jacobs 1992) meant that strangers might be transformed into potential monsters. Before, such monsters had had hardly any presence in public discourse (Pratt 2020), but were now thought to be capable of inflicting irreparable harm on all that which had come to have special value in the course of restructuring. Children, for example, because of the way in which restructuring accelerated already existing trends towards small (and more impermanent) families, made them increasingly scarce – and increasingly precious:

At a time when very few human relations can be taken for granted, the child appears as a unique emotional partner in a relationship [...]. [U]nlike marriage or friendship, the bond that links a parent to a child cannot be broken; it is a bond that stands out as the exception to the rule that relationships cannot be expected to last forever. (Furedi 2001: 107)

Women are another example. Consumer-driven economies that have transformed the adult body (particularly the bodies of women) into a prized vehicle for pleasure and self-fulfilment, at the same time make women especially more vulnerable because of the increased presence in public space this gives them. Or the public at large, because of the random nature of terrorist attacks: after one such incident where a terrorist murdered 30 British tourists at a Tunisian resort, Prime Minister David Cameron observed that "[these] attacks can happen anywhere [...] this is a threat that faces all of us" (Dearden 2015).

The framing of risk and uncertainty around these types of crime was regularly informed and enhanced by victims' rights groups, law and order activists, business organisations, right-wing journalists, and media personalities. They claimed that government and its elite experts had generated these risks because of their liberal

penal programme: law-abiding citizens had been put at risk, while lawbreakers, or those at risk of becoming so had been favoured at their expense. The evidence for such claims was usually based on anecdote, sensational one-off cases, distortions, or outright fabrications – but they were very attractive all the same to these media outlets precisely because of the opportunity for easy sensationalism they provided within this new framework of knowledge. Equally, the “public opinion” these campaigners said they represented was more likely to be based on headlines in the tabloid press or angry voices on a phone-in than any social scientific survey.

Nonetheless, governments from both Left and Right were prepared to align themselves with these forces, simultaneously reducing the influence of criminal justice elites on policy. Previous concerns about the effectiveness and cost of imprisonment, or the difficulty in predicting future criminality as an argument against indeterminate sentences were thus relegated in importance. Indeed, governments that now made these alignments were more likely to claim that a high prison population was an indicator of the government’s success rather than failure (Cavadino, Dignan 2002; Pratt, Clark 2005). Here, then, was the first flowering of those populist seeds sewn in the 1980s, albeit in a form of *penal* populism at this juncture.

Aside from generating “incarceration mania” (Harcourt 2001), this brand of populism has also brought about the development of the new kind of utilitarian criminal justice that takes effect in the form of the security sanction. For example, the US measures to immobilise the homeless, beggars, and so on:

The most widely adopted of such civility laws prohibit sitting or lying on sidewalks or in bus shelters, sleeping in parks or other public spaces, placing one’s personal possessions on public property for more than a short period of time, camping, urinating, or drinking in public, selling newspapers and other written materials in public spaces, and begging. (Beckett, Herbert 2008: 9)

Similarly, UK legislation on public space protection orders: warning notices proliferate around the country telling all what they cannot do in a particular area on pain of prosecution and punishment that can lead to prison, even though no crime has been committed. In Oxford, a sign thus reads,

No person shall aggressively beg. Aggressive begging includes begging near a cash machine or begging in a manner reasonably perceived to be aggressive or intimidating [...]. [N]o person shall remain in a public toilet without reasonable excuse [...] council staff are put at risk when having to remove people and drug related paraphernalia from the toilets. (Oxford City 2015)

These controls on movement in public space extend to those who would otherwise put the human body at risk. In the USA, community notification procedures have meant that “from North Carolina to Washington State, communities have

designated swimming pools, parks, and school bus stops as ‘child safety zones,’ off limits to some sex offenders. They are barred from libraries in some cities and all public facilities in others” (Lovett 2012). In the UK, the Prevention of Terrorism Act 2005 allows the courts “to restrict the activities of individuals suspected of terrorist activity but for whom there is not sufficient evidence to charge” (Hanman 2009).

Those already imprisoned for crimes against the body can be immobilised through forms of indefinite imprisonment (in New Zealand, the number of preventive detention prisoners has increased from 10 in 1981 to 293 in 2020). Or at the end of a finite term, if they are considered a high risk, they may be detained in what is referred to as “civil detention.” That is, they remain in prison indefinitely, despite having completed their sentence – or at least until they are assessed as no longer being a risk to the public – as under the provisions of the sexual predator laws in the USA, or the 2012 public protection order legislation in New Zealand.

Here, it seemed, was the solution to providing protection from risks of crime that would otherwise cause intolerable harm, and from which citizens had only limited measures of self-protection (children: “don’t talk to strangers”). On this basis, penal populism was able to override government instructions that individuals should be responsible for their own well-being: here were grave risks that were beyond their own management. If governments did not extend their protection to meet this deficiency in essential safety, a “legitimacy gap” between government and the electorate was likely to open up: governments lose legitimacy when their power is exercised in a manner that contravenes existing conventions and expectations. If this deficit is not addressed, it may lead to a serious threat or challenge to the rules of power in the form of a legitimisation *crisis* (Beetham 1991). To offset this threat, the distance between the governing class and the governed has to be reduced, with some realignment of their respective roles in governance – as with the reversal of penal power here.

At the same time, immobilising sanctions became particularly apposite to this era, where informal community controls had broken down and where there was so strong an emphasis on individualism at the expense of social cohesion. It meant that civic duties and responsibilities could be communicated through official signs and warnings in the absence of informally produced and communicated knowledge. These sanctions were also apposite to an era where mobility had itself become a prerequisite if risk-taking entrepreneurs were to be able to compete for all the prizes and riches that this restructuring had made possible. Indeed, mobility itself became one of these prizes, allowing the *possibility* at least of exciting and exotic foreign travel in some way or another, to nearly all rather than just a privileged few. The immobilisation of those who jeopardise such possibilities not only prevents any further participation for them in this race to the top, but also represents a remarkably equivalent penalty to the risks they pose – at least, where criminal justice systems have shifted towards judging risk rather than crime.

How has it been possible, though, to engineer immobilising practices to ensure protection from risk through a range of enabling mechanisms that undermine the

rule of law? The answer is that while governments have been anxious to push these immobilising strategies beyond the previous boundaries of criminal law, the courts, for the most part, have been reluctant to stand in their way. In *Kansas v. Hendricks* (1997), for example, the US Supreme Court determined that civil detention under the provisions of the US sexual predator laws is not a double punishment for the initial offence since it is intended to provide “treatment.” It then follows that if there is no double punishment, then these laws do not invalidate the conventions against retrospective legislation that has put them in place.

