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COMMENTARY

Re-examining Prisoner Treatment, Rehabilitation, and Systemic Reform: Opinion Piece

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Abstract

Public attitudes towards prisoners remain extremely negative in the UK, with the prevailing opinion that they deserve whatever they get. Our justice system already imposes severe penalties, and no one should endure a lifetime of legally sanctioned discrimination thereafter. Everyone is better than their worst action and deserves a second chance. We all make mistakes but with appropriate support, most prisoners can rehabilitate into a productive life thereafter.

There is gross inequality in the way men and women are treated by the justice system. The total prison population of England and Wales has more than quadrupled since 1955 and the increase is almost entirely accounted for by male prisoners. Men are more likely to be sent to prison than women for the same crime, get longer sentences and are less likely to be granted parole.

The reasons why people offend have been investigated and the role of impaired mental health has been highlighted as a major contributory factor. The percentage of prisoners with a neurodivergent condition is much greater than that in the community, and this can play a large part in their behaviour both prior to and during imprisonment. Mortality is 50% higher in UK prisoners than among the general population, with an average reduction in life expectancy of 20 years. Both physical and mental health care provision in prison is often grossly inadequate.

Most crimes in every country are committed against men but their experiences have been ignored. Male victims of abuse and coercive control perpetrated by women account for over 30% of cases, with sexual and economic abuse reported by 20% and 53% of men respectively.

Perhaps we should question the true purpose of prisons. Are they intended to rehabilitate offenders and support their reintegration, or are they merely punitive institutions that perpetuate failure? Human rights should extend to all people, and the current approach needs to be re-examined. In most European countries prisoner numbers have fallen and they are rehabilitated actively back into the community to allow them to resume a productive role in society. Isn't it about time for a careful reassessment of whether the UK should adopt a similar approach?

Public attitudes towards prisoners

The harsh realities faced by prisoners, including environmental challenges, health and well-being issues, and the ongoing burden of their punishment, profoundly affect their lives. Yet, public concern for their treatment is often minimal, as it does not directly impact most of the population. This lack of empathy contributes to a widespread indifference towards the prison system and the treatment of inmates. Prisoners are often perceived as a demographic that can be freely maligned, seen by many as deserving of poor treatment because of their crimes. Such attitudes, however, are ethically and morally wrong. It is not only those incarcerated who suffer; their families endure constant emotional turmoil, fearing for the safety and well-being of loved ones behind prison walls. This is a painful reality that many are forced to contend with, yet society easily overlooks their pain.

It is widely believed that once individuals have served their sentences, they should be allowed to reintegrate into society, with the understanding that their punishment has ended. Like everyone, former prisoners deserve the chance to change, rebuild their lives, and move beyond their past. Sadly, however, our societal systems often fail to support this. Instead, those with criminal records continue to face punishment long after their sentences are complete. Our justice system already imposes severe penalties, yet no one should endure a lifetime of legally sanctioned discrimination thereafter.

The prevailing narrative that prisons are filled with wicked individuals deserving of their fate ignores the complexities of the system, particularly the cases of those wrongfully or unfairly convicted. Injustice within the legal system is not uncommon. Take the case of Andrew Malkinson, who spent 17 years in prison for a crime he did not commit. His wrongful conviction was only overturned after DNA evidence proved his innocence^[1] raising serious questions about the fairness and reliability of the legal process. Are we sure that all individuals really receive fair trials? The detective responsible for coordinating the case against Andrew is under criminal investigation for potential misconduct in public office and perverting the course of justice in relation to their actions during the police investigation and subsequent trial^[2].

Addressing systemic bias against men

This is just the tip of the iceberg. Are men in general more likely to be convicted on insufficient evidence, with limited recourse to justice? The data offers a resounding yes. There is indeed gross inequality in the way ethnic minorities are treated^[3] as well as in the way men are sentenced for offences^[4]. The total prison population of England and Wales was under 20,000 until 1955^[5]. It has more than quadrupled since then. This increase is almost entirely accounted for by male prisoners. A century ago, the ratio of male to female prisoners was 5:1 but now it's over 20:1^[5]. What has led to this change? Although three times more men than women are convicted of crimes, male offenders are 3.4 times more likely to be sentenced to prison for the same category of crime^[5]. In addition, men get significantly longer prison sentences than women for the same crime. Finally, men are less likely than women to be released from prison early^[5]. This is despite female prisoners being disciplined more frequently than male prisoners for acts of violence^[6].

