

Crime Prevention and Security Management

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Martin Gill

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John Pratt

Law, Insecurity and Risk Control

Neo-Liberal Governance
and the Populist Revolt

palgrave
macmillan

John Pratt
Institute of Criminology
Victoria University of Wellington
Wellington, New Zealand

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*What might have been is an abstraction
Remaining a perpetual possibility
Only in a world of speculation.
What might have been and what has been
Point to one end, which is always present.
Footfalls echo in the memory
Down the passage which we did not take
Towards the door we never opened
Into the rose garden.
—T. S. Eliot (1968, 13)*

For Isabella

Series Editor's Preface

This book not only provides a critique of the role of security, it does so by examining the key ways in which social and political contexts shape penal responses, what is referred to as the security sanction. Essentially John Pratt's book focuses on the impact of populist policies and the disparities created by neo-liberalism. Specifically, it examines the damning consequences for the losers with a specific focus on penal policy.

In addition to covering a wide geographical territory that takes in the US, the UK, New Zealand, Australia and Canada, this book also engages with a range of intellectual domains. Just for example, and core to his analysis, you will read about different elements of the "dark" side of risk management that in different ways lead to the undermining of human rights (where respect for human dignity is viewed as being "trampled"); how both Covid-19 and the UK referendum in Europe generated hostilities towards minorities; and how the influence of experts was undermined to facilitate a new way of populist thinking.

The book is set in historical perspective, starting in the 1930s, and examines the key points at which neo-liberalism began, interestingly with the support of both the political right and left. Never disguising his views and disdain, Pratt describes this era of individualism, and hatred of

collectivism, as leading to a state in which “the irresponsible and the unworthy would have to wallow in their own misfortunes.” He documents the many forms this takes; you will read about the impact on relationships and marriage, and fashion for example.

For Pratt the emphasis on being enterprising and wealth creating broke social bonds and undermined the principles of a good society. It also led to the “inevitability” of economic disasters when individuals were expected to cope for themselves—with minimal state support—penalising the disadvantaged who, for example, lived in more crowded houses and had less secure jobs. And it led in a different way to the reorientation of criminal law and punishment by “using retrospective legislation, shifting burdens of proof, changing rules of evidence, abandoning due process and so on to put these measures into law.” The role of politicians in finding a rationale and legitimacy for their position is discussed.

If you are looking for a well-researched and well-written book that articulates how the social and political context, formed over time, leads to a certain type of security, and of the relationship between human rights and security, then you will find these pages a must read. Clearly not everyone will agree with the conclusions, but the message is clear; when policies reinforce the division between the haves and the have-nots then there are serious implications for the type of security you get and the type of society people live in.

April 2020

Martin Gill

Acknowledgements

The first seeds of the research programme on which this book is based were sewn by Andrew Ashworth who gave a seminar at the Institute of Criminology, Victoria University of Wellington, in 2013 (I think), about the growth of preventive criminal law in the UK. It was based on what was to become his 2014 book with Lucia Zedner, *Preventive Justice*. What was it, though, that was suddenly making possible the transformations in criminal law that had previously been thought beyond the bounds of possibility in that country? In 2014, my thinking was pushed further along when I was invited by Anna Eriksson (my collaborator on a previous project) to attend a symposium in Prato, Italy. This was on the work of Zygmunt Bauman, as it related to practices of exclusion, punishment and criminalisation. My own contribution was a paper based on new laws in New Zealand that allowed for post-prison confinement of certain high-risk sex offenders: in effect, in an era when mobility had become so important, they had become immobilised, as was also occurring in similar fashion in Australia and the US—the shift towards preventive criminal law was not just occurring in the UK. At the same time, I was able to develop the concept of “immobilisation” as an organising theme that addressed the role of these innovative preventive measures in place, to varying degrees, across the main English-speaking common law jurisdictions of Western society. And, of course, immobilisation as the main

strategy in the fight against the Covid-19 virus has since come to have national implications, as explained in Chap. 9 of this book. My paper was published as “Immobilisation in an Age of Mobility: Sex Offenders, Security and the Regulation of Risk” in Anna’s (2016) edited collection, *Punishing the Other*. And the purpose of these interventions was further explored in a paper I wrote with Jordan Anderson, then my Summer Research Assistant: “The ‘Beast of Blenheim,’ Risk and the Rise of the Security Sanction,” *Australian and New Zealand Journal of Criminology* (2016) 49 (4): 528–545.