This kind of reasoning is illustrative of a range of rationalisations from both governments and courts justifying these measures and maintaining that they are anyway within the limits of democratic society’s legal framework. They simply represent, for example, a necessary “rebalancing” of criminal justice interests – in favour of those of the public now over those who would otherwise put them at risk. The UK anti-social behaviour legislation was thus justified on the grounds that “it will shift the balance of power in communities from the anti-social and the criminal to the law-abiding majority. It will put the victim first [...] to help to rebuild community life and prevent social exclusion” (Straw 1998: col 372). In so doing, the concept of human rights has also been redefined: the New Zealand Minister of Justice claimed, as regards the public protection order legislation, that “once public safety has been assured, [the law] provides that people detained will have all the rights of other citizens [...] [and it] strikes the right balance between the liberty rights of individuals under a public protection order and our duty to protect New Zealanders from imminently dangerous offenders” (Collins 2013: 13441).

Similarly, it has been rationalised that these powers of immobilisation fulfil the expectations of democratic governance rather than undermine them:

The civil liberties of individuals who might be suspected of terrorism is important... but we have to balance that against the civil liberties of all the citizens of this country who also have a right in a democracy to expect to live their lives free from the fear and possibility of harm by people who act in that way. (Hughes 2003: col 954)

By signalling that those so detained/imprisoned under these powers will not be permanently consigned to some sort of remote Soviet-style gulag, but in fact have been provided with a pathway of return, albeit obscure and prolonged, such measures can then again be understood as being within the democratic purview. Rather than being undermined by such measures, democratic order is seen as being protected in these ways from those would otherwise put its freedoms at risk.

Meanwhile, these immobilising initiatives also demonstrate that governments will not be held back by the liberal criminal justice establishment in pursuing these ends. If this then puts them in conflict with criminal justice experts demanding that the rights of individuals should be respected and arguing that retrospective legislation and the like had no place in democratic society, then so much the better for governments. They can claim to be on the public’s side while criticising the experts

and the criminal justice bureaucracies that oppose them as being hopelessly out of touch with public sentiment. Indeed, the more spectacular that governments can make their rescue measures – “Dangerous paedophiles to be caged indefinitely” was the headline that greeted the New Zealand public protection orders legislation (Vance 2012) – the more this seems proof that they are on the side of the public.

2. The rise of populist politics

Nonetheless, this specific brand of populism was unable to sustain its intended function of maintaining order and cohesion in a time of growing social and economic divisions. Instead, the societies in which penal populism flourished – again, the Anglosphere democracies in particular – became further divided and fractured, beyond the maintenance it could provide. This was largely because of the twin impact of the 2008 global financial crash, quickly followed by surging immigration from East to West and from South to North around the globe. Both events have further weakened loyalties to the neoliberal programme of government. The financial crisis intensified existing divisions and brought new ones into existence, as a new social class emerged – the “precarariat”.

Taking a temporary job after a spell of unemployment [...] can result in lower earnings for years ahead. Once a person enters a lower rung job, the probability of upward social mobility or of gaining a ‘decent’ income is permanently reduced. Taking a casual job may be a necessity for many, but it is unlikely to promote social mobility. (Standing 2011: 25)

While there were those who prospered even more in the ruins the crash brought about, there were many more for whom there was no recovery, nor any prospect of one. Instead, they were likely to remain trapped in modern society’s bargain basement, staring enviously and angrily at those on the upward escalator to success that operated beyond its locked doors.

Meanwhile, the flow of immigration that had been encouraged by post-1970s governments committed to the free movement of labour was gaining force. The flight of many thousands from conflict in the Middle East added to this increasingly threatening imagery of legal but unwanted migration, illegal migration, refugees, and asylum seekers.² For those who already saw themselves in the “left-behind” and

² The real levels of immigration are by no means clear. Using the USA as an example, the unauthorised immigrant population more than tripled in size from 1990 to 2007 – from 3.5 million to a record high of 12.2 million in 2007. By 2017, that number had declined by 1.7 million, or 14%. There were 10.5 million unauthorised immigrants in the USA in 2017, accounting for 3.2% of the nation’s population. In 2014, 12% of the 42.4 million foreign-born persons in the United States have entered since 2010, 29% entered between 2000 and 2009, and the majority (59%) before 2000.

immobilised category of these societies, it seemed that here was a further threat to their security and economic prospects. Even their national identity was at risk, all that many of them had left to cling to. It was as if immigrants brought their own cultures and values with them, values that undermined all that had once been taken for granted as familiar, indelible features of a particular society:

Schools don't [now] refer to Christmas holidays but the winter break. In some US cities they put up holiday trees, not Christmas trees. The State of Iowa passed laws to change the name of Good Friday to the Spring Holiday. In the name of racial and religious tolerance, eggs aren't decorated, carols aren't sung, and tinsel isn't hung. (McCrohan 2012)

This coincidence of economic catastrophe and apparent uncontrolled and unwanted immigration provided the opportunity for the emergence of "anti-politics" politicians, claiming to be outside of the Establishment circles that were responsible for the national decline that the crash and immigration symbolised. Here were the saviours, it seemed, for those abandoned by the state. In contrast to the neoliberal orthodoxies that had exhorted individual responsibility with a minimal state and free-market-inspired global trade in post-1970s political development, they offered visions of a nationalistic glorious future based around trade and border controls that would protect local jobs and with lavish public spending on vanity projects: but all based on a mythical past. It would be a largely immigrant-free future and one where state power was concentrated in the hands of the saviour-leader and the quasi-magical powers they seemed to have been endowed with to recreate the nation in such a fashion.

Anti-immigration politics – especially from Asian and Muslim countries – in conjunction with protectionist economics had already brought political capital for right-wing populist parties in Australia and New Zealand³ (and similarly in a range of European societies). However, it was the success of the Trump presidential campaign in the USA in 2016 ("Make American Great Again") and the UK Brexit campaign in the same year ("Take Back Control") that made populism a dominant international force. Now, rather than being used as a governmental strategy to maintain the status quo, a recharged populist politics intended to overturn it. To this end, strongman leadership rather than effete democratic processes was needed to bring about the necessary cleansing and purifying of the social body in order to avoid further erosion of national values and financial security. Only by "draining the swamp" of government corruption and nepotism would it be possible for their glorious visions to become reality, claimed Trump and his counterpart in the UK – Boris Johnson, leader of the Brexit campaign and then Conservative prime minister.

³ Respectively, One Nation and New Zealand First. While the former has won parliamentary seats in both state and federal elections, the latter has been a coalition partner of both left and right governments on three occasions since 1996.

