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## **PUNISHMENT AND TECHNOCRACY: PENAL POPULISM, ELITISM, AND THE “BUFFERED IDEAL” IN THE SOCIOLOGY OF PUNISHMENT**

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### **INTRODUCTION**

One of the key concepts used to explain and explore punitive transformation in recent decades has been the notion of *penal populism* (Pratt, 2007; Roberts et al., 2003; see also Green, 2008; Newburn and Jones, 2005). In its most elementary form, penal populism centers on the idea that a “punitive turn,” said to have taken place across the postindustrialized world since the 1980s (Aaronson, 2022), has been driven to a significant degree by the fact that voters have increasingly come to hold punitive views—or are at least *construed* by politicians to have done so; importantly, this tendency, it is said, has been reinforced by a sensationalist, crime-oriented, at times lurid press, while being further exploited by vengeful “law-and-order” politicians, eager to appear “tough on crime” (Beckett, 1999; Newburn, 2007). These increasingly popular punitive sentiments—whether real or perceived—have resulted in, among other things, intensified policing, longer sentences, expanded prison populations, increasingly austere conditions of confinement, and an overall political climate of retribution, in what Loïc Wacquant (2014) describes as the “global firestorm of law and order.”

As a concept within the sociology of punishment, penal populism gained significant scholarly ground throughout the 2000s and 2010s at the intersection of one domain-specific and one generalized social trend as well as a third, broader intellectual tendency:<sup>1</sup>

- (i) the aforementioned Western “punitive turn,” evidenced by more aggressive policing, rising incarceration rates, and more heated public discourse on crime and punishment in the U.S. and many Western European jurisdictions, especially in the 1990s and early 2000s (see e.g. Enns, 2016; Wacquant, 2009b).
- (ii) growing journalistic and academic interest in the generic concept of populism (see e.g. Müller, 2017; Laclau, 2005/2018; Urbinati, 2019), beginning in the 2000s and fueled in the 2010s by such real-world political developments as Donald J. Trump’s election campaign and presidency in the U.S., the 2016 Brexit referendum in the United Kingdom, and a host of kindred political figures and movements around the world, from Jair Bolsonaro’s presidency in Brazil through Mateo Salvini’s Lega Norte in Italy to Viktor Orbán’s Fidesz party in Hungary. On Vergara’s (2019) apt phrase, the term populism had over the course of the 2010s “gone viral.”

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<sup>1</sup> The term “penal populism” now yields more than 6,500 hits on Google Scholar.

- (iii) a *technocratic turn, both in intellectual and political circles*, whose key ideological feature was essentially that of the “post-political” (Mouffe, 2005), fomented by the end of the Cold War and the heightened disrepute into which politics as such had fallen (see e.g. Friedman, 2020; Meyer, 2020), described by Mazzarella (2019: 50) as “the liberal settlement” or “technocratic postpolitics.” In the “end of history” vision of a technocratic, post-political future (Fukuyama, 1992/2020), all that was needed would be scientifically minded experts, bureaucrats, and policymakers with the fortitude to resist the easy temptations of value-drenched politics, in favor of the supposedly rational, reasoned policies advocated by experts and “cooler,” more scientifically inclined minds. Against so many instantiations of a swelling “populist” tide washing over the postindustrialized world (Müller, 2017), with a veritable academic cottage industry centering on the “populist Zeitgeist” (Mudde, 2004) left in its wake, what was needed was technocracy, not politics; reason, not emotion; expertise, not lived experience; objective truth, not subjective evaluation.

The first trend—the “punitive turn”—was a penological research problem in search of an answer: How to account for the punitive turn? The second trend—the growing political and intellectual fortunes of populism (both as political movement and academic concept) and the puzzle this presented (“Why was populism, both as concept and movement, seemingly so popular?”)—appeared to be readily answerable with the third: If there was a punitive turn, it was the result of populist politicians posturing over crime, security, and punitive responses to drive up voting figures and bolster their political legitimacy. The solution, on the other hand, from the progressive penological perspective was simple enough: To establish a suitably expert-driven criminological-legal-penal bulwark against the populist temptation. If the punitive turn was caused by populism, the solution seemed to be technocracy: More experts, fewer politicians, and less popular influence on criminal justice policymaking. Leave the policymaking to the experts, so the conventional wisdom increasingly went, and the punitive turn would be reversed in due course.

In the space of two decades after the legal scholar Anthony Bottoms (1995) first deployed the term “populist punitiveness,” the phrase had morphed into academic doxa, a new scholastic common sense routinely invoked in scholarship on tougher punishment policies. What had at first been “intended to convey the notion of politicians tapping into and using for their own purposes, what they believe to be the public’s generally punitive stance” (Bottoms, 1995: 40), had transmogrified into a far more slippery term, in which the idea that politicians and the public ought to have any say at all in the formation of penal policy seemed increasingly spurious. To those normatively committed to democratic politics—and not, say, an oligarchic form of expert-rule—this conceptual move was troubling (see e.g. Dzur, 2012b; Shamma, 2016b; Shamma, 2020). Far from being a simple empirical diagnosis, penal populism seemed to entail a recipe for criminal justice policymaking in which electorates were increasingly viewed as inherently toxic, over-emotional, essentially punitive, and therefore best relegated to the margins of political life. Invoking the concept of penal populism was freighted with additional ideological baggage, over above a mere description of a state of affairs: It prescribed leaving the politics of crime and punishment to closed-off elites, rather than risk the taint of politicians and the public.

### **CONCEPTUAL TRAJECTORY: THE HISTORY OF “PENAL POPULISM”**

In the mid-1990s, Anthony Bottoms, at the time Director of Cambridge University’s influential Institute of Criminology, coined the phrase “populist punitiveness,” which he defined as the “notion of politicians tapping into, and using for their own purposes, what they believe to be the

public's generally punitive stance" (Bottoms, 1995: 40). The term was deployed as part of a broader explanatory package to account for "modern sentencing change"—meaning, essentially, the turn to longer, harsher sentences: How to make sense of this change that had begun in the 1980s across large parts of the Western world when "penal welfarism," as David Garland (2002) terms the postwar consensus on rehabilitative ideals and moderate sentencing practices, had appeared so secure in the "Golden Age" of social democracy in the decades immediately following the Second World War?

In its nascent form, Bottoms developed what we might call a narrow or weak form of the concept of penal populism, essentially functioning as a pure descriptor of a societal condition in which punitiveness had become increasingly popular—or come to be *regarded, construed or constructed* as more popular by particular politicians, political parties and/or political movements—evidenced by electoral support and opinion polls, and that this very popularity was among the key causes of policy transformation in the direction of heightened punitiveness. As an attempt to describe a state of affairs and how they have been brought about, the weak version of penal populism does little real normative work of its own: It merely tries to point toward a situation in which punitive penal policies have become increasingly popular and, relatedly, that their very popularity accounts for why these policies have become a reality, at once material and symbolic (expressed in both institutional changes and discursive shifts)—perhaps unsurprisingly given that liberal-democratic societies are at least nominally shaped by the "will of the people."

