



Presenter Paper

Penal Populism

A fascinating discussion about the rise of penal populism in Australia, New Zealand and internationally by an expert in the field.

Discussion Includes

- The emergence and history of penal populism
- Penal populism in the English speaking world
- Bail laws and the presumption of innocence
- Recidivism
- Alternatives to imprisonment, including restorative justice
- Victims rights in NZ
- The rise of populist politicians

Paper by John Pratt and Michelle Miao

Presenter Paper

Penal Populism

Penal populism has become a much discussed characteristic of punishment in modern society. Most such commentaries, however, take the rather myopic view that this phenomenon represents some localized event within the social body, to be diagnosed, theorized and exorcized there. This article, however, argues that the emergence of penal populism is neither the endpoint of nor the limits to populism and its consequences in modern society. Rather, it marks only the beginnings of its more general resurgence in the early twenty first century. In these respects, penal populism should be understood as only a convenient incubating phase in which populist forces found vigour and strength before flowing much deeper into mainstream society from that gestation. If it might be thought that penal populism represents an attack on the long established link between reason and modern punishment, this has been only the prelude to the way in which a much more free flowing political populism now threatens to bring an end to Reason itself, the foundation stone of modernity. This shift from penal to political populism has been precipitated by two interconnected factors: the impact of the 2008 global fiscal crisis and the mass movement of peoples across the globe. The article concludes with a discussion of how political populism continues to transform punishment in modern society, as well as the broader social consequences and implications of its emergence.

John Pratt, LLB (Hons) (London University), MA (Keele University), PhD (University of Sheffield), (Fellow of the Royal Society of New Zealand, Professor of Criminology, Victoria University of Wellington, Wellington, New Zealand)

Michelle Miao, LLB (East China University of Politics and Law, Shanghai), LLM (Renmin University, China), LLM (New York University), DPhil (Oxford University) (Assistant Professor of Law, The Chinese University of Hong Kong, Hong Kong, China)

Introduction

1. The phenomenon of penal populism was first identified as a characteristic of English speaking Western democracies around the end of the twentieth century—specifically, the USA, UK, New Zealand, Australia and Canada (see Roberts et al, 2003; Pratt, 2007). Since that time, however, various strands of it—the exact form that it takes and the impact it has varies from society to society—have been identified in a diverse range of countries. Generally, it demands a much more punitive approach to law breaking. This has been manifested in the form of dramatically rising imprisonment rates, as in the Anglophone world; but it has also led to clamourings for more vigorous use of the death penalty in some Asian societies, particularly Japan (Johnson, 2006), or chemical castration of child sex offenders, as in South Korea (Koo et al, 2014) and the Czech Republic (Haney, 2016).

2. With each society it touches, it is as if penal populism undermines the very kernel on which modern punishment had been built: the way in which, from the time of the Enlightenment, science, rationality and expert knowledge were expected to outweigh emotive, uninformed common-sense, thereby ensuring that reason outweighed anti-reason in the development of penal policy. Now, though, slamming the door in the face of reason, penal populism drives up imprisonment rates when the detrimental effects—social and economic—of imprisonment are well known; or it reaffirms the place of capital punishment in modern penal systems when it is well known that there is no conclusive evidence about its deterrent effect; or it targets the bodies of offenders, in a reversion to punishment of the premodern era, rather than compelling them to forfeit time or money in line with the expectations of punishment in the modern world.
3. Most analyses of these developments have treated penal populism as a kind of localized event within the social body, as an aberration from the direction of punishment in modern society, as an infection that can be diagnosed, provided with treatment and exorcized: at which point, it is thought, the voice of reason will once again be allowed to drive modern penal arrangements in a progressive, humane direction and away from such excesses (Roberts et al, 2003; Pratt, 2008; Neto, 2009; Müller, 2010). There is, though, a myopia to these approaches. It is as if populism has burrowed into this sector of modern society alone and is then somehow confined there. It may wreak havoc in that location, but it cannot escape from it. This article, however, argues that the emergence of penal populism is neither the endpoint of nor the limits to populism and its consequences in modern society. Rather, it marks only the beginnings of its more general resurgence in the early twenty first century. In these respects, *penal populism* should be understood as only a convenient incubating phase in which populist forces found vigour and strength before flowing much deeper into mainstream society from that gestation. And penal populism was only a warning of the much greater chaos that was to come when populism was fully unleashed. If it might be thought that penal populism represents an attack on the long established link between reason and modern punishment, this has been only the prelude to the way in which a much more free flowing *political populism* now threatens to bring an end to Reason itself, the foundation stone of modernity.
4. The article begins with an examination of the way in which, around the early 1990s, populism initially surfaced in the penal systems of the main English speaking countries. It then argues that the shift from penal to political populism has been precipitated by two interconnected factors. First, the impact of the 2008 global fiscal crisis that greatly exacerbated the way in which globalization had eroded economic security. Large sections of modern society have since been left resentful and marooned in their own helplessness before such forces, while governments seem unmoved by or oblivious to their concerns. Second, threats to both individual and national identity brought about by the mass movement of peoples across the

globe—from East to West, North to South and South to North. As this has occurred, crime is no longer the main signifier of threats to well-being and the breakdown of order and authority. Rather, crime concerns have become conflated with concerns about 'difference' and 'otherness'—of which being a stranger, a foreigner, or an immigrant, legal or otherwise, have become one of the most potent symbols.

5. Beyond the controls of the penal system itself, there are thus demands that borders have to be defended, new boundaries need to be put in place—walls, electric fences, surveillance mechanisms have to be built or installed, terrorists must be 'eliminated' and registers have to be kept of those with suspect religions or ethnicities to meet these more diffuse, amorphous threats. Individuals and organizations that stand in the way of what seem to be these necessary defences to individual and national health—on civil liberties or humanitarian grounds usually—are cast as traitors and 'enemies of the people', a people now prepared to look beyond existing democratic structures and modes of governance for solutions to restore security. In so doing, they are prepared to abandon Reason and put their trust in populist politicians to take them along a path—their leaders have no need of roadmaps or itineraries to guide them, they just tell their followers to have trust and belief in them—that will make them safe from such existential threats.

Punishment, Reason and Anti-Reason

6. The Age of Reason announced the dawn of modern society. A world without reason, John Locke (1690/2016, p. 89) had written, gives rise to 'despotical power ... which neither nature gives, for it has made no such distinction between one man and another; nor compact can convey: for man not having such an arbitrary power over his own life, cannot give another man such a power over it; but it is the effect only of forfeiture, which the aggressor makes of his own life, when he puts himself into the state of war with another: for having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society; and having renounced the way of peace which that teaches, and made use of the force of war, to compass his unjust ends upon another, where he has no right; and so revolting from his own kind to that of beasts, by making force.'
7. Reason, it was thought by Locke and subsequent Enlightenment scholars, would thus bring an end to the tyranny, absolutism and arbitrariness in the exercise of sovereign power in the premodern world, the world without Reason: 'the freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will' (Locke, 1690/ 2016, p. 35). For Thomas Paine (1794, p. 1), 'the most formidable weapon against errors, of every kind, is reason. I have never used any other, and I trust I never

shall." Similarly, Montesquieu (1914/ 2011, p. 6): 'law in general is human reason, inasmuch as it governs all the inhabitants of the earth: the political and civil laws of each nation ought to be only the particular cases in which human reason is applied.'