Fear of crime and crime risks have remained part of the populist repertoire all the same, since cleansing these threats would be part of the envisaged purifying process. Johnson's Conservative government thus signalled initiatives such as "life to mean life' for child murderers, together with more prison places [...] and less early release" (Jenkins 2019). What is the justification for these policies? Invocations of the empty phrase "most people think" (or variations of it – "people tell me that" and so on) determine the direction of government, rather than expert knowledge based on science or even facts. Thus, a prime minister's source claimed that "most people think all [political] parties and the courts have lost the plot on sentencing" (Jenkins 2019). Here, then, was a template for electoral success for populist politicians. Law and order issues could be placed on a more expansive terrain of threats, seemingly on the verge of engulfing the nation state – unless the local strongman, brushing aside rule of law ephemera and other democratic niceties, is given the power to vanquish them. Conjuring new clusters of enemies (real or imagined) sustains the sense of grievance and victimisation that attracts their supporters and their own grievances that they bring to the populist cause. Trump thus called in the National Guard in 2018 to defend the border against mythical "caravans" of foreign hordes and alien others approaching from Latin America – and then bypassed legal channels and human rights concerns altogether by declaring an "emergency" that allowed him to override such matters.

It follows that the more swamps in need of draining that can be discovered and the more victims that can be found to defend, the more powerful populist politicians become. The more imperilled the nation state is made out to be in these conspiratorial machinations, the greater, it seems, is the need for their strongman leadership – as if they alone are able to extinguish such existential risks to the nation. During the US presidential campaign of 2020, Trump, professing to be "the president of law and order", thus claimed that "the stated goal [of the Black Lives Matter movement] is to achieve the destruction of the nuclear family, abolish the police, abolish prisons, abolish border security, abolish capitalism, and abolish school choice" (Massie 2020).

Indeed, Trump became a master of presenting himself as a victim of the corruption and conspiracy of "the Establishment and their media enablers [who] control this nation... Anyone who challenges their control is deemed a sexist, a racist, a xenophobe, morally deformed. They will attack you; they will slander you; they will seek to destroy everything about you, including your reputation" (Transcript: Donald 2016). By asserting his victimhood, it was as if those left behind and forgotten about in the last few decades (those working in sunset industries such as coal mining, for example) could better identify with him.

Similar tactics to those that had brought penal populism success – the use of anecdotes, lies, distortions, and conspiracy theories, sensational news headlines, and a reliance on "public opinion" rather than experts – have been deployed on the broader political canvas that leaders such as Trump and Johnson have chosen to work on. This has been at the expense of science and reason – these are seen as

merely matters that can be discarded or distorted to suit: “truth isn’t truth”, Rudi Giuliani, Trump’s sometime “personal lawyer” has exclaimed (Morin, Cohen 2018). When expert knowledge threatens the fanciful visions of the future that these populist politicians have promised, this too is discredited. Conservative Cabinet Minister Michael Gove, another leading Brexit campaigner, thus proclaimed that “the British people have had enough of experts” in 2016, after being challenged about Brexit’s economic viability (Mance 2016).

What neoliberal governance had set in motion to sustain itself through penal populism, populist politics exaggerates and twists and distorts still further in a bid to affirm the legitimacy of authoritarianism and isolationist nationalism, and, in so doing, sharpens populism’s threat to democracy. The persistent attacks of this politics on what are claimed to be elitist, corrupt institutions of government – a free press, an independent judiciary, and a politically neutral civil service – then further erodes trust in the bedrock features of democracy. Those who stand in the way of populism – rival politicians, judges, journalists, academics, scientists, economists, and so on – become “enemies of the people.” Richard Spencer, Secretary of the Navy in the Trump administration before he resigned over Trump’s decision to pardon a Navy SEAL for war crimes, has stated that “it is the rule of law that sets us apart from our enemies” (Cummings 2019). However, judges who would safeguard this democratic pillar are likely to be publicly denounced if they hand down a decision that populist politicians disagree with. Trump (2017), ignoring the separation of powers convention, reacted with the following tweet regarding a judge who removed his 90-day travel ban to the US on seven Muslim-majority countries: “The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned.’ It is as if the decision automatically made the judge another member of the “deep state conspiracy” that Trump and his acolytes project themselves as uncovering and fighting and which would otherwise subvert the democratic order they claim to be defending, while simultaneously destabilising it themselves.

Meanwhile, the use of new social media outlets, unbound by any kind of ethical constraints (until 2020, when censoring protocols were introduced, followed by the forced closure of Trump’s Twitter account in 2021), has facilitated populist attempts to directly address large sections of the population – in conjunction with broadcasting/newspaper outlets (such as Fox News in the USA and the *Daily Mail* in the UK). These abandon any pretence of objectivity and peddle conspiracy theories that confirm and strengthen the version of reality that the leader proclaims, however distant it may be from the real world. Any criticism of this populist trajectory in the mainstream media, meanwhile, can be dismissed as “fake news”.

3. The arrival of COVID-19

For a politics that thrives on identifying and attacking what it sees as “enemies of the people”, it might be assumed that the arrival of COVID-19 in early 2020 would be welcomed as another such enemy by populist leaders. But this is an enemy that is real rather than imaginary. And because it exists in microbe form, it cannot be blocked by a wall or scared away by the presence of the National Guard. It cannot be detained. It cannot be shamed out of existence by a Twitter outburst. And it brings incalculable harm to individuals and societies. At the same time, it would seem to undermine the foundations on which populism had been built. For example, the pandemic has led to a huge public demand for more knowledge about it. Where is this information to be found? Many widely read conspiracy theories exist on social media: it was deliberately unleashed on the rest of the world by China, for example, or it does not exist at all but was a plot fashioned by Democrats/international bankers/George Soros/the mainstream media, etc. to destabilise Trump’s presidency. However, vast numbers of citizens have looked instead to the mainstream media – particularly public broadcasting organisations – for their news and knowledge of it. In the UK, “the BBC was the most popular source of news and information about COVID-19 – used by 82% of adults during the first week of [the March 2020] lockdown” (TV watching 2020). For these substantial numbers of viewers and listeners, it seems, truth is truth after all, and not something to be discredited or falsified if it happens to be inconvenient.