We can find multiple examples of the weak concept of penal populism in the literature. There are vague initial traces of the thin, descriptivist form of the term, lacking in conceptual exploration, in the mid-1990s British criminological literature.<sup>2</sup> In an early example, Newburn (1995) wrote of the "reintroduction of penal populism" under Kenneth Baker, Conservative Home Secretary between 1990 and 1992, "in the form of campaigns against 'bail bandits' and 'joyriding'" (Newburn, 1995: 31). The year after, Newburn and his colleague Rod Morgan warned, in a piece on "The future of policing," against the "major political parties" of the UK "competitively engaging in policing and penal populism" (Morgan and Newburn, 1996: 17). This is the thin-descriptivist version of the concept of penal populism in action, with the term essentially standing as a synonym for law-and-order policies and heightened interest in crime by major political agents.

Later, Daems defines—briefly and in passing—penal populism as a "discourse that is characterized by a call to punish in the name of the victims" (2009: 322). Similarly, at least at first, Fenwick thinks of penal populism as involving a "broad set of criminal justice policy preferences," and, more specifically, "policies that favor a 'tough' stance on crime and crime control issues" (2013: 217).<sup>3</sup> But Fenwick (2013: 229) quickly veers off from this thin descriptive trajectory into a normative prescriptivism, applauding the "relative degree of insulation" of "policy elites" in his chosen case, Japan. Such "structural limitations" are to be welcomed, Fenwick (2013: 229) argues,

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<sup>2</sup> The earliest incidence of the exact phrase "penal populism" is in the journalist and former Member of Parliament Roy Hattersley's (1983) *Press Gang*, a collection of essays critical of the British media, in which Hattersley recounts how one of the country's oldest tabloids, *The Sunday People*, had engaged in a "brief flirtation with penal populism" in an article advocating "'terrifying sentences...for those who commit terrifying crimes'" (Hattersley, 1983: 139). Again, this is a thin, descriptive, polemical phrase lacking in conceptual exploration.

<sup>3</sup> But strangely, when enumerating the policies normally associated with penal populism, the author includes "electronic monitoring," which is in many jurisdictions, certainly in Western Europe, viewed as a moderate, less punitive alternative to incarceration. Perhaps this enumerative anomaly points toward the weakness of the top-down "analytic" view of penal populism; it also suggests that, at least in part, policies are punitive or moderate within a relational space.

foreclosing as it does the “possibilities for populism to influence criminal justice”—one could, of course, plausibly read the word *democracy* in place of “populism” here, without substantial subtraction or addition of meaning. The problem, as Fenwick is quite clear, is as the literature on penal populism repeatedly emphasizes, the undue intrusion of the populist politician, who “speaks for, and on behalf of, the people against the status quo” (Fenwick, 2013: 223). But is not this the unavoidable parliamentary and political role of any party or movement seeking to bring about change over against the social elites that have historically held power in most “advanced” societies?

At some years’ remove from Bottoms’ (1995) original work, the weak conceptualization was gradually expanded into what one might call the strong concept of penal populism. In John Pratt’s (2007) *Penal Populism*, the author thinks of penal populism as the result of “deep social and cultural changes which began in the 1970s” (2007: 3), in which “people are less and less prepared to leave questions, including difficult *penal* questions to their ‘masters’” (Ryan, 2004: 9).<sup>4</sup> To Pratt, penal populism involves nothing less than a “dramatic reconfiguration of the power to punish” (2007: 24), in which those whom Ian Loader (2006) terms the “Platonic guardians” of the British technocratic establishment—i.e. unelected Oxbridge-graduate policymakers moving comfortably in Whitehall circles—are (so it is alleged) increasingly relegated to the margins of political influence.

While Loader sees the “Platonic guardians” as troubling figures,<sup>5</sup> Pratt has fewer qualms about the resuscitation of a technocratic ideal. Loader expressly notes, “The idea that crime should be kept out of public life, safely handled by a coterie of experts, was and remains profoundly anti-democratic” (Loader, 2006: 582). No such hesitation on Pratt’s part: Instead, he welcomes what he terms “in-built defenses against penal populism” (2007: 146), such as “members of the criminal justice establishment act[ing] in unison” to “present a formidable and sometimes insurmountable barrier to penal populism” (2007: 147). He salutes as salubrious Arie Freiberg’s observation that “judges are often likely to subvert the intent of what they consider to be excessively punitive legislation, particularly in relation to the use of indeterminate prison sentences” (Pratt, 2007: 147). He cheers on the ““deep structures”” of legal and criminal justice systems for offering the possibility of resisting the noxious influence of democratic legislation—a kind of “*kratos en kratel*” (Gr., lit. “power in the power”), “*état dans l’état*,” or “state in the state.” To Pratt, the deep structures of the legal/penal system are a healthy bulwark against undue “democratization”:

As democratization has provided the opportunity for the emotive experiences and opinions of ordinary people rather than detached objective expert analysis to become the framework through which crime is understood, victimization has come to be regarded as a particularly authentic expression of this mode of knowledge. (Pratt, 2007: 85)

It is clear that one of the bugbears in Pratt’s narrative really is the problem of “democratization.” Pratt complains that sentencing commissions have “become increasingly democratized,” now counting among their ranks “citizens’ representatives and victim advocates as well as judges, lawyers and elected officials” (Pratt, 2007: 47). The media, too, is unduly given to popular influence, such that media “decisions about reporting, commenting, even deciding what actually

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<sup>4</sup> Pratt (2007: 4) quotes this sentence fragment from Ryan (2004), but leaves out the ironic or distancing quotation marks around the word “masters,” giving the phrase an unintentionally ominous ring—who are these “masters” dreamed of by the critics of penal populism?

<sup>5</sup> Loader is careful to enclose “Platonic guardians” in distancing quotation marks in the title of his *British Journal of Criminology* paper, which, again, Pratt forgets to replicate in his 2007 book’s bibliographical entry.

constitutes the news have become much more democratized and diversified,” with “a much greater credence given to the accounts of ordinary individuals rather than to elite opinion” (Pratt, 2007: 6). Pratt even complains that “access to the mass media has been *democratized*,” which “ensures that establishment elites no longer have exclusive control of knowledge and information, whether this is about crime or anything else” (Pratt, 2007: 80-81). The rise of talk radio, Pratt thinks, is an example of the kind of cheapening or devaluation of expert opinion taking place in late modernity. Common opinion is placed on a plane of epistemic equivalence with the voices of experts; the rise of this type of program is “indicative of the way in which ordinary people want to be involved in opinion forming themselves, rather than allowing elites to do this for them” (Pratt, 2007: 82). In the balance between emotion and reason, “democratization” entails that the “emotive experiences and opinions of ordinary people rather than detached objective expert analysis” have “become the framework through which crime is understood” (Pratt, 2007: 85).

