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Crime that 'Withered Away?' Democratic Backsliding and Non-Punitive Populism

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Abstract
The article explores the relationship between democratic backsliding and governance of crime. By focusing on Serbia, which began to democratize in 2000 but started to backslide already in 2012, the article argues that governance of crime has been largely insulated from the damaging impact of the overall process of democratic decline and has been characterized by mostly moderate and inert penal tendencies. While the autocratic inclinations of the political regime have grown substantively in the last decade, crime has lost salience as a tool for political manipulation: the article proposes that this was mostly owing to an overarching political elite's narrative that depicts Serbia as a successful and well-governed country, in which (most) crime has 'withered away'. The article concludes by calling for research that better grasps the specificities of various forms of backsliding to understand the role of penality within them and by assessing the coherence of this finding with some of the key ideas developed within the punishment and society literature.

Keywords Democratic backsliding · Populism · Autocracy · Crime · Punishment · Serbia

Introduction

The term 'backsliding' refers to a set of regressive tendencies that have been taking place since the mid-2000s in countries around the world that have underwent the 'third wave' (Huntington, 1993) of democratization. The sequential rolling back into the previous stages of democratic development is characterized by a set of negative tendencies and developments in the political, economic, social, and cultural domains, which is particularly prominent in countries that have never achieved full democratization. However, the relationship between these fundamental changes and the penal sphere has not been a thoroughly studied topic: is growing authoritarianism, as one could possibly reason, linked to punitive, populist, and exclusive penal tendencies or does the penal field remain (relatively) independent from these wider changes? The article explores this question using the case of Serbia, one of the most notable democratic backsliders in recent decades.

Without seeking to establish a causal relationship between democratic backsliding and the penal domain, but rather aiming to assess—more modestly—what the penal field might look like in the context of democratic backsliding, this article examines the situation in Serbia since 2012 when the country began to noticeably backslide. To achieve this, the article is primarily concerned with the general penal tendencies, such as the narrative on crime as perpetuated by the political elite, the dominant penal policies, and the promoted penal values. The main conclusion of this analysis is that backsliding might be linked to dishonest political representations of reality—including that pertaining to crime—which are then used for particular political goals. This conclusion, however, is a result of a country-specific analysis, which warns us against seeking to develop general, 'one-size-fits-all' interpretations of the relationship between democratic backsliding and penality.

Democratic Backsliding and Governance of Crime: An Uncharted Field

Today's democratic backsliding, as previously mentioned, is particularly present in a number of countries that have underwent the 'third way' of democratization (Huntington,

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1993). The 'third wave' began in the 1970s and concluded around the beginning of the new century, affecting many countries in Europe, Africa, Asia, and Latin America. After a short period of enhancement of their democratic capacities which in most cases did not amount to full democratization, but to a more modest form of 'illiberal democracy' (Zakaria, 1997), many such countries began to relapse into autocracy. The democratic decline affected various domains of the political system, particularly those relating to elections, provision of basic rights and liberties, and the rule of law (see, for example, Bermeo, 2016; Diamond, 2021; Haggard & Kaufman, 2021; Lührman and Lindberg, 2019; Mainwaring & Bizzaro, 2019; Walder and Lust, 2018). Backsliding, also vividly described as the 'strangulation of democracy' (Diamond, 2021: 23), entails a reduction in the 'quality of democracy' (Waldner and Lust, 2019) and 'the incremental erosion of democratic institutions, rules and norms that results from the actions of duly elected governments, typically driven by an autocratic leader' (Haggard & Kaufman, 2021: 1). Particularly important in this process are the actors and *authors* of backsliding: it is a '*state-led* debilitation or elimination of any of the political institutions that sustain an existing democracy' (Bermeo, 2016: 5, emphasis added). For that reason, backsliding is both a worrying and a paradoxical phenomenon, because the demos deliberately (re)elects politicians who rule in an autocratic way, while such regimes—drawing on their democratic legitimacy—then go on to undermine fundamental democratic precepts.

All backsliding countries share some commonalities. The current democratic regression is the 'third wave of autocratization' in the twentieth century (Lührmann & Lindberg, 2019) and corresponds to democratic deficits that are present globally, which indicate a reversal of democracy to a state in which it was at the beginning of the 1990s (Boese et al., 2022). Backsliding is therefore not limited to 'third wave' democratization countries, yet the extent and qualities of the process differ: 'younger democracies' are, due to incomplete democratization, prone to regression (Diamond, 2021; Mainwaring & Bizzaro, 2019), while more established democracies (like the USA and particular European countries) have experienced the 'hollowing out' of democracy (Mair, 2013) or democratic 'erosion' (Haggard & Kaufman, 2021). 'Young democracies' themselves demonstrate similarities relating to the *types* of backsliding causes. Haggard and Kaufman (2021) identify three relevant factors that appear across different cases: (1) social polarization (over, for example, policy, ideology, or identity), (2) realignment of party systems (in response to polarization), which enables autocrats to win elections and stay in power by weakening horizontal checks on the executive, and (3) small-scale, incremental derogations in various domains (elections, rights and liberties, rule of law), which helps them to further solidify power.

While the general process of backsliding has been extensively studied by political scientists, its relationship with the elements of the state system, including the penal realm, have been less well understood. Currently, backsliding is still mostly researched in terms of *tools* that are used to achieve undemocratic results such as, for example, removing political opposition, abusing free media, undermining independent judiciary, weakening civil society, and preventing free expression of the political will of citizens (see Diamond, 2019). Research on the relationship between democratic backsliding and the sphere of penality—understood as 'laws, processes, discourses, representations, and institutions' (Garland, 1990: 17) that relate to crime and punishment—is largely missing.

Beginning in the 1990s, post-transition penal changes began to be studied by authors in the region of Central and Eastern Europe which—through the case study of Serbia—is the focus of this article. A set of largely similar conclusions were ultimately reached: in addition to indisputably progressive changes that concerned the adoption of non-ideological substantive criminal law norms and human rights-based procedural law norms, some negative phenomena were also observed (see Kosowska et al., 2012). These included authoritarian tendencies in Serbia (Tripkovic, 2016), punitiveness in countries, such as Czechia (Drápal, 2021), Lithuania (Dobryninas & Sakalauskas, 2011), and Slovenia (Meško & Jere, 2012), populism in Estonia (Saar, 2004), 'law and order' in Poland (Krajewski, 2004), and 'zero tolerance' in Hungary (Levay, 2012).

Following the period relevant to these observations, many countries within this group—most notably Hungary, Poland, and Serbia—began to backslide, but this did not result in thorough academic assessment of the effects of the process on the sphere of penality. One explanation for this omission may be the swiftness of changes. Within three decades, the countries in question were transformed from authoritarian states to (frail) democracies, only to be pulled back to (liberal) authoritarianism from mid-2000s onward. A rare attempt to understand the relationship between democratic regression and the penal sphere is a Hungarian study which, although limited in scope, reveals significant tensions in the penal system (Boda et al., 2022). Hungary under Viktor Orbán has, on the one side, been characterized by penal populism, exemplified by the changes to substantive criminal law after 2010 which, inter alia, adopted the 'three-strikes' rules and introduced stricter sentencing guidelines. However, on the other hand, everyday administration of criminal justice has been 'nuanced and the content of actual policy decisions in terms of penal reforms is more diverse despite the populist features of the Orbán governments' (Boda et al., 2022: 116).