By the same token, it is no longer the case that people have “had enough of experts.” On the contrary, the opinions of epidemiologists, virologists, immunologists, and the like, regularly given in press conferences or published in the mainstream media (rather than social media), are eagerly awaited. And rather than the magical cures proffered by populist strongmen, or their outright denials of the existence of the virus, a large proportion of the public have put their trust in science. A Canadian opinion poll in March 2020 reported that 87% of the public cited the local health authority as the most trusted source of information (Coronavirus reckoning 2020). In the USA, a *New York Times* poll in June 2020 showed high levels of trust in medical scientists (84%), the Centers for Disease Control (77%), and Anthony Fauci, the Director of the Institute of Allergy and Infectious Diseases (67%) as opposed to Donald Trump (26%) (Sanger-Katz 2020). Trust in science is also reflected in the large number of people wanting to be vaccinated against the virus when given the opportunity, rather than be taken in by populism’s snake oil cures.⁴ The willingness of most of the public at least to wear masks and practice social distancing is another indication of widespread conformity to medical knowledge and expertise. Opinion polls indicate high levels of support for even stricter lockdowns than most governments have been prepared to introduce, as

⁴ Seventy-six per cent in New Zealand in December 2020; 75% in Australia; 69% in the USA; 77% in the UK; and 71% in Canada (One fifth 2020; U.S. and U.K. 2020).

well as support for travel bans and other restrictions.⁵ Many have demonstrated a willingness to sacrifice individual liberties that lockdown restrictions – a form of immobilisation across entire nations – impose to support the public good of virus control. But further levels of protection are still needed from government (coordinated public health strategies, delivery of vaccines etc.) with the help of scientific expertise. The virus has thus become another intolerable risk, one that is over and above the ability of individuals to manage themselves.

In those societies where governments have worked in tandem with their experts and expressed confidence in them (rather than trying to undermine or ignore them), public trust in government has also increased – as with Australia and New Zealand, two of the most successful countries in containing the virus, with government approval rates of 85% and 86%, respectively, in late 2020 (Brain 2020; Deveaux 2020). What this would suggest is that when central governments provide clear, effective leadership and are prepared to disseminate both good and bad news – but news which is true, accurate, and clear – high levels of public support are generated. Reversing the Reagan aphorism, it is as if governments can once again be the solution rather than the problem. In contrast, trust in government is much lower in those societies where expert advice has been ignored in favour of maintaining the economy and what is presented as respect for “individual freedom” – even the right to become infected with the virus and then infect others. It is also lower where government policy is inconsistent, shifting according to news headlines and soundbites – a familiar populist strategy, but one which only undermines trust in those who vacillate in this way when the public are hoping for consistency and clarity. In the USA, approval of Trump’s handling of the pandemic dropped from 40% in March 2020 to 32% in July that year in an Associated Press-NORC Center for Public Affairs Research poll (Mckinley, Azem, Sith 2020). In the UK, the drop in support for the Johnson government was much starker: from 72% in March 2020 to 34% by November 2020 (International COVID 2020).

There is also a high level of public recognition that the solution to the virus involves, first, the development of national strategies that are part of a global response, rather than a race to be first with a vaccine which can then be celebrated in a form of jingoistic triumphalism. This means a willingness to develop and disperse vaccines with other nations, as advocated by the World Health Organization, rather than populism’s emphasis on nationalistic isolation. Secondly, there is recognition that government policies need to provide protection for all citizens:

⁵ For example, there is strong support for mandatory vaccinations against COVID-19 in Australia (77%) and the UK (70%). In the UK, the public have supported more extensive lockdowns than the government had been prepared to impose. During the first lockdown period there in April 2020, ‘We found that 87% believed the lockdown should continue for at least another three weeks (with 6% unsure and 7% disagreeing)... when asked their opinion on whether the UK’s plans over the next few weeks were “not firm enough with restrictions on people” or were “putting too many restrictions on people” [...] 56% felt they were not firm enough’ (Recchia 2020).

failing to protect all will only lead to higher rates of infection. At the same time, opinion polls reflect a yearning for government to provide adequate health care rather than treating this as another consumer product to be purchased in the private sector: post-pandemic health care should be prioritised over economic growth, according to 60% of UK respondents (Harvey 2020); likewise, 63% of US respondents indicated that the government has a responsibility to provide health care for all (Jones 2020).

Certainly, the lockdowns and their immobilising consequences have become part of the terrible price that COVID-19 has exacted, with the poorest and most vulnerable members of communities likely to be the worst affected. However, the lockdowns and related restrictions have also had the effect of strengthening social cohesion. Doctors and nurses have come out of retirement to help with medical services. In the USA, “the Auntie Sewing Squad, which has sewn more than a hundred thousand cloth masks to distribute to frontline, vulnerable, and devalued groups, from farmworkers to former prisoners” (Solnit 2020). In the UK, “hundreds of the nation’s top restaurants [...] pledge their support to a charity focussed on feeding the most vulnerable after the pandemic left them in urgent need of support” (Roberts 2020). As mobility has declined, this has simultaneously provided the opportunity to strengthen local cohesion – as with volunteers delivering food to those unable to do their own shopping.

Amidst such reassertions of community values, there is evidence of a strong desire for post-pandemic personal and social change. In an April 2020 opinion poll, only 9% of Britons wanted a return to their pre-pandemic lives, based as these had been around expectations of endless striving for individual success at the expense of family, community relationships, and so on (Wood 2020). Instead, there was greater recognition of the importance of environmental improvements (cleaner air or more wildlife) and more appreciation of belonging to family and community. Similarly, a global survey by the World Economic Forum and Ipsos found that 72% of respondents wanted their personal lives to change and 86% wanted the world to be more equitable and sustainable after the pandemic (Broom 2020). In other words, these respondents seem to be questioning the emphasis that neoliberal restructuring had given to the mass movement of goods and populations in the form of globalisation and the concomitant shift to urban living and its attractions – both of which trends are seen as having laid the groundwork for pandemics such as COVID-19 (Snowden 2019). During the course of the pandemic, new role models also emerged. Rather than these being the risk-taking entrepreneurial heroes of neoliberalism, they were those who provided medical care or social care along with those working in supermarkets, pharmacies, and public transport: essential occupations that heal and help to bring communities together.

What does this all mean, then, for the prospects of populism as a political force in post-COVID society? It is recognised that these above-noted shifts in public opinion may only be temporary. Nonetheless, the most important and demonstrable political consequence of the pandemic has been the role it played in bringing

the Trump presidency to an end in 2020. COVID-19 enlarged his faults “so they became too frightening to miss. It showed him lacking even the most rudimentary empathy [...] it showed him to be dishonest, insisting that the virus was likely to ‘disappear’ [...] and it showed him to have contempt for facts and science, regularly contradicting and undermining the US response” (Freedland 2020). While Trump attracted 74 million votes, a record 81 million votes were against him, sounding his presidency’s death knell.