8. But if reason was to bring justice for all, it must also bring an end to the inconsistencies and uncertainties of the criminal justice order that reinforced the premodern exercise of sovereign power through brutal, public punishments to the human body: 'we must overturn the barriers that reason never erected', Diderot (1751/1967, p. 93) argued. To do so, legal theory had to disengage itself from the previous associations it had made between Divine Law and the absolute monarchs who had ruled the pre-modern world. From being some mysterious, incalculable and unpredictable force, decipherable only to those who ruled, law became, instead, man made. It represented a contract between all citizens in a society rather than the dictates of a despot: 'laws which surely are, or ought to be, compacts of free men, have been, for the most part, a mere tool of the passions of some, or have arisen from an accidental and temporary need. Never have they been dictated by a dispassionate student of human nature' (Beccaria, 1764, p. 12). The quest of legal theory then became one of showing what law *ought* to be, rather than what the Sovereign decreed it to be. It ought to provide security and order for all rather than merely the sovereign; and it ought to provide fundamental rights protected in inviolable ideas of justice that no ruler or government would be able to take away in the future. Beccaria (1764, p. 24) thus argued that law had to be made certain and knowable to all and applicable to all, in the form of criminal codes: 'when a fixed code of laws, which must be observed to the letter, leaves no further care to the judge than to examine the acts of citizens and to decide whether or not they conform to the law as written: when the standard of the just or the unjust, which is to be the norm of conduct for all; then only are citizens not subject to the petty tyrannies of the many which are the more cruel as the distance between the oppressed and the oppressor is less, and which are far more fatal than that of a single man, for the despotism of many can only be corrected by the despotism of one; the cruelty of a single despot is proportional, not to his might, but to the obstacles he encounters.'
9. In drafting these codes, science and rationality began to be applied to criminal justice. Rather than making law on the basis of the religiosity of priests or the sycophancy of courtiers, Diderot (1753/1966, p. 30) wrote that , in the Age of Reason, 'there are three principal means of acquiring knowledge ... observation of nature, reflection, and experimentation. Observation collects facts; reflection combines them; experimentation verifies the result of that combination. Beccaria (1764/1872, p. 46) thus urged that punishment should be efficient rather than spectacular. It should be proportionate to the crime committed rather than unnecessarily brutal: 'the intent of punishments is not to torment a sensible being, nor to undo a crime already committed ... Can the groans of a tortured wretch recall the time past, or reverse the crime he has committed?' Rather than simply being a demonstration of sovereign power, 'the end of punishment, therefore, is to prevent others from committing the like

offence' (ibid, p. 47). This meant that the amount of punishment should be proportionate to the crime committed: 'if an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater' (ibid, p. 32).

10. Kant (1797/1887, p. 195) then reinforced what the limits to modern punishment should be: '[it] can never be administered merely as a means for promoting another Good, either with regard to the Criminal himself or to Civil Society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime.' It was not only that there should be no punishment of the innocent; in addition, punishment of the guilty had to be an end in itself: punishment inflicted for other purposes might only lead to the excesses and iniquities redolent of the pre-modern era: 'what, then, is to be said of such a proposal as to keep a Criminal alive who had been condemned to death, on his being given to understand that if he agreed to certain dangerous experiments being performed on him, he would be allowed to survive if he came happily through them?' (ibid, p. 196). Normative prescriptions for the operation of criminal law and punishment in modern society were initially set down and developed through the work of such scholars. From there, matters of law enforcement and punishment would be determined by secular experts, able to draw on collections of government statistics from the early nineteenth century to make scientific judgments when determining policy and its likely effects.
11. This did not then mean, of course, that Reason-driven policy and this alone made a straightforward linear progression throughout the modern period. It faced numerous impediments and took numerous detours. The emotive force and symbolic power of punishments to the human body (Hay, 1976) meant that the death penalty was not removed from the penal agendas of the main English speaking societies until the 1970s. The emphasis on fixed and certain punishments did not preclude the introduction of indeterminate sentencing laws around the beginning of the twentieth century (Pratt, 1997). The initial emphasis on punishment as retribution gave way to a focus on treatment and rehabilitation for much of the twentieth century, often leading to the injustices that Kant had warned of when extra-punitive purposes are attached to punishment (von Hirsch, 1976).
12. Nonetheless, after the post 1945 revelations of Nazi atrocities, the need to protect individual human rights in criminal and penal law was given a renewed emphasis. The UN General Assembly Universal Declaration of Human Rights 1948 stipulated that 'everyone has the right to liberty and security of the person. No-one shall be deprived of his liberty [except by] the lawful detention of a person after conviction by a competent court' (Article 5); and 'no-one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed' (Article 7). In 1960, the European Court of Human Rights heard its first case, 'a leap forward in the history of human rights' (Howard & Morris, 1964, p. 153). The protection of

individual rights was also reflected at a jurisdictional level. In the US, prosecution because of status rather than crime was declared unconstitutional by the Supreme Court.¹ In *O'Connor v Donaldson* (1975),² it was held that involuntary commitment of a non-dangerous individual capable of looking after themselves constituted 'a massive curtailment of liberty' and was unconstitutional.

13. Even those areas of penal development that had resisted or departed from the expectations of Reason gradually succumbed to its demands. It had always been assumed anyway that indeterminate prison sentences (at least in the English speaking countries) would be kept at the periphery of the penal system and rarely used. In England, Sir Evelyn Ruggles-Brise (1921, p. 58, *our emphasis*), Head of the English Prison Commission, was at pains to point out that such provisions 'do not touch that large army of habitual vagrants, drunkards, or offenders against bye-laws who figure so prominently in the prison population. *[These are] weapons to be used only where there is a danger to the community from a professed doer of anti-social acts being at large*, and reverting cynically on discharge from prison to a repetition of predatory action or violent conduct.' Thereafter, the US sexual psychopath laws, providing as they did for a fixed term of imprisonment for the original crime after those so diagnosed were first 'cured' in a mental institution, were periodically struck down as unconstitutional or fell into disuse (Tappan, 1957). Other forms of indefinite, preventive sentencing experienced a similar fate (Bottoms, 1977). Their arbitrary and inconsistent use made their retention seem unjustifiable and their abolition seem inevitable (see the New Zealand Report of the Penal Policy Review Committee, 1981).
14. As for the death penalty, Reason and its attributes—science, rationality, humanitarianism—eventually triumphed over the emotive, punitive excess it had come to represent to policy makers in the post war period. It was eventually abolished in these Anglophone societies during the 1960s and 1970s. Government was prepared, at that time, to rid itself of punishments that were thought to have no rightful place in modern democratic society: '[the death penalty] is the one remaining relic in our penal world of the old system of complete repression which was tried against criminals and so badly failed ... these instruments have no proper place in the institutions of a free democracy ... repressive punishments belong to the systems of totalitarian states and not democracies. It was no accident that the chief exponents of violence and severity in the treatment of criminals in other times were the Nazi and Fascist states' (UK Hansard 449, 14 April 1948, col. 1014–1015). In imposing a (temporary) moratorium on the death penalty in the USA, the Supreme Court in *Furman v Georgia* (1972)³ affirmed that 'one role of the constitution is to help the nation become 'more civilized'. A society with the aspirations that ours so often asserts cannot consistently with its goals take the lie of any human being, no matter how reprehensible his past behaviour.'

¹ *Robinson v California* 370 US 660 (1962)

² 422 US 563

³ 408 US 238, 296–7

15. Around 1980, Reason had reached its high-water mark in the development of punishment in modern society. Imprisonment had come to be regarded very much as a 'last resort penal option': too expensive, inhumane and inefficient (Home Office, 1989). For much of the twentieth century, barriers had been steadily erected in front of it to keep out a broadening range of offenders for whom it was thought that such a sentence was too harsh and would do more harm than good: first offenders, young offenders, child offenders, those who suffered from some sort of mental instability, drunks, vagrants and ultimately virtually all non-violent offenders. Not only this, but the 'back to justice' movement (von Hirsch, 1976), with its emphasis on consistent, limited and proportionate punishments reaffirmed the continuity of the penal expectations from the Age of Reason. These were still the yardstick against which a society's alignment or otherwise with the presumptions and expectations of modernity could be judged.
16. In shaping these developments, an establishment elite, made up of senior civil servants, judges, university professors, and authoritative sections of the media such as the BBC and *The Times* newspaper as it then was, were greatly influential on government, and able to make pronouncements on the way forward for punishment with little fear or prospect of these being contested. The Home Office (1959, p. 13) White Paper *Penal Practice in a Changing Society*—the leading statement of the aims of British penal policy in the post-war period—thus determined that punishment should take the form of 'more humane and constructive methods.' Furthermore, the axis of penal power that the elite had formed with governments not only excluded any representatives of those who claimed to speak on behalf of the general public, but took the view that governments should move ahead of public opinion. Abolition of the death penalty had become an illustration of strong government, prepared to act as it saw fit and irrespective of the wishes of public opinion to the contrary. As one speaker in the British parliament explained: 'I doubt very much whether at any time during the last one hundred years a plebiscite would have carried any of the great penal reforms that have been made. The appeal in the time of [Sir Samuel] Romilly was always the belief that public opinion would not stand it, but there are occasions when this House is right even if public opinion may not at that moment agree' (UK Hansard 536, 10 February 1955, col. 2083). Seemingly closing any further discussion, *The Times* editorial (13 March 1975, p. 5, our italics), opined that 'it has been said that parliament is a good deal ahead of public opinion ... this is to a large extent true ... *it is certainly not our business to wait for public opinion on such an important issue.*'
17. From this time, though, many of these trends and characteristics have been reversed: as if a resurgent anti-Reason now drives modern penal development. The growth of imprisonment, in some of the Anglophone countries especially, is perhaps the most obvious illustration of this. In the US, the rate of imprisonment has increased some 700 per cent from 1975 to 2012

(from 110 per 100,000 of population to 762).⁴ It has come close to doubling in the UK (from a rate of 80 per 100,000 in 1990 to 147 in 2016); and has more than doubled in New Zealand (from 85 per 100,000 in 1985 to 208 in 2015). Furthermore, indeterminate prison sentences have been refurbished and reactivated. In New Zealand the number of prisoners serving the indefinite term of preventive detention has increased from 12 in 1985 to 284 in 2015. One in five English prisoners in 2012 were serving indefinite sentences, dramatically undermining the previous emphasis on proportionality and consistency.

