

PENAL POPULISM ACCROSS NATIONS: ILLUSTRATIVE CASE STUDIES

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The paper examines penal populism as a political phenomenon characterized by punitive measures that appeal to public fears rather than evidence-based policies. Through case studies of the Philippines, Nicaragua, and El Salvador, this analysis examines how penal populism is leveraged for political gains, using punitive measures to appeal to public sentiment rather than addressing the root causes of criminality or adopting evidence-based policy responses. In all three cases, the media play a significant role in amplifying public fear and shaping punitive policies, thereby promoting penal populism. This approach disproportionately impacts marginalized communities, exacerbating socio-economic inequalities through mass incarceration and harsh sentencing. By sidelining rehabilitative measures, it perpetuates cycles of poverty and crime. The paper contrasts this with countries like Finland and Germany, which resist penal populism through strong institutions and rehabilitation-focused justice. Ultimately, the paper critiques penal populism's short-term political gains at the expense of human rights and social justice, calling for more balanced, evidence-based approaches.

KEYWORDS: *penal populism, Nicaragua, Philippines, media, marginalized communities*

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INTRODUCTION

Penal populism refers to a political approach that prioritizes severe punitive measures, often disproportionate to the actual issues at hand, as the primary response to crime. One of the key elements of this political strategy is its frequent reliance on public fear, sensationalist media coverage, and political rhetoric that emphasizes a “tough on crime” stance. Some of the main prerequisites for the emergence of penal populism include a lack of trust in traditional government institutions, a shift toward public-driven demands, media’s growing influence in shaping public perceptions of crime and punishment and generally politicization of criminal law. According to researches, penal populism has manifested most in policy areas like sex offenses, youth crime, persistent criminals, and anti-social behaviour (Pratt, 2006, 11). Penal populism tends to prioritize punitive measures over more nuanced, evidence-based approaches to criminal justice. These factors tend to shift the focus away from assessing the risk of criminal behaviour and implementing preventive measures, favouring instead a reliance on retributive policies to control crime (Matic Boskovic & Kostic, 2024,80).

Thus, penal populism can be described as a phenomenon where politically driven criminal justice policies are designed to appeal to popular sentiments and emotions, rather than relying on expert knowledge, research, or evidence-based practices, in order to score political points with the general population. The origins of the term *penal populism* can be traced to Sir Anthony Bottoms (Bottoms, 1995),¹ who used the term populist punitiveness to describe political behaviour that seeks to win votes by adopting tough-on-crime measures. Pratt expands on this concept, pointing out that penal populism is not just about political opportunism but is deeply rooted in structural and cultural changes within societies. This approach has led to a more punitive stance in criminal justice systems in some Western democracies. Governments, in an attempt to align themselves with what they perceive as the views of the majority, adopt policies that reflect public anger or fear of crime rather than focusing on reducing crime or improving justice outcomes. Some societies, such as Finland and Germany, have effectively resisted penal populism through strong central bureaucracies and a steadfast commitment to rehabilitation-focused justice policies. In these and other cases, judges, lawyers, and academics, alongside political elites, play a crucial role in combating penal populism by actively resisting its trends.

¹ Anthony Bottoms, (1995) ‘The Philosophy and Politics of Punishment and Sentencing’, in C. Clarkson and R. Morgan (eds) *The Politics of Sentencing Reform*, Oxford: Clarendon.

2. PENAL POPULISM AND MARGINALIZED COMMUNITIES

Since penal populism tends to favour short-term popularity over sustainable, long-term solutions it has numerous nus-consequences. One particularly concerning consequence is its disproportionate impact on marginalized communities, further exacerbating existing social and economic inequalities.