Elsewhere, as Bobba and Hube (2021) show, populist parties for the most part have not made gains in Europe as the pandemic has raged. Indeed, in some European countries, it is evident that support for populism has declined.⁶ The need to control the virus through a strong central state authority, effective government bureaucracies, and health services, the importance of public broadcasting organisations, the guidance of experts, and the increased social cohesion brought about by the experiences of lockdowns have also put the brakes on populism. Of course, it is recognised that the shifts in public mood that these trends indicate may only be temporary – and there are still outliers. In UK local elections in 2021 and in opinion polls, the popularity of the Conservative Party and Johnson himself significantly increased. This is largely due, it would seem, to them capitalising on the state-financed National Health Service being able to provide a speedy vaccination programme. Here as well, as indicated earlier, there has been familiar recourse to penal policy based around risk control and public protection: the Home Office (2020) White Paper, *A Smart Approach to Sentencing*, has parole restrictions, whole life sentences, and the like for those judged to be high risk.

Nonetheless, the attempt by Trump to make his own versions of law and order the central issue of the 2020 US election was a manifest failure. Indeed, it may be that a further consequence of the pandemic will be that risk becomes uncoupled from crime and linked instead to public health concerns, thereby allowing initiatives to drive down prison populations (this would continue a trend already in place for some years in the Anglo-American democracies⁷). It would also involve shifting resources from penal to public health administrations, reversing a trend that began in the US in the mid-1990s (Snowden 2019). As it was, as the pandemic took hold, both public health and penal experts called for the release of the most vulnerable prisoners. In the USA, dozens of American doctors and public health officials called for decarceration and expanded access to healthcare for released prisoners in an open letter to the CDC (Coalition letter 2020). It has been recognised that prison conditions in these societies – often poorly ventilated, dirty, and with inadequate healthcare – provide breeding grounds for the virus. Of course,

⁶ In fact, support for populist parties has been on the decline in Germany, France, the Netherlands, and Czechia (Politico.eu 2021).

⁷ In the USA, the rate of imprisonment declined from 755 per capita in 2008 to 639 in 2018; in Canada, from 117 to 104; in the UK, from 150 to 130 in 2021; in Australia from 172 in 2018 to 160 in 2021; and in New Zealand from 214 in 2018 to 188 in 2021 (World Prison Brief 2021).

overcrowded prisons have also meant that social distancing is nearly impossible. Furthermore, the American Medical Association recommended that inmates should be prioritised, as prisons are “hotspots” for the spread of COVID-19 (Plater 2020). US Data collected by the Associated Press and the Marshall Project show that prisoners are four times more likely to contract COVID-19 than the general population (Schwartzapfel, Park, Demillo 2020).

This awareness has led to both the USA and Canada releasing inmates early (no-one is safe from the virus until all are safe). The US prison and jail population has fallen by 11%, primarily due to mass release (So et al. 2020). In the first few months of the pandemic, Canadian correctional institutions saw a 16% drop in inmate populations due to early releases (Bradley 2020). The prioritisation of health care over incarceration was again demonstrated when California Governor Gavin Newsom allotted USD 30 million to organisations that offer transport, quarantine housing, and health care for people released from prison during the pandemic (Servick 2020). California and New York have also set up hotel stays for released prisoners. In addition, inmates were given priority in vaccinations, even before some of the elderly populations in a dozen US states (Rabin 2020). Similarly, the Australian government has also promised that prisoners will be among the first to receive the vaccine, with their Health Department attributing this decision to the advice from medical experts and the World Health Organisation (Hendry-Tennent 2020).

This is not a uniform pattern, of course. While an End of Custody Temporary Release scheme in April 2020 in England and Wales was intended to release up to 4,000 low-risk prisoners, it was indefinitely “paused” in August of the same year, after only 275 were released. Negative reports in the virulent mass media there appear to have frightened politicians away (Maruna 2021). There have been no such initiatives for early release in Australia and New Zealand, where control of the virus has been especially effective and removed the urgency for special prison measures. Indeed, in New Zealand, multiple media stories have highlighted the “appalling” conditions prisoners have been subjected to during the pandemic. After rioting against the insanitary conditions at one prison in December 2020, 16 inmates were engaged in a six-day rooftop standoff with corrections officials.

Nonetheless, the successes of state and central government in controlling the virus in these two societies coincided with dramatic falls in support for their Trump-like parties – New Zealand First and One Nation – in their own general elections in 2020. The former won only 2.6% of the vote (7.2% in the 2017 election), which lost them all nine of the seats they had previously held (2020 General Election 2020). Similarly, One Nation won only one seat in the Queensland state election, having received only 7.12% of the vote – down from 13.7% in 2017 (Election results n.d.). Government successes in controlling/defeating the virus, in conjunction with the way in which immobilisation halted immigration and along

with the priority given to public health over law and order⁸ meant that both these parties had little fuel for festering the grievances on which their electoral support had previously been based. There have still been hate crimes and racial abuse prompted by the pandemic in these countries, as there has been in the UK and the USA. But there are also examples of overt disapproval of such activities when they do come to light (see Pratt 2020: 314). Perhaps most importantly, these election results from Australia and New Zealand are likely to mean that governments there are less likely to pursue populist penal props themselves: control of the virus has given them legitimacy, without the need for extra-penal measures to shore this up.

Indeed, the stronger indicators of social cohesion and greater participation in the performance of civic duties and responsibilities provide opportunities for local and central states to manage problematic populations through social assistance measures rather than penal controls. Giving primacy to risks to public health over risks of future crime meant that, at least in the early stages of the pandemic, the homeless were not simply expelled or moved on in New Zealand, but were provided with government-subsidised accommodation in hotels. Thereafter, a Mayoral Relief Fund was set up in Wellington, the capital city, for those in need of food, shelter, and clothing (although some of the homeless have returned to the streets in spite of this). Similarly, the Canadian government has spent CAD 157.5 million on its homeless strategy in the light of the virus (Reaching home 2020). Individual US states have provided new funding and other measures to house the homeless to avoid risking their exposure to the virus (Parsell, Clarke, Kuskoff 2020). The absence of significant public opposition to such initiatives also indicates that the fears and anxieties generated by the presence of those living on the streets may have been defused, replaced by fears and anxieties of the consequences of a lack of social distancing in unhygienic surroundings which might provide opportunities for the virus to spread.

At the same time, where there have been intimations of strengthened social cohesion induced by the virus, this may recreate possibilities for the rekindling of more informal channels of regulation. Stronger social cohesion might provide the knowledge, guidance, and instruction through which the presence of strangers is assessed – avoiding the suspicions that can currently lead to quasi-vigilante interventions on the one hand and formal action to control and restrict such dangers taken by the state on the other: part of a more general picture where it is possible to see security being provided once again through social cohesion rather than the use of penal power. Similarly, if risk is indeed decoupled from crime, as crime risks have been greatly reduced because of the immobilisation of entire nations, and transferred to the public health arena, it might then be understood and justified

⁸ In New Zealand, a Horizon public opinion poll found that 54% of respondents chose health as the most important issue in the 2020 election. This was followed by 'Pandemic Economy Recovery' (51%) and 'Pandemic Management' (48%). Comparatively, 'Law and Order' (30%) and 'Crime' (29%) were ranked 19th and 20th, respectively (Health is 2020).

as a strategy to provide public protection in this domain, rather than being used as a form of penal control over dangerous individuals.