To study the relationship, this article adopts the approach well-rehearsed within the punishment and society literature (see, for example, Feeley & Simon, 1992; Garland, 2001a; Simon & Sparks, 2013). The article, however, recognizes challenges associated with the cultural embeddedness of this literature in a type of system whose traits are distinct from the context of 'young democracies.' Nevertheless, the article finds inspiration from and value in studying the relationship between macro-social changes—in this case, the reversal of democratic achievements that manifests itself in a variety of cultural, ideological, economic, and political ways—and the penal sphere, understood to encompass the whole 'ensemble' of laws, politics, policies, practices, values, attitudes, institutions, actors, and outcomes that concern the 'penal question' (Simon & Sparks, 2013: 7).

Some ideas and notions developed in this strand of literature are directly relevant for this article, as they pertain to either the issues of (the lack of) democracy or populism, which seem to also constitute two key features of the process of backsliding. These include, for instance, Simon's (2007) examination of the changing quality of democracy in the USA and its tendency to 'govern through crime,' Wacquant's (2009) study of the relationship between neo-liberalism and the penal field, Zimring et al.'s (2003) analysis of the association between democratic states and harsh sentencing policies, Whitman's (2003) examination of the differences between punishment in different types of democracies, and—especially importantly—Pratt's (2007) study of the relationship between penal populism and specific penal outcomes.

The article develops in the following way. First, democratic backsliding in Serbia is studied against imprisonment rates, as the conventional indicator of punitiveness. Recognizing the limitations of this approach and probing the relationship further, the article subsequently analyses three domains of Serbia's penality: (1) penal policies, (2) penal practices, and (3) penal values and 'omissions.' Building on this analysis, the last part of the article suggests that the specifically Serbian case of crime that 'withered away' is consistent with the specific subtype of backsliding that is premised on the deceptive and false notion of Serbia as the 'perfect society.' The article concludes by suggesting that to understand penality in backsliding countries, we must assess its specific traits and characteristics: this should warn us against trying to create general accounts of what governance of crime might look like in the context of democratic erosion.

To properly understand the purpose, scope, contribution, and limitations of this article, a few caveats are in order. First, the article does not attempt to scope out a *causal* relationship between democratic backsliding and governance of crime by arguing, for instance, that the loss of democratic qualities leads to more punitiveness. The article's aspiration is more modest in that it seeks to establish whether there is *correlation* between the circumstances of 'impoverished' democracy and the penal field, judged by penal policies, penal practices, and promoted penal values. Given the lack of research in this area not only in Serbia, but in other backsliding countries, the article conducts an initial, diagnostic assessment of the current situation, without seeking to provide a comprehensive explanation of its causes. The study will hopefully inspire further, more complex causal studies in future: this article merely aims to describe what the penal realm might look like in a specific backsliding context and to provide a wider understanding of the political and social conditions which shape the penal field.

Democratic Backsliding and Imprisonment Rates in Serbia

To begin to account for the relationship between backsliding and the penal realm, this part of the article juxtaposes the extent and qualities of democratic backsliding in Serbia with rates of imprisonment. Aiming to study the relationship between the two variables, but lacking systematic research in this area that would pertain to 'young' backsliding democracies, this article takes cue from wider theoretical propositions, as well as empirical research conducted in other countries (for the combination of both approaches see, for instance, Barker, 2009), all the while appreciating their embeddedness in the specific context in which they were developed. For example, Cavadino and Dignan's (2006) study reveals that differences in basic traits of the penal system can be associated with different forms of political-economic constellations. High imprisonment rates are therefore present—and according to their view, almost predetermined—in neo-liberal countries (see also, Wacquant, 2009). Lacey (2008) argues for a better appreciation of the link between the level of punitiveness and the legal and constitutional arrangements of different polities, which would allow grasping better the existing nuances between states. In essence, regardless of the similarities between countries, 'the determinants and characteristics of penal policies remain curiously local' (Tonry, 2007: 2).

What about the level of democracy itself? The relationship between the level of democratic development and imprisonment is multifaceted and not straightforward. As Cavadino and Dignan (2006) show, democratic countries that embrace different political-economic models may end up with very different penal outcomes. For example, the political economies of neo-liberal states can create outcomes which are undesirable from a democratic standpoint, and also lead to a high imprisonment rate. Democracy requires that

the criminal justice system is 'reintegrative and inclusionary rather than stigmatizing and exclusionary' (Lacey, 2012: 8), but if the political-economic circumstances lead to social inequality or political alienation of particular groups of citizens, the quality of democracy will be significantly decreased. Democratic exclusion is most obvious and most concerning in situations of mass incarceration of racial, ethnic, religious, and other minorities: more than merely segregating a segment of the population, incarceration also silences the voices of the poorest, most underprivileged, and marginalized citizens (see Garland, 2001b). And more than just affecting those convicted of crimes, the negative consequences of mass incarceration spill over the prison walls, affecting prisoners' families and communities and impacting the overall quality of democracy (see Mauer and Chesney-Lind, 2003; Patillo et al., 2002). The main conclusion emanating from this is the following: specific political-economic constellations might lead to outcomes which undermine central democratic commitments (such as, for instance, social and political inequality and marginalization of specific classes of citizens), which in turn leads to high imprisonment rates of those excluded from the democratic body.

These insights serve as an inspiration and motivation for the article, but the article—as explained above—pursues a more modest approach. The focus of the current part (and the foundation for the following parts) is to assess whether the lack of central democratic features in Serbia correlates to high imprisonment rates: nothing is inferred from this about the wider reasons for the possible association between the two, and this part of the article merely sets the stage for the further, more thorough analysis of other elements of governance of crime (policies, practices, and values) that is conducted in the subsequent part.

Serbia first began to demonstrate signs of backsliding in 2012. In 2000, Slobodan Milošević, who led Serbia throughout the period of bloody Yugoslav wars was removed from power and democratic change ensued. Serbia made significant democratic steps by, for instance, fulfilling conditions to become a member of the Council of Europe in 2003 and European Union candidate in 2012 (for a detailed analysis of the link between democratization and penality in Serbia, see Tripkovic, 2016). However, the political climate changed profoundly in 2012, when the Serbian Progressive Party (*Srpska Napredna Stranka*—SNS) won the elections, which marked the beginning of the undisturbed reign of its leader, Aleksandar Vučić, first as (deputy) Prime Minister (2012–2017) and later as President of Serbia (from 2017). As in other countries, the process of backsliding was slow and sequential: Serbia first underwent the phase of 'erosion' of democracy (2013–2016), subsequently entering the phase of 'reversion' to competitive authoritarianism in 2017 (Haggard & Kaufman, 2020). Today, Serbia seems to fit the definition of competitive authoritarianism as a political system 'in which formal democratic institutions exist and are widely viewed as the primary means of gaining power, but in which incumbents' abuse of the state places them at a significant advantage vis-à-vis their opponents' (Levitsky & Way, 2010: 5). The last decade has been characterized by profound democratic regression: Serbia was one of the 'top ten autocratizers' in the world in the period 2011–2021, along with countries, such as Brazil, Poland, Hungary, India, and Turkey (Boese et al., 2022). The country has, within the timeframe of only two decades, went from mild autocracy to defective (incomplete) democracy, reverting subsequently to a moderate electoral autocracy (Castaldo, 2020: 1618). The V-Dem project currently classifies Serbia as 'electoral autocracy' (a category below 'liberal democracy' and 'electoral democracy' and only slightly better than 'closed autocracy,' see V-Dem, 2023), while Freedom House defines it as a 'transitional/hybrid regime,' a ranking mid-way between 'consolidated authoritarianism' and 'consolidated democracy' (Freedom House, 2023). While recognizing the limitations of these types of indicators, they do nevertheless have the ability to capture a change in democratic performance over time.

