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*Luke Oldfield, Alice Mills* ■**Adventures in populist discourse: Could a solution to penal populism in New Zealand be hiding in plain sight?****Przygody w populistycznym dyskursie: czy rozwiązanie problemu populizmu penalnego w Nowej Zelandii może być ukryte na widoku?**

**Abstract:** Contemporary discussions on the role of populism in criminal justice reform have centred around its potential for more punitive outcomes i.e., longer sentences, less hospitable prison conditions and a lack of meaningful support for integration back into the community. Reflecting on this legislative trend, Julian V. Roberts et al. (2002) opined that a change of posture might be required by proponents of penal reform, going on the offensive and pointing to the negative actions taken by politicians in the name of penal populism. This paper asks whether politicians advocating for less punitive criminal justice reforms in New Zealand could themselves draw from a more populist style of politics. We hypothesise that research participant support for a free-market populist-style argument on decarceration will be higher than for a status quo-style argument. This is examined through a quantitative approach involving the development of an experimental tool that distils the theoretical conceptualisations of populism and tests them on the New Zealand voting-age public. We find through sub-group analysis that a statistically significant number of participants who self-identified as “right” on the political spectrum or voted for either the National party (a major centre-right political party) or the New Zealand First party (a minor conservative political party) in the 2017 New Zealand general election were more inclined to support arguments for less punitive sentences when pitched using a populist-style argument.

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**Abstrakt:** Współczesne dyskusje na temat roli populizmu penalnego w reformie wymiaru sprawiedliwości w sprawach karnych koncentrują się wokół jego wpływu na represyjność kary: dłuższych wyroków, gorszych warunków odbywania kary pozbawienia wolności oraz braku istotnego wsparcia dla integracji ze społeczeństwem po wyjściu z więzienia. Zastanawiając się nad tym trendem legislacyjnym Roberts i in. (2002) uważali, że potrzebna jest zmiana postaw zwolenników reformy prawa karnego, przechodzących w ofensywę i wykazujących negatywne skutki działań polityków prowadzonych pod egidą populizmu penalnego. W artykule postawiono pytanie, czy politycy opowiadający się za mniej represyjnymi reformami wymiaru sprawiedliwości w sprawach karnych w Nowej Zelandii sami mogliby czerpać z bardziej populistycznego stylu polityki. Autorzy artykułu założyli, że w przeprowadzonym badaniu jego uczestnicy chętniej opowiedzą się za wolnorynkową populistyczną koncepcją dekarceracji aniżeli za zachowaniem obecnego stylu prezentacji argumentów. Analizy w tym zakresie zostały przeprowadzone przy wykorzystaniu podejścia ilościowego. Autorzy opracowali narzędzie eksperymentalne, którym przetestowali na próbie Nowozelandczyków w wieku wyborczym wybrane teoretyczne konceptualizacje populizmu. Dzięki analizie podgrup stwierdzono, że statystycznie istotna liczba uczestników, którzy określili się w spektrum politycznym jako „prawicowi” lub głosowali na Partię Narodową (główna centroprawicowa partia polityczna) lub Pierwszą partię Nowej Zelandii (niewielka konserwatywna partia polityczna) w wyborach powszechnych w Nowej Zelandii w 2017 r. byli bardziej skłonni do popierania argumentów za mniej represyjnymi wyrokami, gdy używali argumentów przedstawianych w stylu populistycznym.

**Słowa kluczowe:** dekarceracja, populizm penalny, powściągliwość w karaniu, polityka inkarceracji, polityka Nowej Zelandii

## Introduction

New Zealand has a reputation for being a friendly, hospitable, and informal nation, yet paradoxically, it also has a history of being decidedly punitive, with high levels of incarceration in comparison to similar jurisdictions (Pratt 2006). In 2017, the rate of imprisonment in New Zealand was around 220 per 100,000 population, compared to an OECD average of 147 per 100,000 (Gluckman 2018). Between 2001 and 2018, the prison population increased by over 75 per cent to a peak of 10,364 (Department of Corrections 2020a). The almost continual growth of the prison system over the last 30 years has been seen as largely driven by “penal populism” as successive governments have introduced “tough on crime” policies in response to media and public debates (Gluckman 2018).

The operation of prisons in New Zealand is an increasingly expensive exercise, with total costs tripling since 1996 (Gluckman 2018) and operating costs now amounting to over \$1.7 billion annually<sup>1</sup> (Department of Corrections 2020b). This ballooning government expenditure on prisons seems paradoxical in the neolibe-

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<sup>1</sup> About \$1.2 billion United States Dollars on current exchange rates.

ral era, and the contemporary prison complex represents perhaps one of the last remaining vestiges of government excess in New Zealand's public service. Unlike areas such as health and education, New Zealand's Department of Corrections and its custodial operations appear to have flexibility in continuously expanding operational budgets (Pratt 2017).

The costs associated with building new prisons and housing prisoners have in the past provided the impetus for privatisation. In 1999 Auckland Central Remand Prison was privatised, until a Labour-led government,<sup>2</sup> which was ideologically opposed to private prisons, opted not to renew the contract, by the end of 2005 all New Zealand prisons were back under public operation. Following another change of government, there was a second partial privatisation by the National-led government in 2010 involving two men's prisons (Rynne, Harding 2016). However, by 2017 the same government had ended the private contract for one of these prisons in response to violent incidents blamed on mismanagement of the facility<sup>3</sup> (Boyle, Stanley 2019). Prison privatisation no longer appears to be on the agenda of either major political party, nor to have widespread public support in New Zealand.<sup>4</sup>

The ongoing use of prisons also imposes further hidden fiscal and social costs on society and on the families and whānau<sup>5</sup> of those imprisoned (Workman, McIntosh 2013; Gluckman 2018). Māori, the Indigenous population of New Zealand, are drastically over-represented in prisons, comprising 53.1 per cent of the prison population but just 16.5 per cent of the general population (Stats NZ 2020; Department of Corrections 2021). The disproportionate imprisonment of Māori is a human rights issue. The long shadow of systemic racism throughout the justice system has had negative consequences for Māori, their families and communities (McIntosh, Workman 2017). The Pākehā majority, descendants of European settlers, tend to either believe that Māori are treated fairly by the justice system (Norris, Lipsey 2018) or that Māori overrepresentation in prison reflects their being predisposed to criminal behaviour (Nairn, McCreanor 1991; McCreanor et al. 2014). The Department of Corrections for their part have accepted the role of colonisation in this overimprisonment of Māori but remain fixated on challenging individual behaviours, attempting to blend kaupapa<sup>6</sup> Māori principles into programs which seek to rehabilitate Māori offenders (Tauri 1999; Mihaere 2015). In 2019, the Department of Corrections introduced Hōkai Rangi, a strategy de-

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<sup>2</sup> The Labour Party (centre-left) and National Party (centre-right) have alternated power since 1938 as the country's two largest political parties.

<sup>3</sup> The second prison continues to be privately run; its contract is not set to expire until 2040.

<sup>4</sup> There is little data in New Zealand on public attitudes to prison privatisation, only a non-scientific poll published by the National Business Review in 2017 suggested its readers were strongly against the practice.

<sup>5</sup> Whānau is the Māori-language word for extended family or family group.

<sup>6</sup> Kaupapa is the Māori-language word used to describe a plan, theme, proposal, or way of doing things.

signed to tackle the over-representation of Māori in the criminal justice system through working in partnership with Māori and humanising the treatment of those in prison in order to reduce recidivism (Department of Corrections 2019). However, recent scandals including the all-day confinement of prisoners to their cells during the Covid-19 pandemic, the handling of the Waikeria prison riot in January 2021<sup>7</sup> and disturbing reports of inhuman and degrading treatment at Auckland Region Women's Corrections Facility and Auckland prison, have substantially undermined the credibility of this strategy<sup>8</sup> (Johnsen 2020; 2021).