Of course, all such matters are still contingent and speculative. And if they do eventuate, they will not be spread evenly. But they remain, all the same, possibilities in the aftermath of COVID-19. Every previous pandemic has brought about extensive cultural, political, and social change (Snowden 2019). Whatever the changes that COVID-19 will bring, there seems no reason to think that penal affairs will remain untouched by them.

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References

- Bauman Z. (2000). *Liquid Modernity*. Cambridge: Polity Press.
- Bauman Z. (2002). 'Violence in the age of uncertainty.' In A. Crawford (ed.) *Crime and Insecurity*. London: Routledge, pp. 52–74.
- Beckett K. and Herbert S. (2008). 'Dealing with disorder: Social control in the post-industrial city.' *Theoretical Criminology* 12(1), pp. 5–30.
- Beetham D. (1991). *The Legitimation of Power*. London: Macmillan.
- Bobba G. and Hube W. (2021). *Populism and the Politicization of the Covid-19 Crisis in Europe*. London: Palgrave Macmillan.
- Bottoms A.E. (1977). 'Reflections on the renaissance of dangerousness.' *Howard Journal of Criminal Justice* 16(2), pp. 70–96.
- Cavadino M. and Dignan J. (2002). *The Penal System*. London: Sage.
- Friedman M. (1962). *Capitalism and Freedom*. Chicago: Chicago University Press.
- Fukuyama F. (1989). 'The end of history?.' *The National Interest* 16, pp. 3–18.
- Furedi F. (2001). *Paranoid Parenting: Abandon Your Anxieties and Be a Good Parent*. London: Allen Lane.
- Gardner N. (2000). 'Fear pushes up value of homes with security gates.' *Sunday Times* 28 May 2000, p. 3.

- Garland D. (1996). 'The limits of the sovereign state: Strategies of crime control in contemporary society.' *British Journal of Criminology* 36(4), pp. 445–471.
- Handy C. (1989). *The Age of Unreason*. Boston: Harvard Business School Press.
- Harcourt B.E. (2001). *Illusion of Order: The False Promise of Broken Windows Policing*. Cambridge, MA: Harvard University Press.
- Hayek F. (1944). *The Road to Serfdom*. London: Routledge.
- Hayek F. (1960). *The Constitution of Liberty*. Chicago: University of Chicago Press.
- Home Office (1974). *Working Party on Vagrancy and Street Offences: Working Paper*. London: HMSO.
- Home Office (2021). *A Smart Approach to Sentencing*. London: HMSO.
- Jacobs J. (1992). *The Death and Life of Great American Cities*. London: Penguin Books.
- James B. (1989). 'The house of the rising sums.' *The Times* 13 April 2021, p. 12.
- McCrohan S. (2012). 'Canberra's PC police need to use common sense: Hands off our rituals.' *Herald Sun* April 8.
- Parsell C., Clarke A., and Kuskoff E. (2020). 'Understanding responses to homelessness during Covid-19: An examination of Australia.' *Housing Studies*. Available online: <https://www.tandfonline.com/doi/pdf/10.1080/02673037.2020.1829564>.
- Pratt J. (2020). *Law, Insecurity and Risk Control. Neo-Liberal Governance and the Populist Revolt*. London: Palgrave Macmillan.
- Pratt J. and Anderson J. (2016). "'The beast of Blenheim', risk and the rise of the security sanction.' *Australian and New Zealand Journal of Criminology* 49(4), pp. 528–545.
- Pratt J. and Clark M. (2005). 'Penal populism in New Zealand.' *Punishment & Society* 7(3), pp. 303–322.
- Shils E. (1956). *The Torment of Secrecy*. London: Heinemann.
- Snowden F.M. (2019). *Epidemics and Society: From the Black Death to the Present*. New Haven: Yale University Press.
- Standing G. (2011). *The Precariat: The New Dangerous Class*. New York: Bloomsbury Academic.
- Wilson J.Q. and Kelling G. (1982). 'Broken windows: Restoring order and reducing crime in our communities.' *Atlantic Monthly* March, pp. 29–38.

Internet sources

- 2020 General Election Official Results (2020), Elections.nz. Available online: [https://elections.nz/media-and-news/2020/2020-general-election-official-results/\[03.03.2021\]](https://elections.nz/media-and-news/2020/2020-general-election-official-results/[03.03.2021]).
- Bradley J. (2020). *Canada's Correctional Institutions Released Thousands of Inmates in the Early Days of Covid-19*, Nationalpost.com. Available online: <https://nationalpost.com/news/canadas-correctional-institutions-released-thousands-of-inmates-in-the-early-days-of-covid-19> [03.03.2021].

- Brain D. (2020). *How Is the Govt Handling Covid-19? The First Opinion Poll since NZ Locked Down*, TheSpinoff.co.nz. Available online: <https://thespinoff.co.nz/society/28-03-2020/how-are-we-feeling-about-covid-19-the-first-opinion-poll-since-nz-locked-down/> [04.01.2021].
- Broom D. (2020). *An Overwhelming Majority of People Want Real Change after Covid-19*, Weforum.org. Available online: <https://www.weforum.org/agenda/2020/09/sustainable-equitable-change-post-coronavirus-survey/> [03.01.2021].
- Coalition Letter to the CDC Calling for Them to Adopt Decarceration and Expanded Health Care Access in Guidance to Slow Spread of Covid-19* (2020), Drugpolicy.org. Alliance. Available online: <https://drugpolicy.org/resource/coalition-letter-cdc-calling-them-adopt-decarceration-expanded-health-care-access-guidance> [03.03.2021].
- Collins J. (2013). *Public Safety (Public Protection Orders) Bill – First Reading*, Parliament.nz. Available online: https://www.parliament.nz/en/pb/hansard-debates/rhr/document/50HansD_20130917_00000020/public-safety-public-protection-orders-bill-first-reading [03.03.2021].
- Coronavirus Reckoning: As Outbreak Hits Home, Canadians Brace for Worse Health, Economic Fronts. Part 5: Information: Who do Canadians Trust?* (2020), Angusreid.org. Available online: <http://angusreid.org/covid-19-response/> [23.12.2020].
- Cummings W. (2019). *Navy Secretary Richard Spencer Forced Out after Donald Trump's Objection Over Handling of Navy SEAL War Crimes Case*, Usatoday.com. Available online: <https://www.usatoday.com/story/news/politics/2019/11/24/richard-spencer-navy-secretary-out-eddie-gallagher-seal-case/4293533002/> [22.12.2020].
- Dearden L. (2015). *'These Attacks Can Happen Anywhere' David Cameron Warns After Terror in Tunisia, France and Kuwait*, Theindependent.co.uk. Available online: <https://www.independent.co.uk/news/uk/home-news/these-attacks-can-happen-anywhere-david-cameron-warns-after-terror-in-tunisia-france-and-kuwait-10348382.html> [03.03.2021].
- Deveaux F. (2020). *Democracy Perception Index – 2020*, Daliaresearch.com. Available online: <https://daliaresearch.com/blog/democracy-perception-index-2020/> [04.01.2021].
- Election Results and Statistics* (n.d.), Ecq.qld.gov.au. Available online: <https://www.ecq.qld.gov.au/elections/election-results> [03.03.2021].
- Fensome A. (2012). *No Sinister Old Man in White Van – Police*, Stuff.co.nz. Available online: <http://www.stuff.co.nz/national/8083424/No-sinister-old-man-in-white-van-police> [03.03.2021].
- Freedland J. (2020). *The Magnifying Glass: How Covid Revealed the Truth About our World*, The Guardian. Available online: <https://www.theguardian.com/world/2020/dec/11/covid-u-turned-planet-freedland> [22.12.2020].