Factors identified as general causes of backsliding around the world are also present in Serbia (see, for more details on Serbian indicators of backsliding, Castaldo, 2020; Haggard & Kaufman, 2021). First, *polarization* stems from the legacy of Yugoslav conflicts, and mostly concerns contested responsibility for the civil war that began in the 1990s, the still unresolved status of Kosovo, and divided perspectives on the desirability of future EU membership, all three of which draw from the enduring conflict between the pro-West and nationalist forces. Second, in terms of *party systems and elections*, opposition parties became fragmented in the 2010s which the SNS subsequently used to its benefit, calling early elections to secure better results. Over time, the political landscape moved significantly to the right, with central and left-leaning parties disappearing from the political scene. Finally, erosion of the various *indices of democracy* is also present: since 2012, horizontal checks were weakened, political opposition constantly targeted, and control of the electoral process fully in the hands of the incumbents. This was, as in other cases of backsliding, achieved mainly through the pressures on the civil society, and by weakening the position of judiciary, including the Constitutional Court. Of particular significance was also the significant reduction in the freedom of media, which is almost fully controlled by the ruling party. Freedom House, which scores Serbian freedom and independence of media with 2 (out of 4), also identifies accurately the main reasons for this: 'the threat of lawsuits or criminal charges against journalists for other offenses, lack of

transparency in media ownership, editorial pressure from politicians and politically connected media owners, direct pressure and threats against journalists, and high rates of self-censorship' (Freedom House, 2024). For example, President Vučić used state media to directly address the citizens on about 300 different occasions during 2023 (Freedom House, 2024), completely overshadowing opposition figures who are almost entirely absent from the media because private media is also controlled by the state. The Independent Association of Journalist of Serbia (NUNS) has identified 36 attacks on journalists from January to April 2024, which includes physical attacks, property violations, pressures, and verbal threats: in 2023, 183 such attacks were registered (NUNS, 2024). In addition, there was limited interference of outside forces, especially the EU, which seemed content to tolerate negative tendencies for as long as the government was dealing with the problem of Kosovo and guaranteeing broader stability in the Balkans. In addition to this, the EU has also been designated as 'soft' on Serbia because it is dependent on the country to control irregular migration and secure economic cooperation in the region (Barber, 2024). Analyzing the EU's 2023 report on Serbia (European Union, 2023), the impression one gets stands in stark contrast with the situation in the country and demonstrates EU's willingness to downplay the significance of specific issues, particularly those that concern the undermining of judicial independence, the media, and freedom of expression more generally. As is typical for competitive authoritarianism, pretense of democracy is constantly upheld and in this, Serbia shares traits with the wider region of West Balkans. Most leaders in the region are 'pragmatic reformists,' because of the pressure to secure external legitimacy, which is strengthened by EU conditionality, and cannot therefore engage in open authoritarianism (Bieber, 2018).

The depletion of democratic qualities, however, does not seem to correspond to a perceptible trend in imprisonment rates. If 2011, as the last pre-backsliding year is taken as a cut-off point, there is no significant increase *or* decrease in the rates of imprisonment: the numbers seem to fluctuate at a rather high level (Fig. 1). The increase is, however, notable in the period of democratization (2000–2011), which can be ascribed to a rising number of pre-trial detainees that resulted from relentless police campaigns to deal with problems such as drug use, organized crime, and child pornography (see also Tripkovic, 2016). For instance, while the most recent data (2020) put the percentage of pre-trial detainees of the total prison population at 18.6%, which resembles the numbers at the beginning of the century, the percentage in some intermediate years was substantively higher—for instance, 30.2% in 2005 and 29.7% in 2010 (Institute for Crime & Justice Policy Research, 2023).

A much clearer picture on the use of imprisonment from 2012 emerges from court statistics on the number of imposed prison sanctions, which therefore *excludes* pre-trial detention (Fig. 2). Since 2011, two periods can be identified: increase until 2014 and then significant decrease since 2014 onward (with a slight rise in 2022). The decrease is so substantial that the current number is close to all-time lows, which can be seen at the beginning of the 1990s, 2000s, and 2010s.

The decreasing number of imposed prison sanctions that is evident from 2014 (when the number was 13,026) to 2022 (when it fell to 7,212) could perhaps be explained

Fig. 1 Graph created from the data of Institute for Crime and Justice Policy Research (2023)

Fig. 2 Graph created from the data of the Serbian office for statistics (*Republički zavod za statistiku*) (2024)

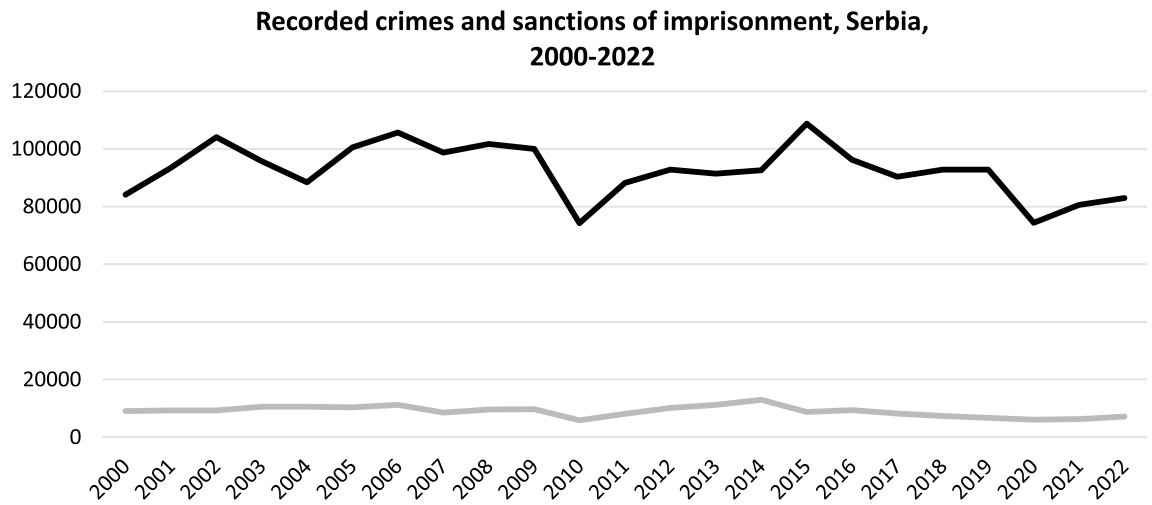

Fig. 3 Graph created from the data of the Serbian office for statistics (*Republički zavod za statistiku*) (2024)

by a decreasing crime rate. As Fig. 3 (below) shows, the number of recorded offenses started to drop significantly around 2015, roughly around the same time at which the number of imprisonment sanctions started to drop as well. Even though the two trends are broadly consistent, it is not likely that the drop in the number of imprisonment sanctions could be entirely ascribed to dropping crime rates. This is for three primary reasons: (1) the drop in prison sentences is more steady and consistent, whereas the number of recorded crime tends to fluctuate; (2) while the number of recorded rate dropped about 20% since 2015, the number of sanctions of imprisonment dropped almost by about 45%; and (3) there is an obvious discrepancy between the two rates in some periods, with number of recorded crimes rising and number of imposed prison sentences decreasing (for instance, since 2020).