This has led to the inevitable conclusion that ***'Men are subject to massive gender discrimination in the criminal***

justice system. If male offenders were treated in the same way as female offenders there would be only one-sixth of the number of men in prison. About 68,000 men would not be in prison in England and Wales if they were female, leaving a male prison population of only 13,000 ^[7]. It has been observed that “females receive even shorter sentences relative to men than whites relative to blacks. The discrimination literature generally argues that females are objects of discrimination and receive worse outcomes. In sentencing, however, women receive better outcomes, consistent with women being treated paternalistically in court. studies have usually concluded that females are sentenced more leniently than males.”^[8]

These observations apply to both the UK and the US. In the latter a study by Starr reported huge unexplained differences in sentencing between males and females in federal criminal cases. Men on average received 63% longer sentences than women did, and women were more likely to avoid conviction, and twice as likely to avoid imprisonment if found guilty^[9]. She goes on to say ‘gender gaps widen at every stage of the justice process and that men and women ultimately receive dramatically different sentences. Policymakers might simply be untroubled by leniency toward women.... One could ask: why are men treated so harshly?: over two million American men are behind bars. ... men in the criminal justice system generally are mostly poor and disproportionately non-white. The especially high rate of incarceration of men of colour is a serious social concern, and gender disparity is one of its key dimensions.... Most defendants of both genders have suffered serious hardship, have mental health or addiction issues, have minor children, and/or have followed others onto a criminal path’^[9].

It is evident from the discussion above that systemic processes are often constructed in ways that disadvantage men, creating substantial obstacles to fair treatment. Men are significantly over-represented in statistics on suicide^[10] and homelessness. Furthermore, they encounter considerable disadvantages in family law and family related cases. A father should not be denied the right to be with his children, especially in cases where cooperation breaks down, yet only one perspective is acknowledged. Paternal rights are not discussed nearly enough. Moreover, men account for a significant number of domestic violence victims^[11], a fact that receives surprisingly little attention. It is difficult to understand why these issues are not discussed more openly; it often seems as if these inconvenient truths are easier to overlook.

Recognising high rates of neurodivergence among prisoners

What factors are associated with an increased rate of offending? The role of impaired mental health has been recently highlighted as the percentage of prisoners with neurodivergent conditions may be as much as ten times greater than that in the community. A study in 2016 showed combined rates of neurodivergent conditions of 32% among male prisoners in Scotland, with ADHD dominant. Those with combined ASD and ADHD had greater mental health issues and higher levels of bad behaviour in prison^[12]. A Swedish study of violent male offenders reported that 63% met DSM-IV criteria for childhood ADHD, and that most persisted into adulthood^[13]. This gross overrepresentation of neurodivergent individuals within the UK prison system^[14] reflects the fact that these individuals often struggle in environments that challenge their ability to interact effectively and navigate complex situations. These findings are predictable. ADHD is associated with emotional dysregulation, impulsivity and risk-seeking behaviour^[15], ASD may reduce appreciation of other's motives and

needs, can impair social skills and produce an apparent lack of empathy and insight^[16].

Difficulties in following rules, and understanding instructions can all contribute to a higher likelihood of involvement in criminalised activities. In court, individuals with ADHD may be unfairly judged by those who perceive them as unpredictable or unlikeable due to behavioural differences. The absence of adequate insight into the challenges associated with these conditions breeds fear, animosity, and bias against defendants, further heightening their risk of negative outcomes within an already failing system. The Equality and Human Rights Commission's report found that in England and Wales, defendants' impairments were rarely, if ever, mentioned during court proceedings^[17]. This oversight is worrying, as it means neurodivergent conditions affecting defendants' behaviour and responses are usually disregarded in trials. Introducing mandatory health assessments by professionals would help identify features of neurodivergence, facilitating timely diagnosis and appropriate support.

In March 2023, Lord Bellamy quoted the Justice Inspectorate's recent publication *An Evidence Review of Neurodiversity in the Criminal Justice System* which suggests that potentially half of the adult prison population has some form of neurodivergence^[18]. The report states that since prisoners started to be screened for neurodivergent conditions, figures suggest 31% of all prisoners require special adjustments to accommodate their needs. From 2023, criminal justice agencies should routinely assess neurodivergent prisoners for reasonable accommodations^[19], as inspectorates admit that present levels of support for neurodivergent people in the criminal justice system is inadequate. The report 'identified serious gaps, failings and missed opportunities at every stage of the system' needing urgent investment to improve outcome^[20].

These findings raise important questions about fairness and the system's capacity to support individuals whose conditions expose them to heightened risks in prison. Too often, neurodivergent individuals, who have received little to no support in managing their conditions, are set up for failure. If deterrence is one of the intended functions of prison, then why does the system fail to address the specific needs of neurodivergent individuals? In 2019-2020, only 29% of neurodivergent prisoners participated in educational programmes after being identified with a learning difficulty^[21]. Yet, the Offender Assessment System recorded only 1% as having learning disabilities^[22], highlighting a striking disparity and raising ethical concerns around underdiagnosis. This huge gap strongly suggests that the justice system fails to consider neurodivergent conditions during legal proceedings, depriving individuals of the support they need, which can produce unfair trials, character misjudgements, and much misinformation.