Throughout Pratt’s *Penal Populism*, then—worth quoting at length for the thinly veiled attacks it contains on “democratization” and consequent normative frontloading of the concept of penal populism and strong decade-long influence on the discursive penological field (with more than 1,200 citations on Google Scholar)—one finds this *undue devaluation* of the people and *excessive valorization of expert elites*. Why is this a problem? Because “the people” are not, *contra* the thrust of Pratt’s argumentation, inherently, necessarily, or universally irrational, emotive, and punitive; expert elites are not essentially or automatically more rational, clever or “detached” than the general public. The repeated casting of doubt on “democratization” is more than a significant blind spot in an otherwise cogently written foundational text: It is the organizing bias that brings coherence to its conceptual framework. Within this framing, reducing popular influence on political decision-making appears as the best way to ensure that “enlightened” criminal justice policies are realized.

It does not take a great deal of philosophical training to see that this in effect amounts to something resembling Plato’s “philosopher-kings.” In the *Republic*, Socrates famously says, “Until philosophers rule as kings...cities will have no rest from evils” (*Republic* 5.473; Cooper and Hutchinson, 1997). The epigraph Pratt selects for his book—a quotation by the novelist Ludwig Lewisohn—is telling: “Democracy which began by liberating men politically has developed a dangerous tendency to enslave him through the tyranny of majorities and the deadly power of their opinion.” If punishment has grown harsher, Pratt (2007) seems to suggest, democracy itself is to blame.

In contradistinction to this approach, an early empirical study of public opinion and punishment employing the term was careful to establish that essentialism ought to occupy no part in the theorization of the politics of punishment:

The policy making process is complex and cannot be reduced to categories of “good” and “bad” programs or policies; nor can policymakers and politicians be assigned to categories such as “populists” and “rationalists.” All policies—and the individuals responsible for them—are subject to pressures relating to the reality of electoral politics. (Roberts et al., 2003: 3)

The authors go on to note the limitations of the concept of populism: It is freighted with normative baggage, being a “value-laden term”; the aversion toward the *populus* inherent in the concept of populism is implicit: To their credit, the authors note that “[i]t would be naïve to complain about politicians being responsive to public opinion.” After all, the “whole point” of democracy is that there be a “responsiveness” to the people’s preferences; nominally democratic societies must have mechanisms in place to “ensure that politicians do not stray too far from the wishes of their

electorate” (Roberts et al., 2003: 4). That such truisms even have to be stated is indicative of how low the idea of real democracy had sunk in the early populism literature at the outset of the 2000s. And these prefatory qualifications are later undermined by this same team of distinguished authors when they recommend, as part of a ten-point policy plan, “The Honest Politician’s Guide to Responding to Penal Populism,” the *reduction* of popular influence on the politics of punishment by “[c]reat[ing] a policy ‘buffer’ between politicians and the criminal justice system” (Roberts et al., 2003: 167). The authors claim, without considering counterexamples, that “the closer that politicians come to directly determining sentencing policies, the more likely it is that these policies will reflect the forces of blind populism” (Roberts et al., 2003: 180).

One brief counterexample: Scandinavian countries like Sweden and Norway, widely lauded for their “penal exceptionalism” (by the very same Pratt, e.g. Pratt, 2008a; Pratt 2008b), operate with a parliamentary system of legislation regulating the penal code, in which elected parliamentary representatives *directly determine* sentencing guidelines—in Norway, in the form of the 2005 *Straffeloven* (Norwegian Penal Code), in Sweden in part III of the 1962 *Brottsbalk* (Swedish Criminal Code). How to square this decidedly “un-buffered” nexus between politicians and sentencing with Roberts and colleagues’ claim that policy proposal? At the very least, the Scandinavian cases suggest that it is highly possible to maintain the democratic interlinkages between popular control (via elected representatives) and sentencing policies and still maintain, at least historically, a form of exceptional penal politics. Tellingly, in his preface to their volume, the Cambridge criminologist Nigel Walker welcomes the authors’ idea of “the creation of a ‘policy buffer,’” an “institution without politicians” capable of “imposing a brake...on governments”; he laments that unelected “civil servants are not as authoritative as they used to be” (Roberts et al., 2003: v).

Are not these utterances finally the ultimate expressions of the essentially *oligarchic-aristocratic* position at the core of the modern worry about democratic politics—from the playwright Ibsen’s *An Enemy of the People* and the philosopher John Stuart Mill’s twin concerns about the “tyranny of the majority,” to Dwight Eisenhower’s quip that “We are a republic, not a democracy” (Eisenhower, 1959: 142)? By this Eisenhower, and many U.S. politicians after him, particularly of Republican persuasion, have meant that unfettered democracy is a dangerous idea, bringing too much of an otherwise good thing (i.e. popular will) into contact with political power. The core concern of (lowercase-“r”) republicanism is preventing the implementation of unmediated democracy; in most forms of republicanism, the will of the people must always be funneled through the appropriate channels and modulated into a more suitable form (Sellars 2015), couched in the strictures of the *Rechtsstaat* (“legal state”), the “checks and balances” flowing from a well-written constitution, and (often) the alleged enlightenment of selective elites, who purport to speak in the name of the people and their true interests.

The only way to protect a society from the fear of untrammelled democracy is to *remove the people from the circuitry of political power*, by various “buffering” mechanisms, such as the rule of unelected judges, or “braking” mechanisms, usually composed of unelected bureaucrats and “deep” technocratic structures that can dig in their heels and prevent the implementation of vexing policies. Having first decided that the problem of governance is in part at least the excessive influence of what in the 1960s was simply, and elegantly, called “people power,” sets one unavoidably on the short road to antidemocratic politics—the world of “checks and balances,” of “technocratic insulation,” of buffering and braking.

Troublingly, then, the strong concept of penal populism seems weighted down with additional normative and political-philosophical meaning, which some of its users have overtaken

from Pratt's foundational conceptual statement. Here the problem, to repeat, is diagnosed as that of a punitive turn, brought into being by politicians insufficiently restrained by institutional checks on their actions, who are influenced by an essentially punitive general public; the best chances of reversing this trend would seem to be the reassertion of checks and buffers, of technocratic deep structures, and the removal of politicians and the people from the circuits of criminal justice policymaking.