There is limited evidence pointing to the efficacy of prisons as a tool to reduce reoffending in New Zealand (Buttle 2017; Pratt 2017; Gluckman 2018). In 2019/20, 60.8 per cent of those released from prison were re-convicted within two years and 41 per cent were re-imprisoned (Department of Corrections 2020b). This failure stands alongside a voluminous number of critiques of in-house prison programs, including those with a kaupapa Māori focus, from Māori scholars (see: Tauri 1999; 2013; McIntosh, Workman 2014; Webb 2017; 2018). Of these critiques, two which are frequently cited are that prison programs reinforce colonial assumptions that Māori are biologically disposed to crime and must civilise their behaviour, and that co-opting kaupapa Māori principles into the prison system validates the use of prisons, which are themselves a colonial construct.

Prisons in New Zealand are therefore expensive to operate, have little rehabilitative effect, and disproportionately impact Māori. However, regardless of any instrumental purpose, they also play a symbolic role as a sign of security and reassurance in times of substantial societal anxiety and a breakdown of social cohesion (Pratt 2006). Given this, what arguments could be made to wind back the scale of prison operations in New Zealand? What if, instead of the increasing expense of housing prisoners, the public were instead convinced not to imprison a larger share of offenders in the first place? In this paper we set out to test whether an alternative strategy to the usual penal reform arguments might be deployed. We consider if a populist rhetoric might be able to disable, rather than enable, the carceral state by asking whether those who seek to change the punitive paradigm could take an offensive position against the use of prisons, one that discredits the use of public funds. Drawing from Julian V. Roberts et al. we hypothesise that to introduce penal reforms which reduce the prison population, a "change of posture" might be required in the political bargaining of prison policy (Roberts et al. 2002: 164).

We begin by defining penal populism and examining recent international developments and explanations for penal moderation before exploring the theoretical basis for populism, specifically market populism, as a potential antidote for penal

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<sup>7</sup> The riot led to a prolonged standoff between prisoners and Corrections' staff and was only resolved after mediation involving Māori party co-leader, Rawiri Waititi.

<sup>8</sup> A judge found that the Corrections Department had breached its own policies around the use of direct segregation (solitary confinement) and the humane treatment of two female prisoners.

populism. We then draw from these scholarly inputs in the field of populism to develop an experimental tool. The purpose of the tool is to provide a side-by-side comparison of two different types of political discourse (*populist* and *status quo*), both of which advocate lower rates of imprisonment. Following an explanation of how both discourses were developed, we outline the method of data collection via self-administered questionnaires distributed through community groups on Facebook. After reporting our findings, we then discuss the implications and limitations of this research for reform in the current New Zealand penal context.

## 1. Theoretical background

### 1.1. Penal populism and penal moderation

Criminal justice policy in New Zealand and other jurisdictions has undoubtedly been influenced by the penal populism of the late 1990s and beyond. Penal populism is defined by Julian V. Roberts et al. as “the pursuit of a set of penal policies to win votes rather than to reduce crime or to promote justice” (Roberts et al. 2002: 5). According to John Pratt, it should not be seen as mere political opportunism, but in New Zealand emerged as a result of deep-seated social and cultural changes, including the decline of trust in politicians and the democratic process, a sense of ontological insecurity caused by the neo-liberal economic reforms of the 1980s and 1990s, public disillusionment with the criminal justice system and the rise of victims’ rights campaigns (Pratt 2007; 2013). Such changes have led to a “fundamental shift in the axis of contemporary penal power” (Pratt 2007: 3). Under penal populism, the expertise of the criminal justice establishment is rejected as being “out of touch” with the opinions and interests of the public, while the opinions of those who claim to speak on behalf of crime victims and the public at large are privileged (Pratt 2007; 2013). This was exemplified by three pieces of legislation passed in 2002 (the Sentencing, Parole and Victims’ Rights Acts) by the Fifth Labour government, which were informed by a 1999 Citizen Initiated Referendum, where the majority of voters called for greater emphasis on victims’ needs and harsher punishments for offenders (Pratt, Clark 2005; Pratt 2013).

A political advocacy group, the Sensible Sentencing Trust, has been remarkably successful in galvanising cross-party political support for its key political aim of obtaining tougher sentences for violent repeat offenders (Pratt, Clark 2005), while, until recently, those who dared to critique the stress on punishment became the target of vilification and personal attack (Pratt 2013). As a result, reactive policies have led to substantial increases in incarceration with no evidential corresponding improvement in public safety or decrease in crime (Gluckman 2018). This speaks to a characterisation of penal populism as being a political rather than criminological

logical problem, and that the solution to this problem might sit within the more ostentatious theatre of political campaigning. John Pratt (2007) argues that when the fiscal demands of the penal system start to threaten the provision of other public services such as health and education, public support for punitive measures may begin to retreat. It seems possible then that drawing public attention to the cost of the penal system in a way that utilises a populist strategy may be effective in promoting penal reform.

Penal tolerance and moderation can either be inhibited or favoured by different social-economic and political contexts (Lacey 2011). In liberal market economies, such as the US, England and Wales, Australia and New Zealand, which are more concerned with innovation and flexibility than stability and economic regulation, and have minimal welfare states and adversarial governments have found it hard “to resist a ratcheting up of penal severity” (Lacey 2011: 624). In contrast, penal moderation is more likely to flourish in coordinated market economies, such as Nordic countries, Germany and the Netherlands, which are characterised by strong welfare states, high degrees of social inclusivity, stable structures of investment, and proportionately representative electoral systems focused on long-term consensus building (Lacey 2011).

However, since the late 2000s, many countries in the global north, including those with liberal market economies, have witnessed the downsizing of their prison populations. Perhaps most notably, in 2018 the US incarceration rate fell by 15 per cent from a peak of 765 in 2007 to 650 (Brandariz 2021). This trend is far from uniform across US states, but between 2007 and 2019 eleven states including California and New York recorded a decrease of more than 30 percent (Gottschalk 2010; Brandariz 2021). Penal moderation has also been particularly identifiable in EU countries and the former Soviet bloc but has occurred in nations as diverse as Chile, Israel and Japan (Brandariz 2021).

The role of economic arguments in decarceration outside of New Zealand has been the subject of some debate. One explanation is what José A. Brandariz (2021) has termed the “austerity-driven hypothesis” which focuses on the effects of the economic crisis of the late 2000s to early-mid 2010s and the consequent need for cuts in public spending. Hadar Aviram, for example, argues that this financial crisis has given rise to a new discourse of “humonetarianism”: “a set of rhetorical arguments, political strategies, correctional policies, and cultural perspectives that focuses on cost-saving and financial prudence as its *raison d'être*” (Aviram 2015: 11). Although other justifications for reform have included human rights considerations and racial justice concerns, this discourse has been utilised by bipartisan coalitions of politicians, policymakers, businesspeople and taxpayer groups to facilitate criminal justice reforms, such as the abolition of the death penalty in several states, the legalisation of marijuana in Washington and Colorado, and reform of the Three Strikes laws in California (Aviram 2015).

