

## Labour

Journal of Canadian Labour Studies

## Le Travail

Revue d'Études Ouvrières Canadiennes



# Christine Scott-Hayward and Henry F. Fradella, Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System (Berkeley: University of California Press 2019)

Melanie D. Newport

Volume 88, automne 2021

URI : <https://id.erudit.org/iderudit/1084999ar>

DOI : <https://doi.org/10.52975/lt.2021v88.0024>

[Aller au sommaire du numéro](#)

Éditeur(s)

Canadian Committee on Labour History

ISSN

0700-3862 (imprimé)

1911-4842 (numérique)

[Découvrir la revue](#)

Citer ce compte rendu

Newport, M. (2021). Compte rendu de [Christine Scott-Hayward and Henry F. Fradella, Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System (Berkeley: University of California Press 2019)]. *Labour / Le Travail*, 88, 210–211. <https://doi.org/10.52975/lt.2021v88.0024>

politics. It may be that activists were more attentive to (and affected by) developments in Britain, France, Germany, and other countries simultaneously struggling with the question of child labour than is allowed for here. These minor quibbles, however, pale in comparison to the book's signal achievement. *Upon the Altar of Work* manages to make well-worn subject matter feel fresh, exciting, and original. Child labour is still with us of course, even if more a problem for the Global South than the American South. Betsy Wood's work reveals how far we have come in combating that evil, while reminding readers of the work yet to be done.

BRIAN ROULEAU  
Texas A&M University

**Christine Scott-Hayward and Henry F. Fradella, *Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System* (Berkeley: University of California Press 2019)**

THE TITLE OF *Punishing Poverty* is something of a misnomer. While a single chapter focuses on the jailing of poor people, this is for the most part, a book about the capriciousness of actors who create and deploy a variety of technologies and institutions in the service of punishing people before they have been convicted. This book explores the largely unheralded subculture of carceral decision-makers – from judges to pretrial services clerks to bail bondsmen like the reality TV star Dog the Bounty Hunter – who carry out the work of bail bond, risk assessment, and pretrial incarceration. This book has profound implications for how scholars of carceral history understand the work of mass incarceration and how carcerality is contingent upon relationships between these actors. The authors demonstrate the wide gulf between bail's

intent, to ensure people appear at trial, and its role in practice, to prevent crimes by people awaiting trial.

This is a challenging book. Its authors are able and clear guides through the labyrinth of contingencies that one might encounter between arrest and sentencing. In defining bail as a financial guarantee to show up for court, the authors are committed to emphasizing the “intended emancipatory purpose” of bail from its creation in the fifth century (5). Since the late 19th century, money bail has become a business providing defendants with access to bonds underwritten by insurance companies so that they can pay bond amounts set by judges in order to secure their freedom before trial. The authors note that today, about 90 per cent of pretrial detainees are jailed because they cannot afford their bail (9). This deep history and tangle of contemporary businesses and judicial choices demonstrates that bail is arguably one of the most complicated aspects of the modern carceral state. The authors note that this system is so complex for people trying to negotiate it that bail bondsmen – critically regarded in this text as people profiting from unfreedom – have maintained a great deal of political influence in part because they serve as effective intermediaries for desperate people coming in contact with this confusing system for the first time.

Being honest about the challenges of bail reform – which is very much the goal of this book – demands attention to the local and federal variability of pretrial decision making in the United States. This requires, necessarily, attention to what many lay readers will find are very technical aspects of bail policy. To achieve this, the authors deploy an intensive synthesis of literatures across law, criminology, and even psychology to explore the nuances of the many nodes of this particular policy realm. Each chapter differs dramatically in scale – ranging, for example, from a

chapter on the entire history of bail to a chapter on the specifics of contemporary risk assessments used to determine bail amounts and eligibility. The chapters are unified by the authors' attention to the reader through clear explanations and very explicit assessments.

The outcome of this approach rewards the reader with a sense that while complicated, bail is not impenetrable. Indeed, a major contribution of this work is conveying the extent to which modern bail practice depends on predictive instruments operating with largely unvalidated premises. The authors note that proof of bail's harm is more well defined by social scientific evidence.

Because Hayward and Fradella are suggesting that bail should be the target of expansive judicial redefinition and legislative reform, this emphasis on what the evidence actually shows is critical for disentangling bail from both its complexities and from the political myth-making that has stoked fears about crime. Notably, while they conclude that money bail's failure "to achieve either its stated ends" in ensuring court appearances or protecting public safety is cause for its abolition, the authors focus primarily on reforming the criminal justice system as it is. Additional suggestions for reform include overturning Supreme Court cases, civil review for prosecutors, expanded access to legal advice at all stages of the arrest and pretrial process, and improved pretrial services, such as reminders about court dates. In a context where Kalief Browder, jailed in New York City for three years on charges of stealing a backpack, has become a widely recognized symbol of the problems of jail and bail, building on such a familiar reference point does not leave much empathetic space in this text for those accused of violent crimes who usually face the longest periods of pretrial detention. A main priority of

this text is achieving reforms that will improve the circumstances of the largest number of people.

The book is, like similar books from earlier eras, a snapshot of how the bail system operates in this moment. As the historical arguments are more based on secondary sources than new archival work, historians will see a range of possibilities to explore in future research: the role of judges and prosecutors in constraining criminal justice reform, bail policy as a driver of jail overcrowding, and how people accused of violent crimes negotiate the judicial process are among the many possible avenues of study. In showing the linked destinies of courts and jails, the book highlights the need for more historicization of criminal justice institutions working in concert. It should be noted that the book's somewhat narrow focus on the relationship between bail and jailing means that it largely overlooks the extensive pretrial surveillance apparatus that includes electronic monitoring and drug courts. Historians will undoubtedly feel frustrated by the authors' use of data that jumps from 2000 to the 1980s to the present. This tendency emphasizes that historians must urgently contextualize the shifts of the punitive turn from the vantage point of the criminal courts. This book is a useful primer for scholars looking to expand their understanding of recent debates in criminology and pretrial studies more broadly.

MELANIE D. NEWPORT

University of Connecticut, Hartford

**Aziz Choudry and Salim Vally, eds., *The University & Social Justice: Struggles Across the Globe* (Toronto: Between the Lines 2020)**

EDITORS AZIZ CHOUDRY and Salim Vally have achieved something remarkable