18. There have also been innovative penal measures that strike at the very core of what had become inviolable values of punishment in modern society. Three strikes laws, sometimes two strikes, punish prior record in addition to the crime committed. Retrospective legislation—punishing behaviour that was not criminal at its commission—is justified on the grounds that the need for public protection supersedes individual rights. The principle of no double punishments is contravened by 'civil detention' provisions (that is, indefinite imprisonment) for some sex offenders at the end of a finite prison term, as is the principle that only the guilty can be punished: they are being detained because not because they have committed more crimes but because they are thought to be at risk of committing crime in the future. These moves to controlling risk at one end of the penal system have been matched at the other by controls on movement in public space of a variety of those who live their lives on the street (gang members, vagrants, beggars etc) in the form of supervision and surveillance to prevent future crime—but before they have actually committed one.
19. In addition, the language of punishment is now much more redolent of the voice of Anti-reason rather than Reason. 'Three strikes', 'life means life', 'no parole' and so on put into legislation raw, vengeful common-sense rather than humane objectivity and rationality. At the same time, the authority of the central state has weakened (Garland, 1996). Now, rather than being prepared to move ahead of public opinion, it is ready to implement some of its wildest demands. Even so, this has not been sufficient to hold back some sections of the public from vigilante activities that challenge the state's previous monopolistic power to punish (Pratt, 2000).

Explaining the rise of penal populism

20. One explanation of these transformations attributes them to the rise of penal populism. This needs to be distinguished, first, from 'authoritarian populism' (Hall, 1979). The latter was seen as involving the imposition of 'a new regime of social discipline and leadership *from above* in a society increasingly experienced as rudderless and out of control' (Hall, 1988, p. 84, *our italics*). But such an account does not involve any recognition of the way in which populist social movements have broken up the existing axis of penal power and formed a new one

⁴ The World Prison Brief has been used as the source for all prison statistics. Here, the US rate represents a decline from its high of 755 in 2008

with government that, having expelled establishment elites from influence, now puts its own illiberal stamp on punishment. Second, it also needs to be distinguished from 'populist punitiveness' (Bottoms, 1995). This involves politicians 'tapping into' the public's seemingly punitive stance on crime for their own electoral advantage, by manipulating this with extravagant promises about what more punishment will achieve. Here again, though, the dominant political class are still seen as being in control of events, rather than responding to the demands of outsider law and order activists and so on.

21. In contrast, penal populism specifically addresses the role and influence of these hitherto outsider individuals, groups and organizations on contemporary penal development. Developing the work of political scientists such as Shils (1956) and Canovan (1981) on populism, it is as if crime and punishment issues act as magnets that draw together those who see themselves as disenfranchised by governments thought to have allowed the unworthy and undeserving to prosper at their expense. In the criminal justice field, it was as if the establishment had been pulling the strings of government, prescribing generous treatment and lenient sentences for law-breakers while ignoring the well-being of crime victims and law-abiding citizens. From the 1980s, these concerns turned into howls of rage from newly emerging social movements that now claimed the right to speak on behalf of those whom government had forgotten. Their primary demands included terminating the baneful influences of the establishment and replacing them with their own representatives. In the new axis of penal power that began to be forged, crime control policy should take the form of protecting the public from crime risks and punishing those who pose them, rather than safeguarding the individual rights of offenders and potential offenders.
22. Initially taken to be an almost exclusive characteristic of the main Anglophone societies, penal populism emerged out of the tensions and dynamics created by the neo-liberal restructuring that took place in these societies from the early 1980s (Pratt, 2007). It was seen as having five underlying causes:

(i) the decline of deference

23. This helps to explain disenchantment with establishment power structures. It means that the values and opinions of elites which had previously been accepted without question are now not only respected but can provoke outrage and derision. Nevitte (1996) argued that the decline of deference is a natural consequence of post-1945 social reforms that raised the living standards of the whole population. Before the 1980s, it was assumed that establishment figures—in the universities, the civil service and so on—formed a natural class of government on the basis of their lineage, education and wealth and the positions of power that these characteristics then guaranteed for them. Thereafter, however, those in government or government bureaucracies would no longer be viewed as the social superiors as the rest of

society, having the exclusive right to pronounce on issues of the day, and would accordingly be challenged by those outside these Establishment circles.

24. However, the extent to which this supposed equalization has occurred in some societies (Britain, for example) would seem debatable. What seems more pertinent to the decline of deference is the way in which the criminal justice establishment failed to address issues of rising crime from the 1950s and in so doing seemed remote and detached from the concerns of 'ordinary people' (Margaret Thatcher's successful use of 'law and order' in the 1979 British election was one of the first illustrations of the political potency of this issue). The subsequent decline in crime from the early 1990s across most of Western society (for example, Zimring, 2012; Farrell et al, 2014) could not displace the way in which rising crime had by then become a taken for granted 'social fact'—to which the establishment had no answer. Attempts by its members to explain that it was in decline rather than rising simply became proof of their own irrelevance and duplicity. By the same token, the developing area of risk control through penal measures has come to symbolize the way in which governments were prepared to jettison previous ties to the Establishment, with its now derided concerns about ensuring individual rights rather than protecting community rights. Introducing the British anti-social behaviour legislation, the Home Secretary stated that this 'represented] a triumph of community politics over detached metropolitan elites' (UK Hansard 310, 8 April 1998, col 370).

(iii) the decline of trust in politicians and existing democratic processes

25. Electorates grow increasingly cynical of politicians' promises and guarantees of better futures when these regularly fail to materialize (especially when this is compounded by evidence of their own scandalous conduct, as with the revelations of extensive fraudulent expenses claims by British MP's in 2009). Indeed, rather than bringing better futures, government policies may bring disaster to those citizens who loyally adhere to them. In the aftermath of economic restructuring, worthy citizens who had followed government advice and invested, often for the first time, on the stockmarket (making fortunes in this way was advertized as no longer being the prerogative of the already rich), were likely to have been the ones hurt most when the first of the great post-restructuring crashes occurred in October 1987.
26. Using the experience of New Zealand as an illustration, this had been one of the countries at the forefront of the restructuring. The crash then contributed to a dramatic decline of trust in both its Left and Right mainstream political parties that had been committed to it—support falling to nine and 12 per cent of the electorate respectively in opinion polling in the early 1990s (see Pratt & Clark, 2005). This decline of trust simultaneously led to a surge of support for the right wing and populist New Zealand First party. It promises to place 'control of New Zealand's resources in the hands of New Zealanders, by restoring faith in the democratic process', alongside 'common-sense decision-making in the best interests of all' (New

Zealand First, 2014). The decline also brought a change to the electoral system that has virtually guaranteed this party permanent representation in parliament. Following a referendum, the 'first past the post' system was changed to proportional representation in 1996. New Zealand First will almost always be able to attract a disaffected core of the electorate sufficient to take it over the five per cent threshold it now needs to gain parliamentary seats. On two occasions since, it has become 'kingmaker' in coalition governments.

27. Much of this party's initial success came through speaking to public anxieties about crime and promising magical solutions to the problem (more police, tougher sentencing, Pratt & Clark, 2005). The major parties have been prepared to accede to these demands to win their support in parliament (Lacey, 2009). Furthermore, the popular appeal of 'law and order' that it had demonstrated encouraged the mainstream parties (as in Britain and the USA, see Jones & Newburn, 2006) to compete with each other on these terms, thereby building penal populism into government policy.