Nevertheless, humonetarian discourse has not necessarily led the penal pendulum to swing away from punitive policies or contributed to the emergence of



alternative penal philosophies, such as rehabilitation or concern with human rights and prisoner welfare (Aviram 2015). Throughout the United States, the deployment of austerity by political actors often overlooks the growing cost of penal institutions or in the state of Oregon, such actors have claimed that austerity is best served by punishing crime through the increased use of imprisonment rather than letting it run unabated (Gottschalk 2010; Cate, HoSang 2015). Another consideration is that humonetarianism could validate the use of more austere measures to save money, such as the overcrowding of prisons, out of state transfers of prisoners, and charging prisoners fees to stay (Aviram 2015; see also Bosworth 2011).

Furthermore, others have noted the limitations of the austerity-driven hypothesis in explaining penal moderation (see: Gottschalk 2015 for a comprehensive overview). Whilst the economic context may have enabled the “consolidation of new discourses, rationales, policies and even actors favouring penal moderation” (Brandariz 2021: 4), other social forces have co-shaped the penal landscape such as long term reductions in crime rates and the lack of critical public concern and anxiety regarding crime (Dagan, Teles 2016; Brandariz 2021). In Republican-led US states such as Georgia and Texas, these forces include the work of a genuine reform cadre consisting of prominent elite conservatives, civil libertarians, and religious advocacy groups such as Prison Fellowship, who have been prepared to challenge the value of incarceration and express compassion for those behind bars and their families (Dagan, Teles 2016). At the federal level, this compassionate conservatism has been exemplified by the US Second Chance Act (Bosworth 2010) and the First Step Act, passed by President Donald Trump.

## 1.2. Populism

The codification of populism more broadly is a highly contentious subject area (see Taggart 2000, 2004; Canovan 2004; Plattner 2010; Moffitt, Tormey 2013). Canovan pointed out that populism “has no acknowledged common history, ideology or programme of social base”; the term is usually applied to political movements by those on the outside, often as a term of abuse (Canovan 2004: 243). Populism appears to be a theoretically malleable concept predicated on scholarly assumptions about its democratic or non-democratic functions and where it might be located on the political spectrum. These assumptions can be associated with three broad scholarly camps: those who stress the mostly negative impacts of populism on liberal democracy e.g., Hungary since 2010 (see: Csigó, Merkovity 2016); those who treat populism as a pejorative term for the political right (while protecting populist movements on the left); and those who claim populism has its roots on the political left. On the latter point, populism of the 19th century was traditionally used in the United States as a strategy for political inclusion and was, therefore, a democratic expression of political action (Urbinati 1998; Frank 2000).

If it can be entertained that populism is neither solely associated with the political left nor the political right and is neither democratic nor anti-democratic

in nature, then it can be deployed in concert with a range of political actors across the ideological spectrum. Cas Mudde (2004) characterised populism through the framework of a thin-centred ideology, which becomes attached to more comprehensively developed political belief systems. Building from this, Cas Mudde and Cristóbal Rovira Kaltwasser (2012) proposed a minimalist theoretical framework of populism, comprising of four quantifiable traits: the people vs the elite; advocacy of more direct forms of democracy; an opposition to pluralism; and a penchant for straightforward solutions.

The first of these minimalist traits is the binary opposition of “us vs them”, which claims that society is separated into two homogeneous yet antagonistic groups. An “us” as the “pure people” versus “them” as the “corrupt elite” is a construct which demands that the silent majority ought to be heard (see also: Abts, Rummens 2007; Mudde 2007; Pasquino 2008). The second trait is to satisfy the will of the majority through a “plebiscitary politics” or appeals to “direct representation” (Mudde, Kaltwasser 2012). This is an appeal from populists to democratise political systems and break the power of a corrupt political establishment (Mudde 2007). The third requires the rebuke of pluralism, typically in favour of enhanced majoritarian principles (Plattner 2010; Mudde, Kaltwasser 2012; Akkerman, Mudde, Zaslove 2014). Populists are sceptical of the institutional structures intrinsic to pluralism (such as institutions and judicial procedures) which provide the internal checks necessary to maintain a diversity of opinion (Akkerman, Mudde, Zaslove 2014). The last of these minimalist traits borrows from the analysis of Canovan (2004), whereby populism is effective in eliminating the complexities associated with political engagement. Populism is endemic to what Cristóbal Rovira Kaltwasser (2012) referred to as the malfunctioning of representative politics, particularly its difficulties in explaining and legitimising complex policy initiatives.

In critique of this framework, Paris Aslanidis referred instead to the populist frame: “Treating populism as ideology reiterates this essentialist perspective. Hence, a political party or leader can or cannot be populist; there is no grey zone” (Aslanidis 2016: 92). In a similar vein, Moffitt and Tormey (2013) considered populism to be a political strategy deployed at will by political actors who might otherwise not be populist. Ernesto Laclau (2005) offered a more abstract interpretation, theorising populism as a discursive logic that is synonymous with democracy and the existential struggle between those in power and those experiencing subjugation. He reasoned that populism is a function of politics and its agitations are a necessary function of the ruled to overcome their rulers.

To summarise, the minimalist framework interprets populism as an ideology that encompasses the notions of a pure people vs an evil elite, an opposition to pluralism, a penchant for more direct forms of representation and simple straightforward solutions to (usually complex) issues within society. Such a framework has tremendous levels of applicability in the analysis of political actors, their speeches and party manifestos. It also makes a compelling case for certain basic elements to be present within a particular discourse before it merits the “populist” label. With



this in mind, we draw from the core tenets of minimalist framework to test the hypothesis of Julian V. Roberts et al. (2002) that a “change of posture” might be required to counter the consequences of penal populism. Nonetheless, there are also important contributions from outside this minimalist ideological framework which need to be considered; populism might exist among political actors who are not otherwise populist and, therefore, could be a strategy or a frame that is deployed to engender a particular change.

A free-market populism might present an alternative pathway for decarceration by pivoting away from technocratic explanations for why imprisonment is either ineffective or unjust, and instead sharpening focus on the wastefulness of the state through its expansive use of prisons. Marian Sawer (2003) gave an early account of free-market populism by tracing its origins to Friedrich Hayek's 1944 book *The Road to Serfdom*. It was not until later in the 20<sup>th</sup> century that policies which privileged a market response to the economy entered the mainstream of liberal market economies the world over, a type of thinking propagated by long established think tanks in Anglophone countries which were able to capitalise on the perceived failures of Keynesian policies in alleviating the economic shocks of the 1970s (Sawer 2013). As the political impetus for neoliberal reforms, free-market populism uses incendiary language to hail the withdrawal of the of state, privileging a view that the new democratic heroes are entrepreneurs and corporate leaders, unshackled by the tax and spend policies of an expansive and inefficient welfare state (Sawer, Laycock 2009; Frank 2020). This populist ideology has become increasingly influential in countries such as Australia, Canada and New Zealand (Sawer, Laycock 2009). Today, voters have already been conditioned to accept market responses to political issues wrapped in what might be broadly considered populist language. What has not yet been tested, however, is whether the language of free-market populism could be applied to the justice system and whether it could be the antidote for what progressive reformers would argue is the overuse of prisons in contemporary society.

## 2. Researching market populism

### 2.1. Developing an experimental tool

In order to test whether taking an offensive approach to prisons and penal reform based on market populism would change public opinion, one of the authors developed an experimental tool based on the theoretical insights into populism discussed in the preceding section. We consider the divergent theoretical conceptualisations i.e., ideological, discursive or framing/strategic to be somewhat complementary in the development of this tool. The purpose is to test the relative

strength of one argument for decarceration, the “populist-style” text we develop, against that of another argument for decarceration, a “status-quo” text based on a collection of statements from political actors advocating for progressive penal reform in New Zealand.

