



Does Prison Work? A Comparative Analysis on Contemporary Prison Systems in England and Wales and Finland, 2000 to Present.

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Abstract

The prison systems in Scandinavian countries have become regarded by many as some of the best in the world, with low incarceration and recidivism rates. Conversely, riots, overcrowding, inadequate staffing numbers, and high recidivism rates surround the prison system in England and Wales; such failures raise questions on what the role of prison in society is: the prevention and reduction of crime or, the social control and marginalisation of the most vulnerable members in our community? By focusing on the prison systems in both England and Wales and Finland, this article will argue 1) that prison system in England and Wales has in recent years developed in becoming more focused towards rehabilitation but, still faces numerous challenges including working within predominantly Victorian-era carceral spaces, limited funding, lack of vocational training opportunities and the perception within a significant sector of the public that they have become 'holiday camps'. 2) The Finnish prison system appears to encompass much higher regard for both prisoners' welfare and a greater emphasis on rehabilitation building upon changes throughout the twentieth and twenty-first centuries. 3) By addressing stigmas and ensuring that opportunities are actively encourage and made more available, the English system, like Finland, could become a world-leading example; reducing recidivism and incarceration rates, and demonstrating that prison can work.

Keywords

Incarceration, reform, rehabilitation, punitive, exceptionalism

I. INTRODUCTION

There is a clear need for prison systems throughout the world to detain those considered too great of a threat to society. However, with longer sentences, higher rates of conviction per 100,000 population, high yearly running costs and high recidivism rates, the effectiveness of English (including those in Wales) prisons has become a focus of criticism through both the

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media, public and academia alike; questioning Michael Howard's famous 1993 declaration at the Conservative Party annual conference that 'prison works'.¹² This article will first outline the respective prison systems and consider some of their similarities and differences. Although there is no universally agreed rationale on the focus of imprisonment, four common functions can be identified: punishment, deterrence, rehabilitation, and the protection of the public, although as will be demonstrated, the Finnish system questions the notion of prison as punishment.³ This article will consider two criteria for defining whether prison works: incarceration and recidivism rates and will continue to then examine rates of desistance through means of official reoffending statistics as the primary desirable outcome for prison systems. Finally, it will consider whether prison provides a viable deterrence against crime, the challenges faced by English and Finnish prisons such as drugs, overcrowding and riots and whether these systems are providing rehabilitative opportunities, including education and vocational courses to prepare inmates for release. This piece does not intend to assess the effectiveness of prison for each category of offender; instead, it will provide a broad overview of the successes and failures of both prison systems and will conclude by offering some suggestions to increase the effectiveness of the prison system in England and Wales.

As adult males are the most represented group in prison, they will be the focus of this discussion. From 2017/18, the respective percentages of adults (aged 18 or over) within the overall prison population are 94% in England and Wales, and 96% in Finland. The remaining 6% and 4% respectively are juveniles within the system; males account for 96% of the total prison population in England and Wales and 91% in Finland.⁴

The Finnish Prison System (hereafter FPS), following ideological reforms in the 1960s and 1970s, has developed into one of the most successful prison systems in the world with low incarceration rates, low recidivism rates, and an approach to imprisonment which emphasises rehabilitation and reintegration over punishment as deterrence alone.⁵ Above all else, the FPS has been recognised for its humanitarianism approach to inmates treating them as humanely as possible, encouraging training and work placements and reducing the likelihood of recidivism.⁶ Reforms in the English prison system, however, have developed with a heavier emphasis on imprisonment, extended detention periods, and the notion of 'prison warehousing'. Subsequently, they have failed in their aim to prevent and reduce crime; instead, it has been argued that prisons have become a means to "socially control and marginalise the more vulnerable members of our society...a symptom of a wider ideological attack".⁷ The issues around reforming the prison system in England are not exclusive to the prison system

¹G. Sturge, 'UK prison population statistics' (2019 House of Commons briefing paper). Available at: <https://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf>

² M. Howard, 'Prison works: conservative party conference speech' (Blackpool, 6 October 1993).

³ R. Taylor, 'Why has prison emerged as a prominent form of punishment for most crimes and what are its functions in relation to wider society?' *Internet journal of criminology* (2011) Available at: http://rageuniversity.com/PRISONESCAPE/PRISON%20THEORY/Prison_and_its_Functions.pdf

⁴ Criminal Sanctions Agency, 'Criminal Sanctions Agency Statistical Year Book' (2018). Available at: https://www.rikosseuraamus.fi/material/attachments/rise/julkaisut-tilastollinenvuosikirja/AzNXXizez/Rikosseuraamuslaitoksen_tilastollinen_vuosikirja_2018_ENG_WWW.pdf; A. Grahame and N. Dempsey, 'Prison population statistics' (2020, Ministry of Justice); MoJ, 'Population bulletin: weekly 27 March (2020, Ministry of Justice).

⁵ R. Bichell, 'In Finland's 'open prisons' inmates have the keys' (2015 The World) Available at: <https://www.pri.org/stories/2015-04-15/finlands-open-prisons-inmates-have-keys>; I. Ekunwe and R. Jones, 'Finnish criminal policy: from hard times to gentle justice' (2012) 21 *The Journal of prisoners of Prisons* 123; T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland' (2012) 54 *Scandinavian Studies in Law* 333; J. Pratt and A. Eriksson, 'Mr Larsson is walking out again: the origins and development of Scandinavian prison systems' (2011) 44 *Australia and New Zealand Journal of Crim* 7.

⁶ J. Pratt and A. Eriksson, 'Mr Larsson is walking out again: the origins and development of Scandinavian prison systems'.

⁷ E.L. Hart and R. Schlembach, 'The Wrexham titan prison and the case against prison expansion' (2015) 54 *Scandinavian Studies in law* 333.

alone; sentencing guidelines, the courts and their sentencing powers and the level of discretion held by judges and magistrates when passing sentence would also benefit from a careful evaluation.⁸ Given the difference between incarceration rates and recidivism rates in Finland compared to England, it is useful to consider the differences in approaches to offenders to suggest how the English penal system could become more efficient. Finland's success in reducing its incarceration rate from 187 per 100,000 (one of the highest in Europe in the 1960s) to one of the lowest in the world; currently 45 per 100,000, provides an ideal case study for comparison.⁹ While there has been a reasonable amount of research conducted into the success of the Finnish system, there has not been any research which explicitly links and correlates that system to England and Wales; this article will go at least some way to filling this lacuna.

Before continuing further, it is necessary to highlight a prevalent stigma attached to prisons, particularly following the opening of HMP Berwyn in Wrexham. The media have created a range of different headlines which have caused a degree of controversy amongst the public over what prisons are indeed there to do; the *Telegraph's* 2017 article 'Britain's Cushiest jail'¹⁰ perpetuated the notion that prisons are holiday camps.¹¹ Former Chief Inspector of prisons, Professor Nicholas Hardwick, previously dismissed claims that prisons were 'holiday camps' at a speech in 2012 where he stated that he was "yet to find any holiday camps in my time as Chief Inspector, but amongst the privations prisoners face, loneliness is amongst the most severe".¹² The prison systems in both England and Finland are not designed in the modern day to be places for punishment; that period ended following the introduction of the Criminal Justice Act 1948 which abolished penal servitude in England and through the policy reform ideology from the 1950/60s in Finland.¹³ Today, prisons are used as punishment; the deprivation of one's liberty, rather than merely as a means to punish. The focus then, once incarcerated, ideally turns to rehabilitation; to remove them from a life of crime and reform them into law-abiding and functioning members of society in preparation for their transition upon release. Unfortunately, this is not the reality of imprisonment for most inmates.

II. ENGLAND AND WALES' PRISON SYSTEM

The current English prisons system, as stated by the former Justice Secretary David Gauke (appointed between 8 January 2018 and 24 July 2019) has three purposes: protection of the public, punishment, and rehabilitation.¹⁴ Gauke was succeeded by Robert Buckland QC who has continued this notion stating that it is "important to take a whole system approach... including probation services and sentencing".¹⁵ Rehabilitation will be the focus of this article; although stated as a desirable outcome by successive governments, the application of such ideas is often variable and undermined by budget cuts, resulting in a punitive and retributive prison ideology rather than a system which reforms men and women into law-abiding citizens.