Improving prisoner access to adequate health care

The inadequacy of health care provision in UK prisons has recently been highlighted in the British Medical Journal^[23]. Mortality is 50% higher in UK prisoners than among the general population, with an average reduction in life expectancy of 20 years^[23]. These staggering figures are partially explained by the grossly inadequate response to acute episodes of illness, but also reflect systemic failings in managing more chronic conditions. One author (CK) has witnessed multiple examples of male prisoners being denied access to drugs essential to their wellbeing with a consequent relapse of their

condition by the time they returned to his clinic following release. Another author (AA) can testify to the same refusal to maintain the provision of crucial pre-prescribed drugs to prisoners leading to a drastic deterioration in their condition. There can be no doubt that prisoners' basic human rights are regularly ignored in the UK.

And it's not just the physical health of prisoners which suffers. Prisoners with autism, ADHD and schizophrenia have been detained in isolation units for periods of 9 months or more with a consequent marked deterioration in their health and behaviour^[24]. This state-sponsored torture is surely criminal in itself? The training provided to prison wardens is often grossly inadequate. Over 70% of emergency calls from wardens to the ambulance service were deemed inappropriate, with mute prisoners referred because they were 'unresponsive', while another with multiple stab wounds was referred with a 'twisted ankle'^[25]. A detailed commentary on the parlous state of primary medical care in prisons revealed multiple challenges, including increasing illicit drug consumption and falling staffing levels^[26]. Lord Timpson, the new minister for prisons, was quoted as stating that many of the people in prison shouldn't be there. He should know, having personally helped to rehabilitate ex-prisoners for many years. Carefully managed rehabilitation back into society is essential. The ombudsman recently published data on the deaths of 137 prisoners who died within a fortnight of their release. Many of these deaths could and should have been avoided by better planning. The Reconnect service, responsible for this transition, needs to standardise and improve its operating policies^[27].

Men as victims of crime

Men are victims of crime, and most crimes in every country are committed against men. The Office for National Statistics reports that one in three victims of domestic abuse is male, but research has focused almost exclusively on the experiences of women. This has meant that men's experiences have been largely ignored. A 2020 report of over 500 UK males who suffered abuse and coercive control showed that females were the perpetrators in over 90% of cases^[28]. It reported that male victims '*experience persistent and severe patterns of coercive control similar to those experienced by female victims.*' Sexual and economic abuse were reported by 20% and 53% of men respectively^[28]. Men's relationships with their children were used to coercively control men, even after separation. False allegations to the police and social services were reported by 65% of male victims, and is a tactic frequently employed by women against men. A recent example of a man subjected to emotional, financial and physical abuse by his female partner documents how he was forced to sleep on the floor, denied access to the toilet and nearly starved^[29]. Yet the perpetrator was only given a suspended sentence.

The mankind initiative which supports male victims of domestic abuse has documented that this can and does affect men of all ages and across all occupations^[30]. Even when men report a female partner to the police for coercive control, this is often ignored or deflected, leaving men feeling 'gaslit' all over again^[31]. Men's fear of losing face by reporting coercive control by their female partners may have played a part in Stark's now infamous statement of 2007 when she asserted '*I have never had a case that involved a female perpetrator of coercive control, and no such cases are documented in the literature*'^[32]. Since then, several surveys have revealed that this is an increasing issue in today's society. Indeed, emotional abuse from a partner was reported almost as often by men (16%) as by women (23%)^[33]. The true level of

female abuse of men may be even greater as males sometimes struggle to recognise their partner's inappropriate treatment as abuse and to identify as victims^[34]. This is a barrier to their obtaining support for, and validation of, their victimhood^[35]. The female authors of a survey of Australian men graphically described the suffering males had experienced as a result of intimate partner abuse by females^[36]. The weaponising of organisations by women against men is an increasingly common tactic and has only recently been recognised by the authorities.

The pressing need for prisoner rehabilitation

The mistreatment of prisoners is deeply concerning as this often results in lasting physical and mental harm. The situation within UK prisons warrants urgent attention. Alarming rates of deaths from mistreatment, alongside confirmed cases of misconduct by prison staff, highlight a crisis within the system^[37]. Some officers have been found to provoke and target inmates, through the use of excessive force and the abuse of their authority^[37]. These circumstances compel us to question the true purpose of prisons. Are they intended to rehabilitate offenders and support their reintegration, or are they merely punitive institutions that perpetuate failure? Human rights should extend to all people, and the current approach needs to be re-examined.