(iii) the rise of global insecurities and anxieties

28. From the 1980s, the modern world has become a much riskier, threatening place (Beck, 1992), in many ways a consequence of the same restructuring. If this has brought new possibilities of pleasure and fulfilment in everyday life, these are also beset with new risks—terrorism, new kinds of cancers, credit card fraud and so on. This has occurred in conjunction with fragmentation or disappearance of many of the old and familiar symbols of security and stability. The permanence of employment and all that comes with this has disappeared for many (Standing, 2014). Family life has become much more tangential, with increased likelihood of divorce amidst the growth of impermanent de facto relationships.⁵
29. Hence, again, the utility of crime and punishment in remedying these deficiencies in social capital. During the 1990s and early part of the twenty first century, it seemed that crime was the most obvious and immediate source of risk and danger, the most obvious and immediate symbol of the inability of governments and their experts to do anything about making everyday life more secure. As Tyler and Boeckmann (1997) demonstrate, the more social cohesion seems to be unravelling, the more likely it is that there will then be support for

⁵ Marriage rates (i.e. number of marriages occurring among the population of a given geographical area during a given year, per 1,000 mid year total population) are as follows: Australia, 1980: 7.4, 2013, 5.1; Canada, 1981, 7.7; 2008, 4.4; New Zealand, 1980, 7.3; 2014, 4.4; UK, 1980, 7.4, 2012, 4.4; USA, 1985, 10.1; 2012, 6.8. Ratio of marriages to divorce over the same period is as follows: Australia, 1980, 2.75:1; 2013, 2.3:1; Canada, 1980, 3:1; 2008, 2:1; New Zealand, 1980, 3:1; 2014, 2.5:1; UK, 1980, 2.7:1; 2012, 2:3:1; USA, 1980, 2:1; 2012, 2.2:1. Couples in de facto relationships in Australia increased from 5% in 1982 to 15% in 2006; in Canada, 6% in 1981 to 16.7% in 2011; in the UK, from 8.9% in 1996 to 16.4% in 2014. One parent families increased in Australia from 8.6% in 1981 to 15% in 2011; in Canada, from 11.3% in 1981 to 16.3% in 2011; in new Zealand from 12% in 1981 to 17.8% in 2013; in the UK, 13.9% in 1981 to 25% in 2014; in the USA, from 19.5% in 1980 to 29.5% in 2008. Meanwhile average household size declined across all these societies: in Australia, from 2.8 in 1986 to 2.6 in 2006; in Canada, from 3.3 in 1981 to 2.9 in 2011; in New Zealand from 3.0 in 1981 to 2.7 in 2013; in the UK, from 2.7 in 1981 to 2.4 in 2012; in the USA, from 19.5 in 1980 to 29.5 in 2008.

severe punishments—not simply as a response to crime but as a way of providing consensus and solidarity and the restoration of authority which seems to be missing elsewhere in the social fabric. The intensity and ferocity of the new language of punishment ('three strikes' etc) reflects the enhanced and extended role punishment has had to play in these societies in this regard.

(iv) the influence of the mass media

30. Life in modern society has come to be characterized by 'the sequestration of experience' (Giddens, 1991, p. 244): 'the separation of day-to-day life from contact with those experiences which raise potentially disturbing existential questions—particularly experiences to do with sickness, madness, criminality, sexuality and death.' As most people in modern society became uncomfortable in dealing with these aspects of everyday life, so these matters were steadily hidden behind bureaucratic screens, with the mass media vicariously informing their publics about them. Or rather, for much of the twentieth century, what information they were provided with was shaped by authoritative sections of the media, allowing the establishment to remain largely in control of public understandings of them.
31. However, from the 1980s, structural changes in the media meant that this was no longer possible. Changes in media technology, the advent of satellite television, and the deregulation of broadcasting had brought about a much more diverse and pluralistic set of understandings about the world—at a time when the decline of organic community life has meant that individuals have become much more reliant on the news media rather than friends, family or work colleagues to inform them about the world. These structural changes in the media then meant that the onset of the fall in crime had little public impact. It was not really newsworthy. Instead, crime continued to be defined as the most obvious and immediate source of risk and danger. Deregulation of state broadcasting amidst the advent of new media technology meant that news reporting had become more simplified, more competitive, more readily available and more sensationalized: more than ever before, a sensational story about crime—its menace not its decline—would beat off competitors, attract the public and thereby attract more advertising revenue (Jewkes, 2004). Amidst this restructuring, the criminal justice establishment found itself unable to control the parameters of public debate and knowledge about such matters.

(v) the symbolic importance of crime victims

32. The importance of crime news in the new framework of knowledge also gave much greater emphasis to victims' accounts of their experiences, rather than the detached, objective analysis of experts. In this respect, crime victims were given a new kind of authenticity and authority. Their personal experiences outweighed the statistical realities of crime. In most

cases, these experiences were presented as something that could easily happen to anyone: going to school, journeying home from work and so on became the starting point for a catalogue of horrors that were then inflicted on these unsuspecting victims. When such catastrophes could befall respectable, ordinary citizens in the banality of their everyday life, it was as if what had happened to them became a universal experience and a universal danger.

33. Hearing, reading, watching their traumas led to demands for more emotive and expressive punishments that sufficiently reflected public anger and revulsion at such crimes; and demands, as well, for more opportunities for victims to express their own anger at their suffering, as opposed to the carefully measured tones of court room professionals. In a number of jurisdictions, such demands have necessitated a spatial and emotional reorganization of criminal justice proceedings, with victims at their centre, rather than their offenders, going through the detail of their victim impact statements. But when judges seem more swayed by reason rather than the pain victims when passing sentence (in reality their hands are likely to be tied by legal constraints anyway on what they can do), this further divides the criminal justice establishment from victims and potential victims and their expectations of justice. It becomes more evidence of how out of touch such elites are from everyday life.

Legitimacy deficits and the rise of populist politics

34. While these were the forces that combined to drive penal populism, other modern societies were seen as having built-in defences against such intrusions: a much greater deference to the criminal justice establishment and trust in government in Finland, for example, had prevented its emergence in that country (Pratt, 2007). But since the publication of Pratt's *Penal Populism*, it is clear that populism no longer confines its influence to the penal sector of the Anglophone countries. Instead, it cuts across much of political life in modern society as a whole, transforming wide-ranging areas of governance. Historically, populist movements have been found on both the left and right of the political spectrum (Betz, 1994). In Greece, for example, it brought the left-wing Syriza party to power, in opposition to EU and IMF demands for economic restructuring and massive reductions in government expenditure. It is usually the case, though, that when populism surfaces in a particular society, it moves the political agenda well to the right (see Haney, 2016 on the Czech Republic, Hungary and Poland.). Even so, there are important nuances and differences within right wing populism. In some cases it professes to be anti-big state (as in the UK); in others (as in Sweden and Finland), it wants to preserve extensive state services—but only for its own authentic nationals—new arrivals will not be welcome. In addition, contemporary populism has brought into being a new era of anti-democratic 'strong man' politics (as in the Philippines, Turkey and Russia).

35. What is it, though, that has brought about the rise of this populist politics? Again, the specific mix of its causes varies. In China, for example, penal populism became a testament to the Party-state's determination to protect its citizens from evil crimes and uncertain risks associated with the profound transformation of the Chinese society to a market economy from the late 1970s (Miao, 2013). Nonetheless, what remains at the core of populism is the sense of disenchantment and disillusionment amongst large sections of society with the way in which political power has been exercised by governments, seemingly in collusion with establishment elites—favouring the unworthy and the undeserving at their expense. Initially, the penal system had been a useful receptacle for this 'legitimacy deficit'—the tension and anxiety that is generated amongst those who feel powerless, ignored, or left behind by the way in which the dominant class exercises power (Beetham, 1991). In a bid to compensate and restore their legitimacy, governments were happy to direct that antagonism towards criminals and prisoners—unpopular outsiders who played the role of useful scapegoats. Thereafter, though, the much greater potency of political populism has been the product of the way in which two of the elements necessary for penal populism have become much more deeply entrenched in the fabric of modern society. These not only give a distinctive texture to the already existing cauldron of mistrust and anger on which populism feeds but ensure that it spills out of the penal sector altogether.
36. First, *economic insecurity and uncertainty*. The global fiscal crisis of 2008 has deepened already existing inequalities in modern society brought about by the globalization of trade and capital from the 1980s—between the winners in the casino economies that were created and its losers (Reiner, 2001). At one level, it had been thought that the 2008 crisis would impose greater financial rectitude on governments, thereby blocking penal populism and its financial profligacy (Pratt, 2008). If, to a degree, this has occurred,⁶ the crisis itself had a much deeper impact on everyday life than this. By and large, winners continued to win. Indeed, the winnings of some of them greatly increased because they bought up cheap property or shares that came on the market in the subsequent recession. The number of losers, however, became greatly swollen due to attendant redundancies and intermittent unemployment, permanent underemployment, or reductions in employment conditions for many others, alongside cuts and restrictions on welfare expenditure.
37. At the same time, opportunities for employment in the public sector—a previous safe haven, offering longevity and security, generous pensions and regular wage increments—have significantly diminished as a result of the new limits imposed on government spending post-2008. The full extent of the changing nature of the labour market, from the beginning of restructuring in the 1980s to post-2008 economic stringency is reflected in the decline of public sector employment: from 27.6 per cent of the Australian workforce in 1989 to 16.5 in 2014; from 25.9 per cent in New Zealand in 1981, to 17.1 in 2013; from 27.4 per cent in the UK in

⁶ See note 4 regarding the decline in the US imprisonment rate. See also Goode (2013).