More intricate conclusions about the use of imprisonment may be reached when the number of prison sanctions is compared with other types of criminal sanctions. Figure 4 contrasts non-suspended prison sentences with conditional sentences (otherwise known as suspended prison sentences, which have traditionally been the most widely used criminal sanction in Serbia) and house arrest. As Fig. 4 shows, both suspended and non-suspended prison sentences have been decreasing significantly since about 2015, so the drop of non-suspended prison sentences cannot be explained by their substitution with suspended sentences. However, the role

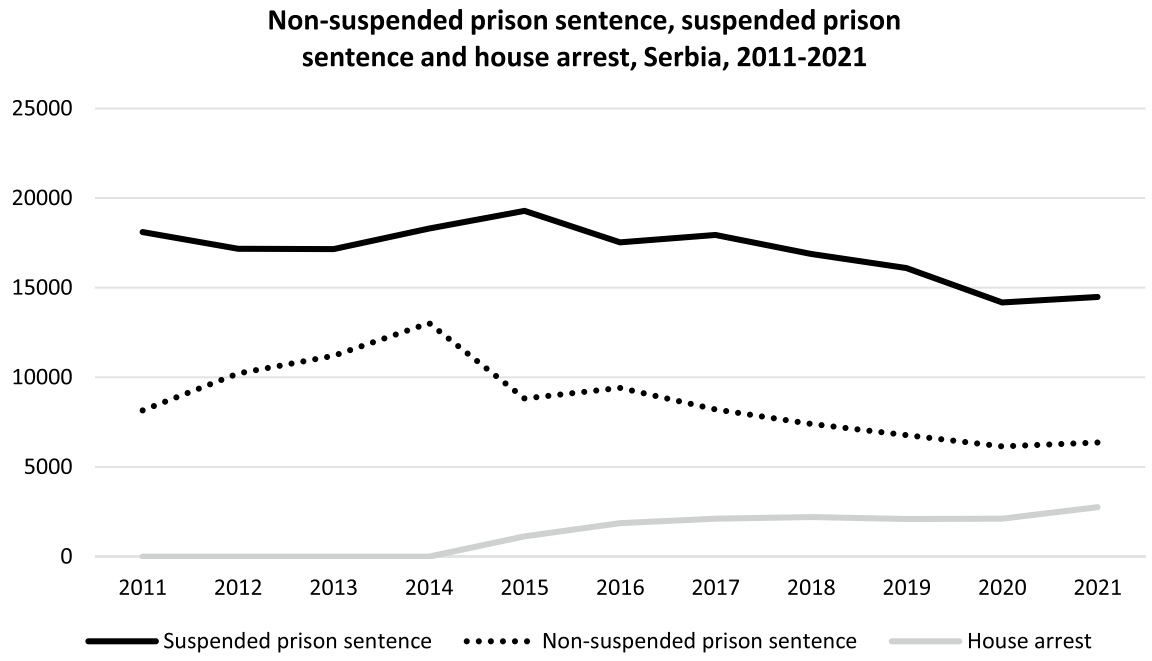

Fig. 4 Graph created from the data of the Serbian office for statistics (*Republički zavod za statistiku*) (2024)

of house arrest seems to be significant. Although this sanction was introduced to substitute imprisonment of up to one year in 2009, provisions which were necessary for its implementation were only made in 2014 and first sentences were imposed in 2015. As the figure shows, the number of these sanctions has been constantly increasing, while the number of short-prison sentences has decreased significantly: the number of imposed sentences of imprisonment under one year dropped from 9435 in 2014 to 3732 in 2021. For these reasons, it seems that a decrease in the total number of sanctions of non-suspended imprisonment correlates with the rise of the non-custodial and non-punitive sanction of house arrest that began to be implemented well after democratic backsliding began.

If judged by imprisonment rates, there is no indication of a positive association between democratic backsliding and more punitiveness. A cursory glance at two other notable European backsliders—Hungary and Poland—reveals an even more inverted relationship between the two variables than in the case of Serbia. Hungary, which began to backslide in 2011, saw a steady increase of rates of imprisonment from 173 (in 2012) to 182 (in 2014), only to experience a significant drop more recently—back to 172 (in 2020). The situation is even more curious in Poland, which started to backslide in 2016. At that time, the rate of imprisonment was 188, but has recently (2020) dropped to 179. The potential role that backsliding might have played in Poland becomes even more difficult to discern given that the rate of imprisonment has been consistently dropping since 2006, when it was at an all-time high of 232 (data on both countries are from Institute for Crime & Justice Policy Research, 2023, and Haggard & Kaufman, 2020).

These findings seem to suggest that we should not assume a correlation between democratic erosion and punitiveness, if measured by imprisonment rates. However, signs of erosion might appear in other penal domains and for that reason the next part of the article canvasses a wider realm of penality that includes penal policies, practices, values, and identities but also considers some 'missed opportunities' for penal populism.

Autocratic penality

Penal policies

Changes that have occurred since Serbia's democratic erosion began in 2012 are inevitably linked to the post-2000 democratization changes, and these are, in turn, couched within penal transformations that have incrementally taken place after the Second World War. Former Yugoslavia, which Serbia was a part of until the dissolution of the country in the 1990s, has followed a peculiar penal trajectory distinct from other communist countries that were characterized by 'notoriously punitive' penal tendencies (Krajewski, 2004). This was prompted by an abrupt transformation of the political-economic system in 1948 which substituted communism with a milder form of state socialism. Penal law followed suit by adopting a legalistic 'German' model (Srzentić et al, 1998) and abolishing notable communist

principles, such as ideological criminal law, material definition of crime, and the wide use of analogy.

The key development post-2000 was the adoption of a set of new laws pertaining to substantive and procedural criminal law, as well as relating to juvenile offenders and prisoner rights which, with some amendments, remain in force today (see Grubač & Beljanski, 2002; Nikolic-Ristanovic, 2007; Pihler, 2006). Overall, these changes did not signal discontinuity with previous penal law (Stojanović, 2006), and most of them were positive from the standpoint of their contribution to securing important principles, such as parsimony, dignity, and human rights. The most important alterations concerned *inter alia*: abolition of the death penalty; maximum term of imprisonment set at 20 years (or, in exceptional cases, 30–40 years); conditional release after two-thirds of the sentence; expansion of the system of alternatives to imprisonment; significant decriminalization and reduction of maximum terms of imprisonment; strengthening of procedural guarantees; setting the upper limit of remand; reduction of non-judicial remand; expansion of victim rights; and so on.

After 2012, further amendments have—regardless of the change of the political regime—remained mostly consistent with previous developments. Although this period has been described as 'dynamic' due to the number of legal changes (Kolarić, 2018), explicitly punitive or otherwise paradigm-shifting modifications have not occurred. Within the general part of criminal law, in 2014, provisions necessary to implement house arrest to substitute short prison were made, while rules that would make it easier for the judges to impose fine (thereby substituting imprisonment) at a greater rate were introduced in 2016. That same year, the rules on conditional release were also relaxed. Most modifications concerned the special part of criminal law and sought to respond to macro-social changes, implement obligations created by the adoption of international treaties, align legislation with the European Convention of Human Rights, as well as to satisfy conditions for joining the European Union, particularly in the domain of regulation of economic crime (Kolarić, 2018).

The only majorly repressive change that occurred post-2012 concerned the introduction of life imprisonment in 2019. The new sanction substituted the sanction of 30–40 years of imprisonment which was provided for the most serious crimes for which the death penalty was in place before it was abolished in 2002. Life imprisonment can be imposed in a limited number of cases: aggravated murder; specific sex offenses if they result in death; a few grave forms of crimes against the state; and specific crimes against international humanitarian law (genocide, war crimes, crimes against humanity). It can also be imposed only on offenders who were at least 21 years old at the time of offense and has so far been used in only 5 cases, all of them either relating to the rape of children or murder of women (RTS, 2020). In most cases, those imprisoned for life are eligible for conditional release after 27 years, but in a few instances—relating to grave murder and specific sex offenses that result in death—conditional release is not possible. This aspect of life imprisonment is extremely problematic and has been criticized as incompatible with the European Convention on Human Rights, particularly its prohibition of inhuman or degrading punishment, because there are no legal mechanisms that allow for review and reduction of the length of the sanction (see Ćorović, 2021; Ilić, 2019; Turanjanin, 2021).

