

Gentle Justice Reduces Recidivism and Incarceration: Can South Africa Benefit from the Finnish Experience?

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Abstract

This is a study of how Finland, a Western democracy which has considerably reduced its rate of recidivism, could help South Africa achieve more effective crime control, despite vested interests (such as the prison-industrial-complex, which profits from the perpetuation of crime). This contribution also considers Braithwaite's seminal distinction between stigmatising and integrative shaming cultures and how Finland, even though it has a stigmatising shaming culture, has achieved a recidivism rate of around 31% (with deincarceration at 53/100 000). This is much better than South Africa's unacceptably high 86–94% (259/100 000). By using a conflict transformation theoretical lens, it is argued that this great accomplishment in Finland manifests as a result of a meaningful acknowledgement of offenders' and ex-offenders' basic human needs, thereby removing this primary source of human conflict. In conclusion, Finland's criminal justice system is a good blueprint that South Africa's Department of Correctional Services should seriously consider emulating.

Keywords: basic human needs; comparative criminology; conflict transformation; cross-cultural learning; Finland; recidivism; stigmatising shaming culture; South Africa

By any dreams necessary.
Malcolm X

To understand a given thinker, requires one to presuppose that [s]he is right.
Hans-Georg Gadamer

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Introduction

Globalisation has enabled criminologists, in forging transnational theorising, to gain insights into a more nuanced understanding of crime from the many different cultures on divergent developmental and evolutionary trajectories around the globe. According to Martinson (2001), the notion of “nothing works” in correctional policy has led, at least in part, to a global trend towards harsher punitive measures (Moran 2015) as we move into the third decade of the twenty-first century. Yet, Finland has managed to greatly reduce its rates of reoffending (as well as incarceration) and it begs the question of what South Africa might stand to learn from this unique society, especially regarding their efforts to reduce recidivism.

Although Carlen (2005a, 422) argues that recidivism is the most pressing problem for penologists, Nordic criminal justice policies seem to produce agreeable results. Appropriately then, Ekunwe (2007, 14) coined the term “gentle justice” to denote the Finnish “open prison system as a gentle way of incarceration, of treating the offenders in a humane way with the objective of bringing malefactors in line with the accepted social norms.” It is also important for us to consider Braithwaite’s seminal distinction between stigmatising shaming and integrative shaming cultures. All societies manage deviance (which obviously includes crime) through shame that results in either integration or stigma (Ahmed et al. 2001). Stigmatising condemns the offender rather than the transgression committed, and this results in “criminogenic labelling,” which is “counterproductive” (Braithwaite 1989, 20 and 100) to any project that wishes to promote rehabilitation and desistance. Chui and Cheng (2013, 672) define this stigma “as a label placed on an individual or group that results in devaluation and association with undesirable characteristics.” Integrative shaming, however, encourages reintegration by only condemning the criminal act, and not the individual (Chui and Cheng (2013, 672). Braithwaite (1989, 9), therefore, argues in favour of integrative shaming “as a tool to allure and inveigle the citizen to attend to the moral claims of the criminal law, to coax and caress compliance, to reason and remonstrate with him over the harmfulness of his conduct.” By contrast, stigma (or what Carlen perceptively calls “criminal stigma”) makes no meaningful use of constructive reprimand and instead further perpetuates the cycle of recidivism (Carlen 2005a, 113).

The power of the state to effectively criminalise offending behaviour is thus also compromised, to the extent that, as De Haan (1991, 208) observes in a different context, “what we need is not a better theory of crime, but a more powerful critique of crime.” In order to address this (global) problem (re-offending), therefore, different penal jurisdictions have each adopted their own divergent responses along a continuum of shaming practices.

Importantly, for our purposes, carceral geography (a relatively well-established subdiscipline in geography) explores how comparative criminology could create transnational knowledge on this phenomenon we call “crime” (Moran 2015; Moran and Keinänen 2012, 73). Also, as knowledge can be either spatial, temporal, or both