As a society, it is important that we advocate for systemic change. We must develop thoughtful solutions to address the challenges faced by those with criminal records, particularly for those wrongfully convicted, so they can overcome past traumas and build sustainable futures. We must acknowledge that human nature is imperfect; everyone makes mistakes but equally all are capable of change with the right support. Evidently, the present system has failed as the criminal justice system disenfranchises many, particularly men who have been wrongfully convicted. We must recognise that some prisoners do learn valuable lessons and experience genuine reform behind their prison walls; they deserve a second chance to make things right.

So as of 27th September 2024, the adult prison population in England and Wales was 86,256, the highest number on record. This equates to 140 prisoners per 100,000 population, twice the rate of France, Sweden, Spain and Germany. Prison occupancy is 111% of capacity, the highest in Europe, and twice that of the Baltic States and Scandinavia^[38]. Among UK prisoners, 96% are male, 18.7% are on remand (pre-trial) and 12% are non-British national^[39]. It seems incredible that climate activists in the UK have been sentenced to four years behind bars for protesting against the failure of the UK government to take action to limit global warming by blocking roads^[40] or throwing soup over paintings^[41] at a time when our prisons can't cope. Surely, there must be a better way? Can we learn from the actions of more enlightened nations?

In Holland the prison population has fallen by over 40% of late and Lord Timpson calls the Netherlands a *source of inspiration*. The Dutch are very conscious that a prison sentence does more harm than good. In many cases, those convicted rapidly resume their previous problematic way of life on release. They may have learned new tricks and made new connections while 'inside'. Even short stays in prison ruins lives, resulting in the loss of family, friends, employment and home. In Holland, judges usually give community service rather than short jail terms. This is both cheaper and

reduces reoffending rates^[42]. Sentences have also become shorter, even for those who are sent to prison for^[43]. Norway's prisons are small, and they focus on reintegration of prisoners back into the community. Prisoners are rehabilitated to allow them to resume a productive role in society on release. By contrast, large British prisons often lock up prisoners much of the time because they don't have the capacity to spend staff time rehabilitating them. It is much more difficult to return to civilian life under such circumstances, and the resulting risk of reoffending is therefore much greater in the UK^[44].

Overcrowding in European prisons is now virtually confined to the UK^[45] although it remains a concern in other continents. Reports of dire conditions in the prisons of South Sudan^[46] have been confirmed by direct inspection from one of the authors (CK) who was asked to assess prisoners' health there recently. He found prisoners always chained together, even during their clinic consultations. At night prisoners slept on a concrete floor, sharing one threadbare blanket between two men. They were malnourished and grew their own food in the prison compound. Infectious disease was rife and although state services were provided for the identification and treatment of tuberculosis and HIV infection, health facilities were generally very basic. People with a variety of mental health issues were sometimes imprisoned for their own 'safety' and for the safety of others for an indefinite period without provision of any mental health support.

Conclusions and recommendations

Given the current economic climate in the UK, with the cost-of-living crisis and a strained healthcare system, there is also a financial incentive to address these issues. The average annual cost of incarcerating one prisoner is around £51,724; thus, one priority should be to explore alternatives. Greater understanding of the extent and impact of neurodivergent conditions on prisoners is essential. By exploring alternatives to imprisonment and providing appropriate support for those incarcerated would strengthen society as a whole, leading to reduced poverty, long-term savings, and a break in the relentless cycles of crime and punishment. Perhaps there may be a glimmer of hope: on Teesside there has been recent recognition that imprisoning neurodivergent young men for their impulsive actions may have been counter-productive^[47].

Greater awareness among judges, police and prison officers must be combined with effective screening. A *'range of environmental and sensory adjustments to ease distress for people with neurodivergent conditions and support them to engage'* is now recommended^[48]. Without wholesale changes within the criminal justice system at every level, the trend towards imprisoning more neurodivergent people will continue. Men with ADHD are grossly over-represented within the UK prison population, and this need to be redressed. The implications of this finding are enormous as imprisonment is rarely likely to address the reasons for their offending and often actually reinforces the very tendencies that led to their offence. A completely different approach is urgently required. A recent report has confirmed the UK Government's commitment to improve support for neurodivergent offenders^[49], and this has been augmented by the announcement that restrictions on the detention of autistic people in police custody and in prison are to be enacted^[50]. These overdue measures should help identify and support neurodivergent men and women who have fallen foul of the justice system.

Despite the huge disparity between the way men and women are handled by our justice system, the answer is not to

imprison more women but to reduce the number of male prisoners. Alternatives to a custodial sentence including community service and rehabilitation are successfully employed across Europe, and the UK would benefit from considering these. Active rehabilitation and education within prisons is both feasible and desirable but requires inward investment and careful planning. Medical and mental health services must be improved for all prisoners to ensure that they are not deprived of both quality and quantity of life while their freedom of movement is curtailed. And planning for the transition back into society deserves and demands much greater attention if we wish to reduce adverse outcomes for both prisoners and the rapidly changing society that they seek to reinhabit, often after a long absence.

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