⁸ C. Tater, 'Reimagining punishment and justice' (2016) 55 *British Journal of Criminology* 883.

⁹ World Prison Brief, 'Highest to lowest prison population rates.' Available at: <https://www.prisonstudies.org/highest-to-lowest/prison-population-total>.

¹⁰ H. Dixon, 'Britain cushiest jail: the super-prison where inmates are 'men not offenders'' (*The Telegraph*, 1 March 2017). Available at: <https://www.telegraph.co.uk/news/2017/03/01/britains-cushiest-jail-super-prison-inmates-men-not-offenders/>.

¹¹ N. Hardwick, 'Importance of visiting prisons' (Temple Church, London 7 October 2012).

¹² N. Hardwick, 'Importance of visiting prisons'.

¹³ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

¹⁴ D. Guake, 'Prisons reform speech' (Royal Society of Arts, London 6 March 2018).

¹⁵ R. Buckland, 'Modernising criminal justice conference' (QEII, London, 11 June 2019).

Following the abolition of penal servitude, convicts (offenders) would no longer face long hours of hard labour; instead, they would be placed in an appropriate prison for their punishment and reformation, at least theoretically developing the prison system into one of rehabilitation. Although successive Justice Secretaries have reiterated this emphasis, it appears that it remains an ideology rather than something which has been proactively implemented. The prison system remaining mostly unchanged and still operating with a Victorian-era estate; of the 118 operational prisons in England and Wales 40 were built in the Victorian era, and a further 33 were created over 70 years ago.¹⁶

There are still elements which run off utilitarian and Benthamite principles; 'the greatest good for the greatest number' and appropriate proportionality between the offences which have been committed and their subsequent punishment. Bentham argued that to prevent offending the sentence given should be proportionate to the crime and only what was necessary to prevent and deter future crimes. To provide a more recent interpretation of Bentham's Purple Paragraph¹⁷, "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand, the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection will serve but to demonstrate and confirm it". Danchev¹⁸ summarised this as follows "that pain and pleasure are the primitive forces that govern not only our actions but also the forming of the social norms and conventions with which our actions are evaluated", to break this down further, in our lives, we aim to maximise pleasure and minimise pain in the choices we make. Rational Choice Theory (RCT) develops these principles to provide a theory of crime whereby the 'rational' offender will be more likely to commit a crime where the pleasure gained by committing the offence, i.e. financial gain, outweigh the possible pains of punishment if caught. However, in contrast to Bentham's work, the pleasure the offender receives may not always be maximised and is instead the maximum which can be obtained out of a set of choices. The lawmaker, on the other hand, should only be concerned with actions which establish either pain or pleasure against actions which affect the greatest good or happiness for the greatest number.¹⁹ Prison under this approach is designed to inflict pain. However, it can only be successful if it achieves the primary aim of deterrence; current reoffending rates illustrate that prison does not typically do this.

Home Secretary Michael Howard made his bold claim in 1993 that 'prison works'²⁰; however, some 27 years later whether the broader aims of rehabilitation and deterrence against crime has been achieved is less transparent. The latest available proven reoffending statistics do not paint a convincing picture of prison 'working', between January 2018 and March 2018 adults who were released from custody had a proven reoffending rate of 36.7%, this increases to 62.7% for those serving a sentence of 12 months or less.²¹ This is little if any

¹⁶ J. Brown, 'The prison estate' (2018 House of Commons, briefing paper).

¹⁷ J. Bentham, 'The Rationale of Punishment' (R Herward 1830).

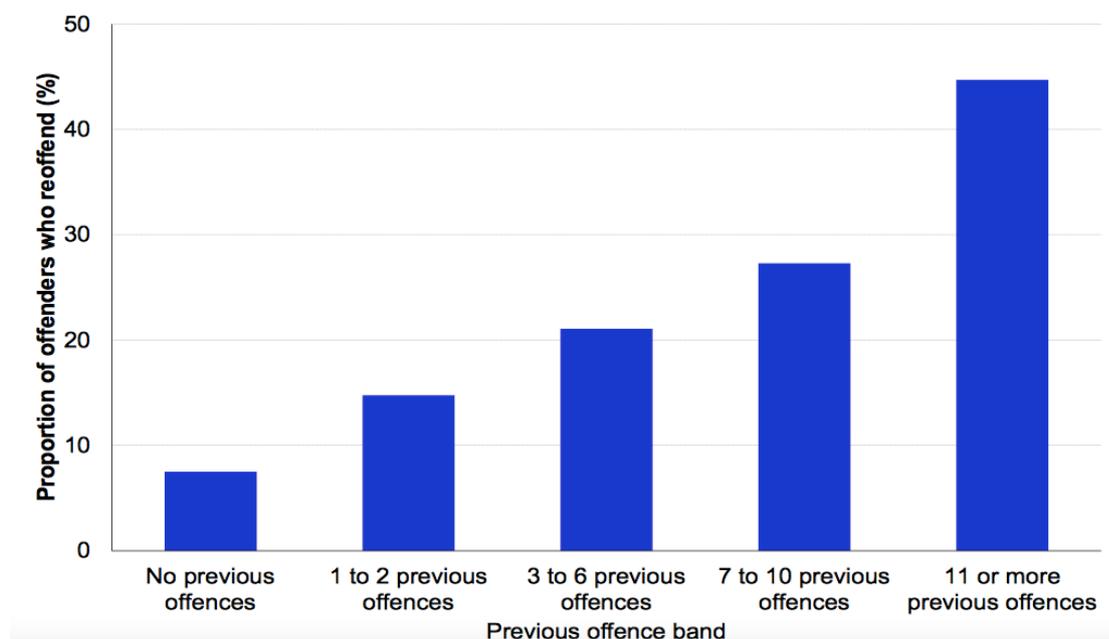
¹⁸ S. Danchev, 'Was Bentham a primitive rational choice theory predecessor?' (2016) 23 *European Journal of the History of Economic Thought* 300.

¹⁹ D. Cornish and R Clarke, 'Understanding crime displacement: an application of rational choice theory' (1987) 25 *Criminology* 933; *Ibid*; D. Scot, 'The changing face of the English prison: a critical review of the aims of imprisonment' in Y. Jewkes (ed), *Handbook on prison* (Routledge 2007).

²⁰ M. Howard, 'Prison works'.

²¹ MoJ, 'Proven reoffending statistics quarterly bulletin, England and Wales, January 2018 to March 2018' (2020 Ministry of Justice).

evidence to suggest that prisons work and certainly raises questions over whether the system provides value for money.²² The problem here is that although only around 8% of inmates, with no previous convictions, go on to offend after their first offence, this statistic increases exponentially the more previous crimes an individual has as Figure One demonstrates. These people are referred to here as habitual criminals and are one of the most complex challenges prison systems must combat.



Ministry of Justice, 'Proven Reoffending Statistics Quarterly: April 2014 to March 2015' (2015 Ministry of Justice).

The prison system in England and Wales classifies prisons and prisoners by their security rating and the likelihood of attempted escape; this has a subsequent impact on the degree of freedom inmates retain while inside and the level of security they will be subject to. There are two types of prison in England and Wales, open and closed prisons; these are divided up into four sub-categories for male prisons ranging from A – D, each of these may also have further segregations according to the individual. Category A prisons have the highest level of security and will be used to detain those who pose the most significant risk to the public and those who are likely to try and escape. Category B prisons have fewer security measures; however, inmates can be locked up for up to 23 hours per day. Category C prisons grant prisoners increased internal freedoms with passes to commute around the jail and will often hold inmates considered to be a low risk of escape or threat. Finally, in category D or 'open' prisons, offenders are expected to work during the day and are not subject to perimeter fences or enhanced security levels, these institutions boast some of the lowest recidivism rates in England and Wales.²³ Offenders may also be held temporarily in Category C institutions, until a vacancy becomes available, however, in some circumstances, inmates may voluntarily remain in a higher security prison; this is usually due to accessibility to visitation for friends and family; HMP Dartmoor is an example of this due to its rurality and lack of open (category D) prisons in the Southwest of England. The rehabilitative and reformatory regimes used in open prisons can be used to varying extents within all categories.