simultaneously, as Derrida (1982a, 19) observes, this contribution's cross-cultural appropriation of a slice of the Finnish experience, namely its correctional policies (those between 1980–2010) will account for both geographical (space) and historical (time) considerations during this transplantation to the South African context of the 2020s. Similarly, studies have been done that profitably compared corrections in the United States with the Nordic experience (Ward et al. 2013; Weiss and MacKenzie 2010) as well as South Africa with China (Lötter 2018a). Having said this, it needs to be added that comparing South Africa, a middle-income, developing country, with any first-world, developed country, such as Finland, poses major challenges. On the one hand, South Africa has indecent echelons of inequality (Orthofer 2016; Piketty 2015), deepening poverty and criminality in which the South African Police Service is often complicit (Grobler 2013), unemployment, corruption (Chipkin and Swilling 2018; Johnson 2017, 45; Merten 2019) and levels of violence (Institute for Economics and Peace 2023), which can only be described as abnormal. On the other hand, for the past couple of years, Finland (including the other Nordic countries) has consistently occupied the top 10 spots in the World Happiness Index. Significantly, the top position on this index includes other features as well, namely “lack of corruption, trust between citizens, [feeling of safety], social cohesion, gender equality, equal distribution of incomes, or many other global comparisons” (Martela et al. 2020, 30). Said in another way, I argue that meeting basic human needs, as the Finnish do, is an extension of Nordic cultural attributes.

Incidentally, even though China's re-offending rates were as low as 6–8% at the turn of the century (Dutton and Xu 1998, 322), theirs is, from a Western democratic point of view, perhaps not an appropriate punitive model to emulate, considering their tendency to opt for mass execution rather than for recidivism, as well as their unapologetic use of brainwashing techniques to achieve desistance (Lötter 2019, 504–505)—although “desistance” is almost certainly the wrong word for the Chinese demand for a “new mindset.” The point is, however, that a different reality is possible.

What is interesting along this continuum of shaming practices (Braithwaite 1989) for managing crime as deviance, is the possibility of merging the best features of both shaming perspectives in order to create a more habitable environment for both offenders and ex-offenders. As for this contribution's case study, even though Finland has a stigmatising shaming culture (Ekunwe 2007, 122–123), it still boasts an admirable rate of re-offending (31% [Ekunwe and Jones 2011, 446]), which is very unlike the unsustainable recidivism rates of other stigmatising shaming societies—for example, the United States' rate of 67% (Ekunwe and Jones 2011, 446–453; Geiger 2006, 1197) and South Africa's particularly disturbing rate of approximately 86–94% (Cronje 2017, 23; Murhula and Singh 2019; Ngabonziza and Singh 2012, 87; Pierce and Kiewit 2020). While there are admittedly no reliable statistics (poor record-keeping amid a high turnover of offenders might partially account for this state of affairs) on recidivism in South Africa (Muntingh 2005, 28; Pierce and Kiewit 2020), these figures give us a good

idea of how badly the fight against crime in the form of the inability of curbing reoffending is going.

Against this background, my road map designed for the contribution is as follows. In light of the important distinction between stigmatising shaming and integrative shaming practices outlined above, I will briefly highlight the research question. This will lead to an overview of Derrida's and Lacan's views on the transplantation of the signifier from one context to the next. It will, therefore, be necessary for our purposes to explore the causes of both South Africa's deplorably unsuccessful rehabilitative results and Finland's exemplary correctional returns, so as to ascertain what can be sensibly transplanted from the latter criminal justice system to the former.

After the subsequent critical discussion of what can be reasonably adopted from the Finns, I will then critique the Finnish criminal justice system before concluding the article.

Research Question

Coming back to Braithwaite's (1995, 280–281) point that integrative shaming is the “missing link” in criminology, I argue by analogy that the Finnish criminal justice system also provides a “missing link” of sorts. Since no culture is either entirely stigmatising or entirely integrative, and cultural practices are always subject to change, this contribution will only analyse the Finnish criminal justice practices that were in effect during the years 1980–2010, which circumscribed period will do well for heuristic purposes. Even though there are undeniably vast differences between Finland and South Africa (wealth and income inequality, for one), there also happens to be considerable overlap between these two societies since they both have stigmatising shaming cultures and liberal democracies. The important question to my mind, though, is not the focus on the similarities and/or dissimilarities between these two societies, but rather whether there is anything useful that South Africa can learn from Finland in regard to correctional policy.

Now, however, we must discuss Derrida's and Lacan's insights regarding the transplantation of the signifier.

Derrida and Lacan on Intercontextually Transplanting the Signifier

Ideas have an uncanny ability to create context-dependent meaning, due to the former's “unstable” surplus value. This means that the potential meaning of an idea, as it is re-interpreted within different contexts, can never be exhausted. In this respect, Ferdinand de Saussure famously demonstrated that a sign consists of a “signifier”—the idea—and a “signified”—the “real” entity that the idea “means” (Lötter 2018a, 98–99). This semiotic model of his superseded the then traditional referential scheme of “language as a system of meaning” (Olivier 2005, 80). Most revolutionary, though, was his theory that signifiers can only operate within a field of negatives, as “meaning is a function of

differences” (Lötter 2018a, 99). Language does not consist of positives (as per the traditional belief that signs are primarily references) and thus, as Olivier (2005) argues, words can only create meaning because they differ from one another.

