

Title:

The Pandemic as an Antidote to Populism: Punishment, Immobilization and Covid-19

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Abstract:

The contemporary rise of populism across much of Western society – especially the Anglo-American countries that are the main focus of this paper – has threatened many of the protections and freedoms provided by the post-1945 commitment to a democratic political order: guarantees of human rights, adherence to the rule of law, and a media free to criticize governments and hold them to account. Its penal programme that not only fostered more severe punishments but has also extended the scope of criminal law so that it can be used to immobilize those thought at risk of committing particular crimes – through control and restriction of their movement in public space to indefinitely imprisoning them at the end of a finite prison term – before any new crime is committed.

Given the way in which these measures point to important shifts away from democratic norms, it might be thought that governmental reactions to the Covid-19 pandemic pose a further threat to democracy and its criminal justice processes. Additional forms of immobilization have been introduced to combat the spread of the virus: control on freedom of movement in public space or stay at home orders equivalent to house arrest – controls now on entire nations rather than just those at risk of committing particular crimes, with police (and sometimes the military) given powers of enforcement.

However, it will be argued that the pandemic also provides very different possibilities of governance to this kind of populist authoritarianism. Indeed, the virus acts as an antidote to populism. The latter is premised around nationalistic visions of a glorious future, that only 'strong man' leadership, with demagoguery blustering its way past science, reason and expertise, can provide. For this to happen, however, 'enemies of the people' must be brought under control through extra-judicial action beyond the boundaries of the rule of law as necessary. Covid-19 is one such enemy, but it laughs in the face of these demagogues. It shows them to be nothing more than incompetent, if usually malevolent, charlatans. Instead, it can only be eliminated by science and expert knowledge, acting in conjunction with a strong but accountable central government, amidst forms of immobilization to which the general public have largely acquiesced, strengthening rather than weakening social cohesion in the process – and eating into the conditions necessary for populism to thrive. This then provides opportunities for a different and more restricted penal framework in the post-pandemic era.