One key reason for this is that penal populism often leads to policies that favour mass incarceration, harsher sentencing, and reduced focus on rehabilitation. Marginalized communities, which typically face higher levels of poverty, unemployment, and systemic discrimination, are more likely to come into contact with the criminal justice system due to socio-economic conditions. For instance, policing practices often target disadvantaged areas with a higher concentration of minorities or the poor, leading to increased surveillance and arrests in those neighbourhoods. This is why certain U.S. policies, such as “three-strikes” laws, mandatory minimum sentences, and zero-tolerance policing, disproportionately affect individuals from these communities, particularly African Americans. These policies have contributed to mass incarceration rates that far exceed their share of the population. (Cummins, 2020). Reason behind this is the fact that penal populism tends to ignore the underlying causes of crime, such as poverty, lack of education, mental health issues, and substance abuse, all of which disproportionately affect marginalized groups. Instead of addressing these root causes, the focus is placed on punishment, which does little to prevent recidivism or reintegrate offenders into society. This cycle perpetuates social exclusion, as those who have been incarcerated often face stigma, reduced job opportunities, and barriers to housing and education upon release, further entrenching the marginalization of these communities. In countries with histories of racial or ethnic discrimination, penal populism can also deepen racial disparities in the criminal justice system. For example, in the United States, the “war on drugs” disproportionately targeted African American and Latino communities, leading to high rates of incarceration for nonviolent drug offenses. This racial disparity is replicated in other nations with similar penal populist policies, where minority groups are overrepresented in prisons and other forms of state punishment. The harsh impact of penal populism on marginalized communities is also evident in its neglect of rehabilitative services. As already stated, penal populist policies often prioritize punitive over restorative measures, resulting in underfunding of programs aimed at mental health support, substance abuse treatment, education, and vocational training—all essential for breaking the cycle of poverty and crime in marginalized groups. Instead, the system perpetuates a cycle of punishment that disproportionately harms those who are already vulnerable. In conclusion, penal populism exacerbates the marginalization of already vulnerable communities by promoting punitive policies that disproportionately target and punish these groups. It fails to address the socio-economic factors that contribute to criminal behaviour, instead deepening inequalities and entrenching marginalized communities in cycles of poverty, crime, and exclusion.

2.1 *The example of El Salvador*

A recent example El Salvador's state of exception under President Bukele, introduced in March 2022, marks a significant escalation of *mano dura* policies (Rosen & Cutrona, 2023), resulting in mass incarcerations and widespread militarization. While the government claims these actions have brought a dramatic reduction in crime, particularly homicides, the social costs—especially for women—have been profound. The state of exception has led to the arrest of over 65,000 individuals, many of whom are alleged gang members. However, reports suggest that one in six of those detained may be innocent, raising serious concerns about arbitrary arrests and lack of accountability (Janetsky & Pesce, 2023). For women, the impacts of these policies extend far beyond the immediate fear of violence from gangs. The increased presence of police and soldiers in their communities has introduced new dangers, including harassment and sexual violence by security forces. Women in formerly gang-controlled neighbourhoods now find themselves living under a different form of oppression, where the threat of abuse by state actors replaces the fear once instilled by gangs (Zulver & Mendez, 2023). Moreover, the mass incarceration of men, who often served as the primary breadwinners, has left thousands of women as sole providers for their families. These women face immense financial strain, as they must not only care for their households but also support their imprisoned relatives by supplying basic necessities that the prison system fails to provide. This economic burden is particularly heavy on poor households, exacerbating cycles of poverty and vulnerability. The government's aggressive crackdown has also undermined the institutional support available to women. Funding cuts to initiatives like the Ciudad Mujer project—an acclaimed program providing health-care, legal assistance, and job training for women—have left many without essential services. Meanwhile, women's rights organizations face growing hostility from the government. Advocates who speak out against human rights abuses are often harassed and surveilled, forcing some to curtail their activities or operate in secrecy. Despite the short-term gains in public safety, the state of exception has deepened gendered vulnerabilities and perpetuated systemic violence against women. The militarized approach, while temporarily effective in reducing gang activity, risks entrenching authoritarian practices and eroding democratic institutions. For women already marginalized and victimized, the absence of civil liberties and institutional support has made their plight even more precarious, highlighting the unsustainability of heavy-handed security policies in addressing complex social issues (Zulver & Mendez, 2023).²

² Julia Zulver and María José Méndez, "El Salvador's "State of Exception" Makes Women Collateral Damage", <https://carnegiendowment.org/posts/2023/05/el-salvadors-state-of-exception-makes-women-collateral-damage?lang=en> Published on May 4, 2023.