1980 to 17.2 in 2015. For most, employment in the much more precarious and quixotic private sector awaits—if anything awaits them. The general expectations of inexorable progress associated with modernity, of betterment, of always improving living standards, have also evaporated. The Governor of the Bank of England has thus warned that 'Britain is experiencing its first "lost decade" of economic growth for 150 years [and that] real incomes had not risen in the past ten years' (quoted in *Daily Telegraph*, 6 December 2016).

38. This 'precariousness' (Standing, 2014) has deepened the already existing distrust of establishment elites and supra-national governmental organizations, such as the IMF, EU, World Bank and so on (for Donald Trump, the UN has become nothing more than 'a good time club').⁷ These are seen as either powerless to prevent the 2008 crash, or helplessly caught up in it, or responsible for it: but still flourishing themselves, all the same. The expertise they profess and its associations with reason, rationality and science is not even considered worthless any more. It has a negative value instead. It damns and condemns them in the eyes of the public at large. 'People in this country have had enough of experts', was the claim made by leading campaigner for Britain to leave the EU in 2016, Michael Gove.⁸
39. In addition, the crash further burnt away traditional political loyalties. Even democracy is no longer seen as a precious gift of modernity, with built-in guarantees of good government. Instead, it is pictured as a quagmire by populists that drags many deserving but not prospering citizens down to its depths, while members of the Establishment can always find escape routes. Attempts to bridge the legitimacy deficit by extending democratic processes only bring disinterest and disdain. In Britain, elections to the European parliament have turnouts of less than 50 per cent, while the first elections there in 2012 for local police commissioners saw less than a ten per cent turn out in some constituencies. It seems that it is only in plebiscites, referenda and, in the US, citizens' propositions that are understood and trusted as authentic expressions of public will. The 2016 British EU referendum had voter turnout of 72 per cent, compared to 66 per cent in the general election of 2015, and only 59 per cent in that of 2001. Alternatively, electorates may be prepared to give their support to aspiring politicians who claim to speak on behalf of 'the people' rather than the establishment, who present themselves as independent minded 'strong men' rather than party loyalists, and who, as with Trump, promise to 'drain the swamp' of central government and career politicians altogether rather than add more layers to the existing democratic process.
40. Second, *the emergence of a new kind of victimhood*. This is something more than being a crime victim, or fear of becoming one, which governments had tried to offset by promising tougher punishments on the perpetrators. While cries for law and order have not been prominent in recent elections in those societies—the fall in crime no doubt reduces its purchase somewhat, fears of specific types of crime or criminals—fear of paedophiles and

⁷ Quoted in Daily Mail, 27 December 2016

⁸ Quoted in *The Financial Times*, 3 June 2016

sexual predators, for example, in those Anglophone countries especially—seem stronger than ever. Such fears still inform the conduct of much of everyday life and have led to the introduction of further preventive measures that continue to erode fundamental features of criminal justice in modern society (Pratt, 2016). Equally though, such fears have become conflated with fears of difference, fears of otherness—qualities variously demonstrated by strangers, foreigners, immigrants, asylum seekers, refugees ('Disabled limping migrant who uses a crutch while begging in London is exposed as a FRAUD when he is seen strolling off to buy a takeaway', *The Sun*, 16 September 2016). Fears and suspicions such as these are periodically fuelled by terrorist outrages that give further justification to such concerns and the horrendous dangers that these outsiders might be capable of, while reminding potential victims of their helplessness on such occasions. Fears such as these continue to demand more punishment, but they also demand that more controls be put in place to protect the public: sexual predators—keep them in prison, even after their sentences finish; paedophiles—hunt them down and drive them from local communities altogether; local troublemakers—issue banning, restriction and prohibition orders; asylum seekers, refugees, unwanted foreigners and all the rest of these strangers—build barriers, walls, fortifications to keep them out; protect the borders so they cannot come in; speed up deportation processes once they are caught.

41. These are some of the responses to this new kind of victimhood whereby it is not only the well-being and security of individuals that is endangered but also that of the nation state itself as mass immigration is seen as corroding its values, security and identity. In Britain, these concerns have been prompted primarily by Eastern European migrants, now allowed to move to Britain without restriction since their countries joined the EU in 2004. In the East European countries themselves, it is fear of asylum seekers and refugees from the Middle East. In the US, it is fear of Mexican 'rapists and murderers' crossing the border in the south and Muslim (which for many Americans is synonymous with terrorism) immigration in general. And so it would be possible to continue collating this inventory of fear and suspicion, moving from one modern society to another.
42. As well as demanding protective and innovative para-penal measures, this new kind of victimization continues to erode trust in supranational organizations and establishment elites. Having positioned themselves, once again, above the everyday chaos and insecurity that they had helped to create, these are seen as weakening the nation state by imposing foreign, alien, unwanted values and practices on it. Haney (2016) writes of East European fears of losing control over national interests as a consequence of joining the EU. Similarly in the UK, the European Court of Human Rights has become one of the most prominent signifiers of the imposition of unwanted European difference on British values and understandings. It seemingly has the power to insist that Britain should be 'Europeanized' as it sees fit, with its intervention in criminal justice matters symbolizing such dangerous intrusion. Notably, the

Court's declaration that the British 'blanket ban' on all convicted prisoners' voting rights, regardless of the gravity and circumstances of their offenses, violates Article 3 of the European Convention on Human Rights (*Hirst v UK* [no 2] 2005). Similarly with regard to 'whole life sentences' (*Vinter and Others v UK* [2013] ECHR), a decision that reflected, it was claimed, a European 'rights madness', as opposed to British common-sense (Hastings, 2013).

43. The consequences of deregulation and technological advancement enhance the power of the media to highlight such unwanted interventions and the social distance that exists between these ineffectual, dilettante elites and 'the people', as if the will of such a body is now the only authentic expression of authority. The response of the British *Daily Mail* (4 November, 2016) to Court of Appeal judges who ruled that the vote to leave the EU following the 2016 had to be ratified by parliament, was to label them 'Enemies of the People' and 'out of touch judges' who 'had declared war on democracy.' As this example shows, news making and reporting has broken out of the paradigm of reason, rationality and truth in which it had been expected to operate in modern, democratic societies, however elasticated this concept might previously have been. It has no limits, no ethical standards, no set direction to constrain it or that it has to follow. Demands that truth be told, as some journalists tried to insist during the 2016 US election, were dismissed with rejoinders by the Trump campaign that this was simply evidence of 'bias' against them in the mainstream media. Indeed, for Trump himself, the journalists at CNN and the New York Times, who stood by truth, were 'the lowest form of humanity.'⁹
44. But when truth is abandoned, then everything can be a lie: there is no means of distinguishing between fact and fiction, nor any point in trying to do so. The purveyors of 'post-truth news' simply call on their critics to prove that what they are saying is not true. Until then, lies and conspiracies 'remain a story.' Lie, lie, lie. Lie again and again. 'Lord, lord, how this world is given to lying.'¹⁰ Throw away truth, and then evidence and facts only become another set of lies. Rather than using truth to win votes, conjure up demons and devils—these can all be fabrications themselves—that need to be confronted by a strong man: then demand that voters put their trust in that man to rid the world of such pestilence, rather than career politicians and effete bureaucrats—what do they know of the insecurities that lie behind such dark fantasies? As it is, the rise of Facebook (2004) and Twitter (2006) since the 2008 crash has meant that individuals can not only create their own news and report it as they see fit but publish it before vast audiences. Again, this new kind of news can be entirely fabricated ('alt news') and usually speaks to some vast web of conspiracy that is supposed to exist, working to entrap the unsuspecting and the vulnerable in its lair. As one of the most prominent anti-EU campaigners in Britain stated, 'the more outrageous we are, the more attention we'll get. The more attention we get, the more outrageous we'll be' (quoted by Rawnsley, 2016a).