²² M. Davies *et al*, 'Criminal Justice' (9th ed, Pearson Education Ltd 2015).

²³ T. Newburn, 'Criminology' (1st ed, William Publishing 2007); D. Scott, 'The changing face of the English prison'.

The recent work at HMP Grendon (category B/C) under former governor Dr Jamie Bennet demonstrated some promising initiatives with their therapeutic communities. By working with offenders on long-term sentences where a focus on therapy and empowering inmates to have a voice in the day-to-day operations of the prison, and operating on a first name basis has seen it yield impressive reports from both the inmates and organisations (HMIP/ IMB) alike.²⁴ HMP Liverpool also provides a recent example of how the appointment of a new governor and the devolution of power into their hands with an increased amount of autonomy, funding and a reduced total prison capacity (from 1,145 to 674) can go some way to challenging Victorian prison architecture arguments as being unsuitable for rehabilitative purposes.²⁵

Each inmate, regardless of category, can increase their entitlements through the Incentive and Earned Privileges Scheme (hereafter IEP). First introduced in 1995, the IEP scheme creates a hierarchical system which classifies each prisoner on one of four levels: basic, entry, standard and enhanced and is based on the rational choice model discussed earlier. The IEP scheme is designed to promote conforming behaviour and adherence to sentencing plans, the higher the level, the more 'perks' offenders receive; these may include increased visitations, more freedom around the prison, the ability to relocate to different wings and more privileges within their cell.²⁶ While it is evident to see the connections between the theoretical approach which the IEP scheme revolves around, it does not take into consideration the limitations of RCT, and these criticisms have thus been carried into this scheme potentially undermining its effectiveness. Rationality is subjective; what may be rational to one may be irrational to another; create a scheme around this such as the IEP and place it into a prison where decision-making processes become blurred, and the result is a system which does little to encourage or motivate offenders to 'achieve'. This is further hindered where prison officer trust and the legitimacy of the scheme is threatened when prison officers can indiscriminately and seemingly at will (as disclosed by an inmate the author spoke to during his time at HMP Oakwood) can reduce an offender from enhanced to basic with little justification.²⁷ Why this theoretical approach has been adopted under the IEP scheme is ambiguous, even more so given the mental state of inmates; Williams²⁸ identified that around 60% of detainees have some form of 'brain injury', something which has affected how their brain functions. Given these statistics, it raises questions regarding the very legitimacy of the scheme and the capacity for many inmates to form rational decisions which will benefit them during their sentence.

III. FINLAND'S PRISON SYSTEM

In 1960 the Nordic Committee on Penal Law (hereafter NCPL) was set up to research the effectiveness of incarceration. In 1962 the Nordic Cooperation Agreement established a criminal policy unifying each political party's desired legislation on penal sanctions.²⁹ Through the 1960s and 70s, the criminal system in Finland had an overhaul following research

²⁴ BSC, 'Grendon Panel' (BSC Conference, BCU 2018); IMB, 'HMP Grendon Annual Report 2016-17 (2017) Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2017/06/Grendon-2016-.pdf>

²⁵ HMIP, 'HMP Liverpool – dramatic improvement and Chief Inspector hopes progress can be sustained' (2020) Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/media/press-releases/2020/01/hmp-liverpool-dramatic-improvement-and-chief-inspector-hopes-progress-can-be-sustained/>.

²⁶ D. Cornish and R. Clarke, 'Understanding crime displacement: an application of rational choice theory' (1987) 25 *Brit Journal of Crim* 933; Prison Reform Trust, 'Incentives and earned privileges' (n.d).

²⁷ A. Pratt and G.G. Grimwood, '*Prisons Incentives and Earn Privileges*' (Home Office 2014).

²⁸ W.H. Williams *et al*, 'Self-reported traumatic brain injury in male young offenders: a risk factor for re-offending, poor mental health and violence?' (2010) 20 *Neuropsychological rehabilitation* 801.

²⁹ R. Lahtia, 'Criminal sanctions in Finland: a system in transition (1977) 21 *Scandinavian studies in law* 121.

conducted by the Nordic countries under the NCPL, which found that incarceration was not helping to reduce crime.³⁰ The reformation of the policy focused on reducing overcrowding in prisons, decreasing the length of sentence served, and the decriminalisation of otherwise indictable offences. The result? Some of the lowest incarceration rates in the world. Currently, these are 53 per 100,000 in Finland and 139 in England and Wales comparatively.³¹

The Finish Justice System (hereafter FJS) believes that "fines, short sentences, open prisons with a heavy emphasis on gentle social rehabilitation" are the best approaches to successful penalties for those who offend for the entire category of offences.³² The allocation of prisoners facing imprisonment to one of the five districts in Finland is conducted through an assessment of the individual considering three criteria: 1) the rehabilitative requirements of the individual, including activity requirements. 2) The relationship with close relatives and the proximity to being allocated an activity to fulfil work, education or rehabilitative requirements. 3) The level of security required for the individual.³³ Finland encourages the principle that incarceration is used as a form of punishment, rather than a place for punishment. Thus, sentences are designed to help offenders lead crime-free lives during prison leave schemes and upon eventual release.³⁴ By 2000 Finland had developed their Constitution, which ensured three fundamental principles regarding prisoners: 1) prisoners retain all possible human rights. 2) These rights can only be altered through statutory parliamentary law. 3) Any alteration must be conducted following international human rights. The Constitution of Finland prevents the use of the death penalty and any other inhumane or degrading punishments, instead, the FJS strives to achieve proportionately in the sentence between the severity of the offence and the level of sanction, whether imprisonment, community punishment or fines which may be imposed.³⁵

Like England and Wales, Finland operates both open and closed systems; open prisons have more interaction between inmates and prison officers, where this association is usually on a first name basis rather than prison numbers, or informalities which denote status within the prison. Although Finland uses solitary confinement, this is restricted to a maximum of 14 days (it is unusual for this duration to exceed three days) and is typically only be used if prohibited conduct is discovered or witnessed, as a final measure and will only where discussions with the inmate(s) involved have failed to reach a desirable outcome.³⁶ Institutions in Finland are commonly much smaller than England and Wales; 50 – 60-bed prisons are widespread, there are higher rates of interaction between inmates and officers with some institutions almost operating on a 1:1 prisoner to officer ratio, there is also a greater emphasis on work, education and rehabilitation during their detention period.³⁷ By contrast, there are only seven open (Category D male) prisons in England and Wales with a maximum capacity of 3,014 inmates.³⁸ There are currently 81,347 individuals incarcerated in

³⁰ R. Bichell, 'In Finland's 'open prisons' inmates have the keys' (PRI The World 2015). Available at: <https://www.pri.org/stories/2015-04-15/finlands-open-prisons-inmates-have-keys>.

³¹ World Prison Brief, 'Higher to lowest prison population rate' (2020) Available at: http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

³² I. Ekunwe and R. Jones, 'Finnish criminal policy: from hard times to gentle justice' (2012) 21 *The journal of prisoners on prisons* 173.

³³ I. Ekunwe, *'Gentle Justice'* (1st Ed, Tempere University press 2007).

³⁴ Ibid.

³⁵ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

³⁶ I. Ekunwe and R Jones, 'Finnish criminal policy: from hard times to gentle justice'.

³⁷ J. Pratt and A. Eriksson, 'Mr Larsson is walking out again: the origins and development of Scandinavian prison systems' (2011) 44 *Australian and New Zealand Journal of Criminology* 7.

³⁸ Justice.gov.uk, 'Males category D' (2020) Available at: <https://www.justice.gov.uk/contacts/prison-finder/males-cat-d>.