But for those who care about constructing truly democratic polities, these conceptual moves must be troubling. If one disagrees with the people, ought one not instead try to change the people's mind, rather "buffer" against them and "brake" their effects on the public realm? Democracy, again, is *demos kratein*, the rule of the people. What the critics of penal populism have in mind looks more like oligarchy: *arkhein* (to rule) by the *oligoi* (few); or aristocracy, rule by the "best" (*aristos*)—understood as the experts or knowledgeable few.<sup>6</sup>

Following in the tradition of radical democratic theory (see e.g. Little and Lloyd, 2008), one could instead say that what is "best" for the polity can only be arrived at through the hard agonistic contestation of its entire social order, drawing in the voices and views of *all* its members. The desire to create "adequate buffers between penal practice and populist policy" (Roberts et al., 2003: 185) is a product of the technocratic spirit, which tends to sideline this basic democratic impulse.

### **PENAL ELITISM: BIRTH OF A DOCTRINE**

Claiming that "commonsensical populist accounts and explanations" come "at the expense of the more elaborate, involved and thereby indigestible opinions of elitist experts," as Pratt (2007: 5) does, and lamenting the ways in which expertise is (allegedly) downgraded in favor of public opinion, is troubling on several points: First, it fails to recognize the ways in which public sentiments can at times serve as critical indicators of unmet policy needs in the population, and therefore warrants being paid close attention to, especially by the "mandarin" class of technocratic experts, who are often at risk of living lives disconnected from the hard material realities of "the masses." Public opinion is at its best a diagnostic instrument of both latent and manifest social pathologies. Second, expert opinion contains (tacit and explicit) ideology above and beyond mere "factual" analysis, thereby departing from a simplistic fact/value dichotomy in which the public are seen as mainly emotive and experts primarily factual, such that experts and unelected officials are often "doing" politics, albeit in disguised, unrecognized form. Third, and perhaps most importantly, if one is serious about democracy, concocting social-political mechanisms for "buffering" or "insulating" against popular influence represents an *antidemocratic aberration*. In another text, Pratt complains that "'ordinary people' are no longer left out of policy making, but instead they, or more likely those who claim to speak on their behalf, have become important definers of its quantity and intensity" (2008c: 265).

But how can this be grounds for complaint? After all, nominally liberal-democratic societies are premised on the very idea that "ordinary people" should precisely *not* be "left out" of the political, or policymaking, process. To wish things to be otherwise is to lapse into oligarchy, or rule by the few, and aristocratic/meritocratic ideology, invoking a rule of the best or the (allegedly) most apt.

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<sup>6</sup> Incidentally, the "best" bear more than a passing resemblance to the same exponents of this critique: On principles of hermeneutic suspicion alone, any social theory that elevates and valorizes the producers of this theory (social scientists, university academics, related experts) ought to be met with at least initial suspicion.

### *Conceptual analogy: Moral panics*

In this sense, it is no exaggeration to say that the strong concept of penal populism has a certain family resemblance with another key criminological/sociology of deviance trope: the concept of *moral panics*. As is increasingly recognized (see e.g. Falkof 2020; Horsley 2017), Stanley Cohen's (2002) once essential concept—denoting the ways in which cultural or political issues become so charged as to become the object of an (alleged) “*panic*” or hysterical and exaggerated sociopolitical, mediatized response—comes with an essentially unresolvable problem: Who gets to define what constitutes an illegitimate “panic” (as opposed to a reasonable, high-stakes political issue that *warrants* a powerful response and all-hands societal intervention), and by which criteria? To speak with Bourdieu, the *symbolic power* to determine that a social phenomenon constitutes a moral panic must itself be a key stake in social-political struggles (see e.g. Bourdieu, 1989; Bourdieu, 2014: 162-165). To take an obvious example: Was the global response to the SARS-CoV-2 virus in 2019-2021 a form of hystericized “panic” (as critics of lockdowns and vaccine skeptics charged), or did the lethal virus in fact require a strong statist response, with mandated school shutdowns and heightened social distancing as appropriate, measured reactions to a novel, highly contagious coronavirus strain? This was and is no doubt a tangled issue, requiring the mobilization of all modes of knowledge and sectors of society in discussion and debate, but one thing is certain: Social scientists are ill-placed to make a priori determinations about the meta-status of a phenomenon and attendant legitimate political responses, which is what the concept of moral panic essentially makes a judgment upon. To claim that a social reaction is a case of moral panic is to attempt to devalue and perhaps even block it.

How is the concept of penal populism like the concept of moral panic? Like the latter, the former involves social scientists labeling the process by which a policy outcome is produced as inherently illegitimate; but more importantly, both are premised on a social epistemology in which the expert class is valorized at the expense of putatively hyper-emotive politicians, media actors, and “the people” as such, which are essentialized and denigrated. Against panics, a suitably *measured* response, grounded in sociological knowledge; against populism, expert opinion, grounded in juridical/sociological expertise. Briefly stated, in both cases, the technocratic *Stand* stands ready to promote “reason,” “rationality”—in short, a world where cooler heads might prevail. But what if these cooler heads are more hot-headed than they themselves like to think? What if allegedly value-free reason turns out, upon closer inspection, to contain ideological figments nonreducible to a pure empiricism?

### *Unpacking penal elitism*

When scholars employ the strong concept of penal populism, they are—perhaps unknowingly—advocating a form of *penal elitism* (Shammas 2020). Briefly defined, penal elitism can be understood as the belief that elites ought to be in control of the penal policymaking process. These elites are typically understood as scientific, judicial, and bureaucratic groups, including top public officials and civil servants, professors, legal experts, and judges. Naturally, these elites are largely *appointed, not elected*, having been selected into their positions through complex processes of education, training, and recruitment. Moreover, as members of semi-enclosed *fields*, in Bourdieu's sense of the term (see e.g. Hilgers and Mangez, 2014; Shammas and Sandberg, 2016), they increasingly come to take on the forms of perception and modes of evaluation suited to membership in their respective fields: Their perception of reality is not composed of socially average percepts, but is skewed and transformed by societal trajectories that have ultimately landed them in semi-enclosed domains such as university departments, higher-level courts, and



governmental ministries, and by passage through and occupancy within these fields. This is not to say that their percepts are inherently invalid, of course—far from it—but it is to suggest that elite views are, perhaps unsurprisingly, far from representative. This very lack of representativeness, moreover, is problematic to the degree that one cares whether the people are permitted to shape societal outcomes; democrats are those who care whether the *demos* (people) are in a position to *kratein* (rule).