⁹ Quoted by *New York Times*, 12 August 2016

¹⁰ William Shakespeare, *Henry IV, Part I, Act 5, sc 4, p. 7*

45. Through strategies such as these, populist politicians have come to prominence. While they may well have tougher punishments on their agendas, this is likely to be only one component of a programme that, they claim, will magically transform an entire society: rid it of corruption and inefficiency, bring a brighter future through a reassertion of authority and nationhood. This was seen most vividly in the campaign themes of the two most spectacular populist electoral successes in 2016. First, the British EU referendum. 'Leave' campaigners used the logo 'Take Back Control', as if by voting to leave, it would be possible to retrieve all that had been lost or stolen—presumably as a result of EU membership; it would be possible to restore national identity and rid the country of corrupting and 'un-British' foreign influence; and it would be a gesture of defiance against the EU—favouring establishment. A vision of a completely mythical and irretrievable past of security and cohesion was conjured, when British people were masters of their own destiny. When was this supposed to have been—who knows? Just before Britain joined the EU in 1973? But that was a period of massive industrial conflict, rising inflation and growing racial tensions (Hall et al, 1978)—this was a time when government had *lost* control—it cannot have been then. Maybe when there was an Empire, or maybe when there was a powerful White Commonwealth, or maybe when Britain (and the colonies) fought alone against Nazi Germany—rather than subject to EU rules, laws and regulations. The route to this Nirvana involved walking away from Europe, although, in reality, not in to a glorious past but a troubled and darkly uncertain future.
46. Similarly, 'Make America Great Again', Trump's logo in the US election. Here too, the theme conveys the sense of loss and betrayal—variously blamed on corruption in central government, international financiers, Muslims, Mexicans, globalization and the infamy of wicked individuals (such as 'Crooked Hillary Clinton'). Hence the need to 'drain the swamp', 'build a wall', 'lock up' Clinton and so on. This kind of purification process was necessary, it seemed, if the glorious past was to be recreated—although exactly when this was remained unspecified. Nonetheless, a society could be rebuilt around dominant white men, where jobs that used to exist before globalization made them redundant would somehow reappear, and where dangerous foreigners would be kept out. In such ways, the implied promise of both 'Take Back Control' and 'Make America Great Again' was that not only would the nation be secure against insidious threats to its well-being that the establishment had allowed to fester, individuals would also be given back what they think has been taken from them: familiarity, certainty, security.

The End

47. These two electoral successes came as a profound, distressing and disturbing shock to many. They had been so unexpected—as if at the last, Reason would prove resolute in the face of what ever the anti-reason lies, distortions and made up news were thrown at it. President Obama had attempted to counter such challenges with an 'ode to reason,

rationality, humility and delayed gratification' (quoted by Packer, 2016, p. 84), an argument for the renewal and continuity of 'American progress.' In the aftermath of defeat, though, and amidst a great surge of hate crime, racial abuse and racial intolerance that had been unleashed in its wake, the liberal intelligentsia suddenly found themselves staring at a cataclysm. Andrew Rawnsley (2016b), for example, on the vote for Britain to leave the EU, wrote that it represented 'a journey into the unknown for a country never before so divided ... between doing-well Britain and left-behind Britain, between the Britain that is essentially comfortable with globalization and diversity and the Britain that feels its anxieties and anger about identity loss have not been listened to.' On the election of Trump, Richard Wolffe (2016) wrote that 'we may as well call this what it is: a revolution ... nothing else comes close to capturing the political revolt—and the chaos that surely follows ... an era that stretches back to Franklin D. Roosevelt just came to an abrupt and ugly end.'

48. In fact, the profundity of these events has an even deeper significance. Each signalled that the long journey that modernity itself had taken from the time of the Enlightenment had come to a shattering end. The defeat of Reason—of rationality, science, truth, objectivity, consistency—and its ability to structure and inform the parameters of governance in the modern world—means that only the unknown awaits. This will not be the end of uncertainty and insecurity promised by populists, but only the start of new uncertainties and insecurities, alongside the exacerbation of those already in existence. That said, the two events themselves do not constitute any *sudden* end to Reason; rather, they should be seen as marking the final moments of a process that had made such an end inevitable, a process that had systematically undermined all that had been intended to provide the certainty and stability, the cohesion and solidarity that would otherwise have been strong enough to resist the shamans of populism.
49. When did this process begin? When was it that all that we had come to assume was permanent would, in reality, have no permanence at all, have no more substance than a sandcastle built to stem an incoming tide? In *The Four Quartets*, T.S. Eliot (1943, p. 23) wrote 'In my beginning is my end. In succession. houses rise and fall, crumble, are extended, are removed, destroyed, restored.' In the beginning is the end. Where do we look for that beginning that led to the end of Reason? The starting point is likely to have been Reason's post-1945 reassertion, its response to the aberrations from its path in the ravages of the depression years of the 1920s and 1930s, followed by the rise of anti-democratic strong men in Europe who brought catastrophe—carnage, destruction, misery and genocide. Hence the phrase that dominated political discourse in the democracies after 1945: 'never again.' Never again. It became the task of post war governments to ensure that there could be no return to that previous dark time of anti-reason—never again. As Eric Hobsbawm (1994, p. 271) explained, 'the inter-war experience, and especially the Great Slump, had been so catastrophic that nobody could possibly dream ... of returning as soon as possible to the time

before the air-raid sirens had begun to sound. All the men who sketched out what they hoped would be the post-war principles of the world economy and the future of the global economic order had lived through the Great Slump.'

50. How was Reason to be secured against any subsequent aberrations? Planning, state intervention and control were the initial answers: 'there was a great faith in the ability (and not just the duty) of government to solve large-scale problems by mobilizing and directing people and resources to collectively useful ends' (Judt 2007, p. 69). Roosevelt's New Deal had promised greater government management of the economy, poor relief and increased public expenditure. New Zealanders had been promised 'cradle to the grave' security in their Social Security Act 1938. The United Kingdom's Beveridge Report (1942, p. 170) promised to control risk and insecurity by eradicating 'five giant evils: Want, Disease, Ignorance, Squalor, Idleness.' Similar intents were expressed in the Canadian Marsh Report (1943) and the Australian White Paper on Full Employment (1945). Rigorous planning by the state was the way to make certain these promises of a good future, one that gave hope to all. In 1943 Beveridge (quoted by Kynaston, 2007, p. 31) had anticipated that when peace came, 'the very first thing to win is the Battle of Planning. We shall need to have planning on a national scale, boldly overstepping the traditional boundaries of urban council, rural council, county council.' Similarly, the Marsh Report (1943, p. 7) explained that 'the pre-war background has not been forgotten by many Canadians ... and it must not be forgotten in the post-war period, in planning in advance what measures should be taken ... to give reality to the aspirations and hopes which the peoples of the world are more and more clearly voicing.'
51. Hence the physical, material and ideological shape of post-war society. The modern city would become a haven where all had a rightful place, would become a testament to the virtues of planning, of rationality, a testament to the virtues of Reason itself, its celebration of public space a necessary feature of harmonious community life. Ebenezer Howard's (1946, p. 44) vision of 'the social city', for example, was based around wide, tree-shrouded avenues, homes, public gardens and a central park: 'large public buildings would be at [its] centre: town hall, library, museum, concert and lecture hall, the hospital. Here, the highest values of the community are brought together—culture, philanthropy, health and united cooperation.' Family life, too, had an importance beyond that of the individuals concerned. Now, it would be ordered and structured by government and its new organizations of assistance to ensure that the well-being of individuals contributed to the well-being of society as whole: 'parenthood itself must become a central interest and duty; and the family and the primary group of workfellows and neighbours must become a vital core in every wider association' (Mumford, 1945, p. 214). In 1950, there were around 100 marriage guidance clinics in existence in Britain to provide the guidance and direction necessary for those struggling to meet these expectations (Clark, 1991).