- Hanman N. (2009). *Explainer: Terrorism Legislation*, The Guardian. Available online: <https://www.theguardian.com/commentisfree/libertycentral/2009/jan/22/explainer-terrorism-legislation> [03.03.2021].
- Harvey F. (2020). *Britons Want Quality of Life Indicators to Take Priority Over Economy*, The Guardian. Available online: <https://www.theguardian.com/society/2020/may/10/britons-want-quality-of-life-indicators-priority-over-economy-coronavirus> [02.01.2021].
- Health Is the Top Factor Driving New Zealanders' Party Vote Choices* (2020), Horizonpoll.co.nz. Available online: <https://horizonpoll.co.nz/page/599/health-the> [02.03.2021].
- Hendry-Tennent I. (2020). *Prisoners Will Be Among the First to Get Covid-19 Vaccine in Australia*, Newshub.co.nz. Available online: <https://www.newshub.co.nz/home/world/2020/12/prisoners-will-be-among-the-first-to-get-covid-19-vaccine-in-australia.html> [03.03.2021].
- HM Prison and Probation Service COVID-19 Official Statistics* (2020). UK Ministry of Justice. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919130/HMPPS_COVID19_AUG20_Pub_Doc.pdf [02.03.2021].
- HM Prison and Probation Service COVID-19 Official Statistics* (2021). UK Ministry of Justice. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960361/HMPPS_COVID19_JAN21_Pub_Doc.pdf [02.03.2021].
- Hughes B. (2003). *New Clause 45. LIMIT on Period of Detention without Charge of Suspected Terrorists*, Hansard.millbanksystems.com. Available online: <http://hansard.millbanksystems.com/commons/2003/may/20/limit-on-period-of-detention-without> [03.03.2021].
- International Covid-19 Tracker Update: 8 June* (2020), Yougov.co.uk. Available online: <https://yougov.co.uk/topics/international/articles-reports/2020/06/08/international-covid-19-tracker-update-8-june> [20.12.2020].
- Jenkins S. (2019). *Johnson's Cynical 'Tough on Crime' Talk Shows the Depth of His Incivility*, The Guardian. Available online: <https://www.theguardian.com/commentisfree/2019/sep/16/boris-johnson-crime-rightwing-populism> [03.03.2021].
- Jones B. (2020). *Increasing Share of Americans Favour a Single Government Program to Provide Health Care Coverage*, Pewresearch.org. Available online: <https://www.pewresearch.org/fact-tank/2020/09/29/increasing-share-of-americans-favor-a-single-government-program-to-provide-health-care-coverage/> [02.01.2021].
- Linning S., Duell M., and Tonkin S. (2015). *So Who Does the 'Suspicious Abandoned Taxi' Belong to?*, Dailymail.co.uk. Available online: <https://www.dailymail.co.uk/news/article-3370479/Thousands-Christmas-shoppers-evacuated-London-s-Regent-Street-security-alert-suspicious-vehicle-near-Hamleys-toy-store.html> [02.03.2021].

- Lovett I. (2012). *Public-Place Laws Tighten Rein on Sex Offenders*, The New York Times. Available online: <https://www.nytimes.com/2012/05/30/us/sex-offenders-face-growing-restrictions-on-public-places.html> [02.03.2021].
- Mahon B. (2020). *Coronavirus in Ireland: Nearly 500 Prisoners Released Under Covid-19 Precautions*, The Times. Available online: <https://www.thetimes.co.uk/article/coronavirus-in-ireland-nearly-500-prisoners-released-under-covid-19-precautions-0cd8d2cm0> [05.03.2021].
- Mance H. (2016). *Britain Has Had Enough of Experts, Says Gove*, Ft.com. Available online: <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c> [02.03.2021].
- Massie G. (2020). *Donald Trump Launches Blistering Attack on the Black Lives Matter Movement*, Theindependent.co.uk. Available online: <https://www.independent.co.uk/news/world/americas/donald-trump-rally-today-blm-black-lives-matter-b604727.html> [23.12.2020].
- Mckinley S., Azem D., and Smith A. (2020). *Trump Job Approval Under Water in NH*, Scholaris.unh.edu. Available online: https://scholars.unh.edu/cgi/viewcontent.cgi?article=1600&context=survey_center_polls [06.09.2021].
- Morin R. and Cohen D. (2018). *Giuliani: 'Truth Isn't Truth'*, Politico.com. Available online: <https://www.politico.com/story/2018/08/19/giuliani-truth-todd-trump-788161> [22.12.2020].
- One Fifth of Kiwis Would Not or Probably Not Get Covid-19 Vaccine, 1 News Poll Finds* (2020), Tvnz.co.nz. Available online: <https://www.tvnz.co.nz/one-news/new-zealand/one-fifth-kiwis-would-not-probably-get-covid-19-vaccine-1-news-poll-finds> [04.01.2021].
- Oxford City Council Anti-Social Behaviour, Crime and Policing Act 2014 Part 4, Section 59 Public Spaces Protection Order* (2015), Oxford.gov.uk. Available online: https://www.oxford.gov.uk/downloads/file/2264/oxford_city_centre_pspo [05.03.2021].
- Plater R. (2020). *Debate Heats Up over Whether Prisoners Should Be Among the First to Get Covid-19 Vaccines*, Healthline.com Available online: <https://www.healthline.com/health-news/debate-heats-up-over-whether-prisoners-should-be-among-first-to-get-covid-19-vaccines#Why-it-matters> [05.03.2021].
- Politico.eu (2021). *Politico.eu*. Available online: <https://www.politico.eu/europe-poll-of-polls/> [29.06.2021].
- Prisoners Locked Up for 23 Hours Due to Covid Rules Is 'Dangerous'* (2020), Bbc.com. Available online: <https://www.bbc.com/news/uk-54607813> [03.03.2021].
- Rabin R.C. (2020). *In Massachusetts, Inmates Will Be Among First to Get Vaccines*, The New York Times. Available online: <https://www.nytimes.com/2020/12/18/health/coronavirus-vaccine-prisons-massachusetts.html> [05.03.2021].
- Reaching Home: Canada's Homeless Strategy – Covid-19* (2020), Canada.ca. Available online: <https://www.canada.ca/en/employment-social-development/programs/homelessness/notice-covid-19.html> [05.03.2021].