In an early statement, Johnson (2000) argues that the penal elitist temptation as societal response to the retributive policies—encapsulated in Whitman’s (2003) shorthand notion of “harsh justice”—is wrongheaded: While the users of the (strong) concept of penal populism may have commendable goals—that of reducing the incidence of “harsh justice”—the normatively appropriate way of going about this is to widen the scope of democracy, not narrow it. In short, penal elitism ought to be replaced by *more*, not less democracy:

The problem with the ‘populist model’ of penal policy making is not that it goes too far in the direction of democracy but that it does not go far enough. ... Instead of seeking to keep popular influence at bay, as the elitist model attempts to do, we could try to dampen down punitive and illiberal passions. One of the best ways of doing might be a much stronger democratization of criminal justice ... (Johnson, 2000: 162)

Green (2008) recounts how, in the context of Britain, a series of “insulating” layers of elite governance had gradually fallen apart by the early 2000s, in what he terms, following Ryan (2003), “the decline in the influence of ‘metropolitan elite’ expertise and the rise in influence of public opinion” (Green, 2008: 201). But unlike many of the advocates and users of the concept of penal populism, Green expressly does *not* argue in favor of “re-insulation” as a response to increasingly punitive policies—that is, as a method for rolling law-and-order back in favor of penal welfarism, that “ruling framework for penal policy” which held sway in the Western world “for much of the twentieth century” (Gottschalk, 2006: 35). In fact, “to advocate a return to the days of insulated cognoscenti influence in English penal affairs,” Green (2008: 275) writes, “is futile and misguided.” Instead, “de-insulation” ought to be strived for.

To summarize, one might say that there are two broad options available to societies in choosing to respond to heightened calls for punitive policies: On the one hand, there is the possibility of an *insulating strategy*, which involves a de-democratizing move, broadly penal-elitist in nature, seeking to reduce the influence of the public and ensure that penal-carceral power remains in the hands of established technocratic, managerial, judicial, and scientific elites. Besides the normatively problematic reduction in the scope of democracy that this entails, there is, pragmatically speaking, no substantive guarantee that these buffered or insulated elites will remain reliable partners in the broader project of ensuring low levels of punitiveness. Historically, elite commitments to rehabilitation and “moderate” justice have been capricious and contingent. Wacquant (2009a) shows how a whole network of “experts” was involved in the formulation and implementation of law-and-order policies in the U.S. beginning in the 1980s, predominantly in the “New Right” think-tank ecosystem including organizations such as the Manhattan Institute and Heritage Foundation. In later work, Wacquant (2022) has shown how social scientists were deeply implicated in the formation of the racialized category of “the underclass,” which was instrumental to the mobilization of a politics of welfare retrenchment and, by extension, a reactive police-and-prisons policy response. Experts and scientists are not necessarily epistemic guarantors of a humane politics or eternal guardians of a politics of decency. Instead, as Bourdieu reminds us, there is a scientific field, only partly autonomous, and always liable to be overrun by the state (see e.g. Bourdieu, 2014); science is a field of “forces, struggles, and relationships” determined “by the

relations of power among the protagonists” (Bourdieu, 1991), such that the positions, values, and preferences of members of the scientific field cannot be determined a priori. Professors are not exempt from the strictures of ideology.

Moreover, expertise is a broader category than membership of some subset of university departments. Social and political struggles are constantly being waged over *which expertise* is to count as expertise: Should think-tankers be permitted influence over policy? Or criminologists, sociologists, or other social scientists? In the case of the latter, which ones? There are criminologists of a managerial persuasion (so-called “administrative criminology”) who tend to believe in rational choice theory, psychologizing theories of “criminogenic needs,” or even biological theories of criminal formation, who wish to optimize the smooth functioning of the penal system; but there are also “radical” or “critical” criminologists, concerned more with deviance, labelling, and how processes of structuration give rise to criminal behavior, who take a decidedly state-centered critical look at power and legal/penal institutions. If one is to place one’s trust in experts, one must at the very least ask: *Which* experts? And on what grounds?

In November 2023, *The Economist* described how bloggers have increasingly come to serve as a source of policy guidance for the British government. The policy known as “full expensing” would allow companies to write off capital investments as tax deductibles, and it would in the case of Britain come at an annual cost of some £11bn (\$14bn), according to the magazine. But whence did this policy arise? Full expensing “first wormed its way into British politics in 2017 via blog posts from Sam Dumitriu and Sam Bowman,” *The Economist* notes, “both then of the Adam Smith Institute, a small think-tank known for its staunch neoliberalism and deranged internet memes about its Scottish namesake” (The Economist, 2023). The timely lesson on “How to change the policy of the British government,” then, was simple: “First, write a blog post.”

More accurately, and sociologically, one might say that to allow “experts” to decide on policy means first and foremost to *select which experts to listen to*, up to and including the power to nominate an *individual to the role of “expert” in the first place*. Naturally, this process of nomination-and-selection is an ineluctably political process, nonreducible to epistemic purity or objective certainties. Under the right political circumstances, even bloggers can become elevated to the rank of expert—at least if the blogger is of a suitably libertarian and/or neoliberal economic persuasion. The power of “official nomination,” as Bourdieu reminds us, is one of the key works of symbolic power in advanced societies. The key limit inherent to the notion of technocracy, then, is that the “epistocracy” (see Holst 2012) or rule by knowledge, which it implies, leaves unaddressed the problem of nomination of a *particular subtype or school of knowledge* to rank of *official knowledge*. The governing *epistēmē* in epistocracies is, as almost Foucault’s entire body of work draws attention to, a properly historical process of power games, rivalries, and contestation: “Truth is a thing of this world...Each society has its regime of truth, its “general politics” of truth: that is, the types of discourse which it accepts and makes function as true.”

Transferring the power to make political decisions into the judicial system—a form of buffering or insulation par excellence—is sometimes called the *judicialization of politics*, the “reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies” (Hirschl, 2013). Here too, however, there are no guarantees of substantive outcomes. To take an example adjacent to the concerns of penal “insulationists”: The U.S. Supreme Court’s nine justices may at one historical moment be an ally to progressive feminists, affirming the right to abortion (as with *Roe v. Wade* in 1973), but in another epoch prove staunch supporters of religious conservatives, striking down the constitutionally protected right to abortion (as with the June 2022 decision to overturn the landmark 1973 ruling, *Dobbs v. Jackson*

*Women's Health Organization*). Much hangs on the composition of the court, which is a politically contingent state of affairs. Throwing in one's lot with relatively buffered elites is no guarantee of desired policy outcomes in the future, in part because elites are already stacked, selected, picked, and pruned into a particular direction. This is what leads Bourdieu (2014: 24-28) to develop a sociology of *state commissions*, those semi-independent bodies tasked with examining some specific set of policy-relevant questions and developing a considered answer. But commissions are strange political-technocratic creatures, dialectically entangled hybrids. These "commissions of wise men" (as Bourdieu dubs them ironically) are really "stagings," that is, scenes where the state allows an essentially predetermined outcome to "play out" under the pretense of formal independence (Bourdieu, 2014: 24). But as Bourdieu bluntly states, "It is possible to determine what will come out of a commission on the basis of its composition (2014: 18). Nominating legitimate expertise means stacking the answers: Picking the right experts means, at least to a certain degree, ensuring that a commission arrives at the "right" answers.