However, using this example to support the claim that penal policy became punitive due to democratic erosion must be done with caution. The main reason concerns the negligible effects of the introduction of this sanction on imprisonment rates, as the number of cases in which it was imposed is quite small. The punitiveness of the change can, however, be inferred from the stance taken by policy makers and the message that the change sends to criminal offenders, particularly in the case of sexual and violent offenses toward women and children, which aligns with assumed public opinion on this matter. Even though life imprisonment was introduced in 2019, the long campaign that led to it began a decade earlier, preceding the beginning of democratic erosion. Two young girls were raped and killed in 2010 and 2014 which sparked national outrage and led to a public campaign to deal with such offenders more severely. The first case resulted in the adoption of a law that introduced a set of measure to prevent and punish sex offenses toward minors in 2014. The second animated the introduction of life imprisonment following a citizen initiative which collected signatures of more than 150,000 people (Istinomer, 2019). In that regard, the current political regime merely completed the process that was put in place by its democratic predecessors.

While some criticism of life imprisonment is justified, particularly in the case of crimes for which there is no possibility of parole, the existence of this form of punishment in the catalogue of criminal sanctions is not in itself problematic: the introduction of the sanction might even be understood as correcting a flaw of the system that for a long time provided for the potentially inadequate maximum penalty in such cases (30 to 40 years in prison). Life imprisonment is, in addition, widespread around the world: it exists in 183 countries, while life without parole is present even in the European context (in jurisdictions, such as Bulgaria, England and Wales, Estonia, Sweden, and Turkey (Penal Reform International, 2023)). Within the regional context, Serbia has by introducing this sanction joined other former Yugoslav countries which have, starting from the same benchmark of imprisonment of 20 years, over the years introduced either life imprisonment (such as

Macedonia and Slovenia) or very long imprisonment (of 50 years, such as the case in Croatia) (Radulović, 2020).

Penal practices

The democratic years (2000–2012) were characterized by penal practices which—despite the country's expressed democratic commitments—had strong undemocratic tendencies. While the solid emphasis on human rights prompted a significant reduction in the abuse of the penal apparatus and strengthened human rights protections both domestically and internationally, a lack of a clear separation of powers led to what has been termed 'authoritarian governance of crime within democracy' (Tripkovic, 2016). The key role in this process was played by the governing political elite which resorted to punitive and populist moves to demonstrate—mostly in times of perceived social crises—its 'tough on crime' commitment (Ignjatović, 2010). Despite improvements pertaining to the substance of penal legislation, such negative inclinations prompted academic observers to describe Serbian penal tendencies as 'populist' (Ignjatović, 2010) and 'vindictive' (Soković, 2011). This, furthermore, caused a notable rupture between, on the one side, articulated goals and the substance of penal provisions which were mostly progressive and moderate, and, on the other side, the behavior of specific penal actors, particularly the law enforcement and judges, who became unduly overzealous and repressive, mostly due to political pressures that were put on them (Tripkovic, 2016).

On the one hand, law enforcement was put under pressure from when the first democratically elected PM Zoran Đinđić was assassinated in 2003. In the wake of his murder, 11,000 suspects were arrested (Vreme, 2013) and the trend of overreactive 'police campaigns' under pompous names, such as 'Armageddon' or 'Balkan Warrior' continued in respect of problems, such as drug trafficking and child pornography (Vreme, 2013). Campaigns kept the number of pre-trial detainees persistently high: at the time of democratic transition in 2000, the pre-trial population rate was 17, but it rose to 46 by 2010 (Institute for crime & justice policy research, 2023). On the other hand, judicial independence was undermined by the executive's participation in the process of judicial appointments (Rakić-Vodinelić et al, 2012). This pushed judges toward behaviors they thought were preferred by politicians in order to solidify their status. Consequently, the rate of imprisonment rose almost twofold in this period: from 82 in 2000 to 142 in 2012, which was a combined result of the increasing length of sentences (see below Fig. 5), decreasing use of parole and the already mentioned rise in the use of pre-trial detention (see for more details Tripkovic, 2016).

After the democratic decline began in 2012, problems observed in the previous period have seemingly improved to a large degree. The police have ceased with wide-scale campaigns which led to a reduction of the rate of pre-trial

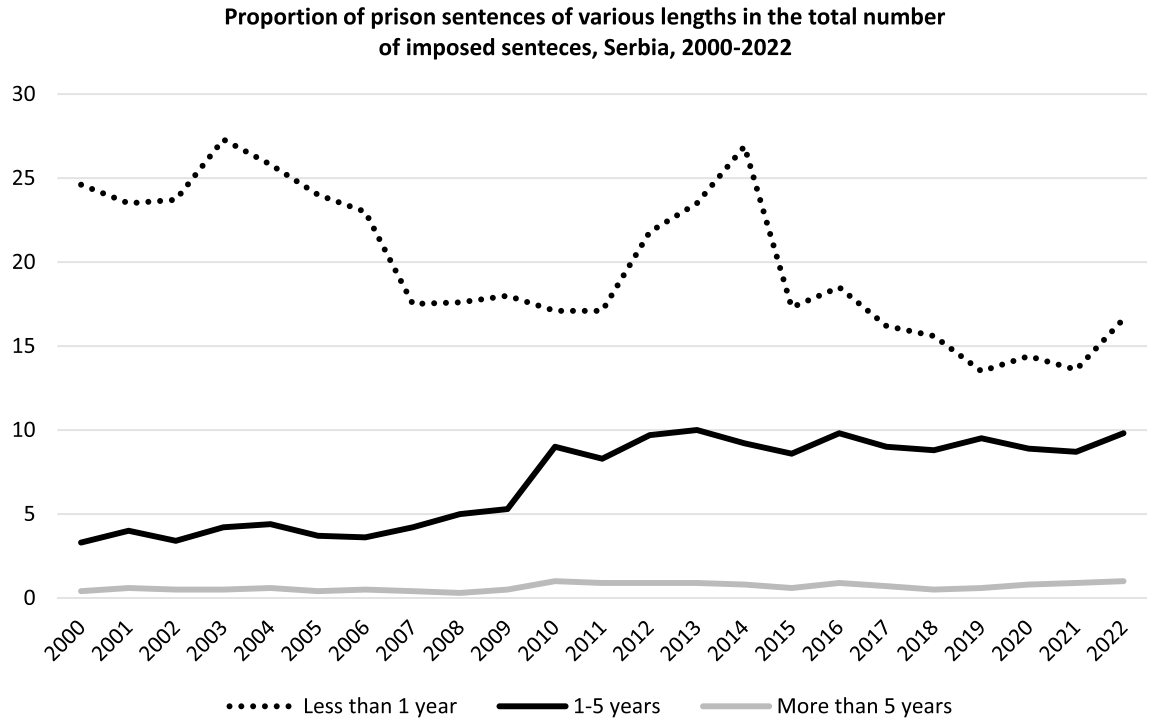

Fig. 5 Graph created from the data of the Serbian office for statistics (*Republički zavod za statistiku*) (2024)

detention: from 46 in 2010 to 29 in 2020 (Institute for crime & justice policy research, 2023). In terms of judicial independence, the pressure in penal matters in *general* (but not always in *particular* matters, see below) has subsided. Through their sentencing decisions, judges in Serbia have for decades formulated a sentencing policy that has consistently been described as 'mild' when contrasted to legal provisions in place (Stojanović, 2012), and the noticeable 'conflict' between legislators and judges in that 'legislative penal policy is strict, but judicial penal policy is lenient' (Radulović, 2020: 83) has been a recurring point made in the academic scholarship. The tendency to pursue sentencing practices that are at odds with intentions of policy makers has been noted in other countries in the region, both those that demonstrate signs of backsliding and those that do not. For example, the mentioned Hungarian study (Boda et al., 2022), identifies tensions between penal populism that can be observed both in the political and legislative domain and 'everyday' sentencing practices which do not pursue such punitive goals. Another example from Slovenia, whose penal system has for a long time shared (though not entirely) Serbia's penal trajectory in the former Yugoslavia, shows similar tendencies: despite politicians embracing populism and regardless of rather comprehensive punitive legal changes introduced after 2000 (see Plesničar and Drobnjak, 2019), 'the penal practice of Slovenian courts has been relatively stable and has not experienced significant changes despite increasing retributive elements in the criminal legislation' (Flander et al., 2023: 634). This has been the case not only in general, but also in some contentious areas, such as sentencing for sexual offenses (Plesničar et al., 2022). This shows that, given the right separation of power conditions, bearers of the judicial function have an ability to pursue relatively mild and balanced sentencing practices despite the punitive signals that they might receive from politicians and legislators.