52. What mattered most in the provision of this extensive apparatus of support and instruction, wrote leading British sociologist of the period T.H. Marshall (1950, p. 56), 'is that there is a general enrichment of the concrete substance of civilized life, a general reduction of risk and insecurity, an equalization between the more or less unfortunate at all levels.' Indeed, the vastly expanded public sector workforce that would be necessary to achieve all such objectives in itself went some way to achieving this by providing guarantees of employment security and status (in the UK, for example, civil servants increased from 340,000 to 720,000 between 1931 and 1955, Marwick, 1971, p. 137). These guarantees were not presaged around an especially ambitious life, to be sure, not a life that would be lived in the fast lane, frenetically grabbing at pleasures and indulgencies as they came along; but a good life all the same, a life that now had comfort rather than hardship as an expectation, a life to be cherished rather than abandoned to whatever fate came its way. And the future seemed assured at this time. In Britain, a *Daily Telegraph* (27 December, 1961) opinion poll of 16-18 year olds found that only nine per cent disagreed with the opinion that 'the world would be a better place to live in ten years time.' In a world of stability and security, what is particularly striking in the other responses of those polled is the regularity of their working habits. After three years, more than half were still in the same employment as when they started. Furthermore, one in three were regular church attendees. Only one in ten was not looking forward to getting married; 85 per cent disagreed with the assertion that it did not much matter whether or not the marriage worked out well.
53. Yet the very successes of this post-war solidarity project (Garland, 1996) began to eat away at its base. Certainty and stability in personal life and relationships were the first to crumble, under demands for much greater expression of personal choice regarding sexual preferences and identities. It resulted in what had previously been the taken for granted presence of family life and all the networks woven around it becoming much more tangential, as noted. What possible role could all the marriage guidance clinics now have in the light of the subsequent reality of family life? As Ulrich Beck (quoted in Bauman, 2000, p. 6) has written, 'Ask yourself what actually is a family nowadays? What does it mean? Of course, there are children, my children, our children. But even parenthood, the core of family life, is beginning to disintegrate under conditions of divorce ... [G]randmothers and grandfathers get included and excluded without any means of participating in the decisions of their sons and daughters.' Many others fall through what have become these flimsy networks altogether and find themselves living alone, one of the most significant features of current demography in modern society.¹¹ Whatever personal histories lie behind this—choice or misfortune, accident or cruel fate—the growing presence of this cohort more than any other represents the atomization of everyday life in modern society and the importance of structures of support and guidance beyond the family to provide interdependencies and bonds to the rest of

¹¹ The percentage of people living alone has increased from 18.8% of the Australian population in 1986 to 23% in 2013; from 11.4% in Canada in 1981 to 27.6% in 2011; from 16% in New Zealand in 1980 to 23.5% in 2013; from 22% in the UK in 1981 to 28% in 2014; from 22.7% in the US in 1980 to 27.4% in 2012.

society. In an era when we all now have to 'operate at the outer edge of the ordered world, on the barbaric final frontier of modern technology' (Giddens, 1999, p. 2), when we are all involved with complex social economic and technological systems we do not understand, so many have been left on their own to try and digest and resolve the existential dilemmas and conflicts that these produce on their own.

54. This is because, in addition to the changing nature of family life, extra-familial structures also began to collapse from the 1980s, as Robert Putnam (2000) observed in *Bowling Alone*. The post-war solidarity project, it was now claimed, had been both inefficient and sapped the energy of individuals to make their own way in the world, make their own fortunes and spend them as they wished, rather than having the state tell them what they might do—although, of course, they would also have to manage their own risks—for good or bad. Thereafter, amidst declines in church attendance, volunteering, trade union membership and the performance of civic obligations, deregulation and globalization not only made employment prospects less predictable and permanent and more uncertain and contingent, but the attendant redevelopment of communities and movement of labour also began to dissolve local cohesion, ties and responsibilities: 'enterprise culture proved to be a solvent of bonds of trust and community and a source of insecurity to many. The mobility demanded by a dynamic market economy is not easily reconciled with a settled common life. The end result was the weakening or dissolution of the ties of the community and the generation of a society of strangers' (Gray, 1993, p. 54).
55. Most public and political attention though—in the main English speaking countries especially that were in the forefront of these changes—was given to celebrating the fame and fortune that greeted the winners that this economic restructuring had made possible. The losers—all those left behind or those who could not keep up with the changes—found themselves largely written out of the script. These growing divisions, the growing tension between those perpetually on the move,¹² heading up an ever extending escalator that exponentially provided more wealth and success at each new floor and those left out, perpetually trapped in modern society's bargain basement, feeling aggrieved at governments who seemed to have so little interest in helping them to get to even the next level, informed the development of penal populism.
56. By introducing innovative sanctions and controls, as well as more extensive and intensive punishments on those who seemed to be the most obvious and direct threat to individual well-being, here was a simple, common-sensical, if expensive (necessitating reductions in expenditure for other social and welfare measures) way for governments to show that they had not forgotten the worthy but left-out constituency. Indeed, they were now prepared to speak its language of punishment, rather than that of their erstwhile experts, in the new axis

¹² Cf Bauman (2001, p. 62) 'individuals who are untied to place, who can travel light and move fast, win all the competitions that matter and count.'

of penal power that began to put these measures into effect. Here was the way, temporarily at least, to unify the population, to heal divisions and to restore social cohesion. If this was at the expense of many of the principles on which criminal justice in modern society had been built, then this could easily be explained away ('rebalancing the criminal justice system', the new controls were 'only for the worst of the worst', only out of touch 'liberal elites' will care, see Pratt, 2016).

57. As we have seen, though, penal populism proved to be only a staging post towards the much more extensive populist march through modern society. The increased potency of the threats to individual and national well-being meant that populism was able to burst out of the constraints of the penal zone and pervade the whole social body. This does not mean that it has now finished with its transformation of the possibilities of punishment. As anxiety, uncertainty and insecurity increase, as criminality is conflated with otherness, so criminal law and punishment themselves become more diverse and amorphous, increasingly seeking to control risk rather than merely punishing crime. In so doing, the boundaries that had previously separated punishment in modern society from punishment in non-democratic, totalitarian societies are further eroded.
58. This, though, is a matter of little consequence for populism and its forces. What drives it is not any legacy of Reason and the Enlightenment but anger and resentment and the construction of a magical politics around these emotive forces that promises to eliminate at a stroke all the demons and devils it identifies. In 'taking back control', in 'making a nation great again', who then needs Obama's commitment to 'tolerance, compromise and our common humanity ... the values of liberal democracy' (Packer, 2016) to accomplish this? Who needs evidence, rationality, facts and science and all the other attributes on which modernity itself had been built, to do so? Yet, as Jonathan Freedland (2016) writes, 'evidence, facts and reason are the building blocks of civilization. Without them we plunge into darkness.' And as this darkness falls, so it brings with it the end of Reason and all its light.

BIOGRAPHY

Professor John Pratt

School of Social and Cultural Studies, Victoria University of Wellington, New Zealand

Professor John Pratt gained an LLB (Hons) degree at London University, an MA in Criminology at Keele University and a PhD at the Centre for Criminological Studies, University of Sheffield. Much of his academic career has been spent at the Institute of Criminology, Victoria University of Wellington. He has undertaken extensive research on comparative penology and the history and sociology of imprisonment and has been awarded prestigious prizes and fellowships for his research. His writings have been translated into eleven languages and he has been invited to lecture at universities in South America, North America, Europe, Asia and Australia.

BIBLIOGRAPHY

Books

Bauman, Z. (2000). *Liquid Modernity*. Cambridge: Polity Press.

Bauman, Z. (2001). Violence in the age of uncertainty. In A. Crawford (Ed.), *Crime and Insecurity* (pp. 52–74). London: Routledge.

Beccaria, C. (1872). *On Crimes and Punishments*. Albany, NY: W.C. Little & Co. (Original work published in 1764)

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

Beetham, D. (1991). *The Legitimation of Power*. Basingstoke: Macmillan.

Betz, H.G. (1994). *Radical Right-Wing Populism in Western Europe*. Basingstoke: Macmillan.

Beveridge, W.H. (1942) *Social Insurance and Allied Services: Report [The Beveridge Report]*. London: HMSO. [Cmd. 6404]

Bottoms, A.E. (1977). Reflections on the Renaissance of Dangerousness. *Howard Journal of Criminal Justice*, 16, 70–96.

Bottoms, A.E. (1995). The philosophy and politics of punishment and sentencing. In C. Clarkson & R. Morgan (Eds), *The Politics of Sentencing Reform* (pp. 17–49). Oxford: Clarendon Press.

Canovan, M. (1981). *Populism*. New York, NY: Harcourt Brace Jovanovich.

Clark, D. (1991). Guidance, counselling, therapy: Responses to 'marital problems' 1950–90. *The Sociological Review*, 39(4), 765–798.

Commonwealth of Australia (1945). *Full Employment in Australia*. Canberra: Australian Government Printer.

Diderot, D. (1967). *Denis Diderot's The Encyclopedia: Selections*. (S.J. Gendzier, Ed. & Trans.). New York: Harper Torchbooks. (Original work published 1751)

Diderot, D. (1753/1966). On the interpretation of Nature, No. 15. In L. Crocker (Ed.), *Diderot's Selected Writings*. New York, NY: Macmillan. (Original work published 1753)

Eliot, T.S. (1943). *Four Quartets*. New York, NY: Harcourt, Brace & Co.