3. CAUSES OF PENAL POPULISM

One of the primary causes identified for the rise of penal populism is the public's demand for punitive measures that align with perceived moral values or societal concerns, often amplified by media portrayals of crime. This media-driven outrage can pressure governments to implement harsher policies, even when these measures are not supported by actual crime statistics or expert recommendations. These technologies often simplify complex penal issues for broader public consumption, frequently at the expense of nuanced debate and informed discussion.

One of the most significant (hidden) causes of penal populism is the collapse of trust in governmental institutions, especially among the general public. People no longer have confidence in bureaucratic or expert-driven approaches to criminal justice (Pratt, 2005, 16).³ Weak institutions play a significant role in fueling penal populism, as governments often exploit these shortcomings in the most apparent ways. The decline in public trust has been closely linked to broader dissatisfaction with traditional political processes, creating a fertile ground for the rise of populist movements. A clear example of this can be seen in the Philippines, where the erosion of institutional strength and public confidence has allowed populist rhetoric to thrive, particularly under the leadership of President Rodrigo Duterte. His administration's harsh anti-drug campaign and disregard for human rights have been framed as necessary responses to the failures of established political systems (Calimbahin, 2018, 21).⁴

3.1 The Role of Media and New Technologies of Communication

The media has exceptional influence in various aspects of judiciary (Novakovic, 2024, 301),⁵ particularly through new communication technologies, has played a crucial role in the rise of penal populism. Sensationalized crime reporting and simplified news have heightened public fear, with talk-show hosts, journalists, and victims' rights advocates amplifying emotional responses and pressuring governments for harsher justice. Media often frames crime as a threat to public safety, emphasizing retribution over rehabilitation or addressing systemic causes. New technologies of communication opened a series of new

³ Pratt, J. (2006). *Penal Populism* (1st ed.). Routledge. <https://doi.org/10.4324/9780203963678>

⁴ Cleo Calimbahin, (2018), *Eroding Institutions and Exploiting Resentments: Populism in the Philippines and Southeast Asia*, <https://th.boell.org/en/2018/05/07/eroding-institutions-and-exploiting-resentments-populism-philippines-and-southeast-asia>

⁵ Marko Novakovic, *Odgovornost medija kao ključan element u očuvanju slobode izražavanja: ECHTR slučaj NIT s.r.l. protiv Moldavije*, u *Mediji, Kazneno pravo i pravosuđe*, IUP-IKSI-Pravosudna akademija, Ur. Marina Matic Boskovic i Jelena Kostic, str.299-313, 2024

possibilities for judicial systems (Boskovic & Novakovic, 2021, 199)⁶ and its potential its even greater, not only in judiciary, but in entire public sector (Radonjic et al, 2024).⁷ The rise of social media and 24-hour news has democratized information flow but also simplified complex issues, fuelling penal populism with emotionally satisfying solutions. This has reduced the influence of expert opinions, making it harder for nuanced discussions on crime prevention or rehabilitation to compete with sensational headlines. Good example is example of Italy, where some researches demonstrated that, social media users who create and consume content, amplifying populist narratives (Lavorgna & Corda, 2024, 271).⁸ Despite social media's influence on public discourse, its impact on policy-making remains limited. Top-down policy channels still dominate, with leaders like Prime Minister Giorgia Meloni using social media more for support than policy change. The study shows that social media narratives often reinforce existing biases rather than drive new policy. Measures like the crackdown on rave parties and tightened immigration controls were symbolic actions aimed at fulfilling political promises rather than addressing deeper issues. While digital platforms influence public debates, penal policy remains shaped by traditional power structures, illustrating the complex interplay between digital populism and real-world policy-making.