One can think about this from another angle. Between the 1970s and 1990s, the notion of central bank independence grew in popularity. Economists increasingly came to hold the view that central banks should become more autonomous in decisions over monetary policy, overtaking the power to set policy from elected politicians, on the charge that politicians were fundamentally unreliable in these matters: Due to an excessively short-term perspective, politicians were naturally predisposed, so it was believed, to set monetary policies according to (short) electoral cycles and were beholden to what Fischer (1995: 201) terms "inflationary bias." Since politicians measure out their careers in electoral cycles, there is a constant temptation, economists increasingly believed, to cut interest rates, boosting economic activity and, consequently, short-term economic welfare, but in the process risking rising inflation, potentially undermining the long-term welfare of the population. The solution to this conundrum, some held, was to transfer power out of the hands of politicians into the hands of central bankers. Thus was born the doctrine of central banking independence.

Critics of this doctrine—a case of increasingly *doxic insulation* of fundamental political issues—can rightly charge that such "independence" places too much power in the hands of unelected technocrats and is premised on an untenable image of politicians as irresponsible. But, on the other hand, the *formal autonomy* of the central bank's board of governors (which is the problematic power of an unelected elite to determine the welfare of citizens) is often undermined by the *power of composition* that still typically remains with governments—that is, the power to determine who will serve in leadership roles in the central bank—as well as the *agenda-setting power* of governments to determine institutional goals (say, a particular inflation target, which central bankers must aim to keep the economy below). Economists distinguish between *goal independence* and *instrument independence*, that is, the independence of central bankers to determine their own ends vs. the (more limited) independence to select the means.

The essential sociological point is that the *image of autonomy* that hangs over expert commissions, (semi-)autonomous bodies, and other policy entities of delegation and insulation, can easily be exaggerated. The formal autonomy of an entity can be undermined by the structuring heteronomous actions of the state in determining the parameters, goals, or composition of so-called independent bodies. Thus, in a study of California parole boards, it is surely significant that a significant proportion of the commissioners appointed by the governor to the state's Board of Parole Hearings are drawn from the worlds of law enforcement and corrections (Shammas, 2019: 154-155). Their professional categories of perception ensure at least in part, despite their formal autonomy from the state's executive and legislative branches (though appointed and confirmed by

the governor and senate), a certain convergence of official viewpoints on offenders. A commissioner who is a former warden of a maximum-security prison will likely tend to evaluate an offender differently from a (critical) criminologist or former public defender.

In this sense, one could say that insulation always has an element of artifice about it: It is difficult if not impossible to conceive of a formally autonomous decision-making body—buffered and insulated from politics, predicated on its expert competence—that is fundamentally autopoietic (self-made): As Bourdieu understood so well, because commissions must always be *committed*, the ones doing the committing retain a certain power over the entity so created. One example: The United States Sentencing Commission, which “establishes sentencing policies and practices for the federal courts” and is a formally independent entity of the judiciary branch, is made and remade by successive presidents, suggesting the unavoidable politicization of policymaking, despite a former role described by Barkow (2020) as “politically insulated, expert agency that would serve, essentially, as an independent policy maker.”

### *Deepening democracy vs. the “buffered ideal”*

Alternatively, a society can opt to move down the *path of deinsulation* in criminal justice policymaking, deepening and strengthening democracy in this area rather than diluting it (see e.g. Dzur 2012a). Participatory processes of policymaking in which citizens are brought into the legislative process at the consultative stage are one example of this in practice, even as such processes of consultation remain vulnerable to “expertization” and the preponderance of narrower interests and specialist viewpoints (Christensen and Hesstvedt, 2020). More foundationally, establishing institutional structures through which “ordinary people” are permitted to think aloud about the appropriate scale, scope, and modalities of punishment, through grassroots-level deliberative processes such as citizens’ assemblies, could be another option—even as citizens’ assemblies remain susceptible to the inhibiting and ideological effects of typically being consensus-oriented (Machin 2023). In the context of criminal justice policymaking, Bell (2022) also points out the potentially problematic unrepresentativeness of such assemblies (given the significant requirements on time and energy of participants) and the lack of guarantees that their recommendations are carried into government policies (given the lack of incentives for governments to abdicate power to such entities). Finally, it is not at all certain that deinsulation would in itself be enough to tamp down the allure of punitiveness; but then, this is the risk of democracy.

The insulating move, or “buffered ideal” as we might also think of it, is normatively problematic. But is it also empirically and substantively erroneous? In an influential book on the relationship between democracy and penal policymaking, Zimring, Hawkins, and Kamin (2001) develop a broadly penal-elitist argument by invoking a series of essentialisms, in which experts are understood as essential brakes on retributivism and the people are viewed as inherently retributive. In one place, they write:

It may be that the social authority accorded to criminal justice experts provided insulation between populist sentiments (always punitive) and criminal justice policies at the legislative, administrative, and judicial levels. This insulation prevented the direct domination of policy by antioffender sentiments that *are consistently held by most citizens at most times.*” (Zimring et al., 2001: 15; emphasis added)

Their advocacy of a (*de-democratizing*) *strategy of insulation*, rather than a more democratizing *policy of deinsulation*, is premised on the inscription of an essential quality onto the people: In Zimring and colleagues’ own words, “most citizens at most times” are held to be under the sway

of “antioffender sentiments.” But does the empirical record offer support for such categorical verities? The Scandinavian countries, as noted earlier, offer an ongoing sociological case study of the relative *absence* of harsh justice, at least when carceral power is turned inward at the nation-state’s own citizenry (Todd-Kvam, 2019), with relatively humane, rehabilitation-oriented carceral policies still enjoying the broad support of electorates, despite contradictions and certain moves toward law and order (see e.g. Barker, 2013; Shamma, 2016a). Similarly, the United States and Britain were both bearers of penal welfarism in the postwar decades, and it would likely be empirically misguided to view penal welfarism in these countries to be solely the result of elite machinations; these policies could not have survived without (significant) electoral support. In Australia, Roberts and Indermaur (2007) suggest that punitive sentiments were actually declining by the early 2000s despite commentators’ assumption that “steep increases in the use of imprisonment” in that country were necessarily the “result of growing public dissatisfaction and demand for more punishment.”

In brief, the popular attitude toward crime and punishment, offenders and sentencing is a *historically constituted property*, varying over time and place; it is precisely *not* an inherent, “natural” property, universally given once and for all. The attitudes of the public admit of far greater richness and complexity than a simple dichotomous binary—“retributive” or “humane”—and it is far from certain that this binary switch is always already “thrown,” locked eternally into one position. The people are not forever and everywhere destined to hold punitive values.