The four minimalist conditions of populism set out by Cas Mudde and Cristóbal Rovira Kaltwasser (2012) underpin the tool. The following examples of these conditions are located within the text of the tool:

**Us vs. Them**

“big government approaches”, “rent-seeking bureaucrats” and “do-gooders in Wellington”<sup>9</sup>

**Simple Solutions**

“By sharpening our focus, we could kill two birds by redirecting millions of dollars into compensating the victims”

**Anti-pluralism**

“we are paying countless rent-seeking bureaucrats to oversee a system that doesn’t work”

**Appeal to direct democracy**

“An earlier referendum suggested”

The text frames prisons as a fiscal wreck and uses discursive techniques to mobilise voters against existing prison arrangements. Drawing from Paris Aslanidis’s (2016) theoretical conceptualisation, this populist frame speaks directly to the wastefulness of prisons and suggests that change is required. Written provocatively, it creates a sense of urgency, seeking agreement from the people that the current situation is no longer tenable. Such framing is pervasive among free-market populists, who rely on the frame of “government deficits” to advocate radical and often immediate cuts to the public sector. The text also reaches to Ernesto Laclau (2005), but in a somewhat incongruous manner. The heterogeneous linking together of demands from the oppressed is a key theme in Ernesto Laclau’s conceptualisation of populism. In this piece, the taxpayer, the victim and the offender are joined in unwilling servitude to the government and its lumbering bureaucratic wastefulness.

The more likely discourse used by political actors advocating for progressive penal reform is called the status quo text. This omnibus of statements was drawn from politicians and criminal justice elites in New Zealand. Each argument was made between 2014 and 2019, and so it can be claimed that these comments reflect the likely discourse from those advocating such reform. Wherever possible, direct quotes were sourced and inserted in the text following minor changes for prose.

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<sup>9</sup> Wellington is the capital city of New Zealand and thus its discursive use refers to government elites and the country’s state sector.

Figure 1. Populist-style text

Our government is squandering public funds on prisons to house an ever-increasing number of people. Such big government approaches to criminal justice are rooted in the beliefs of elites who don't live in the real world.

By sending thieves, druggies and wayward youth off to prison we're simply creating Universities of Crime where kids are being introduced to older, more violent thugs.

While do-gooders in Wellington talk up the prospect for rehabilitation, the only 'prospect' these kids have in prison is a gang.

What we have now is a revolving-door prison industry which has grown into a billion-dollar-a-year taxpayer funded enterprise.

Every person imprisoned costs the state up to \$300 each day (more than \$100,000 per year), and on top of that are the costs associated with building new prisons.

Corrections have adopted different strategies to combat rising costs, these include:

*Limiting the unlock time of prisoners to a few hours per day (minimising staff requirements).*

*Uniformity in kitchens across the country (e.g. mince on Wednesdays, sausages on Thursdays).*

*'Double Bunking' prisoners (housing two prisoners in a cell originally designed only for one).*

Despite having a spending problem in New Zealand, we are paying countless rent-seeking bureaucrats to oversee a system that doesn't work and is frequently condemned for its shortcomings.

By sharpening our focus, we could kill two birds by redirecting millions of dollars into compensating the victims of crime (or back into the pockets of hardworking taxpayers) while also reducing the influence of outsiders.

An earlier referendum suggested that people want prisons to house high-risk violent offenders, perhaps then it's time we start carefully choosing who we send to prison in the first place.

Figure 2. Status Quo-style text

New Zealand's prison population is at near record numbers due to a strategy of punishing people more often and locking people up for longer.

Many criminal justice experts have argued though that prisons are an ineffective method of either deterrence or rehabilitation and fail to keep anybody safe in the long term.

Tougher sentencing policies for nonviolent crime only transform low level criminals into more hardened criminals, leading to escalating costs for the taxpayer.

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*'Double Bunking' prisoners (housing two prisoners in a cell originally designed only for one).*

We also know that higher numbers of Māori in prison stem from racism in the justice system, where Māori have been treated more harshly than non-Māori. This is a legacy of colonisation.

Consequently, our justice system should adopt new approaches to reduce re-offending that are rooted in compassion and fairness.

Meanwhile the increase of incarcerated persons has led to less hospitable prison conditions which has brought into question our commitment to basic human rights. By doing so we are ignoring one of the fundamental tenets of democracy: that prisoners be detained humanely.

Instead of putting more people in prison, we must be brave and focus on the causes of crime by addressing unemployment, inadequate housing and a shortfall in mental health services.

The origins of each statement in the status-quo text are detailed below, alongside the original statement where applicable:

Andrew Little, Minister of Justice, New Zealand Labour Party

New Zealand has adopted a general strategy of punishing more often and locking people up for longer periods of time [...] the justice system was not making potential victims safer by focusing on imprisonment and punishment. (cited in Gatthey 2018)

This was adapted to: “New Zealand’s prison population is at near record numbers due to a strategy of punishing more often and locking people up for longer periods of time. However, criminal justice experts have argued that this method of deterrence is ineffective.”

Kelvin Davis, Minister of Corrections, New Zealand Labour Party

[...] prisons are often training grounds for further offending. Prisoners can build their criminal careers by learning criminal skills in prison, which damages their employment, accommodation and family prospects, and compounds any existing mental health and substance use issues. (cited in Gatthey, 2018)

This was adapted to: “Tougher sentencing policies for non-violent crime only transform low level criminals into more hardened criminals, leading to escalating costs for the taxpayer.”

Marama Fox, Member of Parliament, Māori Party<sup>10</sup> co-leader

The high numbers in prison stem from poverty and also from injustice from racism in the justice system where Māori have been treated harsher in the system than non-Māori. (cited in Wright 2016)

This was adapted to: “We also know that higher numbers of Māori in prison stem from racism in the justice system, where Māori have been treated more harshly than non-Māori.”

Professor Tracey McIntosh, University of Auckland

[...] you can’t have a conversation about institutional racism without having a conversation about colonisation. (cited in Bingham, Penfold 2016)

This was adapted to: “This is a legacy of colonisation.”

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<sup>10</sup> The Māori party are an indigenous rights political party formed in 2004. The party has been represented in the New Zealand parliament in all but the 2017 to 2020 term.

Golriz Ghahraman, Member of Parliament, Green Party of Aotearoa / New Zealand<sup>11</sup>

[...] our justice system should adopt new approaches to reduce re-offending that are rooted in compassion and fairness. (cited in Walters 2018)

Peter Boshier, Chief Ombudsman, Office of the Ombudsman

New Zealand was at risk of falling below minimum standards set by New Zealand's agreement to comply with the United Nations Optional Protocol to the Convention [...]. It stands to reason that an increase in prisoners, recycling prison facilities which had been closed and double-bunking meant prisoners not having the same access to facilities which are so important to try and get their heads right. (cited in Fisher, 2018)

This was adapted to: "Meanwhile the increase of incarcerated persons has led to less hospitable prison conditions which has brought into question our commitment to basic human rights."

Golriz Ghahraman, Member of Parliament, Green Party of Aotearoa New Zealand

[...] we must be brave and focus on the causes of crime by addressing unemployment, inadequate housing and a shortfall in mental health services. (cited in Walters, 2018)

Both the populist and status quo texts make an explicit argument for reducing the rate of imprisonment. For consistency, the theme of each text directly traverses issues related to cost, efficacy and prisoner rights. The efficacy of prisons is disputed in each through a generalisation about prisons as places where criminals meet other criminals, which, importantly, has merit in criminological literature linking imprisonment with gang socialisation (Pyrooz, Decker, Fleisher 2011). Both texts also share a similar format, word count (280) and identical bullet point script in the middle section. The purpose of this identical section was to give participants a realistic impression of the costs associated with housing prisoners, as misinformation can lead to calls for more austere prison conditions (see: Coyle 2008). The populist text then pivots away from the rights of prisoners as outlined in the status-quo text by drawing attention to the victims of crime, in much the same way as political actors have often done.