4. PENAL POPULISM – A GLOBAL PHENOMENON

Although penal populism has been most visible, due to its contrast to general policies, in democratic countries like the United States, the United Kingdom, and Australia, it is by no means confined to these regions or political systems. Pratt observes that penal populism has also had a significant impact in countries such as New Zealand and Canada, demonstrating its adaptability to diverse cultural and political contexts. However, penal populism is not solely a product of democracies; it thrives in authoritarian regimes, where it often finds its “natural habitat.” In such environments, punitive policies serve as tools for consolidating power, suppressing dissent, and projecting control, often without the checks and balances that exist in democracies. Despite its global spread, some countries have successfully resisted penal populism. In Finland, for instance, a strong bureaucratic state and a deep commitment to rehabilitation have prevented it from taking root. Similarly, Germany has upheld a rehabilitative approach to criminal justice, even when faced with public demands for harsher measures. These examples highlight that while penal populism is a wide-

⁶ Matic Bošković, Marina and Novaković, Marko (2021) Adaptation of Judicial Systems to the Global Pandemic - a Short and Long-term Impact of COVID-19 on Judicial Systems. *John Marshall Law Journal*, XIV (2), pp. 188-201. ISSN 0147-3689

⁷ Lj. Radonjic, Lj. Bojic, M. Novakovic, Blockchain integration in public sector: A comprehensive review of economic and legal challenges, *Ekonomika preduzeca*, 2024.

⁸ Lavorgna, A., Corda, A. Online Prosumers and Penal Policy Formation in an Age of Digital Polarization and Populism: An Exploratory Study. *Int Criminol* 4, 265–278 (2024). <https://doi.org/10.1007/s43576-024-00134-4>

spread phenomenon, its influence varies depending on a country's institutional frameworks and political culture.

In the next section, the author will examine the emergence and spread of penal populism in two recent case studies: the Philippines and Nicaragua. In both countries, penal populism has become a dominant tool in shaping criminal justice policies and enforcement strategies, albeit within vastly different political and cultural contexts.

Historically, *mano dura* strategies have transformed gangs into more powerful groups capable of exercising vast territorial control. Moreover, they have led to an increase in the number of human rights violations carried out by state security forces (Zulver & Mendez, 2023).⁹

5. PHILIPPINES

A particularly picturesque example of the penal populism emerged in Philippines under Rodrigo Duterte. Part of this picture is due to his general populist rule and the fact that he has brought significant challenges to democratic institutions, human rights, and the rule of law. Duterte is notorious for his aggressive stance on the International Criminal Court (ICC) and the United Nations Human Rights Council (UNHRC) that reflects his resistance to international accountability, particularly in relation to his administration's bloody anti-drug campaign.

His withdrawal from the ICC in 2018 (Lema & Jerome Morales, 2018)¹⁰ exemplifies his populist narrative, positioning external organizations and critics as interfering in domestic affairs. Duterte's rhetoric, which frames the drug war as a matter of national survival, has resonated with many, particularly the Philippine National Police, whom he encouraged to ignore potential UN investigations. His populist leadership thrives on painting a crisis and offering strongman solutions, a tactic not uncommon in Southeast Asia. The attacks on democratic institutions have been a hallmark of Duterte's governance. His administration has targeted the Commission on Human Rights, leading to public attacks and threats of defunding. Chief Justice Maria Lourdes Sereno faced impeachment proceedings in 2017, driven by Duterte's congressional allies, amid allegations of asset misdeclarations and political tensions over her independent judicial stance (Villamor, 2018). The broad targeting of critics underscores the central populist theme: consolidating power by dismantling democratic safeguards. In the wider Southeast Asian region, populism is rising, with various leaders utilizing crises to justify repressive policies. For instance, Myanmar's Aung San Suu

⁹ Julia Zulver and María José Méndez, "El Salvador's "State of Exception" Makes Women Collateral Damage", <https://carnegieendowment.org/posts/2023/05/el-salvadors-state-of-exception-makes-women-collateral-damage?lang=en> Published on May 4, 2023.

