

Introduction OPEN ACCESS

Prisoner Rights: Time for a Rethink?

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1 | The Failure of Rights in United Kingdom (UK) Prisons

The implementation and enforcement of human rights in prison is a global issue. Around the world, prisoners face premature death, violence, crowded and dirty conditions, chronic physical and mental health problems and systematic exploitation, among a wide range of other issues (Jarman and Heard 2023; Tidball-Binz 2023; United Nations Office on Drugs and Crime 2024). Although the prevalence of these problems intuitively raises questions about the purpose and legitimacy of the prison itself, it has also drawn attention to the efficacy of rights within this context (Cliquennois et al. 2021). Despite the multitude of domestic and international legal protections for prisoners, the failure of rights appears to be everywhere in evidence.

In the UK, this issue has become increasingly urgent.¹ Across the state, prisons are engulfed by endemic violence, record levels of 'overcrowding', rising numbers of deaths and mental health crises (Crook and Ward 2025; HM Chief Inspector of Prisons 2025; INQUEST 2025; Prison Reform Trust 2022; Savage 2023). Many prisoners are kept in their cells for up to 23 hours a day (HM Inspectorate of Prisons for Scotland 2025; HM Chief Inspector of Prisons 2025; User Voice and Queen's University Belfast 2022), often in dirty, decaying and squalid conditions (HM Inspectorate of Prisons 2024). In England and Wales, thousands of prisoners are still detained indefinitely under the controversial (and now abolished) scheme of Imprisonment for Public Protection (IPP) (UK House of Commons Justice Committee 2022). Despite being recognised as a major driving force behind successful rehabilitation and resettlement, family contact is administered as a privilege, subject to good behaviour, rather than a right (Farmer 2017). Meanwhile, thousands of prisoners are excluded from the legal minimum wage and other basic labour protections, making them

vulnerable to exploitation by the state and private companies (Burnett 2022; Mantouvalou 2020). In some instances, where prisoner rights litigation has succeeded—most notably on the right to vote—no change in the law followed (Jones and Davies 2023). On other occasions, successful rights litigation has led to dramatic increases in prison service budgets and an expansion of the prison estate, thereby consolidating penal power (Armstrong 2018).

These problems are being played out within jurisdictions where human rights are embedded within official prison policies (Northern Ireland Prison Service 2012; Scottish Prison Service 2025a; UK Ministry of Justice 2024a). Moreover, despite human rights law's constructive ambiguity around prisons (Renzulli 2022), these jurisdictions boast some of the highest rates of imprisonment in western Europe. Since the *World Prison Population List* was first published in 1999, England and Wales have recorded the highest (or joint highest) rate of imprisonment in western Europe in 8 of the 14 surveys. Although Scotland and England and Wales recorded the joint highest imprisonment rate (140 per 100,000) in the most recent edition (Fair and Walmsley 2024), the imprisonment rate in Wales (disaggregated from England) was higher still (Jones 2025). Remarkably, however, as Figure 1 shows, prisoner numbers in the UK are *rising*. Since this special issue was first proposed in August 2023, for instance, prisoner numbers have increased by 2%, further contributing to acute capacity pressures (Northern Ireland Department of Justice 2025b; Scottish Prison Service 2025b; UK Ministry of Justice 2025).² Such 'overcrowding' poses significant additional threats to the human rights of prisoners (HM Chief Inspector of Prisons 2025).³ Far from prompting any reflection on these harms, however, increases in the prison population have been seized upon by governments in both London and Edinburgh to legitimate the expansion of prison capacity (Scottish Prison Service 2025c; UK Ministry of Justice 2024b). Curiously, this voracious appetite for 'modernised'

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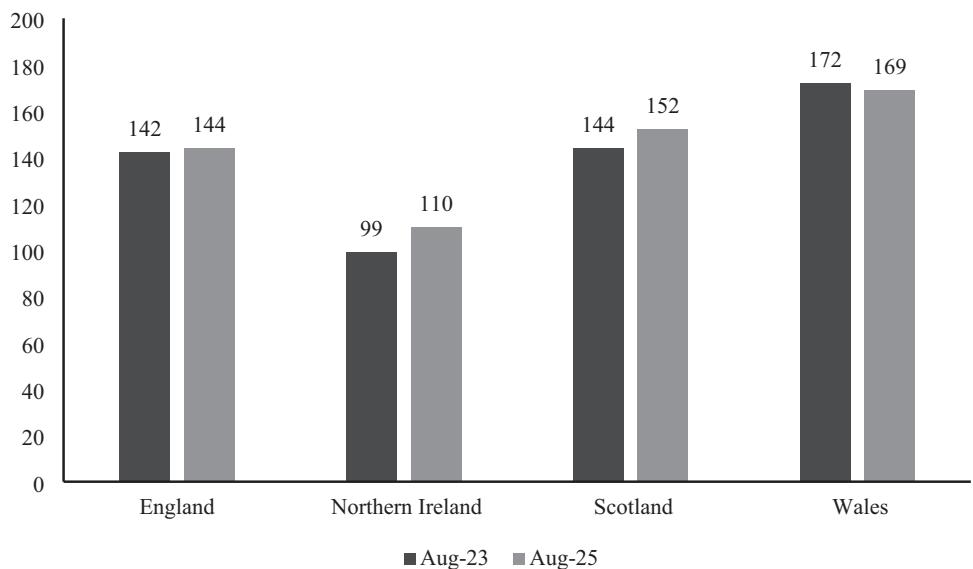