England and Wales³⁹ despite the emphasis on rehabilitation there are only enough spaces in open prisons for one person for every twenty-eight who are incarcerated.

In comparison, at the end of 2019, Finland had 22 community sanction offices and 26 prisons, these were divided up so that around 70% of offenders were in closed prisons and 30% in open prisons equating to an average of 2,910 prisoners during 2018 with an official capacity of 2,878.⁴⁰ The low recidivism rates in Finland has been argued to have come as a result of compliance with the penal code system and the use of open prisons as a form of incarceration opposed to the closed prisons of international standards.⁴¹ This, coupled with the Finnish Constitution reform and the fundamental rights and prison reform in 2006, which made provisions guaranteeing the protection of liberty and human rights upon release, encouraging them to lead lives without crime.⁴²

IV. FAMILY VISITS AND CORRESPONDENCE

Incarceration results in more than merely the loss of liberty; it has an impact on offenders' lives, children and surrounding friends and family. For most offenders, families and closest friends play an essential part in their rehabilitation, both during and the following release and thus, the loss of outside connections is considered one of the most challenging parts of imprisonment.⁴³ Partners of those who face the burden of visiting prisons to continue a stable relationship; something which is often challenging at best and further complicated when children are involved. Visitation entails a wealth of problems in the UK: a lack of information regarding visiting and the screening process they will be subject to, inconvenient visiting hours, expensive travel costs due to the location of their partner, and the overarching fact that prisons are not family-friendly places to visit; the majority of prisons are designed to do one thing in the UK; keep people in with little thought being given to visitors' requirements.⁴⁴

Although prison visits are usually available in England and Wales, all visits are supervised and conducted strictly. Inmates are granted limited access each week to see friends and family, and some such as HMP Oakwood operate a family visiting scheme which enables more interaction between prisoners and their close relatives, a positive development.⁴⁵ However, there are only a certain number of these more personal visits available to those who are on the 'family wing' which is earned through the IEP scheme or made available for those within three months of release. The implication of this approach is undermined by IEP scheme which contains within its guidelines allowing for increased, or decreased number of visits according to the inmate's level; this can vary from two 1-2 hour visits every four weeks up to three 1-2 hour visits every week.⁴⁶ Research suggests that family and friends visiting prison have a positive influence on inmates, both increasing their chances

³⁹ Howard League for Penal, 'Reform Prison Watch' (2020) Available at: <https://howardleague.org/prisons-information/prison-watch/>.

⁴⁰ RISE, 'Community sanction offices' (2019) Available at: <https://www.rikosseuraamus.fi/en/index/units/communitysanctionoffices.html>; World Prison Brief, 'World Prison Brief Data Finland' (2020) Available at: <https://www.prisonstudies.org/country/finland>.

⁴¹ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

⁴² T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'; I. Ekuwwe and R. Jones, 'Finnish criminal policy: from hard times to gentle justice'.

⁴³ B. Godfrey *et al.*, *Criminal lives: family life, employment and offending* (OUP 2007); J. Murray, 'The effects of imprisonment on families and children of prisoners' in A. Leibling and S. Maruna (eds), *The effects of imprisonment* (William Pub 2005).

⁴⁴ J. Murray, 'The effects of imprisonment on families and children of prisoners'.

⁴⁵ HMP Oakwood, 'Strengthening Oakwood family ties' (2020) Available at: <https://hmppoakwood.co.uk/visiting/visiting-faf/visiting-faf-ft/#>

⁴⁶ Gov.uk, 'Staying in touch with someone in prison' (2017) available at: <https://www.gov.uk/staying-in-touch-with-someone-in-prison/visiting-someone-in-prison>.

of reintegration on release and reducing recidivism.⁴⁷ The IEP scheme risks being a hindrance to this positive development and may, at least in part, be to blame for increasing recidivism, particularly for the detrimental effect parental imprisonment has; around 200,000 children are facing parental imprisonment each year in England and Wales. Research has suggested that these children are much more likely to develop adverse behavioural outcomes over their lifetime, are less successful at school, have an increased probability of mental health problems and 65% of boys will go on to become offenders themselves; often resulting from family dismemberment, subsequently creating the next generation of offenders. Family visits are thus not only essential to the inmate but also play a more significant part in protecting the broader community from future offenders.⁴⁸

As part of the Finnish Sanction System (hereafter FSS), once offenders have been assessed, they will be allocated to a prison in the district nearest to their home and are actively encouraged to have family visits every weekend. This allocation process can be frustrating for repeat offenders due to the length of time it can sometimes take to consider and designate their appropriate institution; up to 2 months in some instances. This causes inconvenience for those habitual offenders who, prior to reoffending, have been in paid working prisons; offenders are paid an hourly wage for their work as part of their sentence plan, increasing the likelihood of successful rehabilitation.⁴⁹ Both supervised and unsupervised visits are available subject to meeting certain conditions and permissions of leave may also be granted in open prisons once half the sentence has been carried out.⁵⁰ The Finnish are not, unlike England and Wales, restricting access to family members through IEP schemes; such an approach could otherwise be viewed as further punishments under the guise of 'promoting good behaviour'. In Finland, punishment is simply the loss of one's liberty, and thus penalties for offences are conducted in a way as to have as little interference with inmates' participation in society as possible and instead, aim to encourage it.⁵¹ Finnish inmates are encouraged to have frequent family and friend visits which last 3 or 4 hours compared to the 1 or 2 hours in England and Wales, and most prisons also have additional visiting apartments where children and their carers can stay for up to 4 days, maintaining relationships up until eventual release.⁵²

V. EDUCATION IN PRISON

Following the failed Prisons and Courts Bill in 2016, a governor empowerment agenda has somewhat been adopted. As of April 2019, prison governors have received increased autonomy in choosing their educational suppliers and the courses which are run, the idea behind this is to both improve the standard of prison education, to implement courses which have demand and to make it more likely that offenders will have the skills they need to secure meaningful and permanent employment upon release.⁵³ The Prison Education Framework

⁴⁷ D. Moran, 'Carceral geography and the spatiality's of prison visiting: visitation, recidivism and hyper incarceration' (2013) 31 *Environment and planning: society and space* 174.

⁴⁸ Barnardos, 'Children affected by parental imprisonment' (2017) Available at:

http://www.barnardos.org.uk/what_we_do/our_work/children_of_prisoners.htm; J. Murray, 'The cycle of punishment: social exclusion of prisoners and their children' (2007) 7 *Brit Journal of Crim* 55.

⁴⁹ D. Martin, 'From custody to Community – a more realistic and helpful approach' (Winston Churchill Memorial Trust 2011).

⁵⁰ I. Ukunwe, 'Gentle Justice'.

⁵¹ D. Moran and A. Keinänen, 'The inside and outside of prisons: carceral geography and home visits for prisoners in Finland' (2012) 190 *Fennia International Journal of Geography* 62.

⁵² Prison Reform Trust, 'Family connections: a review of learning from the Winston Churchill memorial trust' (PRT 2016).