Public surveys (rather than focus groups or interviews) were identified as the preferred method of deploying this experimental tool because they minimise interviewer effects and social desirability bias, and ensure that large amounts of data

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<sup>11</sup> The Green Party of Aotearoa New Zealand is a left-wing political party formed in 1990. The party stood its own candidates in the 1999 election and has been represented in the New Zealand parliament since.

can be collected (Bryman 2016). For this research, it was essential to recruit a large number of participants, with a minimum number from key demographic groups, in order to identify demographic patterns (e.g., those who might be susceptible to penal populism) and allow for greater inferences about the utility of populism as a tool for progressive penal reform. Effort was made to locate, as far as possible, a sufficient sample size of key groups within New Zealand's voting age population. In the survey itself, demographic questions were modelled on those asked by Statistics New Zealand in the 2018 Census. In addition to age, gender and ethnicity, two further questions were asked to ascertain the political orientation of participants: one involved participants self-selecting on a left-right politics scale; and the other asked them to declare which party they voted for in the 2017 New Zealand general election.

## 2.2. Hypotheses

We hypothesise that participants will agree more with a populist argument than a status quo argument. The specific research hypotheses are:

H1–A Older participants will agree more with a populist argument than a status quo argument compared to younger participants.

H1–B Men will agree more with a populist argument than a status quo argument compared to women.

H1–C Pākehā will agree more with a populist argument than a status quo argument compared to non-Pākehā.

H1–D Politically “right” identifying participants will agree more than “centre” and “left” identifying participants with a populist argument compared to a status quo argument.

These hypotheses draw from a constellation of scholarship outlining the advent of populist phenomenon in contemporary liberal democracies. Beginning with Thomas Frank (2007), a frenzied free market populism (initially associated with both Republican and Democratic parties in the 1990s see: Frank 2000) had taken on a quasi-religious fervour among right identifying voters in the United States. Marian Sawyer and David Laycock (2009) draw on this free market populism as a framework in their analysis of conservative Prime Ministers, John Howard of Australia and Stephen Harper of Canada. A guiding belief among those most drawn to free market populism is that the welfare state impinges on their individual freedom as taxpayers. Thomas Frank (2007) argues that even as the economic wellbeing of many right identifying voters has deteriorated, little attention has been given to this dismantling of the welfare state and how that relates to the increasingly insecure position that these constituents find themselves. Instead, such right identifying



voters are more likely to hold the (now limited) state apparatus responsible for such economic insecurity.

Pippa Norris and Ronald Inglehart (2019) challenged the veracity of this economic insecurity hypothesis through recasting populism, especially an authoritarian populism, as being consequential of a “cultural backlash”, suggesting that it was more likely a response to widespread social changes that had been occurring more quickly than the replacement of one voting age constituency by the next. This cultural backlash hypothesis of populism in Europe and North America reflects an omnibus of research from Australia also. David Snow & Benjamin Moffitt (2012) linked populist attitudes to general unease from white Australians to mass non-white immigration and the acceptance of refugees. Meanwhile, Marian Sawer (2006) traced the genesis of a gendered anti-feminist populism back to the 1970s, a time when Australia was at the forefront of multilateral commitments to the rights of women.

This paper is less concerned with the strength of either economic insecurity or cultural backlash as a theoretical explanation of populism. We note however that both arguments identify demographic subgroups which might be susceptible to populist ideation i.e., men, older generations and the white majority (Pākehā), along with right-identifying voters, and consider these subgroups worthy of further analysis.

### **2.3. Sampling procedure and survey administration**

A total of 1,400 participants were recruited primarily through community-oriented groups in New Zealand on the social media platform, Facebook. In each community group, a notice briefly detailing the research was posted and registered voters (i.e., residents who were 18 years of age and over) were requested to provide their opinions on prisons by following a link to the questionnaire. To incentivise participation, members of the public were advised that they had the option of entering a voucher prize draw at the conclusion of the survey. A link then routed those interested to Qualtrics, an online survey collection tool. To be eligible for the prize draw (3x \$100 supermarket vouchers), participants provided their email address and were also asked if they wished to receive a brief of the results and/or participate in future surveys. Participants were randomly allocated into one of two groups by Qualtrics. The first group ( $n = 697$ ) was exposed to the populist-type approach to decarceration while the second group ( $n = 703$ ) was presented with the status-quo text (the collage of progressive talking points outlined above).

A minimum subgroup of  $n = 70$  was sought for age, ethnicity, gender and party vote. The four age bands are based on Pippa Norris and Ronald Inglehart (2019): Interwar (born before 1945); Baby boomer (born before 1965); Generation X (born before 1981); and Millennial (those aged 18 and older and born after 1981). Each age band was sufficiently represented. Additional efforts were made to sufficiently account for ethnic minority subgroups and party vote in the 2017 general election

by advertising the research in other New Zealand Facebook groups with a specific focus.<sup>12</sup> The participant voter spread was also monitored to ensure that a minimum number of participants (also  $n = 70$ ) from each of the four political parties<sup>13</sup> (those with more than one parliamentary seat in the 52<sup>nd</sup> New Zealand Parliament) met the subgroup threshold. Gender participation was also monitored with a view to ensuring that at least 45% of participants were men. At the conclusion of the data collection, a sufficient sample of participants identifying as Pākehā (NZ European), Māori and Pacific Peoples had been collected. However, there were insufficient numbers of participants identifying as Asian (collectively, Chinese or Indian are the next two largest ethnic minorities in New Zealand) and so these participants were folded into an “other” category, along with Middle Eastern, Latin American and African.

### 3. Results

A 7-point Likert scale ranging from “strongly agree” to “strongly disagree” was used to capture levels of support for either of the two texts. Likert scales allow the intensity of participants’ feelings towards social phenomena to be measured (Bryman 2016). Responses to this scale were then grouped into categories of “broadly agree”, “neither agree nor disagree” and “broadly disagree”, after which, significance testing was used to determine the relative strength of one text compared to the other, with specific reference to age, gender, ethnicity and political persuasion.

A larger proportion of all participants broadly agreed with the populist argument than the status quo argument. Table 1 shows the overall agreement with either the status quo or populist argument. An independent samples t-test also showed that there was a significant effect from the type of argument which was read by participants at the  $p < .05$  level ( $t(1295.301) = 2.472, p < .001$ ). However, the overall mean difference was negligible, as outlined in Table 1, reflecting shifts in the intensity of agreement and disagreement. In other words, while there were proportionately more participants who agreed with the populist argument, they were less inclined to strongly agree with it. Also evident in the table is that a larger proportion of participants took a neutral position when presented with a populist-type text instead of the status quo text, suggesting that a larger number of participants were ambivalent rather than opposed to the populist text.

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<sup>12</sup> E.g., in Facebook groups such as ‘Kai Māori’, a group promoting contemporary Māori cuisine.

<sup>13</sup> There were actually five political parties represented in the 2017–2020 parliamentary term: National, Labour, New Zealand First (a centrist nationalist party), the Green Party of Aotearoa New Zealand and ACT (a right-wing libertarian party). However, ACT only won 1 seat and 0.5% of the national vote in the 2017 general election.