Similarly, Zimring et al. (2001) commit to an essentialism of expertise. In an analysis of California’s “Three Strikes and You’re Out” bill, signed into law in 1994 after a successful voter initiative, the authors complain that California’s “legislative and initiative processes through which the proposal traveled were also almost entirely devoid of expert scrutiny from government specialists or from scholars” (Zimring et al. 2001: 3). Instead, “criminal justice professionals and academic experts...were not consulted by anybody in government” (Zimring et al., 2001: 11). They note, too, the “decline of expert influence on policy formation and evaluation,” rendering the policymaking process “vulnerable to populist domination” (Zimring et al., 2001: 13). But again, one should ask: Are experts essentially committed to the sorts of braking actions on punitive criminal justice policies that the authors would like to see in place?

The historical record suggests otherwise. To take but one example: The Norwegian postwar legal purges of Nazi collaborators, which took place in the immediate postwar era, was orchestrated by government legal experts residing in exile in London and Stockholm (see e.g. Shamma 2016b; Vaale and Borge 2021); an ex post facto law was instated making collaboration with the Nazi regime—the so-called “quislings,” named after Vidkun Quisling, the prominent Norwegian leader of *Nasjonal samling* (“National Gathering”), a pro-Nazi party—not only illegal but punishable by death. After the Second World War, 72 death sentences were passed by Norwegian courts, with 37 persons ultimately being executed, including 25 Norwegian citizens, several of them by firing squad, including one case as late as 1948. Even allowing for the exceptional nature of a wartime and immediate postwar situation, and for the fact that these death sentences—which break with the idea of a Scandinavian penal exceptionalism retrojected into recent modern history—were in part no doubt driven by popular demand, the fact remains that a fundamental retooling of a liberal-democratic *Rechtsstaat* to serve punitive demands was made possible precisely by a corps of legal experts, increasingly scrutinized by a new generation of legal scholars (Graver 2015). The lawyers and bureaucrats who made possible the Norwegian postwar legal purges were not brakes on retributivism, but their facilitators, even accelerants.

## THE FOUR ESSENTIALISMS OF PENAL ELITISM

In summary, the doctrine of penal elitism—always implicit in the application of the strong concept of penal populism—is premised on a series of ahistorical, even antisociological, essentialisms:

i) an *essentialism of citizens*, construed as necessarily punitive bearers of “antioffender sentiments,” in Zimring et al.’s (2001: 15) words. But this must remain open to empirical investigation, taking note of the historical and social variations in punitive sentiment across space and time (see e.g. Ramirez 2013). The *populus* is not inherently and deterministically committed to universally punitive policies. Enns (2014) provides robust empirical support for the causative role played by punitive public opinion in expanding incarceration in the United States, an analysis tempered by a relatively modest effect size (if punitiveness had not increased after the mid-1970s, the use of imprisonment would only have been about 20 percent less), the limitation of analysis to a single society (limiting its universal applicability), and the fact that public opinion was markedly more tolerant prior to the growth in punitive sentiment beginning in the 1960s. There remains, then, always the possibility, the haunting specter, of “another people”—which, moreover, not merely a utopian figment, but a “real reality” in the recent past and in certain societies under particular conditions.

ii) an *essentialism of experts*, understood as inherent brakes on punitive transformation and natural allies to the penal-welfarist cause, and whose relative downgrading in the policymaking process therefore spells trouble. As Garland (2000) observed at the outset of the twenty-first century, criminal justice policymaking had now become “*populist* and *politicized*” (350; emphasis in original),<sup>7</sup> because of the relative devaluation of experts:

Policy measures are constructed in ways that privilege public opinion over the views of criminal justice experts and professional elites. The professional groups who until recently formed the policy-making community are now increasingly disenfranchised. Policy is formulated by political action committees and political advisers—not by researchers and civil servants.

By 2012, Garland had, if not fully changed his mind about the inherently rehabilitationist nature of knowledge elites, then at least tempered the argument, even if the essential point remained. Recognizing that “[a]lthough there is no essential link between an autonomous penal elite and a ‘positive’ penalty,” Garland nevertheless claimed their “occupational interests...tend to press against harshly retributive punishment” (Garland, 2013: 499). Garland continued to advance a Golden Age-ism of the penal modernist era, a period in which power was said to reside with “penal experts and administrators” able to “shape custodial regimes, classify and allocate inmates, design treatment programs, and grant parole and early release” (Garland, 2013: 26). While this may historically have been accurate—though it bears noting that in this same period, the construction of dangerous deviants, maltreatment of psychiatrically ill offenders, and racial and classwise disproportionality of penalty remained potent factors across much of the Western world—the fallacy lies in constructing an *essential* (tranhistorical) link between expertise and rehabilitation.

But as the existence of a dark triad of biological, “administrative,” and rational-choice criminology suggest, academics have been more than willing to supply law-and-order politicians

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<sup>7</sup> One might very well ask how policy could be anything but politicized. But to those who are committed to technocratic buffering and de-democratizing insulationism, policy both can and should be “depoliticized,” no matter how peculiar this must strike political theorists who view “policy” as inherently political and who therefore hold the view that a “politics without politics” must be conceptually self-contradictory.

with the legitimizing veneer of science. Wilson and Herrnstein's (1985) "crossover" publishing hit (combining both academic and "trade" appeal), *Crime and Human Nature*, served as a scholastic authorization of the Reagan/Bush era's law-and-order ethos and presaged Clinton's "get-tough" politics of crime control in the 1990s that combined, in two contemporary sociological observers' phrase, "the iron fist and the velvet tongue" (Kramer and Michalowski, 1995). Every major penal policy requires its ideologues. Most if not all policies today require at least the gloss and sheen of scientific evidence and reasoned discourse. Aggressive crime control policies in New York City demanded a theory of "broken windows" (Wilson and Kelling, 1982), an appeal to expertise if there ever was one.

Instead of establishing a simplistic link between expertise and moderate policies of policing and punishment, the properly sociological question is to ask what sorts of ideologies and bodies of "truth" are mobilized, nominated, and legitimized with particular appeals to "the experts"—and which theories are, by extension, excluded.

iii) an *essentialism of politicians*, viewed as a nefarious influence on penal welfarism and constantly threatening to pollute otherwise "pure" penal policies with cheap electioneering and appeals to the "lowest common denominator" amongst the *populus* (e.g. the "basket of deplorables," on Hilary Clinton's memorable, but supercilious, phrase). Thus, Roberts and colleagues claim that "the closer that politicians come to directly determining sentencing policies, the more likely it is that these policies will reflect the forces of blind populism" (2003: 180). Pratt (2007) constantly portrays "populist politicians," though more often simply unqualified "politicians," as key antagonists in the punitive turn—without a sustained attempt to disentangle *which* politicians from which parties and ideological filiations might primarily be responsible. Clearly, however, such reductionist analysis is problematic. California governor Gavin Newsom's stunning 2023 plan to model San Quentin State Prison, a centerpiece of California's far-from-lenient prison system, on Norway's more rehabilitation-oriented policies (Chabria, 2023), mobilized a network of state-funded experts to make the 150-page case for this transformative move (Williams et al., 2024)—suggesting that both an essentialism of experts and politicians is fallacious. In Norway, when the right-wing populist politician Per Sandberg of the Progress Party—head of the country's parliamentary justice committee at the time—was interrogated by a tabloid newspaper, *VG*, about the reasonableness of allowing inmates in a minimum-security prison, Bastøy, to attend a "barbeque party," his resolute reply was: "I think it's very positive." Sandberg lauded the "open" prison for "creating optimism and giving criminals the chance to get used to a normal life" (Murtnes, 2012). Against a facile essentialism of "politicians"—without qualification or further qualia—one needs instead a close analysis of the political and penal fields to understand the evolving, *complex, tangled, and at times unpredictable dynamics* of the politics of punishment (see e.g. Goodman et al. 2017).