In 2016, I was fortunate enough to receive a research award from the Royal Society of New Zealand’s Marsden Fund that made this project—how and why preventive criminal law had embedded itself in these societies in the post-1970s era—conceivable. The project was titled at that time “Intolerable Risks. The Search for Security in an Age of Anxiety.” Jordan was recruited as my PhD student. With the receipt of the award, the project was able to gain momentum and the ideas underlying it began to be regularly marshalled and revised in a series of seminar and conference presentations: in Argentina (courtesy of Maximo Sozzo), and in Hong Kong, Beijing, Prague, Brisbane and Adelaide. Further seminars were given in 2017 at the Center for the Study of Law and Society, University of California (Berkeley), and the School of Social Ecology, University of California (Irvine), with thanks to Jonathan Simon and Elliot Currie. A seminar was also given at the Centre for Criminology and Sociolegal Studies, University of Toronto, with thanks to Marianna Valverde; and at the Department of Criminology, Ryukoku University, Kyoto (courtesy of Koichi Hamai). My 2017 publication in the *British Journal of Criminology* 57 (6): 1322–1339, “Risk Control, Rights and Legitimacy in the Limited Liability State” was an important milestone in this journey.

In 2016, in what proved to be my great pleasure, I began to work with Michelle Miao on what became the “populist dimension” to the analysis being developed. It was because of her cajoling—at that time (remarkable though it might now seem), I did not think I had anything further to say on this subject, following my 2007 book *Penal Populism*, and a few publications thereafter—that I began to see populism both as a response and as a successor to the neo-liberal era of governance. This work in turn led to another series of seminar and symposium invitations: in Taiwan

(courtesy of Doris Chu), in Berlin and at the Max Planck Institute in Halle-an-der-Saale; at the Institute of Criminology, University of Sydney; at the Department of Criminology, Jagiellonian University of Krakow and the Polish Academy of Sciences, Warsaw (courtesy of Magdalena Grzyb and Witold Klaus); and at Bar-Ilan University, Tel Aviv (courtesy of Hadar Dancig Rosenberg). There have been the following publications on populism with Michelle that have been influential in the development of the later themes of this book: “Populismo Penal: El Fin de Razon [Penal Populism: The End of Reason],” *Nova Criminis* (2017) 9 (13): 33–105; “From Protecting Individual Rights to Protecting the Public,” in Gregor Fitzi et al. (eds) (2018), *Populism and the Crisis of Democracy*, Volume 2, 47–63, Oxford: Routledge; “Risk, Populism and Criminal Law,” *New Criminal Law Review* (2019) 22 (4): 391–433; and “The End of Penal Populism; the Rise of Populist Politics,” *Archiwum Kryminologii* (2019) 2: 15–40.

Part of the project involved what might loosely be termed “fieldwork.” That is, I was exploring the way in which urban regeneration and its built-in security measures had further social and spatial divisions in these societies. Here, I am particularly grateful for the guidance provided by Paul O’Hare in Manchester; Francis Pakes and David Pritchard in Portsmouth; Joe Sim in Liverpool; Wayne Morrison in London; Carlos Bustamante in San Francisco and Oakland; Katherine Beckett and Steve Herbert in Seattle; and Murray Lee in Sydney. I have had numerous research assistants, in addition to Jordan Anderson initially, all of whom have done invaluable work for me. These are Ruby King, Sean Becker, Daniel Botha, Emma Simons and Naomi Scott.

Insa Koch, Liam Martin and Sarah Monod de Froidville read initial chapters and made helpful suggestions. Paul Morris persevered with early drafts of the whole manuscript and his encouragement and subtle criticisms have been invaluable. Jordan Anderson was outstanding in organising the symposium we held here in December 2018 titled “Criminal Justice, Risk and the Revolt Against Uncertainty.” A book from the proceedings with this title and edited by myself and Jordan was published by Palgrave Macmillan in March 2020. I am grateful to Josie Taylor and Liam Inscoe-Jones at this publishing house and also the very helpful referees’ comments on my book proposal.