**Table 1.** To what extent do you agree with the text? Populist vs Status Quo (all participants)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
Status Quo	11.4 (165)	11.4 (165)	9.5 (137)	2.6 (38)	5.8 (84)	4.0 (58)	3.9 (56)	3.16 (1.925)
Populist	14.1 (98)	24.5 (171)	14.8 (214)	4.4 (64)	4.9 (71)	6.7 (47)	4.6 (32)	3.15 (1.621)

H1–A stated older participants will agree more with a populist argument than a status quo argument compared to younger participants. To test this, Baby Boomers and Interwar were grouped together as “older” participants (those born before 1965), while Generation X and Millennials were grouped together as “younger” participants (those born in 1965 and after). 57.7% of older participants broadly agreed with the status quo text and 60.7% broadly agreed with the populist text, while 68.8% of younger participants broadly agreed with the status quo text and 71.5% broadly agreed with the populist text. A two-way ANOVA showed that at the  $p < .05$  level the differences were not statistically significant ( $F(1, 1294) = 0.101$ , interaction  $p$  value = 0.751).

**Table 2.** To what extent do you agree with the text? Populist vs Status Quo (age)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
Millennials: Status quo	27.2 (58)	25.8 (55)	19.7 (42)	6.6 (14)	7.5 (16)	7.0 (15)	6.1 (13)	2.87 (1.823)
Millennials: Populist	19.3 (47)	28.7 (70)	27.9 (68)	9.0 (22)	8.6 (21)	3.7 (9)	2.9 (7)	2.82 (1.503)
Generation X: Status quo	24.0 (82)	22.0 (75)	20.0 (69)	5.6 (19)	11.4 (39)	8.8 (30)	7.9 (27)	3.16 (1.933)
Generation X: Populist	11.7 (36)	25.6 (79)	30.8 (95)	9.1 (28)	9.4 (29)	7.8 (24)	5.5 (17)	3.24 (1.651)
Baby Boomers: Status quo	19.8 (25)	21.4 (75)	16.7 (21)	2.4 (3)	19.0 (24)	9.5 (12)	11.1 (14)	3.52 (2.046)
Baby Boomers: Populist	9.8 (12)	13.0 (16)	35.8 (44)	10.6 (13)	13.8 (17)	11.4 (14)	5.7 (7)	3.63 (1.657)
Interwar: Status quo	0.0 (0)	34.8 (8)	21.7 (5)	8.7 (2)	21.7 (5)	4.3 (1)	8.7 (2)	3.65 (1.668)
Interwar: Populist	13.6 (3)	27.3 (6)	31.8 (7)	4.5 (1)	18.2 (4)	0 (0)	4.5 (1)	3.05 (1.558)

H1–B stated men will agree more with a populist argument than a status quo argument compared to women. As illustrated in Table 3, 60.3% of men broadly agreed with the status quo text and 66.6% broadly agreed with the populist text, while 71.9% of women broadly agreed with the status quo text and 71.4% broadly agreed with the populist text. Due to the small number of gender diverse participants ( $n = 11$ ), these were excluded when measuring the significance of gender

on the results. A two-way ANOVA showed that at the  $p < .05$  level, men did not have statistically significant higher levels of agreement than women ( $F(1, 1278) = 1.999$ , interaction  $p$  value = 0.274) with a populist argument compared to a status quo argument.

**Table 3.** To what extent do you agree with the text? Populist vs Status Quo (gender)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
Men: Status quo	21.8 (72)	20.9 (69)	17.6 (58)	4.8 (16)	13.3 (44)	11.2 (37)	10.3 (34)	3.42 (2.039)
Women: Status Quo	25.1 (91)	25.6 (93)	21.2 (77)	6.1 (22)	11.0 (40)	5.5 (20)	5.5 (20)	2.91 (1.771)
Men: Populist	12.3 (40)	21.8 (71)	32.5 (106)	7.7 (25)	10.4 (34)	9.8 (32)	5.5 (18)	3.34 (1.692)
Women: Populist	15.5 (57)	26.7 (98)	29.2 (107)	10.6 (39)	10.1 (37)	4.1 (15)	3.8 (14)	3.01 (1.544)

Table 4 illustrates the differences in agreement for each text based on ethnicity. H1-C stated Pākehā participants will agree more with a populist argument than a status quo argument compared to non-Pākehā participants: a majority of Pākehā participants, 64.4%, broadly agreed with the status quo text, while 67.9% broadly agreed with the populist text. Ethnicity was not indicative of a broader agreeability with the populist text. A two-way ANOVA showed that at the  $p < .05$  level, Pākehā participants did not have statistically significant higher levels of agreement than non-Pākehā participants ( $F(1, 1294) = 0.112$ , interaction  $p$  value = 0.738) with a populist argument compared to a status quo argument.

A participant’s political leanings appear to be the most significant determinant of responsiveness to the populist text. H1-D stated right-of-centre identifying participants will agree more with a populist argument than a status quo argument compared to non-right-wing identifying participants, the data for which is illustrated in Table 5. Those who self-identified with the political right showed the greatest proportional difference: 39.2% broadly agreed with the status quo text, while 57.4% agreed with the populist text. A two-way ANOVA showed that at the  $p < .05$  level, right-identifying participants had statistically significant higher levels of agreement than non-right-identifying participants with a populist argument compared to a status quo argument ( $F(1, 1278) = 11.456$ , interaction  $p$  value = .001). Those who self-identified in the political centre showed only a small proportional difference: 64.4% broadly agreed with the status quo text, while 67.2% agreed with the populist text. A two-way ANOVA showed that at the  $p < .05$  level, centre-identifying participants had statistically significant higher levels of agreement than non-centre-identifying participants with a populist argument compared to a status quo argument ( $F(1, 1278) = .005$ , interaction  $p$  value = .945).

**Table 4.** To what extent do you agree with the text? Populist vs Status Quo (ethnicity)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
NZ Euro: Status quo	22.0 (132)	22.7 (136)	19.7 (118)	5.5 (33)	12.7 (76)	9.0 (54)	8.3 (50)	3.25 (1.940)
NZ Euro: Populist	12.3 (74)	23.3 (140)	32.4 (195)	9.1 (55)	10.6 (64)	7.1 (43)	5.1 (31)	3.25 (1.628)
Māori: Status quo	33.0 (37)	27.7 (31)	18.8 (21)	1.8 (2)	8.0 (9)	4.5 (5)	6.3 (7)	2.63 (1.797)
Māori: Populist	23.9 (27)	32.7 (37)	23.9 (27)	7.1 (8)	5.3 (6)	5.3 (6)	1.8 (2)	2.60 (1.479)
Pasifika: Status quo	38.1 (16)	21.4 (9)	19.0 (8)	4.8 (2)	7.1 (3)	7.1 (3)	2.4 (1)	2.52 (1.714)
Pasifika: Populist	26.7 (8)	36.7 (11)	20.0 (6)	6.7 (2)	3.3 (1)	6.7 (2)	0 (0)	3.20 (1.406)
Other: Status quo	17.3 (13)	30.7 (23)	13.3 (10)	9.3 (7)	16.0 (12)	6.7 (5)	6.7 (5)	3.24 (1.842)
Other: Populist	17.4 (12)	15.9 (11)	34.8 (24)	11.6 (8)	7.2 (5)	7.2 (5)	5.8 (4)	3.20 (1.685)