¹⁰ Duterte to withdraw Philippines from ICC after 'outrageous attacks' By Karen Lema and Neil Jerome Morales March 14, 2018, 6:31 PM GMT+, <https://www.reuters.com/article/world/duterte-to-withdraw-philippines-from-icc-after-outrageous-attacks-idUSKCN1GQ0M8/0020>

Kyi has remained silent on the Rohingya crisis to maintain nationalist support, while severe measures have been taken against her critics (Novakovic & Blesic, 2020, 164). Despite international condemnation and human rights concerns, Duterte's approval ratings remain high, reflecting the entrenched populist appeal. As populist leaders continue to thrive on crisis narratives and resentment, reformists must critically examine electoral and institutional vulnerabilities to counter the populist agenda and safeguard democratic values.

6. NICARAGUA

In Nicaragua, penal populism is deeply intertwined with the broader political and social dynamics of the country, a phenomenon also prevalent across many Central American nations. The government's approach to law enforcement and the penal system reflects not just an effort to control crime, but also to consolidate political power and suppress opposition, as depicted in recent UN report (A/HRC/57/20).

6.1 *Historical Context of Crime and Punishment in Nicaragua*

To understand penal populism in Nicaragua, it is essential to look at the historical evolution of the country's legal and penal systems. The Nicaraguan penal system has been shaped by decades of civil war, dictatorship, and political instability. The Sandinista revolution of 1979 marked a turning point (Brown, 2003, 110)¹¹ as the new regime under Daniel Ortega sought to implement socialist reforms. Crime and punishment became tied to the political agenda, and while initial reforms were aimed at rehabilitation, the years of conflict and economic hardship led to a rise in crime, pushing the government towards more repressive measures.

The post-revolution era saw a shift in focus from revolutionary ideals to more pragmatic concerns about controlling crime, particularly as neoliberal economic reforms in the 1990s exacerbated poverty and inequality. This background sets the stage for the penal populism that emerged in the 21st century.

Daniel Ortega's return to power in 2007 brought about a resurgence of the Sandinista movement, but this time under different circumstances. His FSNL managed to "evolve from cadre party to electoral party that won elections (Martí i Puig & Wright, 2010, 88).¹² The government's approach to crime and punishment shifted towards penal populism, as

¹¹ Brown, D. (2003). The Sandinista Legacy in Nicaragua [Review of *The Many Faces of Sandinista Democracy; The Undermining of the Sandinista Revolution; Nicaragua without Illusions: Regime Transition and Structural Adjustment in the 1990s*, by K. Hoyt, G. Prevost, H. E. Vanden, & T. W. Walker]. *Latin American Perspectives*, 30(3), 106–112. <http://www.jstor.org/stable/3185039>

¹² Martí i Puig, S., & Wright, C. (2010). The Adaptation of the FSNL: Daniel Ortega's Leadership and Democracy in Nicaragua. *Latin American Politics and Society*, 52(4), 79–106. <http://www.jstor.org/stable/40925837>

Ortega's administration sought to address public concerns about crime while also using the criminal justice system to stifle political dissent. Ortega's government began to adopt increasingly authoritarian measures, with the legal system serving as a tool for political control.

Under Ortega, there has been a clear trend towards harsher penalties and increased incarceration rates, particularly for crimes related to opposition activities, political protests, and criticism of the regime. The government's approach to crime has been characterized by a heavy-handed response, with law enforcement and the judiciary often bypassing due process in favour of expedient, politically motivated outcomes.

6.2 Public Opinion and Fear of Crime

Penal populism thrives on public fear of crime, and Nicaragua is no exception. Crime, particularly violent crime, has been a major concern for Nicaraguans, and the government has capitalized on this fear to justify repressive measures. Media portrayals of crime, along with government propaganda, have helped to create a sense of insecurity, even when crime rates have not necessarily risen. The government's response has been to enact tough-on-crime policies that resonate with the public's desire for security. These policies include longer prison sentences, increased police powers, and a militarized approach to law enforcement. However, these measures often prioritize punishment over prevention or rehabilitation, and they disproportionately affect marginalized communities making it a perfect example of penal populism. One of the most significant criticisms of penal populism in Nicaragua is its disregard for human rights. The Nicaraguan government has been accused of using the criminal justice system to target political opponents and suppress dissent. Human rights organizations have documented numerous cases of arbitrary arrests, detention without trial, torture, and extrajudicial killings (HRW, 2023).

