

Phantom of the Prison

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PENAL POPULISM AND PUBLIC OPINION:

LESSONS FROM FIVE COUNTRIES

OUP, \$125hb, 244pp, 0 19 513623 3

RECENTLY, NEW SOUTH WALES had its fifth election since 1988 in which shrill law and order promises — tougher sentencing, more police and the like — constituted the most prominent feature of the major parties' campaigns. During those fifteen years, NSW witnessed its biggest prison-building programme in more than a century and a rise of more than fifty per cent in its prison population. An obvious lesson is that prison-building programmes and rising criminal justice expenditures do not reduce crime or enhance feelings of public safety and confidence in legal institutions, and that those who argue otherwise are chasing phantoms. Yet the terms of political discourse around law and order seem to be impervious to the facts. What would commonly be taken as incontrovertible evidence of the failure or limits of a policy in other areas yields more of the same in relation to crime control, such is the treadmill of penal populism.

This new book provides a valuable analysis of the recent trend toward punitive justice and the populist politics that has nurtured it in five English-speaking countries: the USA, Canada, Britain, Australia and New Zealand. It describes the growing resort to more deeply punitive sentencing measures (such as mandatory sentencing laws) and devotes separate chapters to each of three areas in which penal populist politics have been particularly evident: juveniles, drugs and sex offenders (especially paedophiles).

Although the authors acknowledge significant differences between the countries (especially between the USA and the rest), much less attention is given to the differences than to the commonalities. Perhaps this is because US policies and rhetoric ('three strikes', 'zero tolerance') have been appropriated in some form by the others. Yet, were the USA to be taken as a benchmark (with its retention, in a majority of states, of the death penalty, the execution of juvenile offenders in some and an imprisonment rate on average four to five times that of the other countries), the others would look positively benign by comparison, as would every other country in the world, barring a few, such as Russia, China, Iraq and Saudi Arabia. As interesting, though, are the *internal* regional and jurisdictional differences within these countries, the USA as much (or even more) than the others. Why is it that some US states have imprisonment rates that are lower than the national Australian rate and thus a mere fifth or sixth of the national US rate? Why does the Northern Territory imprison people at more than five times the rate of Victoria? Crime rate differences only partially explain the differences in penal practice

across jurisdictions. It is also necessary to consider differences in punitiveness: that is, the predilection of different communities and their legal and political institutions to engage in the disinterested infliction of pain on those of their members who transgress.

For the authors, penal populists are those politicians who exploit the superficial popularity of tough crime control policies in defiance of the evidence relating to crime and the measures likely to reduce it. The situation is made worse by the fact that public opinion is badly misinformed. Politicians who fall in with it, out of cynicism, ineptitude or felt necessity, merely reinforce the public's distorted understanding, thus setting in train the populist cycle from which neither public nor politician can escape. Thankfully, the authors argue, when public opinion is examined in deliberative settings, where attitudes are formed on the basis of information and debate, the views of the public emerge as far more complex and discriminating, and not at all straightforwardly punitive. The solution is to deliver more and better information and to facilitate more rational public debate and policy-making.

It is possible to agree with many of the specific arguments and proposals in this book without finding the overall analysis of penal populism convincing. The authors simply underestimate the scale of the political, cultural and social change that has given rise to public feelings of insecurity, increased mistrust of public institutions and rising populism. It is too readily assumed that crime and its management can be divorced from the far-reaching changes affecting people in every domain of their lives, including family, work, community, relationship to nation and government. If punitive sentiment and policies often cohere around particularly heinous crimes — involving children as victims and/or offenders, to take one example — this may be because these crimes tap into anxieties concerning threats to familiar images of childhood innocence, family life and so on. The salient issue is not that ordinary people lack the necessary knowledge to understand the intricacies of crime and penal policy, but that they readily connect crime to their own experiences and fears in an increasingly uncertain and insecure world.

They implicitly recognise something that the authors of this book tend to overlook or neglect: that questions of crime and punishment are inescapably normative and moral in nature, and that they inevitably and properly also touch upon the deep structures of our symbolic and emotional life. They are about values and feelings, not just facts and figures. Consequently, they are not readily amenable to the sort of instrumental rationality proffered in this book, in which ascertaining and interpreting 'the facts' to produce rational penal policies is an objective process that is properly confined to professional experts and those sections of the public deemed to be properly 'informed'. It is precisely of the essence of penal populism that it has sidelined 'the experts' (including even the judiciary) in crime debates. The solution, therefore, is hardly to be found in an appeal to technical rationality. A different politics, not a denial of politics, will be required to tackle penal populism and its baleful effects.