Finally, I would especially like to thank Anne Holland for the wonderful work she has done for me for getting on for twenty years now—hunting down internet references, sometimes remarkably obscure; formatting; referencing; constructing bibliographies, graphs, tables—I could go on and on. To my knowledge, this is the fifth of my books to which she has acted as “midwife,” in addition to articles, book chapters and so on along the way. This one posed its own particular challenges for her but she remained undaunted and helped me enormously in delivering the manuscript.

Thank you, thank you, thank you.

Professor of Criminology
Institute of Criminology
Victoria University of Wellington
April 2020

John Pratt

Praise for *Law, Insecurity and Risk Control*

“Many will already know and admire John Pratt’s contributions to studies of risk and criminal justice. *Law, Insecurity and Risk Control* is the culmination of those efforts. In charting the rise of ‘the security sanction’, Pratt here also tells an engrossing story about the transformations that have engulfed Anglophone countries in recent decades. In Pratt’s view the populist revolt is no longer merely the shadow or counterpart of neo-liberal government; it is the token of its failure to develop a viable habitat in which humans can flourish. This is not just a book about the present and future of criminal justice, but about the future of democracy as a way of life.”

—Professor Richard Sparks, *School of Law, Edinburgh University, UK*

“In *Law, Insecurity and Risk Control*, John Pratt provides a compelling cautionary tale of hubris and unlearned lessons. Placing risk at the core of a socio-historical analysis of Anglo-American societies in the last 75 years that carries the insightful rigour and sophistication that are the hallmarks of his work, Pratt traces the rise of the security sanction from before its neoliberal framing up to its appropriation by the populist revolt and the contemporary challenges posed by the Covid-19 pandemic. This book is essential reading to anyone wishing to reflect on the role of criminal law and punishment in politics and society today.”

—Dr Henrique Carvalho, *School of Law, University of Warwick, UK*

“John Pratt’s new book *Law, Insecurity and Risk Control*. Neo-liberal governance and the populist revolt’ is broadly about the consequences of unleashing risk. From the inter and post-war attempts to manage and tame population risks, to a neo-liberal freedom where market risk and ontologically insecurities fuel fear and facilitate the emergence of punitivity and populism, the book traces the broad contours of risk in late modernity. Pratt shows that risk not only re-writes criminal law in the form of the ‘security sanction’, but also recasts our human rights. In the new paradigm the key human right becomes that which protects the many from the few – even if the few are yet to commit and offence. The book is stunning in scope yet manages to ground its analysis of broad concepts

through a discussion of a range of historical and contemporary issues. The book will be of great value to the fields of sociology, criminology, political science and policy.”

—Professor Murray Lee, *Institute of Criminology,
University of Sydney, Australia*

“In *Law, Insecurity and Risk Control*, John Pratt provides a typically systemic, sociologically-informed analysis of the way in which the politics of risk (and its inherent duality) has been turbo-charged by populist politics and underlying social and economic discontent. In so doing, Pratt poses fundamental questions about the future of the (neo-)liberal state and the role of criminal law within it.”

—Dr Harry Annison, *Southampton Law School,
University of Southampton, UK*

“Caught between its core commitment to shifting economic risk to ordinary citizens and workers, and the growing backlash of populism, John Pratt shows how the neoliberal state increasingly turns to novel sanctions that are placing the rule of law in crisis. A global analysis of astounding breadth. Theoretical criminology at its best.”

—Professor Jonathan Simon, *Centre for the Study of law and Society,
UC Berkeley, US*

“This is a timely, thought-provoking and authoritative book. John Pratt has provided us with a critical, engaging and highly prescient account of the impacts of neo-liberal governance on the criminal justice system and the broader management of ‘security’ in an age of pervasive risk and uncertainty. Masterful writing, by one of Criminology’s finest scholars.”

—Professor Gabe Mythen, *Department of Sociology, Social Policy
and Criminology, University of Liverpool, UK*

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