**Table 5.** To what extent do you agree with the text? Populist vs Status Quo (political leaning)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
Left: Status Quo	47.4 (90)	35.3 (67)	8.9 (17)	2.6 (5)	3.2 (6)	0.5 (1)	2.1 (4)	1.89 (1.249)
Left: Populist	20.9 (61)	31.9 (61)	28.3 (54)	7.3 (14)	6.3 (12)	3.7 (7)	1.6 (3)	2.63 (1.392)
Centre: Status Quo	17.6 (63)	21.6 (77)	25.2 (90)	6.4 (23)	14.6 (52)	7.8 (28)	6.7 (24)	3.29 (1.810)
Centre: Populist	12.0 (44)	22.7 (83)	32.5 (119)	10.1 (37)	11.7 (43)	5.7 (21)	5.2 (19)	3.25 (1.603)
Right: Status Quo	5.6 (8)	13.3 (19)	20.3 (29)	6.3 (9)	18.2 (26)	19.6 (28)	16.8 (24)	4.44 (1.883)
Right: Populist	10.3 (14)	18.4 (25)	28.7 (39)	9.6 (13)	11.8 (16)	14.0 (19)	7.4 (10)	3.65 (1.786)

Of those who self-identified on the political left, there was a proportional difference in favour of the status quo text: 91.6% broadly agreed with the status quo text, while 81.2% agreed with the populist text. A two-way ANOVA showed that at the  $p < .05$  level, left-identifying participants had statistically significant lower levels of agreement than non-left participants with a populist argument compared to a status quo argument ( $F(1, 1278) = 10.374$ , interaction  $p$  value =  $< .001$ ). As illustrated in Table 6, differences in the agreeability of a status quo text compared to a populist text generally map over to who the participant voted for in the 2017 election. A two-way ANOVA also showed that at the  $p < .05$  level, there were statistically significant differences in agreement based on the 2017 party vote choice of participants ( $F(5, 1279) = 3.509$ , interaction  $p$  value =  $.004$ ). Agreement based on party vote also supports the hypothesis that political leanings influence the agreeability of the populist text compared to the status quo text, both National Party and New Zealand First voters were statistically more inclined to support the populist argument than Labour and Green party voters.

**Table 6.** To what extent do you agree with the text? Populist vs Status Quo (party vote 2017 election)

	Broadly agree			Neither agree or disagree	Broadly disagree			M (SD)
	Strongly agree	Agree	Somewhat agree		Somewhat disagree	Disagree	Strongly disagree	
National: Status Quo	7.1 (15)	14.3 (30)	27.1 (57)	5.2 (11)	19.0 (40)	15.7 (33)	11.4 (24)	4.08 (1.829)
National: Populist	9.1 (17)	18.2 (34)	32.6 (61)	10.2 (19)	13.9 (26)	8.6 (16)	7.5 (14)	3.57 (1.691)
Labour: Status Quo	31.5 (74)	33.2 (78)	16.2 (38)	6.0 (14)	7.2 (17)	2.6 (6)	3.4 (8)	2.46 (1.558)
Labour: Populist	17.4 (42)	28.6 (69)	26.6 (64)	10.0 (24)	7.5 (18)	7.1 (17)	2.9 (7)	2.94 (1.577)
Green: Status Quo	60.0 (36)	20.0 (12)	8.3 (5)	6.7 (4)	0.0 (0)	1.7 (1)	3.3 (2)	1.85 (1.436)
Green: Populist	22.9 (16)	28.6 (20)	31.4 (22)	5.7 (4)	8.6 (6)	0.0 (0)	2.9 (2)	2.60 (1.387)
NZ First: Status Quo	9.2 (6)	21.5 (14)	16.9 (11)	3.1 (2)	18.5 (12)	10.8 (7)	20.0 (13)	4.12 (2.080)
NZ First: Populist	5.1 (4)	20.3 (16)	35.4 (28)	7.6 (6)	10.1 (8)	15.2 (12)	6.3 (5)	3.68 (1.684)
Other: Status Quo	19.4 (7)	25.0 (9)	13.9 (5)	0 (0)	19.4 (7)	8.3 (3)	19.9 (5)	3.56 (2.144)
Other: Populist	9.7 (3)	35.5 (11)	29.0 (9)	12.9 (4)	6.5 (2)	0 (0)	6.5 (2)	2.97 (1.494)
Did not vote: Status Quo	24.6 (16)	23.1 (15)	21.5 (14)	4.6 (3)	10.8 (7)	10.8 (7)	4.6 (3)	3.05 (1.858)
Did not vote: Populist	20.5 (15)	21.9 (16)	32.9 (24)	9.6 (7)	9.6 (7)	2.7 (2)	2.7 (2)	2.85 (1.488)

4. Discussion

There were three points of interest derived from this experiment. First, overall, participants were more likely to broadly agree with the populist text than the status quo text, albeit with less intensity, suggesting perhaps that some participants were more persuaded by the populist text though still harbouring some reservations about how the argument was presented. Second, a participant’s gender, ethnicity and age were not statistically significant factors in determining whether one text was more broadly agreed with relative to the other. For example, while men were less inclined to broadly agree with either a status quo or populist text for penal reform, the populist text was not measurably more popular among this cohort. Third, the participant’s self-identified political orientation or party preference in the 2017 New Zealand general election appears to be the most significant determinant of agreeing with the populist-style text. Because each text advocated reducing the number of persons imprisoned, this experiment found that participants who identify with the political right and its parties might be more willing to accept arguments for lower rates of imprisonment if they are presented using a free-market populist lens.



The relevance of a participant's political identity helps to conceptualise the sort of political environment where a market populist approach might be deployed. Former Alberta Premier Ralph Klein is one notable example of a free-market populist whose fiery rebuke of government excesses led, perhaps inadvertently, to a reduction in the province's prison population. Klein's populist rhetoric was wedded with New Right thinking, an ideology of free-market liberalism promoting less government intervention in the economy and in the lives of ordinary Albertans (Denis 1995; Taft 1997; Martin 2002). What happened to Alberta's prison population between 1993 and 1997 was dramatic, falling by 32 per cent (Webster, Doob 2014). Of note also is that despite the Klein government enacting policies which cut provincial funding of prisons, this did not precipitate a shift toward private prisons, it simply resulted in less people imprisoned (Nossal, Wood 2004).

While the early Klein era provides an interesting anecdote of a market populist enacting policies which led to a significant reduction in imprisoned persons, there are some limits to its comparability to politics in New Zealand. Klein sought a 20 per cent cut across public service expenditure for which the justice sector was only one of many budgets under pressure to cut costs, and there is no strong evidence that Alberta provincial government intended to reduce its prison population during this time. In contrast, Corrections New Zealand has enjoyed expanding budgets since the 1990s as its prison population has increased (Gluckman 2018). It remains to be seen at a time of increasing government spending due to the Covid-19 pandemic whether a free-market populist style argument similar to the one used in this experiment, might be employed to convince right-identifying voters of the need to reduce the use of imprisonment.

The outcomes of this experiment also support suggestions that public punitiveness might have been overstated and that the public is more amenable to alternatives than first thought (see: Dzur 2010; Green 2014). A considerable majority of participants broadly agreed with either the populist or status quo text, with widespread support for arguments leading to lower rates of imprisonment. Some evidence of this also exists within recent measures of public opinion in New Zealand. In 2016 the Ministry of Justice commissioned a survey into public perceptions of crime, asking participants what would increase their confidence in the criminal justice system. Only 6% responded with a preference for longer or harsher sentences. Notably these punitive responses were less popular than a focus on victims or the rehabilitation of offenders (Colmar Brunton 2016). This survey and the research discussed in this paper therefore seems to confirm a sense of moral ambivalence that much of the public feel towards the notion of punishment, which those advocating for penal moderation need to bring to light and engage with (Loader 2010).