- Reagan R. (1987). *Informal Exchange with Reporters – October 19*, Presidency.ucsb.edu. Available online: <https://www.presidency.ucsb.edu/documents/informal-exchange-with-reporters-27> [02.03.2021].
- Recchia G. (2020). *Coronavirus: A New Survey Suggests UK Public Supports a Long Lockdown*, Theconversation.com. Available online: <https://theconversation.com/coronavirus-new-survey-suggests-uk-public-supports-a-long-lockdown-136767> [03.01.2021].
- Roberts M. (2020). *Help the Hungry: Nation's Top Restaurants Rally Behind Charity Left Out of Pocket by Pandemic*, Independent.co.uk. Available online: <https://www.independent.co.uk/voices/helpthehungry/streetsmart-restaurant-charity-campaign-b1764438.html> [22.12.2020].
- Sanger-Katz M. (2020). *On Coronavirus: Americans Still Trust the Experts*, The New York Times. Available online: <https://www.nytimes.com/2020/06/27/upshot/coronavirus-americans-trust-experts.html> [22.12.2020].
- Schwartzapfel B., Park K., and Demillo A. (2020). *1 in 5 Prisoners in the US Has Had Covid-19*, Themarshallproject.org. Available online: <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19> [05.03.2020].
- Servick K. (2020). *Pandemic Inspires New Push to Shrink Jails and Prisons*, Sciencemag.org. Available online: <https://www.sciencemag.org/news/2020/09/pandemic-inspires-new-push-shrink-jails-and-prisons> [03.03.2021].
- Sims A. (2016). *Locals Detain Innocent Tourists on Southend Seafront After Mistaking Them for Paedophiles*, Independent.co.uk. Available online: <https://www.independent.co.uk/news/uk/home-news/locals-detain-innocent-tourists-on-southend-seafront-after-mistaking-them-for-paedophiles-a6979716.html> [04.03.2021].
- So L., Heath B., Szep J., Parker N., and Eisler P. (2020). *Dying Inside: The Hidden Crisis in America's Jails, Part Three*, Reuters.com. Available online: <https://www.reuters.com/investigates/special-report/usa-jails-release/> [02.03.2021].
- Solnit R. (2020). *Republicans Are Standing Up to Trump. Unfortunately, It's too Little, too Late*, The Guardian. Available online: <https://www.theguardian.com/commentisfree/2020/dec/04/republicans-are-standing-up-to-trump-unfortunately-its-too-little-too-late> [03.01.2021].
- Straw J. (1998). *Crime and Disorder Bill [Lords]*, Hansard.millbanksystems.com. Available online: <http://hansard.millbanksystems.com/commons/1998/apr/08/crime-and-disorder-bill-lords> [04.03.2021].
- The Guardian View on Lockdown Law: Democracy Must Keep Up* (2021), The Guardian. Available online: <https://www.theguardian.com/commentisfree/2021/jan/13/the-guardian-view-on-lockdown-law-democracy-must-keep-up> [03.03.2021].
- Transcript: Donald Trump's Speech Responding to Assault Accusations* (2016), Npr.org. Available online: <https://www.npr.org/2016/10/13/497857068/transcript-donald-trumps-speech-responding-to-assault-accusations> [21.12.2020].

- Truman H.S. (1945). *Victory; Day of Prayer – 16 August 1945*, Trumanlibrary.gov. Available online: <https://www.trumanlibrary.gov/library/proclamations/2660/victory-day-prayer> [02.03.2021].
- Trump D. (@realDonaldTrump) (2017). *The Opinion of This So-Called Judge...*, Twitter.com. Available online: <https://twitter.com/realDonaldTrump/status/827867311054974976> [22.12.2020].
- TV Watching and Online Streaming Surge During Lockdown* (2020), Bbc.com. Available online: <https://www.bbc.com/news/entertainment-arts-53637305> [22.12.2020].
- U.S. and U.K. Are Optimistic Indicators for Covid-19 Vaccination Uptake* (2020), Ipsos.com. Available online: <https://www.ipsos.com/en/global-attitudes-covid-19-vaccine-december-2020> [04.01.2021].
- Vance A. (2012). *Dangerous Paedophiles to Be Caged Indefinitely*, Stuff.co.nz. Available online: <http://www.stuff.co.nz/national/politics/6900603/Dangerous-paedophiles-to-be-caged-indefinitely> [04.03.2021].
- Wood V. (2020). *Britons Enjoying Cleaner Air, Better Food and Stronger Social Bonds Say They Don't Want to Return to 'Normal'*, Independent.co.uk. Available online: <https://www.independent.co.uk/news/uk/home-news/coronavirus-uk-lockdown-end-poll-environment-food-health-fitness-social-community-a9469736.html> [20.12.2020].
- World Prison Brief* (2021). Available online: <https://www.prisonstudies.org/world-prison-brief-data> [04.09.2021].

Case Law

- Kansas v. Hendricks*, 521 US 346 (1997). Available online: <https://supreme.justia.com/cases/federal/us/521/346/> [04.03.2021].

Legal Acts

- Prevention of Terrorism Act 2005, c. 2. Available online: <https://www.legislation.gov.uk/ukpga/2005/2/contents> [04.03.2021].
- Public Health (Control of Disease) Act 1984, c. 22. Available online: <https://www.legislation.gov.uk/ukpga/1984/22> [04.03.2021].

Others

- Maruna S. (2021). *Rehabilitation and Prisoner Release During the Pandemic. Perspectives from British Prisons*. Plenary address to the Asian Criminology Society Conference.