⁵³ Gov.uk, 'Procurement for prison education dynamic purchasing scheme' (2019) Available at: <https://www.gov.uk/government/case-studies/procurement-for-prison-education-dynamic-purchasing-system>.

and the Dynamic Purchasing Scheme (DPS)⁵⁴ work together and allow governors "access to suppliers that are able to meet the bespoke educational needs of their establishment and offers a flexible route to services that add real value".⁵⁵ However, current research by the Prisoner Learning Alliance has raised concerns about how this has been implemented and has identified that there are long waiting times and complex processes currently and that those DPS contracts which have been awarded are too short in length.⁵⁶

As part of the focus on rehabilitation, ensuring inmates have a viable education and enough training for the outside world has become a focus. Currently, nearly half of all inmates have no formal qualifications in England and Wales, and just under one-third have learning difficulties.⁵⁷ In England and Wales, longer-term prisoners can have individually tailored learning plans created for them; these can include education such as GCSE and NVQ qualifications and the opportunity for higher education through Open University access.⁵⁸ Working prisons enable offenders to conduct onsite jobs such as cooking, tailoring or manufacturing work; unfortunately, the availability of employment is limited. Offenders who do work can earn around £10 per week for this, however, how much they can spend per week is governed following the IEP scheme and is currently capped at £25.50 despite inmates being able to gain additional finance from outside sources.⁵⁹ These opportunities help address some of the underlying causes of crime such as a lack of education and skills which impede one's ability to gain employment upon release. In England Wales, 54% of all prisoners are at or below basic skills level one in 2015; this is typically the expected standard for an 11-year-old.⁶⁰ Charity schemes such as the Shannon Trust help provide basic level education to all inmates.⁶¹ Rather than employing from outside sources, the Trust operates by training inmates to become mentors for other prisoners; as of 2017 they operate in 125 prisons, 80% of mentors reported being involved with the reading plan believe it has been an efficient use of their time in jail, and 91% of learners said that the program had improved their reading skill.⁶²

Despite this success, the charity is hindered financially. This problem also undermines other education and training opportunities within the prison system more widely; through 2014-15 'core days' were expected to be implemented into the prison programme to increase the time inmates spend out of their cells with the intent of improving productivity, work, and learning. However, due to acute staff shortages, these days were often undermined and led to little, if any, improvement and development to the average day.⁶³ Education and training are essential elements which contribute to successfully rehabilitating an offender and helps to ensure they have adequate skills upon release. Although educational training courses are advocated, access to additional classes or courses is further complicated for those attempting to achieve beyond level two education or for those inmates over the age of 24. Any prisoners who fall into either one of these categories must apply for loans to cover their costs,

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Inside Time, 'How can we improve education?' (*Inside Time*, 30 December 2019).

⁵⁷ E. Allison and A. Sloan, 'Prison education still at the back of the class' (*The Guardian*, 4 August 2015); P. Case and D. Fassenfest, 'Expectations for opportunities following prison education: a discussion of race and gender' (2004) 55 *Journal of correctional education* 24.

⁵⁸ Open University, 'Supporting students in secure environment' (2020) available at: <http://www.open.ac.uk/secure-environments/>.

⁵⁹ Gov.uk, 'Education and work in prison' (2017) Available at: <https://www.gov.uk/life-in-prison/education-and-work-in-prison>; HM Inspectorate, '*Life in prison: earning and spending money*' (HMIP 2016).

⁶⁰ Prisoners Education Trust, 'New government data on English and maths skills of prisoners' (PET 2015) Available at: <https://www.prisonerseducation.org.uk/media-press/new-government-data-on-english-and-maths-skills-of-prisoners>.

⁶¹ Shannon Trust, 'The reading programme' (2020) Available at: <https://www.shannontrust.org.uk/about-us/why/>.

⁶² J. Argent, 'Shannon Trust: turning pages, changing lives' (Lecture at University of Wolverhampton, 2 March 2017).

⁶³ HM Inspectorate, '*HM Chief Inspector of Prisons for England and Wales: annual report 2014-2015*' (HMIC 2015).

this is not only contradictory to the emphasis on successful rehabilitation but will also, at least in part, fuel the likelihood of reoffending due to additional debts upon release. Subsequently, this approach is in part responsible for the significant drop in offenders enrolling and attaining level 3 and above qualifications while inside; currently less than 1% of the prison population.⁶⁴ While Open University courses may provide the opportunity for additional degrees, these are self-funded, and loans will not be given to inmates unless they are within six years of release. Although English and Maths are the 'essential' courses encouraged, these are not considered stimulating enough for long-term offenders, and thus they require more engaging and meaningful activity.⁶⁵

Education in both open and closed Finnish prisons is a fundamental right of every prisoner, enabling them to expand his or her knowledge in an available topic of their choice. Finland makes use of both internal and external education organisations and over half of all inmates attend.⁶⁶ In Finnish prisons, inmates have a responsibility to participate in training activities or education during their allocated working hours with only certain exemptions from this. Any achievements or certificates they subsequently earn are issued to them with some discretion; the awarding body does not explicitly indicate that the certification was attained in prison. This simple approach will help ensure that ex-inmates are not discriminated against upon release for their employability. Like England and Wales, Finland offers vocational training, education through work placements and general knowledge to secondary school standard. Any courses which inmates may have been studying upon their release are transferable to be continued in the community. However, this is problematic as only 5% of prisoners were accepted for studies once they had been released, despite 70% engaging with studies in prison which bolstered a 93% completion rate. The Finnish system of education in prison however does, like England and Wales, somewhat lack in establishing a correlation between the interests of the offenders and the range of educational options provided, with inmates preferring more vocational courses rather than the standard academic subjects of English and maths.⁶⁷

Finland prisoner activities fall into three categories: education, work and other activities which have been organised through the prison; these activities together ensure that 65% of the average working day in prison is occupied. In Finland the role of work makes up part of the rehabilitation plan for each inmate; it develops valuable skills increasing employability options upon release and subsequently reduces the likelihood of them reoffending; in 2015 around 32% of all inmates engaged in at least one type of work daily.⁶⁸ The FPS aims to normalise everyday life in prison consequently, around 65% of an offender's day is occupied with either work, education or rehabilitation-based programmes available in both open and closed institutions and makes their transition upon released more relaxed.⁶⁹ Depending on the crime committed there are increased privileges granted for those based in open prisons; they are paid a similar wage to that of a citizen in Finland and from this wage they are required to pay board to the prison and taxes where appropriate, their products are

⁶⁴ E. Alison and A. Sloan, 'Prison education still at the back of the class'.

⁶⁵ IMB, 'HMP Long Lartin: annual report 2012-2013 (2013) Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2015/01/long-lartin-2012-2013.pdf>.

⁶⁶ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

⁶⁷ T. Langelid, *Nordic prison education* (1st Ed, Nordic Council of Ministers 2009).

⁶⁸ Criminal Sanctions Agency, 'Criminal sanctions agency statistical yearbook 2018' (2018) Available at: https://www.rikosseuraamus.fi/material/attachments/rise/julkaisut/tilastollinenvuosikirja/AzNXXizez/Rikosseuraamuslaitoksen_tilastollinen_vuosikirja_2018_ENG_WWW.pdf.

⁶⁹ Criminal Sanctions Agency, 'Statistical yearbook 2018'; I Ekunwe, *Gentle justice*.

sold to the state and municipal institutions, to the business sector or directly to customers in the prison shop increasing their sense of leading a 'normal' life in preparation for release, something which HMP Dartmoor museum in England and Wales also engages with.⁷⁰

VI. ROTL SCHEMES AND LEAVE REQUESTS

The Release on Temporary Licence (hereafter ROTL) scheme in England and Wales was introduced as part of the resettlement and rehabilitation process, allowing inmates to have brief periods of leave in preparation for their release. This is a positive development in the prison system and less than 0.1% of all ROTL fail (absconding or committing another offence while on temporary release) equating to just five arrests for every 100,000 temporary releases.⁷¹ ROTL schemes demonstrate how modern-day systems have developed to be useful as punishment, while also providing some opportunity to rehabilitate and reform offenders as part of the more extensive resettlement programme.⁷² During their release offenders can engage with the community and family, consider job opportunities and areas of residence in preparation for their release. There are four types of ROTL: day release, overnight release, special purposes and childcare resettlement, ROTL challenges the 'nothing works' proposition; both home leave and study leave schemes are efficient at reducing recidivism rates and increase the chances of employment upon release.⁷³

ROTL schemes, however, are being widely underused across the prison estate; in 2018 it was estimated that only 1 in 50 prisoners (or 2%) experienced ROTL in any given quarter.⁷⁴ To ensure ROTL develops to become more successful the system must ensure adequate provisions are in place, Nicholas Hardwick conducted a review in 2013 which highlighted that failures came because of inadequately skilled offender managers were granting permission for resettlement day releases for increasing numbers of indeterminate prisoners, especially in open prisons, who posed a more significant risk of harm, he concluded that PSO (Prison Service Order) 6300 did not do enough to differentiate between 'safe' and 'risk' inmates.⁷⁵ ROTL is typically only granted to those inmates in 'open' prison conditions (category D) where the offender poses little to no risk of escape, most other prisons including resettlement and training prisons make little use of the scheme with some not using it at all; category A offenders, however, cannot apply for ROTL. In May 2019, governors received greater autonomy to use ROTL subject to thorough risk assessments of the offender(s) before their licence being permitted. This has increased the number of licences – being granted, between July-September 2018 (97,356) and July-September 2019 (117,576) there was a 21% increase in the use of ROTL, there was a subsequent 18% increase in the number of temporary release failures, 127 to 150 respectively.⁷⁶

The Finnish system introduced prison leave schemes, open prisons, and improved rights from the late 1960s. Unlike the UK, this process did not lead to prison warehousing; placing a significant number of offenders in large prisons with little in the way of opportunity

⁷⁰ Dartmoor Prison Museum, 'Dartmoor prison' (n.d.) Available at: <https://www.dartmoor-prison.co.uk/>; I. Ekunwe, 'Gentle justice'.