iv) an *essentialism of the media*. Pratt (2007) ascribes a significant role to "popular media," though he is careful to divorce it from "quality media," in bringing about toughened social responses to crime. In an Australian case study drawing upon the (strong) concept of penal populism, Antolak-Saper (2023) argues that the media has produced harsher sentencing policies there, noting more broadly "the print media's widely observed tendency to promote tough on crime policies" (2023: 18).

While tabloid newspapers, certain forms of network television, and in more recent times, social media channels have undoubtedly played an influential role in generating support for a

politics of law and order across many societies, it would be a mistake to over-universalize the mechanistic link between the media and punitive policies. The media can conceivably play a more progressive role. A broadsheet (“quality”) newspaper of record like the *New York Times* has written extensively on parole, drug legalization, the harms of imprisonment, and related matters in recent years. Social media helped spread serious criticism of policing in the United States in the wake of George Floyd and Black Lives Matter. Without falling into the rose-tinted Habermasian idealization of “unrestricted” discussion in “the public sphere” (for a critique, see e.g. Bourdieu, 2000: 65-67), blanket accusations against “the media” for an (assumedly) universally negative role in the politics of punishment are problematic. In the late 1950s and early 1960s, the Norwegian writer and social critic Jens Bjørneboe published a series of deeply critical, widely read essays on the need for prison reform in the country in the newspaper *Dagbladet* (Eide, 2008). The articles contributed in their small way to the turn toward what has later been called “penal exceptionalism.” While it would be simplistic to suggest that a handful of op-eds alone can transform an entire penal regime, Bjørneboe’s graphic portrayals of penal methods such as “the rack” (*lemmen*)—still in use in Oslo Central Prison in the late 1950s—helped remold public and political elite opinion.

Briefly stated, to understand the linkages between the media and penal policy, one must subject the journalistic and political fields to careful analysis rather than rely on essentialist slogans and shortcuts.

## **CONCLUSION: THE SPIRIT OF TECHNOCRATIC REASON**

Taking a broader view beyond penological inquiry, the *discrediting of the political* is central to understanding the formation of the liberal-centrist ideology of the post-political, which tends to think an objectivist/empiricist science of governance is not only possible but desirable, and which has (tacitly) suffused penological debates as well. By the early 2000s, the very word “politics” had increasingly become toxic within the Anglo-American political lexicon—a slur or aspersion, a thing best avoided. When Barack Obama, then a U.S. senator, criticized the Iraq War on the Senate floor in 2006, he deployed the term in this peculiarly late-modern sense, claiming that the decision to “invade Iraq was being made without a clear rationale, based more on *ideology and politics* than fact and reason” (Obama, 2006; emphasis added). Of course, the decision to invade or not invade another country is inherently political, involving value-laden choices about the rightful deployment of military force—one of the four central forms of social power on Michael Mann’s (1986) quadripartite typology—making a nonsense of a usage invoking the apparent neutrality and value-freedom of “fact and reason.” Similarly, decades later, the *New York Times* wrote worriedly that “many Ukrainians look with alarm at the *politicization of military aid* in the United States, Slovakia, Poland and other countries” (Kramer, 2023; emphasis added). The decision to supply another warring nation with arms cannot, of course, be anything but political. In fact, castigating “politicization” suggests a severely lopsided understanding of “politics.” Those who do so fail to understand that the political is composed of *struggles between competing interest groups over the legitimate framing and prioritization of value-suffused deployments of social energy*; they tend instead to view politics as the routine selection of self-evidently optimal solutions to what are said to be essentially technical problems. All that is needed on this scientistic-technocratic view of politics is essentially more data—and optimal methods for sifting this data. Ideology is superseded by technique on this account. It is this (ironically, deeply ideological) vision that has suffused much of the field of social and political thought in recent decades, turning our age into the age of *scientistic technocracy*. It is perhaps little wonder that one finds the same structuring ideas in the sociology of punishment.



Thinking more narrowly about criminal justice policymaking, if we by penal populism simply mean a “thin” description of how, under some circumstances, punitiveness has been driven by popular demand and a style of political discourse, then there can be no real quibble with the term on conceptual grounds; in this case, the term simply stands in as a form of explanatory shorthand—a way of summarizing (possible) empirical developments. The strong version of the concept of penal populism, however, implicitly features something like a normative commitment to penal elitism, which is to say the removal of a significant portion of state power—the power to criminalize, police, and punish—from the terrain of politics as such, to be managed instead by a technocratic, expert-oriented rule of the nominated few.

The concept of penal populism, then, is a concept that, in strong form, thinks in essentially undemocratic terms: it attempts to shift and relocate the battle over penal policymaking altogether, by pivoting onto a different plane—the plane of technocratic governance. This is, of course, not a move unique to penal policymaking. In some ways, the past thirty years have seen the rise of technocracy to a position of doxic influence across the world, as evidenced by such issues as central bank independence, or even combatting climate change or global pandemic. Naturally, listening to “the experts” is not inherently wrong and may in some sense be unavoidable in complex societies predicated on advanced forms of division of labor and interlocking technical systems. But much hangs on *which experts* are nominated to speak. Experts, moreover, often end up playing the role of (unelected) politicians, speak, framing and proposing ideas that are, strictly speaking, beyond the remit of the “purely” technical (if such a thing were even imaginable), but doing so in disguise.

If harsh punishment has grown more popular across the postindustrialized world in the decades since the mid-1970s—and it is a big “if”—then the appropriate terrain on which to oppose this tendency on the part of progressive penologists and their allies is that of the *populus* itself. Intellectuals, scientists, experts, and adjacent symbolic analysts should devote their skills and energies to shaping public opinion through *information and disputation*. The competency of academics is best deployed in raising awareness and informing the public, rather than attempting to devise ways of taking the public out of the equation altogether. Constructing healthy, vibrant democracies, which must be at once deliberative *and* agonistic, means throwing one’s lot into the arena of argumentation. Rather than think up ways of screening off the political, one ought to face it head-on. Only then can one claim to be serious about democracy as governance-by-*demos* or rule by the people.

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