FIGURE 1 | Prison population rates per 100,000 in the United Kingdom, August 2023 and August 2025⁴.

prisons is matched only by the level of political disinterest in their subsequent performance (Jones et al. 2024) (Figure 1).

Against the backdrop of these continuing failures and contradictions, the UK context underlines the urgent need to re-evaluate the role of rights within prisons.⁵ To their advocates, rights give vital recognition to prisoners' citizenship, dignity and humanity. They set minimum standards for prisoners' treatment, and thereby circumscribe the punitive power of the state. Further, they empower prisoners with the legal tools to expose, challenge and reform prison regimes, and open up prisons to wider scrutiny and accountability. On some accounts, rights can even be harnessed to challenge the use of imprisonment itself (Karamalidou 2022; Renzulli 2022; Easton 2011; van Zyl Smit and Snacken 2009; Livingstone 2000).

For sceptics, such claims are overstated. Across a range of issues, prison compliance with human rights standards is often lacklustre (Jones and Davies 2023, 2025). Meanwhile, prisoners themselves usually lack knowledge of their rights and the means to enforce them (Karamalidou 2017). In addition, prisoner litigants face a range of physical and bureaucratic barriers to pursuing their claims, as well as the emotional and psychological pressures of the legal process and a judicial system sympathetic to the prison authorities in matters of order and security (Armstrong 2020; Scott 2013). On the rare occasions that rights claims are successful in the courts, often claimants have already been released from prison. Prisoner rights tend to be vindicated after the fact, and at significant personal cost.

Rather than a means to redress the problems facing prisoners, therefore, critics argue that rights simply provide a 'cloak of legitimacy' for a failing system (Scott 2013, 238). Instead of empowering prisoners, they function as bureaucratic tools which strengthen the power that prison authorities wield over them (Armstrong 2020). At a time when prisoner numbers are increasing in the UK, rights-based claims have also been repeatedly co-opted to legitimise prison building programmes (Armstrong 2020; Jones and Davies 2025).

But although these arguments suggest a rather restrictive dichotomy between 'rights as good' and 'rights as bad', the debate is more nuanced. Advocates of prisoner rights often recognise the disharmony between law and practice within prisons. Indeed, they tend to use this disharmony as evidence of the need for *more* rights and more rigorous enforcement. Likewise, there remains an acceptance even among critical scholars that rights necessarily play an important role in the lives of prisoners. Tellingly, even those who articulate the limitations of rights most forcefully stop short of calling for their removal. Instead, they tend to advocate a political reorientation away from rights, towards a more direct challenge to the institution of the prison and the social relations which sustain it.

In short, prisoner rights scholarship is marked by a degree of ambivalence, albeit one which is not always acknowledged. Rather than a neat dichotomy between rights advocates and sceptics, therefore, this debate can be understood as a continuum. At one end are those who tend to view prisoners' rights as an unqualified good; at the other are the more critical voices who regard them above all as sustenance for the power and legitimacy of the prison system. Between these are differing views as to the effectiveness of rights and rights-based penal reform more generally. In this respect, the present topic connects with wider debates around legal rights and reform which cut across various critical traditions of academic scholarship, such as Critical Legal Studies (e.g., Kennedy 2002; Unger 1986), Marxism (e.g., Kivotidis 2025; Knox 2010; O'Connell 2018) and prison abolition (Davis 2003; Ryan and Sim 2016; Scraton 2016). With different emphases, each of these traditions has asked whether legal reform is compatible with more radical political goals, be it prison abolition or a world beyond capitalism, with a similar range of answers and ambivalence.