As in any populist and authoritarian regime, the criminalization of protest is a key feature of penal populism in Nicaragua. Following the 2018 protests against Ortega's government, thousands of Nicaraguans were arrested, with many facing trumped-up charges such as terrorism, treason, and incitement to violence. The government's use of anti-terrorism laws to silence opposition is a clear example of how penal populism can be used to serve authoritarian ends.

6.3 Government controlled society

In Nicaragua, the judiciary plays a crucial role in the implementation of penal populism. The courts are often seen as an extension of the executive branch, rather than an independent check on government power. Judges and prosecutors who are sympathetic to the government's political agenda have been instrumental in enforcing repressive laws and ensuring that opposition figures are convicted of crimes, often with little regard for due pro-

cess or fair trials. This role of judges and other judicial professionals is definitely something that not only contributes to the penal populism but also diminishes fairness and rule of law in a given system (Novakovic, 2024).¹³ The politicization of the judiciary has undermined public confidence in the legal system. Many Nicaraguans see the courts as biased and corrupt, particularly when it comes to cases involving political dissent or opposition to the government. This lack of trust in the judiciary further fuels the cycle of penal populism, as the government can claim that harsh measures are necessary to maintain order and stability.

Ultimately, penal populism in Nicaragua is not just about controlling crime, but about controlling the population, like every populism is. The government's use of punitive policies is closely tied to its broader strategy of maintaining political power. By criminalizing dissent and using the legal system to target opponents, the Ortega administration has been able to weaken opposition movements and consolidate its control over the country.

It is clear that this use of penal policy for political purposes is not unique to Nicaragua, but it is particularly pronounced in a country where the government has increasingly resorted to authoritarian measures to maintain power. Finally, like in any authoritarian regime, the role of the media in promoting both Government's actions and consequently fueling penal populism in Nicaragua cannot be overstated. Crime is often sensationalized, with a focus on violent offenses and the portrayal of criminals as irredeemable threats to society. At the same time, opposition voices are often silenced or marginalized, with little space for critical discussion of the government's penal policies. Independent journalists and media outlets that criticize the government's approach to crime are frequently harassed or shut down, further limiting the public's ability to engage in informed debate about the criminal justice system.

CONCLUSION

It is clear that policies based on penal populism thrives on public fear and dissatisfaction, often exacerbated by sensationalist media and weakened trust in institutions. The cases of the Philippines under Rodrigo Duterte and Nicaragua under Daniel Ortega illustrate that, and are good examples how penal populism can serve as both a political tool and a response to societal insecurities. The author also emphasizes the global reach of penal populism, noting its adaptability in both democratic and authoritarian regimes. While some countries, such as Finland, have resisted penal populism through strong institutional frameworks and rehabilitative justice systems, others have succumbed to the populist appeal of punitive measures. A critical consequence of penal populism, noted in the paper, is its disproportionate impact on marginalized communities, which often face harsher sentencing and mass incarceration. This not only deepens existing socio-economic inequalities

¹³ Marko Novaković, *Idealni sudija: etički standardi u savremenim pravnim sistemima i čemu sudija treba da stremi*, Zbornik radova pravnog fakulteta, Univerziteta u Nišu, 2024.

but also perpetuates cycles of poverty and crime, undermining long-term societal cohesion. The role of media and communication technologies is pivotal in shaping public perceptions and fueling penal populism. By simplifying complex issues and amplifying emotional narratives, media platforms often prioritize punitive responses over nuanced, evidence-based approaches to criminal justice. While penal populism offers short-term political gains for ruling parties, it poses significant risks to democratic institutions, human rights, and social equity and it can be perceived as a political tool more than anything. Addressing its root causes, such as socio-economic insecurity and institutional distrust, is crucial for developing more balanced and sustainable criminal justice policies.

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