

## Penal Populism and Public Opinion: Lessons from Five Countries

by Julian V. Roberts, Loretta J. Stalans, David Indermaur and Mike Hough  
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*PENAL POPULISM AND PUBLIC OPINION*<sup>1</sup> is an important contribution to the growing debate about how penal policy is made in late modern societies, and as such, deserves to be read well beyond North America.

Few academic lawyers or criminologists will be unaware that in many western democracies, crime rates have tended to be stable in recent years, in some cases even declining. Yet, politicians and the press continue to campaign and write as if quite the opposite were true. This has fuelled the public demand for even more punitive measures, even though research, some of it government funded, suggests that the utility of such punitive measures in reducing crime is, in many cases, far from certain.

While there is every reason to believe that this punitive drift affronts the moral sensibilities of the scrupulous researchers who have put together this important and timely new text on the growth of penal populism in the USA, Canada, the United Kingdom, Australia and New Zealand, this is not something that the authors collectively wish to emphasize. Rather, they are more concerned to present themselves as dispassionate social scientists. Thus, what concerns them most are penal policies that appear to be driven more by their crude popular, punitive appeal than by any objective evidence that they work.

To explain what appears to be a lamentable, almost irrational, state of affairs, the authors turn to *populism* as an explanatory tool. Political scientists have long wrestled with *populism* as a style of government. The concept is by no means easy to grapple with, not least outside of very specific, historical contexts. It can serve very politically different masters in very different ways. However, the gist of the argument about *populism* in the case we are considering runs something like this: In representative democracies, such as those in North America, Europe and Australia, policies are not normally determined by what appeals to a simple majority of people. Rather, we elect political representatives to make policy for us in association with public servants, experts and associated interest groups, including the judiciary. Of course, our views, preferences, and the voice(s) of the public are not ignored, but simply constitute one element in the complex and, in truth, sometimes messy process of negotiated compromises that determine the outcome of much public policy, including penal policy.

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1. Julian V. Roberts *et al.*, *Penal Populism and Public Opinion: Lessons from Five Countries* (New York: Oxford University Press, 2003).

*Populism* is a style of politics that seeks to bypass the institutional complexities of this process. Leaders appeal above and beyond the institutional apparatus for hammering out compromises to manage complex social problems, like crime, by offering simple solutions to “the people”: Those suspicious of metropolitan elites and so-called “experts” who arrogantly claim to know “what is best” for “ordinary folk”; those who bear the brunt of repeated policy failures. Charismatic leaders—a Ronald Reagan or a Margaret Thatcher—speak out for and mobilize this “silent majority.”

The strength of the book is its clear demonstration that this style of politics has characterized penal policy-making in recent years in many western democracies. However, *explaining* why this style of politics has triumphed over the more considered, evidence-based processes which characterized penal policy-making in the first three decades after 1945 is more difficult, and while I think the explanations the authors offer certainly have considerable merit, I do not find them wholly convincing.

There is, for example, in my view, an over reliance on Garland’s opinion that late modern societies have become more punitive in response to growing anxiety, not least among the middle classes, about social order in the face of rapid social change, and that politicians have responded to (and partly used) this anxiety for political advantage.<sup>2</sup> If we leave aside the argument that Garland’s thesis is arguably far more applicable to America than elsewhere, I can think of other equally convincing—and possibly related—explanations. For example, Robert Inglehart has demonstrated the marked decline in political *deference* in most western democracies in recent decades.<sup>3</sup> This has resulted in the public being far less willing to let the established political parties and the policy *cognoscenti* decide what is good for them in policy terms. So, in our case, they have refused to be marginalized in setting the penal agenda. Instead, they mobilize, often outside of the formal policy-making process, often in ugly, punitive ways, as this text chronicles.

Combating this populist drift is far from easy. For example, in a thoughtful final chapter, the authors recommend that governments must take more responsibility for explaining crime rates, that they should use the new technologies, not only to present statistical material about sentencing more clearly, but to make it more accessible to the wider public, who is often misled by the media. They also believe that the real cost of stepping on the punitive escalator should be spelt out in every new legislative proposal, a practice already followed in some jurisdictions.

These are sensible suggestions. However, the proposal that we create a “buffer” between politicians and the criminal justice system suggests a certain political naivety, to me at least. My judgment is that the public voice(s)

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2. *Ibid.* at 68.

3. Robert Inglehart, *The Silent Revolution* (Princeton: Princeton University Press, 1997).

is rising, that in an age of interactive media technologies, the public is no longer prepared to simply *eavesdrop* on private conversations between politicians, practitioners and pressure groups. In this sense, the *cognoscenti* should concentrate on working outwards to engage and educate the public, not to erect barriers and exclusion zones for the public. Without this openness, the search for a progressive, rational, evidence-based penal policy will all too easily come unstuck.

But, of course, the real and ever present danger to evidence-based penal policies is the uncomfortable truth that such policies, as we have already implied, are often framed to serve wider, referential contexts which have little to do with the penal system *per se*. For example, no one now seriously doubts that the “law and order” years in the United Kingdom (1970s – 80s) were more about readjusting the historic post-war compromise between capital and labour, and securing the market economy, than about crime and punishment.

At such historical moments, dispassionate social scientists, such as those who have put together this excellent text, are swept aside by a far more compelling political “rationality.” This is not intended as a criticism, though had the authors invested a little more in exploring the intellectual capital that political scientists have accumulated in excavating *populism*, they might have produced a less sanguine conclusion.

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