- Garland, D. (1996). The limits of the sovereign state: Strategies of crime control in contemporary society. *British Journal of Criminology*, 36, 445–471.
- Giddens, A. (1991). *Modernity and Self-Identity: Self and Society in the Late Modern Age*. Cambridge: Polity Press.
- Giddens, A. (1999). Risk and responsibility. *Modern Law Review*, 62(1), 1–10.
- Goode, E. (2013, July 25). US prison populations decline, reflecting new approaches to crime. *The New York Times*. Retrieved from <http://www.nytimes.com/2013/07/26/us/us-prison-populations-decline-reflecting-new-approach-to-crime.html>
- Gray, J. (1993). *Beyond the New Right: Markets, Government and the Common Environment*. London: Routledge.
- Farrell, G., Tilley, N. & Tseloni, A. (2014). Why the crime drop? *Crime and Justice*, 43(1), 421–490.
- Freedland, J. (2016, November 9). The US has elected its most dangerous leader. We all have plenty to fear. *The Guardian*. Retrieved from <https://www.theguardian.com/commentisfree/2016/nov/09/donald-trump-us-president-nightmare>
- Hall, S. (1979). *Drifting into a Law and Order Society*. London: Cobden Trust.
- Hall, S. (1988). *The Hard Road to Renewal: Thatcherism and the Crisis of the Left*. London: Verso.
- Hall, S., Critcher, C., Jefferson, T., Clarke, J. & Roberts, B. (1978) *Policing the Crisis. Mugging, the State and Law and Order*. New York, NY: Palgrave Macmillan.
- Haney, L. (2016). Prisons of the past: Penal nationalism and the politics of punishment in central Europe. *Punishment & Society*, 18(3), 346–368.
- Hastings, M. (2013, July 10). The danger is we've become immune to human rights lunacy. It's vital we stay angry, says Max Hastings. *Daily Mail*. Retrieved from <http://www.dailymail.co.uk/debate/article-2359048/The-danger-weve-immune-Human-Rights-lunacy-Its-vital-stay-angry-says-MAX-HASTINGS.html>
- Hay, D. (1976). Property, authority and the criminal law. In D. Hay, P. Linebaugh & E.P. Thompson (Eds.), *Albion's Fatal Tree: Crime and Society in 18th Century England* (pp. 17–63). London: Allen Lane.
- Hobsbawm, E. (1994). *The Age of Extremes*. London: Abacus.
- Home Office. (1959). *Penal Practice in a Changing Society*. London: HMSO. [Cmnd. 645]
- Home Office. (1988). *Punishment, Custody and the Community*. London: HMSO. [Cm 424]
- Howard, E. (1946). *Garden Cities of To-morrow*. London: Faber & Faber.
- Howard, C. & Morris, N. (1964). *Studies in Criminal Law*. London: Oxford University Press.
- Jewkes, Y. (2004). *Media and Crime*. London: Sage.
- Johnson, D.T. (2006). Japan's secretive death penalty policy: Contours, origin, justifications, and meanings. *Asia-Pacific Law & Policy Journal*, 7, 62–124.
- Jones, T. & Newburn, T. (2006). *Policy Transfer and Criminal Justice*. London: Open University Press.

- Judt, T. (2007). *Postwar. A History of Europe since 1945*. London: Pimlico.
- Kant, I. (1797/1887). *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence*. (W. Hastie, Trans.). Edinburgh: T & T Clark.
- Koo, K.C., Ahn, J.H., Hong, S.J., Lee, J.W., & Chung, B.H. (2014). Effects of chemical castration on sex offenders in relation to the kinetics of serum testosterone recovery: Implications for dosing schedule. *Journal of Sexual Medicine*, 11(5), 1316–1324.
- Kynaston, D. (2007) *Austerity Britain, 1945–51*. London: Bloomsbury.
- Lacey, N. (2008). *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*. Cambridge: Cambridge University Press.
- Locke, John (1690/2016). *Second Treatise of Government*. Los Angeles, CA: Enhanced Media.
- Marsh, L. (1943). *Report on Social Security for Canada [The Marsh Report]*. Ottawa: King's Printer.
- Marshall, T.H. (1950). *Citizenship and Social Class*. Cambridge: Cambridge University Press.
- Marwick, A. (1971). *The Explosion of British Society, 1914–1970*. London, Macmillan.
- Miao, M. (2013). Capital punishment in China: A populist instrument of social governance. *Theoretical Criminology*, 17(2), 233–250.
- Montesquieu, C. (1914/2011) *The Spirit of Laws* (T. Nugent, Trans.). New York, NY: Cosimo Classics.
- Müller, M-M. (2012). The rise of the penal state in Latin America. *Contemporary Justice Review*, 15(1), 57–76.
- Mumford, L. (1945) *City Development: Studies in Disintegration and Renewal*. New York, NY: Harcourt, Brace & Co.
- Neto, L. (2009). El Populismo Punitivo En Espana: del estado The penal populism in Spain: from welfare state to punishment state. http://www2.pucpr.br/sssccla/papers/SessaoC_A33_pp219-245.pdf
- Nevitte, N. (1996). *The Decline of Difference: Canadian Value Change in Cross National Perspective*. Peterborough, ON: Broadview Press.
- New Zealand First. (2014). *Manifesto*. Wellington: Government Printer.
- Packer, G. (2016, October 31). Hillary Clinton and the populist revolt, *New Yorker Magazine*. Retrieved from <http://www.newyorker.com/magazine/2016/10/31/hillary-clinton-and-the-populist-revolt>
- Paine, T. (1794). *The Age of Reason: Being an Investigation of True and Fabulous Theology*. Paris: Barrois.
- Pratt, J. (1997). *Governing the Dangerous*. Sydney: Federation Press.
- Pratt, J. (2000). Emotive and ostentatious punishment. *Punishment & Society*, 2(4), 417–439.
- Pratt, J. (2007). *Penal Populism*, New York, NY: Routledge.
- Pratt, J. (2008). *When Penal Populism Stops. Legitimacy, Scandal and the Power to Punish in New Zealand*. Australian and New Zealand Journal of Criminology 41, 364–383.
- Pratt, J. (2016). Risk control, rights and legitimacy in the limited liability state. *British Journal of Criminology*, Advance online publication. doi:10.1093/bjc/azw065

- Pratt, J. & Clark, M. (2005). Penal populism in New Zealand. *Punishment and Society*, 7, 303–322.
- Putnam, R. (2000). *Bowling Alone: The Collapse and Revival of American Community*. New York, NY: Simon and Schuster.
- Rawnsley, A. (2016a, November 20). The shock lessons for liberals from Brexit and the Trumpquake. *The Observer*. Retrieved from <https://www.theguardian.com/commentisfree/2016/nov/20/lessons-liberals-brexit-trumpquake-demagogues-rules-electoral-politics>
- Rawnsley, A. (2016b, June 26). Brexit: A Journey into the unknown for a country never before so divided, *The Observer*. Retrieved from <https://www.theguardian.com/commentisfree/2016/jun/26/brexit-eu-referendum-disunited-kingdom>
- Reiner, R. (2001). The rise of virtual vigilantism: Crime reporting since World War II, *Criminal Justice Matters*, 43, 4–5.
- Report of the Penal Policy Review Committee, 1981. (1982). Wellington, NZ: Government Printer.
- Roberts, J.V., Stalans, L., Indermaur, D. & Hough, M. (2003). *Penal Populism and Public Opinion*. New York, NY: Oxford University Press.
- Ruggles-Brise, Sir E. (1921). *The English Prison System*. London: Macmillan.
- Shils, E. (1956). *The Torment of Secrecy*. London: Heinemann.
- Standing, G. (2014). *The Precariat. The New Dangerous Class*. London: Bloomsbury.
- Tappan, P. (1957) Sexual offences and the treatment of sexual offenders in the United States. In L. Radzinowicz (Ed.), *Sexual Offences. A Report of the Cambridge Department of Criminal Science* (pp. 500–516), London: Macmillan.
- Tyler, T. & Boeckmann, R. (1997). Three strikes and you are out, but why? The psychology of public support for punishing rule breakers. *Law and Society Review*, 31: 237–265.
- von Hirsch, A. (1976). *Doing Justice*. New York, NY: Hill & Wang.
- Wolffe, R. (2016, November 9). Trump's victory is nothing short of a revolution, *The Guardian*, Retrieved from <https://www.theguardian.com/commentisfree/2016/nov/09/donald-trump-victory-us-election-result-revolution>
- Zimring, F.E. (2012). *The City that became Safe: New York's Lessons for Urban Crime and its Control*. New York, NY: Oxford University Press.