Therefore, even though judges succumbed to punitive pressures during the period of democratization (see Tripkovic, 2016), things have apparently gone back to 'normal' more recently. This can be attributed to both legislative amendments and the lack of political pressure. For example, conditions for conditional release, that were made stricter on a few occasions since 2000 (see Soković, 2014), were finally relaxed in 2016. In addition, house arrest which can substitute imprisonment of up to one year began to be implemented in 2016, alleviating pressure on prison facilities. Judicial independence has also improved due to a lack of large-scale amnesties that undermine robustness and integrity of judicial decisions (the last large-scale amnesty occurred in 2012) (Danas, 2022).

Figure 5 helps us observe some of the mentioned trends, by presenting data on the changes in the proportion of prison sentences of various lengths in the overall number of sentences since the coming of democracy in 2000.

First, presented data speak strongly in favor of the generally lenient and moderate sentencing policies that are pursued in Serbia. From the figure, it is clear that the most frequently used prison sentences in Serbia are those below one year, the use of which has nevertheless fluctuated significantly since 2000. At the other side of the spectrum are sentences above five years (which includes sentences up to the statutory maximum of twenty years as well as life imprisonment), whose number is neglectable (below 1% of the total number of imposed sentences). This means that all, save for the 1% of all sentenced offenders in Serbia, will either not be incarcerated at all, or will spend less than five years in prison, which is usually further reduced through conditional release which can occur after two-thirds of the sentence has been served. Second, notable changes in the use of prison sentences of various degrees can be observed over time. There is, overall, a general decrease in the use of short-prison sentences (with a notable exemption in years 2012–2015), which is accompanied by a rise in the use of sentences between one and five years from roughly 2007. It is probable that these two changes are correlated, even though some of the decrease in the number of sentences below one year can probably be ascribed to the increasing use of alternative sanctions, such as work in public interest or house arrest. What is important for the current discussion is to notice that the two changes cannot be immediately linked with the beginning of backsliding, as both long precede 2012.

Judges therefore continue with their relatively mild sentencing practices which seem largely independent from the change in government and political pressure. In 2017, an anonymous survey revealed that only some judges feel pressured: the pressure is, however, in most cases not political but comes from senior judicial officials and presidents of courts who push for quicker conclusion of trials (Paragraflex, 2017). The interference with the course of justice has, nevertheless, not ceased entirely, but has instead been limited to high-profile cases, which might implicate the executive. Recently, for example, two deputy prosecutors were replaced and thus prevented from investigating a case of corruption involving the state electro-power industry company in which 7.5 million US dollars were embezzled (Reuters, 2023). Another notable tendency that constitutes interference with the course of justice has been to provide criminal impunity to members of the political elite or those associated with them by not initiating criminal proceedings in individual cases in which criminal misconduct was suspected. There are dozens of events and incidents of such kind, including, for example, illegal destruction of houses in the capital Belgrade to build a luxury business and residential complex; illegal

state ownership of a telecommunication agency; corruptive activities in the factory producing firearms and subsequent criminal process against the whistleblower who reported them; a road traffic incident presumably caused by a close associate of the ruling elite which resulted in a death of a woman; and the discovery of one of the biggest marijuana plantations in Europe (see: N1, 2023a and Direktno, 2022). All of these—and other—events were systematically misrepresented, covered up, and manipulated, resulting in complete absence of criminal liability of their alleged perpetrators.

Penal Values and Penal 'Omissions'

The final domain relates to the behavior of penal actors—namely politicians—who inspire, motivate, and introduce large-scale changes in the penal domain. After the democratic transition in 2000, notable instances of politicization of crime, as well as populist and punitive behavior in the penal sphere were present. These concerned putting the 'fight' against crime high on the political agenda, using cases of rare and unconventional violent crimes to garner popular support, as well as spreading the fear of crime and inculcating security concerns (see Tripkovic, 2016).

The post-2012 political behavior and endorsed penal values seem to be more consistent with the generally moderate penal outlook promoted through penal policies and practices in this period. Instances of emotive and unwarranted penal reactions are rare: one notable example is the already discussed introduction of life imprisonment, which became part of Serbian criminal law without a public debate, following a widespread public campaign and significant media pressure (Turanjanin, 2021). Most political action is, however, characterized by inertia, and any changes—as the example of life imprisonment shows—are reactive rather than proactive. The elite might succumb to punitive public pressure, but is unlikely to inspire or lead by punitiveness.

Important conclusions to support this argument might be drawn from analyzing the scope and substance of what I term *penal omissions*. Penal omissions occur when populist politicians omit to exploit existing social challenges that have a propensity to arouse negative public sentiment. One such example is a high level of unexpected and—from the standpoint of the state—undesirable immigration, such as the immigration 'crisis' that began to seriously affect Europe in 2015–2016. This situation can be easily exploited by populist politicians, as it allows them to refocus punitiveness from its usual target—criminal offenders—to undesirable immigrants. In this way, the pressure to act in punitive ways is relieved through another channel, such as by detention and deportation of immigrants (a phenomenon defined as 'transcarceration'), which requires that we consider this domain when assessing how penal power is used (for an overview, see Brandariz, 2021).

Relatedly, migrants are a convenient target for inculcating social anxieties through securitization. The example of Hungary, Serbia's next-door neighbor, shows how the production and artificial maintenance of a migration 'crisis,' as well as the discourse surrounding it, help solidify autocratic power through 'bordering and ordering' of a nation, which especially hinges on drawing the link between migration on the one side and terrorism, insecurity, and a threat to a specific way of life on the other (Cantat and Rajaram, 2018). The discourse developed in Hungary—premised on, among other things, the conflation of various categories of foreigners and the lack of recognition of the separate status that should be given to refugees and asylum seekers—later provided legitimacy for the exaggerated response and actions that were directed against them (Bocskor, 2018). In that sense, migration became the 'jackpot' for the success of Viktor Orbán's government: presenting Hungary as the 'protector of Europe' and politicizing the issue led to a consistent sense of fear among the voters and secured electoral success (Bíro-Nágy, 2022).

Serbia, which is like Hungary on the Western Balkans migration route, and which has seen more than 1.5 million migrants pass through its territory since 2015 (UNICEF, 2023), has a conspicuously different public approach to discussing migration. One significant difference, of course, is Serbia's non-EU status which makes it mostly a transit country for migrants who do not desire to stay permanently, which is fundamentally opposed to Hungary's perception of itself as the EU's gatekeeper (Bocskor, 2018). Nevertheless, Serbia's political elite could have easily used the migrant-related concerns to its advantage, especially because public opinion polls revealed negative attitudes and security concerns which is particularly notable in areas with a high proportion of immigrants (UNDP, 2018).