⁷¹ Prison Reform Trust, 'More carrot, less stick' (2018) Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/more_carrot_less_stick.pdf.

⁷² IMB, 'HMP Grendon Annual report 2016-2017'.

⁷³ L. Cheliotis, 'Before the next storm: some evidence-based reminders about temporary release' (2009) 53 *International Journal of Offender Therapy and Comparative Criminology* 420.

⁷⁴ Prison Reform Trust, 'More carrot less stick'.

⁷⁵ HM Inspectorate, 'HM Chief Inspector of Prisons for England and Wales: Annual Report 2014 – 2015'.

⁷⁶ MoJ, 'Prison releases July-September 2019' (2020) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861894/Releases_Q3_2019.xlsx.

or rehabilitation.⁷⁷ Due to the developments in prison leave schemes inmates as part of the prison regime are obliged to engage in purposeful activity during the average working 8-hour day, promoting their ability to live their lives without crime. Open prisons, however, allow inmates to almost go and come as they please; the average day will see inmates in open prisons work in the local community doing regular paid jobs and offenders receive permits to gain education outside of prison in towns, enabling them to lead as normalised life as possible without being completely isolated from society.⁷⁸ Suomenlinna Prison off Helsinki, Finland is one example of an open prison, the author visited this island in 2018 and can attest that despite being fully aware of the purpose of the island it was not possible to differentiate between offenders, staff or those who would otherwise have been members of the public, likewise, accommodation was either disguised or out of sight. Despite the open conditions' prisoners are subject to, escape attempts are limited to around 50 per year or 1.6% of the prison population; naturally, in open prisons, this is an obvious risk. However, inmates are reluctant to escape for the large part due to fears of re-arrest and subsequently being placed in higher security prisons.⁷⁹ Likewise, prison escapes remain low in England and Wales, in the year up to March 2019 there were only nine escapes, only 1 of which was from a local male prison, two were from HMPPS transportation, and the remaining six were during contractor escorts.⁸⁰

VII. DRUGS AND PRISON

Drugs use and involvement in prisons is an abundant problem, particularly in England and Wales. The 2019 report from HM Chief Inspectorate of Prisons at HMP Garth found that "sixty per cent of prisoners told us it was easy to obtain drugs, 30% were testing positive for drugs and around a quarter had developed a drug habit since entering the prison".⁸¹ Drug use varies from inmate to inmate but will directly affect their chances of rehabilitation, educational opportunities, health (both mental and physical) and lead to behavioural and psychological concerns, all of which will affect how likely it is that a custodial sentence will 'work'. This problem is not exclusive to England and Wales, it is a global issue, with the current developments in technology and an apparent lack of legal developments to prevent it, drug smuggling into prisons is becoming more challenging to deal with; recently offenders have started to use remote-controlled drones to deliver drugs amongst other contraband; this is further complicated as officers are unable to shoot down drones.⁸²

In England and Wales, drug-related crimes and trafficking cost England and Wales almost £11 billion per year.⁸³ It is estimated that around 79% of all prisoners will have engaged with one drug or another at some point in their lifetime.⁸⁴ Further research by

⁷⁷ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

⁷⁸ R. Bichell, 'In Finland's 'open prisons' inmates have the keys'.

⁷⁹ Ibid.

⁸⁰ MoJ, 'HMPPS annual digest 2018/19 (2020) Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873344/hmpps-annual-digest-2018-19-march-2020-update.pdf.

⁸¹ HM Inspectorate, 'Report on an announced inspection of HMP Garth' (2019) Available at: <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2019/05/Garth-Web-2019.pdf>.

⁸² J. Strang *et al*, 'Persistence of drug use during imprisonment: relationship of drug type, recency of use and severity of dependence to use of heroin, cocaine and amphetamine in prison' (2006) 101 *Journal of Addiction* 1125.

⁸³ National Crime Agency Drugs, 'Drug trafficking' (2019) Available at: <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/drug-trafficking>.

⁸⁴ EMCDDA, 'Prisons and drugs in Europe: the problem and responses. (2012) Available at: http://www.emcdda.europa.eu/attacheements.cfm/att_191812_EN_TDSI12002ENC.pdf.

O'Hagan and Hardwick⁸⁵ suggests that approximately 28% of all offenders engage with drugs while inside (42% for women, 26% for men) and 6-7% of the prison population developed an addiction problem while inside; worryingly 31% of prisoners also claimed it was 'easy' to obtain illegal drugs while inside.⁸⁶ The subsequent effect of the increasing drug use in prisons is the transmission of blood-borne infections such as HIV, and hepatitis B and C with shared needles.

More recently 'spice' (a synthetic cannabinoid) is being used throughout UK prisons due to its cheapness and similarity, but less predictable effects, than cannabis. Its use is also being escalated by 'prisoner games' requiring individuals to smoke £50 worth of spice if successfully done before passing out the offender does not have to pay for the drug.⁸⁷ England and Wales use several Drug Intervention Programmes (DIP) however, the success of these despite the £330 million annual funding for such programmes, is not precisely known; it is impossible to tell whether drug users would have sought help in other ways. A study by Reuter and Stevens⁸⁸ suggested that 47% of offenders who engaged with a DIP were less likely to reoffend upon release; 28% also showed an increase in offending post-release. A later study by Collins *et al.*⁸⁹ also supported these earlier findings with their research into 266 offenders involved with a DIP; their results demonstrated a reduction in the likelihood of reoffending in the 12 months post-release of 52%. Given the relatively small sample size, it is challenging to state whether DIP programmes would work as well for all offenders; most of their sample was involved with acquisitive crime or drug-related offences but did suggest promising results. More recently, Andrade *et al.*⁹⁰ in a systematic study into 49 prison-based substance use interventions found that therapeutic communities were the most effective means of reducing recidivism upon release, and to a lesser extent also reduced drug use post-release for those offenders with opioid addictions.

Finland faced drug problems in prisons through the 1990s where concerns were brought up regarding insufficient drug control in prisons.⁹¹ In 2001 drug smuggling became an increasingly recognised problem for Finnish prisons; this resulted in Finland conducting frequent urine tests and raids in cell blocks to check for any illegal substances. A study carried out by Joukamaa *et al.*⁹² found that 84% of all male inmates in Finland had a substance abuse problem at some point in their lives, and a further study by Tourunen *et al.*⁹³ found that 69% of male inmates were diagnosed with drug dependency. A separate study in 2015 investigating the personal experiences of prisoners in Finland found that 49% of inmates confessed to having some substance abuse problem. However, the same research also highlighted that only 1% of inmates began engaging in substance abuse because of imprisonment and the limited availability of substances inside; only 4% continued their drug abuse during their time

⁸⁵ A. O'Hagan and R. Hardwick, 'Behind the bars: the trust about drugs in prison' (2017) 5 *Forensic Research and Criminology International Journal* 158.

⁸⁶ M. Chambers, 'Coming Clean' (2010) Available at: <https://www.policyexchange.org.uk/wp-content/uploads/2016/09/coming-clean-jun-10.pdf>; Centre for Social Justice. 'Drugs in Prison' (Centre for Social Justice 2015).