Against this brief introduction to Saussurean linguistics—and its impact on twentieth-century philosophy in terms of the latter’s well-documented “linguistic turn”—I shall now describe the “sliding signifier” or “signifying chain” (as named by Derrida and Lacan, respectively), so as also to demonstrate what exactly the transplantation of ideas entails. This revolutionary insight of Lacan regarding the “signifying chain” follows logically from his ranking of the signifier over the signified (such as in his famous remark that the “unconscious is structured like a language” [Lacan 1977, 55]). According to Lacan, a signifier remains intelligible along the chain of signifiers (different [contextual] re-interpretations) as it moves from one context to another, and will then either succeed in or fail at creating new meaning within each new context it visits (Lacan 1977, 55). Said differently, attempting to transplant, for example, the idea of “open prisons” from the Finnish criminal justice system to that of South Africa, is not guaranteed to succeed. In this respect, Derrida (1982b, 310) argues that this “quasi-transcendental function of a displaced signifier in a new context” is consistently supposed, even though there are always conditions that dictate the parameters (and possibility) of mutual understanding or communication of meaning in any given context. Yet for Derrida (1982b, 316), this non-saturation or indeterminacy of the signifier within some context is “inscribed in the nature of the mark.”

This suggests that signifiers do not lose their meanings when inserted into new contexts, even if the transplantation is less than perfectly compatible, though ideas may be adjusted in order to fit better into the new environment. Consider, for example, the overwhelming renown of Sixto Rodriques’s music in South Africa during the 1970s and 1980s, even though his own career failed dismally within its original context, the United States (*Searching for Sugarman* 2013). Another fascinating case in point is the English novelist D. H. Lawrence’s racy romance *Lady Chatterley’s Lover* (Lawrence 1960), which was immediately banned in England and the United States in 1929, the year that the original text was published in those countries, but curiously found such resonance in France that they adapted a film in 1955 based on an uncensored version of the text. The relocation of both these signifiers to other contexts did not alter their original meaning, but instead greatly enhanced them through other cultures and/or texts along the chain of signifiers.

So now, next for our purposes, after discussing the value of cross-cultural borrowing for comparative criminology, I shall outline my chosen methodology and theoretical framework. The relocation of these signifiers to other/new contexts did not alter their original meaning, but instead greatly enhanced them through other cultures and/or texts along the chain of signifiers.

This contribution's poststructuralist methodology will similarly facilitate the transfer, from one context to another, of certain ideas whose differences from the host society will provide spaces for the synthesis of new meaning.¹

It is now necessary to discuss poststructuralism's great ability to make sense of complex phenomena, which include vexing social ills like "wicked" problems (which crime certainly qualifies as). Therefore, the significance of Lacan's and Derrida's work for the endeavour of cross-cultural learning has been the insight that "[t]he act of inscribing or crafting a signifier onto a new context implies necessarily (and perhaps also paradoxically) that it must remain the same *and* that it must inevitably change as well" (Lötter 2018a, 99; emphasis in the original). Therefore, according to poststructuralist theory, when a signifier is detached from one space and reinscribed to another, it must be reconsidered in all its different aspects—historical, philosophical, juridical, social, economic, etc.—in order to account for the immense potentiality of its meaning (Lötter 2018a, 101). For these reasons, a theoretically eclectic methodology that employs an inclusive "both/and" rationale, as opposed to the traditional simplistic "thoroughgoing singular theoretical lens" which prioritises "either/or" logic, enjoys considerable advantage over the latter (Lötter 2018a, 97–98).

Furthermore, comparative criminology is in urgent need of more research on cross-cultural borrowing, and so I consider our discussion on the transplantation of the signifier to be a particularly significant aspect of this contribution. Galtung (1996, 22), one of the leading figures in conflict transformation or peace studies, argues persuasively in favour of "using fully the transnational nature of peace studies." I shall accordingly employ the "continuous comparative method," which is embedded in grounded theory so that knowledge develops based on common themes that emerge from the data (Ekunwe and Jones 2011, 449). As for my theoretical framework, I shall highlight the importance of basic human needs (a factor which has been much emphasised in recent conflict transformation/management literature²) in "proventing" (a neologism coined by Burton [1997]) to forestall social conflict (Burton 1997; Galtung 1996; Quinney 1991, 11–12). I shall now address the question of why rehabilitation was historically unsuccessful in post-apartheid South Africa.