The purpose of this special issue, of course, is not to answer or settle these debates. Rather, it showcases some of the latest developments, arguments and research on the questions which they raise. Do prisoners' rights 'work'? If so, to what extent, and in whose interests? Do they offer genuine pathways to prison

reform, including towards non-carceral alternatives? Do they, and can they, materially improve prisoners' lives? These questions speak directly to the experiences of prisoners, lawyers, academics, activists and politicians in each of the UK's four constituent parts and beyond.

2 | Exploring the Continuum of Perspectives on Prisoner Rights: The Special Issue

Building upon a research seminar funded by the Socio-Legal Studies Association at the University of Liverpool on 26 July 2023, this inter-disciplinary special issue brings together socio-legal and criminological perspectives to examine the role and effectiveness of prisoner rights. Drawing on doctrinal, empirical and theoretical insights, it examines the sufficiency of key rights and options for reform. Although the focus is primarily on the UK context, the issue carries wider international relevance. It engages with key international law measures on prisoner rights—the European Convention on Human Rights, the Mandela Rules, the Optional Protocol to the Convention Against Torture (OPCAT), among others—which apply to prisons across Europe and beyond. Marked by the highest imprisonment rates in western Europe, and home to multiple territorial legal jurisdictions, the UK also offers important comparative insights for wider international debates around the promise and pitfalls of rights-based prison governance. Capturing the full range of perspectives, we bring together the devout believers, the agnostics and the sceptics of prisoner rights.

First, Susan Easton builds on her decades of legal research into the rights of prisoners to recount the significant influence of human rights frameworks upon the operation of prison systems, with a particular focus on the ECHR. Her analysis suggests that rights have served to empower prisoners, curb the punitive excesses of the state, hold prison systems accountable, and in doing so catalyse humane reforms. To this extent, she argues, rights need not be seen as antithetical to the more radical goal of prison abolition. Although rights measures may well suffer from lacklustre implementation by prison authorities, they need to be defended, reinforced and made real if we are to avoid making prisons even worse. Recalling the deteriorating state of UK prisons, these are sentiments warranting serious consideration.

In the subsequent contributions, they find both affirmation and challenge. Sabina Garahan critically examines the scope of positive obligations on states under Article 2 ECHR—the right to life—to prevent suicides in prison. Given the prevalence of prisoner suicides across UK prisons, the importance of this topic can hardly be overstated. Garahan's review of relevant caselaw suggests that the legal duty on states to take preventative measures has been interpreted unduly narrowly by the courts, with state authorities tending to find lenient treatment over deaths in their custody (an observation echoed by Sarah Armstrong and her co-authors later). Harnessing trends within the wider caselaw on Article 2, however, Garahan calls for a new holistic approach which evaluates a person's suicide risk by reference to their mental health history. The effects of her revised approach would be considerable: states would need to consider the potential risk of suicide at the sentencing stage, and whether recourse to imprisonment itself would exacerbate that risk. Echoing Easton,

these proposals suggest that rights might indeed be leveraged in the pursuit of de-carceral aims.

From here, the collection broadens to consider the role of non-judicial institutions in the protection of prisoners' rights. Building on her research into structural injustice, Virginia Mantouvalou critically explores the working lives of prisoners in England and Wales. Drawing upon a recent landmark report on prisons by the UN Special Rapporteur on Contemporary Forms of Slavery, she draws attention to the multiple sources of precarity faced by these prisoners: the lack of any basic employment contract, exclusion from the national minimum wage and from rights of association, each increasing the exposure of prisoners to a heightened risk of exploitation and marginalisation. Her analysis offers a vital reminder of the harms that result from the absence of certain legal rights altogether.

Next, Isobel Renzulli analyses the powers and functions of HM Inspectorate of Prisons (HMIP) in the light of the UK's obligations under the UN OPCAT. Observing various gaps between OPCAT and UK domestic law and practice, along with a woeful record of implementation of HMIP proposals by the UK Government, she calls for a new statutory obligation on ministers to consider the Inspectorate's findings. Additionally, she suggests that the UK National Preventative Mechanism—the collection of inspection bodies charged with dispensing the UK's OPCAT obligations—should be formalised by statute. This, she suggests, would bolster its authority and facilitate its cohesion through the consolidation of data, knowledge and recommendations for reform across its member institutions. Combined, she argues that these twin reforms would render the Inspectorate more effective, ensure the improvement of prison conditions and strengthen overall political accountability for the prison estate.