Serbia's President Aleksandar Vučić, who is otherwise no stranger to inflammatory and melodramatic political behavior, has always been unusually reticent and balanced in his statements about immigration, avoiding to discuss the topic as much as possible. Although academic research has identified many problems and inconsistencies in how migrants, refugees, and asylum seekers have been received and treated in Serbia since 2015 (for details, see, for instance, Beznec et al., 2016; Milivojević, 2019 and Kovačević, 2021), one would, for the most part not be able to infer the existence of these problems from Vučić's statements. At the beginning of the crisis, he was quoted saying that 'immigrants do not come to make incidents … they have run away from misfortune, war, and are looking for a better life, not trouble' adding that 'walls are not the answer' (RTS, 2014). More recently, addressing public concerns

about specific migrant-related incidents, Vučić stated that 'migrants are engaged in less incidents than Serbs' and that he does not want to engage in conspiracy theories about them (Nova, 2020a). The general narrative put forward by the ruling elite is well captured in the following statement by Vučić: 'we have to help, that is our obligation, and we have to treat them as our citizens … we do not have too many immigrants on our territory and they are not a problem … we have to show hospitality and not seek to pin down responsibility for our own problems on someone else' (Soinfo, 2021). This discourse was initially consistent with the general humanitarian and emergency approach to migration crisis that developed in Serbia from 2015, but became more inconsistent over time when focus was put on securing Serbia's borders, only to become more consistent again when steps toward integration of migrants were taken (Stojic Mitrovic, 2019).

Therefore, in opposition to Viktor Orbán, Serbia's president not only refrains from incendiary statements, but actively seeks to downplay the extent of the crisis and engage in a calm and responsible discussion of issues at hand. As it will be shown in the last part of the article, this approach to immigration, which is similar to the approach to governance of crime, is overall consistent with the way that the political elite presents Serbia to its citizens.

Non-Punitive Populism and Crime that 'Withered Away?'

Previous section has highlighted the extent to which the mostly moderate and non-punitive traits of Serbia's penal system are present within the overall erosion of democratic features of the society. In fact, a much more populist and punitive political stance seems to have been present in the period of democratization (2000–2011) than after backsliding began (2012–today).

To begin to unravel these findings, reference must again be made to the very idea of populism which is one of the key features of democratic backsliding. In the most conventional use of the term, populism refers to a strategy of governing by forging 'a direct relationship with 'the people'' (Diamond, 2021: 33). The style of governing straddles the left–right political divide: it is a 'thin-centered' ideology without predictable policy agendas (Mudde and Rovira Kaltwasser (2017). For these reasons, populism should not be understood as a 'coherent ideological tradition [but] as a set of ideas that, in the real world, appears in combination with quite different, and sometimes contradictory, ideologies' (Mudde and Rovira Kaltwasser, 2017: 6). Populist leaders of backsliding democracies are therefore—because they need to respond quickly to volatile and everchanging public desires—'often pragmatic and less bound by ideological constrains' (Boda et al., 2022: 118).

This means that populists will resort to penal populism and punitiveness *only* if they perceive this to be in line with preferences of the majority: as pragmatism ultimately dictates their policy choices, the tools and outcomes will inevitably be ideologically heterodox (Bartha et al., 2020). To understand why Serbia's political elite shows little concern for the 'penal question' (Simon & Sparks, 2013), we must first establish the role of crime in the elite's general narrative about the Serbian state and society and then subsequently contrast this to the specific 'subtype' of populism (Mudde and Rovira Kaltwasser, 2017) that characterizes Serbia. To do so, the next section explains the particularly Serbian style of governance of crime which accentuates the 'alien' nature of crime in an otherwise 'perfect society:' this misrepresentation of both the crime and society is used to increase the appeal of the governing party to the voters and secure electoral success. Following this analysis, the article assesses such specific form of governance of crime within the wider characteristics of the Serbian backsliding case, which is unpredictable, volatile, and conducive to change.

Serbian Case of Crime that 'Withered Away'

Crime governance, as a component of political governance, should correspond to the wider political narrative that creates and promotes a specific picture of the country that is 'sold' to the voters. Since coming to power in 2012, Aleksandar Vučić has worked to create an image of Serbia as an economically stable, modern, inclusive, and equal society: Vučić has often been quoted saying that Serbia is Europe's leader in terms of economic growth (Nova, 2020b) and is becoming 'an economic tiger' (B92, 2016). Given that such statements imply good leadership based on strong state and social foundations, promoting or inculcating a sense of crisis would be at odds with this picture: this might explain why governance of crime plays such an insignificant role. Instead of the overall sense of crisis, select problems are carefully curated and used for populist purposes: in Serbia, like in the rest of Balkans, these include the political opposition's alleged attempts to undermine the government, as well as interethnic tensions and problematic relations with neighboring countries (Bieber, 2018). Crime, which as arguably a sign of individual or social pathology, might somehow be linked to the government, does not fall within these designated categories, and good governance of crime is one of the many ways through which the political elite can represent itself as the best choice for the people. Recently, for example, Aleksandar Vučić stated that 'the number of crimes in the country has never been smaller, the number

of murders has never been slighter, violence has never been lesser' (Danas, 2024).

This does not, of course, mean that crime is not on the political agenda at all. A good indication of this are the pledges taken by the prime ministers in their first address to the parliament. In that sense, each new prime minister tends to indicate their commitment to fighting crime: for example, Vučić's 2014 exposé emphasized the continuing fight against corruption and organized crime (Vlada Republike Srbije, 2014), while the currently outgoing PM Ana Brnabić's 2022 exposé also stressed the importance of addressing corruption and organized crime (Vlada Republike Srbije, 2022). The notion of 'corruption and organized crime' as a focal point of the fight against crime, has become a frequently revisited promise of all post-2000 governments and can be found in each new prime minister's exposé (see Vlada Republike Srbije, 2024). In addition, when reading the post-2012 exposés in their entirety, it is observable that 'crime fighting' concerns and commitments are of negligible importance when compared to other plans and promises.

In line with this, there are two ways in which the governance of crime reflects the representation of Serbia as the 'perfect society.' First, crime is understood as 'corruption from the West'—an aberration from otherwise flawless social conditions. When on 3rd May 2023, a 13-year-old boy killed and wounded 16 people, mostly children, in a school in Belgrade, the Minister for Education attributed responsibility for the act 'to the cancerogenic and detrimental effect of internet, video games, and the so-called Western values,' adding that measures must be put in place so that this does not 'become a *socially accepted* way of behavior such as is unfortunately the case in some Western societies' (Radio 021, 2023, emphasis added). To this, the President added that Serbia 'has apparently become part of the global world … not only in good, but even the worst of things' (AV, 2023).

Second, in cases of grave crimes when negative influences from abroad cannot be identified, an alternative narrative of crime as targeting the *state,* is presented. Just two days after the school shooting, a 20-year-old killed and wounded 24 people in central Serbia. While evidently a case of mass murder, the Minister of Interior described it as a 'terrorist attack' (Politika, 2023), while the President described the act as 'an attack on the whole country,' calling the shooter a 'terrorist' and drawing parallels with the 9/11 attack (Danas, 2023). The 'victimization of the state' narrative has been, with the aid of pro-government tabloid media, promoted since 2015 and has mostly been framed in terms of failed or prevented assassination attempts on Vučić himself (Nova, 2022).

Political representation of both the Serbian social conditions and the crime situation is, however, merely a populist manipulation and a 'game of deception' (Luhrmann and Lindberg, 2019: 1108) that the government plays to conceal a less than ideal reality. Rather than a 'perfect,' Serbia remains a society deeply traumatized by its recent violent history, current regional problems, economic difficulties, enormous emigration, and internal polarization. Violence, corruption scandals, illegal activities connected to the political elite, abuse of power, nepotism, and suspicious privatization—among other things—have been a constant feature of Serbia for decades, while 'gangsterism' and strong ties between the governing elite and organized crime groups (Worth, 2023) play a decisive role in everyday political life.