In New Zealand, there are signs suggesting that the time of penal populism has passed. The Labour Party has now committed to reducing the prison population by 30 per cent in 15 years (Coughlan 2020), and by June 2021, the prison population in New Zealand had dropped around 19 per cent to 8,397, from a peak of 10,364

in 2018 (Department of Corrections 2020a; 2021). This decrease is the result of a number of different factors, including reduced victimisation and the postponement of jury trials during the 2020 Covid-19 lockdowns, administrative measures to facilitate bail and parole processes, but also the increasing use of non-custodial sentences (Ministry of Justice 2020). Although right-leaning parties in New Zealand have retained a punitive focus, attempts by the National Party to stir up concerns about criminal gangs in the 2020 election campaign (Walls 2020) went largely unnoticed. The Covid-19 pandemic has also undoubtedly played a role in this and could potentially end populism as a political force (Pratt 2020). During the pandemic, expert opinion has been given prominence in media reporting (Pratt 2020), and New Zealanders' trust in science, politicians and the police all increased during the first Covid-19 lockdown (Sibley et al. 2020). As John Pratt (2020: 323) suggests, "the triumph of expertise and science over the virus may lead to the re-establishment and respect for such capabilities in other areas of government [...] they may even find their way to back to guiding penal policy."

While the rate of imprisonment appears to be in decline in New Zealand, it is noteworthy that there have been few attempts to repeal existing punitive legislation. Despite promises to repeal the "three strikes" law, an attempt to do so in 2018 failed after Labour's then coalition partner, New Zealand First, publicly refused to support the proposal (Moir 2018), and further attempts have not been forthcoming even though Labour is now strong enough to govern alone. It could therefore be suggested that New Zealand has engaged in what Loader (2010: 361) calls "moderation by stealth", which largely avoids "engagement with citizens whose visions of punishment may not fully overlap with those of the penal moderate." What is now needed instead is penal "moderation-by-politics" (Loader 2010) which does not treat public opinion as a ticking time bomb to be carefully diffused, but seeks to challenge prominent understandings of the meaning and place of punishment in society by explicitly engaging with the "passions that crime and punishment provokes" (Loader 2010: 363).

The most resounding finding of our experiment provided some clues as to what might aid this penal moderation-by-politics; that among right-identifying voters, an offensive free-market populist style of politics yields more favourable results than the technocratic status quo. Consequently, a change of posture by proponents of more progressive penal reform might contribute toward the dual goals of lowering rates of imprisonment further and entrenching it in the political culture of New Zealand. As in some US states, using these "cost-saving rationales", may enable bipartisan coalitions of political adversaries to advocate for fiscally prudent policies and reform, without being penalised by voters for promoting nonpunitive policies (Aviram 2015).

Because the experiment was an omnibus of viewpoints, we can only speculate as to what specifically was most agreeable among this subgroup of participants. Only the status quo text contained views on the impacts of colonisation on Māori and New Zealand's human rights obligations and it could be that the right-iden-

tifying subgroup strongly disagreed with these specific claims. Alternatively, the populist text centred on the wasteful and unnecessary use of prisons and suggested instead that such resources could be directed toward the victims of crime. It could also be that this argument resonated strongly with the right-identifying subgroup. Both the omission of Māori as victims of unfair treatment in the justice system, and the prioritisation of support for victims of crime in the populist text, plays on the cynical politics that already underpins both penal populism and populism in New Zealand.<sup>14</sup>

## 5. Limitations

There were some noteworthy limitations to this experiment. Surveys in criminal justice are likely to attract the participation of a particular voter type, instead of a mix that is representative of the wider voting population (Hough, Roberts 2005). Despite attempts to ensure a mix of the New Zealand voting age population, it was not a probabilistic sample. One alternative to the methods deployed in this paper would have been to obtain a probabilistic sample from the electoral roll and then send out surveys to potential participants; however, costs and increasingly low response rates have made such practices less viable than what they once were (Greaves et al. 2021).

Survey timing is also crucial, but can be problematic. Criminologists have noted that a spike in public punitiveness tends to arise following particularly heinous crimes (Roberts et al. 2002; Dowler 2003; Pratt 2007). During piloting of the experimental tool, Grace Millane, a female tourist, was declared missing and later found deceased. Details of this case were widely reported in the New Zealand media, leading to vigils and a public outpouring of grief for the victim and her family. In the same month, in a separate incident, a man was decapitated in a particularly gruesome murder that was also graphically reported in the New Zealand media. Due to these incidents, a decision was made to halt the pilot process and resume later. Subsequently, the timing of the survey – a period of relative calm – may have important implications for the applicability of the research findings. Data collected in periods of relative calm can obscure the realities of the effects of violence, which are neither predictable nor a respecter of political campaign cycles. If a high-profile instance of violence were to overlap with a populist-type campaign for decarceration, it could be less effectual or not effectual at all.

Inferences can therefore only be made based on what is comparable in this experimental tool (a populist-type argument vs a status quo argument) at times of relative political calm (in the absence of a recent heinous and highly publicised cri-

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<sup>14</sup> There is irony in this cynical politics of omitting Māori but also talking about victims because Māori themselves are also disproportionately the victims of crime.

me). For these reasons, there is only a limited extent to which this methodological approach can wholly satisfy the research question and, by extension, its *real-world* applicability. Finally, this questionnaire does not test how a political actor relying on penal populism might respond to populist-type arguments for decarceration. We cannot regulate the emergence of confounding socio-political factors (such as the random chance of a violent act overshadowing a populist-type decarceration argument, or a political actor taking a position that nullifies such an argument).

## Conclusion

We began by setting out how prisons in New Zealand are expensive, ineffective in reducing reoffending and reflective of the country's colonial history and its contemporary failure to address inequity in the justice system. Noting the political culture of both penal populism and populism in the socio-political culture of New Zealand politics, we went on the decarceration offensive, testing the strength of a hypothesis put forward by Julian V. Roberts et al. (2002) nearly twenty years ago. We acknowledged that cost arguments alone might be insufficient to induce penal moderation, but might be more successful if they were drawn from the more incendiary rhetoric of free market populism. To develop an experimental tool necessary to test this hypothesis, we considered looking within populism itself and detailed the literature explaining its core features.

Our experiment showed through subgroup analysis that the participants who were more inclined to support a populist-style text advocating decarceration were those who self-selected their political leanings as "right of centre" or who voted for the National Party, New Zealand's main centre-right political party. However, both texts elicited strong support from participants, suggesting that opinions on penal reform were malleable irrespective of the argument being presented. These findings have important implications because they suggest that discussing criminal justice in a different way, as hypothesised, might be of greater utility to advocates of criminal justice reform, especially if such discussions could be deployed in a manner that does not alienate an existing support base. But they also suggest that existing arguments for penal reform might resonate more strongly across the political spectrum than was once thought.

As this experiment did not draw on a probabilistic sample, some caution must be taken before claiming that these results broadly represent the New Zealand voting age population. Nor was this experiment staged against the backdrop of a political campaign where rhetoric and the tactics deployed by political actors are rarely display a conscientious regard for penal institutions and how they operate. Finally, despite there no longer appearing to be an appetite for prison privatisation in New Zealand, this experiment cannot rule out privatisation or more austere

prison conditions in response to the deployment of a market populist argument for penal reform. For that reason, the authors recommend further research to test the validity of populism as a tool for decarceration, employing a wider range of methodologies to better determine its real-world utility.

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