The remaining papers advance more critical perspectives using empirical approaches. Turning to Scotland, Deborah Russo provides a socio-legal study of the concept of 'meaningful contact'—a cornerstone of international human rights-based prison regulation—within Scottish prisons. In a valuable doctrinal survey and critique of the applicable rules and guidance related to 'meaningful contact', Russo draws attention to the various ambiguities, silences and inconsistencies which they contain, as well as the general neglect of the views of prisoners in the drafting and negotiation which preceded them. From there she goes on to explore the subjective insights, experiences and understandings of 'meaningful contact' of prisoners in Scotland, using qualitative data obtained via letter-writing. The rich insights contained in the interviewees' accounts are testament both to the importance of including prisoners' voices within these debates and to the benefits of this distinctive method for future research. Russo's contribution offers a direct challenge to legalistic accounts of 'meaningful contact' and prisoners' human rights more broadly.

Next, Sarah Armstrong, Betsy Barkas, Linda Allan and Deborah Russo empirically examine the record of Fatal Accident Inquiries (FAIs) in Scotland over a 20-year period, using data from all investigations into prison deaths between 2005 and 2024. FAIs are intended to discharge Scottish authorities' procedural obligations under Article 2 ECHR to investigate deaths in prisons, and the process was even reformed in 2016 to align more closely

with these obligations. And yet, the research by Armstrong and her co-authors demonstrates convincingly that FAIs are performing worse than they did prior to those reforms across a range of measures. There are longer delays, family participation in proceedings remains low, and there is a consistent lack of accountability, with deaths in Scottish custody reaching a peak in 2024. In light of these findings, they conclude that the FAI system—a clear example of human rights-based legal reform—serves only to perpetuate and legitimise deaths in custody by providing the illusion of transparent procedural justice. These compelling findings and observations ought to prompt even the staunchest advocate of prisoner rights to reflect on their effectiveness as safeguards against harm.

Concluding the special issue, Rita Shah explores the wide-ranging challenges involved in doing research on human rights in prison, using a qualitative interview-based study of prison researchers in the UK and Australia. Ranging across practical challenges, power dynamics and ethical dilemmas, the themes explored undoubtedly transcend the specific jurisdictions covered in the paper, and it is therefore likely to be of wider interest to prison scholars. Revealingly, Shah's study suggests that human rights research on prisons is not only likely to encounter the well-established challenges involved in prison research but also face additional scrutiny and suspicion from prison authorities—in spite of official commitments to uphold human rights obligations. Nevertheless, echoing the sentiments of several authors in this special issue, Shah suggests that it is incumbent on prison researchers to *try* to navigate these challenges as best they can, for the sake of holding prisons accountable and giving prisoners a much-needed platform to articulate their experiences with rights.

In light of these wide-ranging contributions, the question facing us is not whether we simply dismiss or abandon rights. Indeed, under current circumstances, removing rights in the absence of any broader structural reforms will only further disempower and worsen the plight of prisoners. When dangerous and harmful conditions are actively worsening, it seems incumbent on researchers, lawyers and activists to seek to build upon and maximise the existing protections. At the very least, it is our task to highlight and expose the many abuses and failings occurring in prisons on a daily basis. As the empirical contributions within this collection make clear, rights are always mediated through the prison. Despite the progressive values and aspirations that underpin rights-based agendas, the prison remains an institution with its own competing logic, imperatives and function. As scholars, we simply cannot assume that prison practices neatly accord with the legal doctrine. Indeed, despite the laudable efforts being made by liberal reformers and campaigners, it would be naïve to assume that they can or ever will.

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Conflicts of Interest

The authors declare no conflicts of interest.

Endnotes

¹There are three separate legal jurisdictions and justice systems in the UK: England and Wales, Northern Ireland and Scotland. Although Wales remains formally part of a 'unitary' England and Wales system, devolution to Wales in 1999 has helped to create a unique and distinct set of arrangements for criminal justice and debates on prisoner rights in Wales (Davies and Jones 2023).

²The only reduction recorded between August 2023 (5454) and August 2025 (5361) was in Wales.

³Overcrowding can constitute 'inhuman or degrading treatment' contrary to the European Convention on Human Rights, Article 3. For example, *Muršić v. Croatia* (2017) 65 E.H.R.R. 1.

⁴Imprisonment rates were calculated using 2023 mid-year population estimates for England, Northern Ireland, Scotland and Wales (Office for National Statistics 2024).

⁵Prisoner rights can be interpreted and understood as 'legally enforceable claims' that require the 'accomplishment, or restraint, of certain actions on the part of prison service' (Scott 2013, 234). Our special issue, however, reflects a slightly broader understanding, encompassing not only legally enforceable claims but protections entrusted to bodies responsible for monitoring and scrutinising prisons, such as HM Inspectorate of Prisons or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment.

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