⁸⁷ Centre for Social Justice, 'Drugs in prison'.

⁸⁸ P. Reuter and A. Stevens, 'An analysis of UK drug policy' (UK Drug Policy Commission 2007).

⁸⁹ B.J. Collins *et al.*, 'Assessing the effectiveness and cost-effectiveness of drug intervention programmes: UK case study' (2016) 36 *Journal of Addictive Diseases* 5.

⁹⁰ D.D. Andrade *et al.*, 'Substances use and recidivism outcomes for prison-based drug and alcohol interventions' (2018) 40 *Epidemiologic Reviews* 121.

⁹¹ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

⁹² M. Jourkamaa, 'Health, working and capacity and need for treatment of criminal sanction clients' (Criminal Sanctions Agency 2010).

⁹³ J. Tourunen *et al.*, 'Prison-based treatment in Finland: history, shifts in policy-making and current status' (2012) 29 *Nordic Studies on Alcohol and Drugs* 575.

in prison.⁹⁴ Lintonen *et al.*⁹⁵ in their study of 601 offenders found when scaled to represent all Finnish prisoners that an average of 70% for both male and female prisoners in Finland were diagnosed with alcohol abuse/dependence, drug abuse/dependence was diagnosed in 62.3% of all prisoners; this may in part be due to the preference of alcohol consumption rather than drug use within the Finnish culture through the 21st century. However, with the increase in migration into the country, this could be changing and lead to an increase in drug-related offences.⁹⁶ The culture surrounding drugs has had a subsequent impact on the imprisonment of narcotic offences; 14-18% in Finland compared to 38% in England and Wales where 38% of men reported committing crimes to get the financial standing to supply drug habits.⁹⁷

Prisoners found to be in possession or using of intoxicants in Finland are isolated from the rest of their inmates and, in some cases may face total exclusion from the entire prison population with the perpetrator then having to have private discussions with specialists to address their problem. Those who are isolated may also face ramifications like England and Wales, where inmates who are on rehabilitation programmes may be withdrawn and treated in rehabilitation centres to help address and deter against their involvement with drugs while inside. Although, where inmates are not actively engaging with their rehabilitation programmes, this may prove more challenging.⁹⁸ From the 2000s, the use of drug programmes became expected and part of the inmates' activity plan under the approach of treatment, rehabilitation and control of drug usage. Successfully engaging in drug-treatment programmes encourages and empowers inmates to engage with other activities throughout their time in prison; those found to be frequent abusers may be sentenced to 6 months in a specialised treatment unit for part of their term inside.⁹⁹ The use of tighter prison security in closed prisons, monitoring for drugs through the use of sniffer dogs, the development of intoxicant-free blocks and increased drug testing has seen the number of drugs fall drastically; only 200g of amphetamines, cannabis and heroin was seized in 2010 as a result.¹⁰⁰

VIII. RIOTS

In England and Wales, prison riots are not a recent phenomenon; there have been several over the past decade, which will be mentioned in this section. Despite their rarity given the daily problems which occur in most prisons, Justice Secretary Kenneth Clarke¹⁰¹ in 2011 referred to rioters as a "feral underclass, cut off from the mainstream" who are acting out in response to a "broken penal system, whose record of preventing reoffending has been straightforwardly dreadful". Riots generally occur as a response from inmates as a form of protest against the conditions or inhumane treatment they claim they face. The Strangeways riot in 1990 occurred due to the inhumane and variable conditions offenders were forced to live, coupled with the use of excessive and prejudicial force they were subject to from their custodial authority.¹⁰² The subsequent investigation into the Strangeways riot led to a wholesale review of penal policy within England and Wales, most notably ending 'slopping out' in 1996 and

⁹⁴ V. Varjonen, 'Finland drug situation 2014' (National Institute for Health and Welfare 2014).

⁹⁵ T.P. Lintonen *et al.*, 'Drug use among prisoners: by any definition, it's a big problem' 46 (2011) *Substance and Misuse* 440.

⁹⁶ H. Hofer, 'Prison populations as political constructs: the case of Finland, Holland and Sweden' (2003) 4 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 21.

⁹⁷ Prison Reform Trust, 'Bromley briefings prison factfile autumn 2016' (2016) Available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Autumn%202016%20Factfile.pdf>.

⁹⁸ V. Varjonen, 'Finland drug situation 2014'.

⁹⁹ J. Tourunen *et al.*, 'Prison-based treatment in Finland: history, shifts in policy-making and current status'.

¹⁰⁰ V. Varjonen, 'Finland drug situation 2014'.

¹⁰¹ K. Clare, 'Punish the feral rioters, but address our social deficit too' (*The Guardian*, 5 September 2011).

¹⁰² E. Carrabine, 'Prison riots, social order and the problem of legitimacy' (2005) 45 *Brit Journal of Crim* 896.

improving the general sanitation of cells. However, slopping out was reported to be still occurring at HMP Coldingley in 2017.¹⁰³ Riots have continued to occur, the Winson Green uprising in December 2016 took place as a response from inmates to inadequate staffing numbers, restrictions or the prevention of exercise, excessive holding times in cells, general poor sanitary conditions and healthcare and a lack of nutritional meals. The riot at HMP Birmingham saw the government retake control of the institution under special measures, as we progress through the 21st century, it begs the question of what has changed if we are still subjecting humans to conditions such as these.¹⁰⁴

Given some prison conditions, it is surprising that prison riots do not occur more frequently; it seems that prison riots require a lot to go 'wrong' before a riot occurs.¹⁰⁵ Despite some improvements in prison architecture from the largely Victorian estate, new prisons are still facing riots for similar issues; the protest at HMP Oakwood in 2014 saw the largest prison in England face a 10-hour riot following serious shortcomings since its opening in 2012, including ease of drugs access, lack of opportunities, poorly trained prison officers and an abundance of inexperience. Although HMP Berwyn in Wales supposedly provides a more humane living environment, the development of more 'super prisons' need to take into consideration more than just aesthetics if we wish to provide an effective system. HMP Berwyn opened in 2017 as the 'prison of the future', designed to emphasise rehabilitation and provide improved resettlement opportunities; currently, it has an operational capacity of 1,865 (certified normal accommodation 2,106) and a population of 1,820.¹⁰⁶ Despite the 'futuristic' design of this prison, 70% of cells are double occupancy with only 30% being single; the recent IMB report indicated that in real terms this means when the prison reaches full capacity of the 2,106, 82.3% of offenders will be in double rooms with only 17.7% in single rooms.¹⁰⁷ With the increased risks which come with confining multiple people together and given the problems surrounding this with our estate, this is something which should have been addressed in the 'prison of the future'. The problems do not end there, Berwyn has fallen significantly short of its claimed £14,000 per prisoner budget, the latest figures show that the average overall resource expenditure cost per prisoner in 2018/19 was £49,088 (the 5th highest expenditure in the category C trainer prisons). At the same time, however, education appears to be a success; 97% of those who engage with the programmes are retained and certified. Unfortunately, there are only 419 learning places available for the current 1,820 inmates.¹⁰⁸

Riots in Finland prisons seems to be something of a rarity although it is difficult to state this with any certainty; there appears to be little to no evidence or data to suggest that riots occur in Finnish prisons. Without this information, it is hard to draw sound conclusions about whether they also face such problems like England and Wales. However, a logical conclusion given the more humanistic approach to incarceration, mainly through the use of

¹⁰³ IMB, 'HMP Coldingley: annual report 2016-17' (2017) Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2017/09/Coldingley-2016-17.pdf>.

¹⁰⁴ D. Gauke, 'Prisons and reform speech' (Royal Society of Arts, London 6 March 2018).

¹⁰⁵ A. Boin and W Rattray, 'Understanding prison riots: towards and threshold theory' (2004) 6 *Punishment and Society* 47.

¹⁰⁶ MoJ, 'Population bulletin: monthly March 2020' (2020) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879086/monthly-population-bulletin.ods.