Serbian Case of 'Volatile' Backsliding

Thinking more generally about the type of backsliding that is present in Serbia, the rule of Aleksandar Vučić can, on the one hand, be described as a form of 'stealth authoritarianism' (Przeworski, 2019), a style of governance which is arguably autocratic in nature but hidden under the guise of legalism. The most well-known case of such form of authoritarianism can be found in Turkey, where President Recep Tayyip Erdogan has been known to use 'legal mechanisms for anti-democratic ends' (Varol, 2018: 339). Rather than ostentatious authoritarian behavior, such as shutting down media or imprisoning political opponents, such political regime adopts small-scale, incremental legal measures through which democracy is undermined over time (Varol, 2018) in a concealed way. The same seems to be the case in Serbia: apparently learning from the downfall of the last Serbian dictator Slobodan Milošević, Vučić is more careful to craft policies which will neither cause serious internal conflict nor irritate the European Union (Bieber, 2018; Džankić et al., 2019). On the other hand and at the same time, everyday political behavior and style of communication is becoming riddled with 'post-shame' politics (Wodak, 2019). In the case of Vučić, 'post-shame' relates to political communication that the governing elite employs toward not only the opposition, but also the public, which is vulgar, uncivilized, and humiliating. This is, among other things, done by way of mass media, tabloid newspapers, reality show TV programs, glorification of violence, war criminals, and persons with organized crime histories: the current state of the Serbian society is, consequently, described as profoundly 'anti-intellectual' (N1b, 2023). The political elite, through such behavior, promotes violence and creates an atmosphere of hate (Guardian, 2023), causing the erosion of important democratic values and undermining the human and social capital. All these factors combined force the people to either become alienated from the state or emigrate: in the last 20 years, around 15% of the population of Serbia has left the country (Politika, 2022).

When political power is personalized (Ziblatt & Levitsky, 2018) in a way and to the extent to which this is the case in Serbia, where parliamentary democracy has effectively become a de facto presidential rule (Haggard & Kaufman, 2020: 180) of a self-professed 'strongman' (Mudde and Rovira Kaltwasser, 2017), personal circumstances affecting such leader will inevitably have ripple effect on the society. The specific type of backsliding which 'has not emancipated itself from the leading figure of the regime' will trace the leader's path and destiny, because such regimes do not 'offer an ideologically coherent authoritarian system that could persist without these figures' (Bieber, 2020: 120). While Vučić's leadership was at first steady and confident, over time it became hectic and volatile: in opposition to the standard populist condition, the bond between the populist leader and his 'people' (Mudde and Kaltwasser, 2017) is becoming porous as ever-growing segments of the population are being accused of undermining the vision and project of 'strong' Serbia. It is thus the people rather than the 'elite' who are targeted by his more recent rhetoric and policies: in that, Vučić's rule becomes a case in point of the 'paranoid style in politics' (Hofstadter, 1964). As a result, his populist appeal weakens, but his control over the country inevitably strengthens.

These two characteristics of populist rule—'stealth authoritarianism' and 'post-shame' politics—are, however, in tension and might eventually lead to an even more volatile form of political governance. While the current political elite still seeks to paint the picture of the perfect society, increasing destabilization of the regime through the personal downfall of the leader might direct them toward unpredictable policy choices which are even harder to predict than the already unpredictable policy choices in fully 'functional' populist polities. In such circumstances, governance of crime might suddenly—if it is seen to benefit the government—become a topic of concern and attention. Tracing the changes, subtle nuances and growing tensions in such polities therefore become key for interpreting the role and purpose of policy choices, including those that might relate to governance of crime.

Conclusion

Although democratic backsliding in Serbia shares in some of the global backsliding characteristics, its specificity that emanates from the position of the political regime that is perpetually stuck between its nationalistic aspirations and European ambitions makes Serbian leaders 'constrained' autocrats (Bieber, 2020: 7). These specificities are also relevant for understanding the place and nature of crime governance in the country. As the article has shown, most elements of penality in Serbia are currently mild and moderate, but could easily change having in mind how 'volatile' Serbian backsliding is. Punitiveness therefore does not seem to be an inevitable consequence of democratic erosion: outcomes are not preordained, but can be negotiated in virtue of wider commitments, pressures, and aspirations. Populist leaders in democratically weak countries do not seem to be—at least judging from the Serbian case—predisposed to be punitive or 'tough on crime,' and there are various factors in addition to those that appear in established democracies which play a role in deciding whether punitiveness is a desirable tool to invigorate and prolong undemocratic rule. To be capable of understanding and explaining these tendencies, academic research in this domain must be multidisciplinary and requires collaboration between political scientists, criminologists, and lawyers (see Ciantetti et al., 2018).

Conclusions of this article are therefore along the lines of those contributions to the punishment and society literature that advocate smaller-scale studies of penality and are wary of general accounts on the impact of, for example, 'capitalism' or 'democratization' on the penal field. Lacey, for instance, argues that descriptors such as 'liberalism,' 'neo-liberalism,' or 'social democracy' are too indeterminate and vague for the purpose of establishing their impact on the penal sphere and there needs to be a 'more differentiated and a more specifically institutional account of the defining features of political systems for the purposes of understanding punishment' (2012: 262). Going a step further, it can be argued that penal outcomes might equally have to do with political and political-economic conditions, as well as with other—for instance, historical or cultural—circumstances. For that reason, a tendency to expect a specific form of penality to be present in *all* backsliding countries just on the account of the depletion of their democratic credentials must be resisted and the wide variety of regional, national, and local specificities should be taken into account instead. In the case of Serbia, factors that contribute to current penal outcomes might have little to do with democratic conditions themselves: for example, Serbian penality might be more impacted by the long-standing penal tradition of mildness and moderation, something that Serbia shares with other countries that were once part of the former Yugoslavia. This tradition for the most part remains robust despite backsliding conditions: the 'withering away' of crime and the irrelevance of the penal question might therefore not only be a political strategy of presenting Serbia as a 'perfect society,' but a consequence of more genuine, long-standing penal tendencies which, although somewhat undermined in specific periods (such as the period of democratization, 2000–2011), tend to be stable and continue to shape penal outcomes. These tendencies can be traced back to the political and legal context that existed in the former Yugoslavia since the break-up with the USSR

in 1948. As a consequence, the new political-economic system of self-managing socialism, which substituted hard-line communism, provided a context that was conducive to policies and practices that were significantly milder than the 'notoriously punitive' (Krajewski, 2004) penal tendencies in the Warsaw pact countries. While Yugoslavia was 'special' from an external point of view, internal differences were notable during its existence—especially after the increasing autonomy of federal units after the 1974 constitutional changes (Đorđević, 1977)—becoming even more profound after the dissolution of the country which began in the 1990s (for a detailed overview, see Hacin et al., 2022). It is thus difficult to say what remains of the old Yugoslav penal tradition, but there is some indication that a level of moderation in 'everyday' administration of criminal justice nevertheless remains, as explained before.

This article sought to assess the association between democratic backsliding and punitiveness in Serbia and—based on a general overview of current penal policies, practices and embraced penal values—found a lack of a positive correlation. Given that the current article is the first to probe into this relationship, both in Serbia and internationally, it should be understood as an attempt to scope out relevant issues and set some boundaries for the subsequent debate in the Serbian and other contexts. To probe the relationship further and to, perhaps more ambitiously, shed light on issues of causation, more detailed studies of all aspects of penality need to be conducted in future.

Declarations

Conflicts of interest The author states that there is no conflict of interest.

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