¹⁰⁷ IMB, 'HMP Berwyn: annual report 2018-2019' (2019) Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2019/07/ANNUAL-REPORT-BERWYN-18-19ENGLISH-FINAL.pdf>.

¹⁰⁸ Ibid; MoJ, 'Cost per prison place and prisoners by individual prison 2018-2019' (2020) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841949/costs-per-prison-place-prisoner-individual-prison-2018-19.ods.

open prisons, is that inmates are just more content to serve their time there, this is something which should be evaluated.

IX. OVERCROWDING

Prison overcrowding can be the start of a process of deterioration. England and Wales have problems with overcrowding in prisons to the present day, and Finland had a similar problem before the 1960s, their responses to deal with this problem, however, have been distinctly different. Overcrowding in England and Wales is a cause for concern; there are currently 82,456 offenders in a system with a capacity for 74,954, although this is likely to decrease significantly following the recent COVID-19 outbreak.¹⁰⁹ Despite this, the prison estate is still roughly 8,000 inmates overpopulated and appears unable to keep up with demand; nearly one-quarter of the prison population already resides in shared cells designed for single occupancy.¹¹⁰ Despite this, Victorian prisons and more worryingly, 'modern' prisons such as HMP Oakwood and Berwyn are continuing to develop individual cells for double occupancy to try and keep up with demand, increasing both the prison population capacity while simultaneously increasing the risk of hostilities and riots. The problem here is at least in part a financial one; prison is notoriously expensive, costing the state £41,136 cost per prisoner on average in 2018-19.¹¹¹ However, while newly built 'super or titan' prisons such as Berwyn are considered the 'prisons of the future' unless they prove true to their claims of £14,000 per prisoner per year, this cost is unlikely to decrease. More worryingly, if prisons continue to house large numbers of offenders in a smaller number of cells through the use of privately contracted out prisons or renovations, based on who can produce the most 'cost-effective' prison, then prison riots and overcrowding are likely to continue or worsen. The legitimate intentions of adequate staffing, facilities and equal opportunities with regards to rehabilitation, education and training programmes risk becoming all but a dream resulting in a system which does not 'work', but only serves to detain.

Before their liberalisation process from the 1960s, Finland had one of the highest incarceration rates in Europe at 187 per 100,000 population; subsequently, they also had problems with overcrowding.¹¹² However, rather than adopting the approach of building larger prisons to try and keep up with demand, the Finns conducted a penal reform where the main aim was to reduce the numbers of offenders sent to prison and reduce the duration of sentence served. Their reforms also improved human rights ensuring humane living conditions and increased use of prison leaves and open institutions.¹¹³ The process did not lead to any 'prison warehousing' unlike England and Wales but reformed laws, decriminalising certain acts and replacing punishments with alternatives such as community orders or fines, ensuring legal safeguards and minimal cost of the criminal justice system under the Nordic philosophy of justice.

X. CONCLUSION

Until England and Wales replenish prison officer numbers to those similar before cuts in 2010, ensure each inmate has an appropriate sentence plan, promote the development of open

¹⁰⁹ Howard League for Penal Reform, 'Prison watch' (2020) Available at: <https://howardleague.org/prisons-information/prison-watch/>.

¹¹⁰ G. Sturge, 'UK prison population statistics'.

¹¹¹ MoJ, 'Cost per prison place and prisoner by individual prison 2018-2019'.

¹¹² World Prison Brief, 'World Prison Brief Data Finland' (2020) Available at: <https://www.prisonstudies.org/country/finland>.

¹¹³ T. Lappi-Seppälä, 'Imprisonment and penal policy in Finland'.

prisons with more humane conditions then the system will likely continue to fail. The development of the penal system in England and Wales may not be enough, reforms of sentencing guidelines may also help reduce both incarceration and recidivism rates. The current penal system operating in England and Wales certainly has some of the correct ideology behind it but is failing to adopt and enforce such principles into practice. Despite Justice Secretaries claiming the need for a stronger emphasis on rehabilitation, it appears these are empty claims or words falling upon deaf ears. The Finnish principles which underpin their approach to the imprisonment are substantially different to that of the English; incarceration is only used where other punishments would be inappropriate, and their prisons focus on humane treatment and rehabilitative opportunities to address underlying causes of crime. Their approach helps reduce incarceration rates and the prison population overall also helps prevent the problem of habitual criminals; they aim to reform offenders to develop skills useful in employment. For England and Wales to achieve this the first step is to address the social stigmas; prisons are not places offenders are sent to then be punished, punishment is and should only ever be, the deprivation of liberty. This is where Finland's penal policy offers an alternate solution, the Finnish view it as being more important to locate offenders in open, humane prisons and provide legitimate rehabilitative opportunities, reducing the likelihood of reoffending upon release.¹¹⁴

Both prison systems consider similar opportunities for offenders: chances for education, work and employment, however, there is one glaring distinction which England and Wales have failed to adopt fully, the Finnish principle that incarceration is the punishment. Institutions are not designed to punish but are places of opportunity; it is only down to the inmate to seize it. The limited legitimate opportunities in England and Wales, unlike Finland, are however being undermined by staff shortages, financial cuts and inadequate officers (both in terms of numbers and experience). It then comes as no surprise that academics such as Hart and Schlemback¹¹⁵ argue that the current expansion and development of super prisons are merely used to socially control and marginalise the more vulnerable members of our communities. The rational and humane developments of the Finnish exceptionalism demonstrates that the measures used against social marginalisation and equality work equally as well to reduce crime, there is thus little reason why prisons in England and Wales cannot develop in line with the Finnish exceptionalism: increased use of parole services, decriminalisation of certain offences, greater use of community sentences, more humane conditions and an appreciation that inmates are still human, not just the worst society has to offer.¹¹⁶

The Finnish principle of going to prison is in, and of itself, the punishment through the loss of one's liberty. Their approach advocates that prisons should be normalised as much as reasonably possible, granting more freedom over prison visits, developing dining facilities on wings rather than in cells, open institutions, legitimate work opportunities, an and environment which is not designed to promote punishment.¹¹⁷ Finnish prisons are not 'perfect' institutions; prisoners are still prisoners; there are still problems of inmate bullying, intimidation and drugs; these are universal problems across the estate. Unfortunately, despite increased checks and crackdowns on drugs within prisons, unless there is a controversial decision to keep inmates

¹¹⁴ D. Martin, 'From custody to community – a more realistic and helpful approach'.

¹¹⁵ E.L. Hart and R Schlemback, 'The Wrexham prison and the case against prison expansion'.

¹¹⁶ H. Hofer, 'Prison populations as political constructs: the case of Finland, Holland and Sweden'.

¹¹⁷ J. Pratt and A Eriksson, 'Mr Larsson is walking out again'.

'locked-up' all day, every day, this problem is likely to continue until the causes of drug addiction are addressed, and initiatives to tackle both the supply and demand side are implemented.

The English approach from the 1990s of being tough on crime through the use of longer prison sentences has perhaps had its day, the seemingly accepted punitive approach of punishment needs to be questioned. The hard approach may work for the minority; however, for the majority, it does not. Despite criticisms of being soft on crime, the Finnish prison system has developed into one of the best in the world and are a triumphant testimony to how prisons can work. Then the real challenge here is the question of how to go about bringing about these changes? Although ministers are arguing for a stronger emphasis on rehabilitation and the development of sentencing guidelines,¹¹⁸ a step in the right direction there is, as the Finnish did through the 1960s a need for further reforms across the system. While the ideology behind prisons is changing, until the public, victims, police, prison officers (to list but a few) and their perceptions of punishment are challenged, enlightened even, then it is unlikely the prison system will begin to adopt a different ideology and will continue to fail in England and Wales. As rightly stated by Doran Larson, "There is no punishment so effective as punishment that nowhere announces the intention to punish".¹¹⁹

¹¹⁸ D. Gauke, 'Prisons and reform speech'.

¹¹⁹ D. Larson, 'Why Scandinavian prisons are superior' (*The Atlantic*, 24 September 2013) Available at: <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>.