1 Even though I restrict this line of inquiry to a poststructuralist methodology, I concede my anonymous reviewer's observation that "[t]he means to effect and implement constructive changes may well require some self-conscious methodological and even epistemological interplay between realist, Marxist and post-structural discourses." The fact that South Africa is a developing African economy and Finland a first world developed one, might certainly impact this dynamic.

2 I acknowledge the possible concern regarding conflating the conflict management, conflict transformation, conflict studies and peace studies academic fields (all of which have differing emphases and epistemic underpinnings). In this contribution I use the analytic conflict resolution perspective, with perhaps some additional insights from Galtung, due to his massive influence on the conflict management/ peace research field. My emphasis, of course, is on the value of meeting basic human needs as a way to curb recidivism.

Why was Rehabilitation Historically Unsuccessful in Post-apartheid South Africa?

I propose four main reasons for the historical failure of rehabilitation in post-apartheid South Africa. These consist of: 1) a stigmatising shaming culture (Lötter 2018a, 18, 38, 53–54, 60, 117 and 201–203); 2) extreme socioeconomic inequality (Kriegler 2018; Piketty 2015); 3) the politicisation of crime fighting; and 4) the workings of a South African prison-industrial complex (Agrizzi and Mitchell 2020; Basson 2019; Stayn and Vecchiato 2019). Let us now expand upon the first and last features, as these two perpetuate each other, if at least in part, as well as our sky-high recidivism and crime rates.

Regarding the first feature, Alexander (2012, 95–96) explores the dynamics of a stigmatising shaming culture in the following telling words:

The disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loic Wacquant as a “closed circuit of perpetual marginality.” Hundreds of thousands of people are released from prison every year, only to find themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to find themselves in precisely the same circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status.

This “perpetual incarceration machine” (Richards and Jones 1997) ensures that there are always plenty of bodies for the crime management industry to process, in order that its vested interests, such as Bosasa’s corrupt relationship with the DCS stretching back for at least a decade (Agrizzi and Mitchell 2020), remain undisturbed. Vested interests have gained a foothold within the department despite the many challenges that face DCS (Makou, Skosana, and Hopkins 2017). As for Bosasa and its affiliated companies, they coined billions at the expense of the taxpayers, the (ex-)offenders and the public at large. At the time of writing (February 28, 2021), the media (Rall 2021) had just reported that ANC MP Vincent Smith, the Chairman of the Parliamentary Portfolio Committee “that had oversight of the Department of Correctional Services while Bosasa was under scrutiny for winning contracts worth more than R1 billion from the department amid allegations that the contracts were corruptly awarded,” had his assets attached. This attachment by the Asset Forfeiture Unit of his assets, which were worth 46 million rand, proceeded according to Section 26 of the Prevention of Organised Crime Act (POCA [South African Government 1998]).

In this respect, McLaughlin and Newburn (2010, 5–10) argue that the impotence of criminologists to influence public policy formulation in Western democracies with evidence-based interventions is the result of, among other factors, the increasing politicisation of crime prevention and crime-fighting strategies. Politicians often wish to be seen as “tough on crime” by the public.

Another consideration is how certain stakeholders within the prison-industrial complex dis-incentivise politicians and Big Business from fighting crime in the “right way.” This having been said, I acknowledge that the prison-industrial complex in SA is less unitary and more fragmented in practice than in the original settings, such as the USA. Nothing, however, turns on this distinction. Consider, for example, the following pithy summation of the workings of the PIC in South Africa:

I argue that the stigmatisation of ex-offenders, directly, and the profit motive as it has come to be embedded in the PIC, indirectly, are important, though certainly not exclusive, drivers of South Africa’s unsustainable rates of incarceration and recidivism. (Lötter 2020b, 109)

McLaughlin (2010, 165) similarly contends that “[t]hese particular commercial enterprises have a built[-]in ‘growth dynamic’ because they have a vested interest in seeing the problem of crime growing.” In addition, Christie (2017, 4), the well-known Norwegian conflict criminologist, points out that “the major dangers of crime in modern societies are not the crime, but the fight against them may lead societies towards totalitarian developments.” Another unfortunate factor is the increasing professionalisation of criminologists, which has resulted in an unscrupulous scramble for funding and government patronage (Carlen 2005b, 84–44; Chan 2013, 612; Hillyard and Tombs 2004, 28; Lötter 2020b, 111; McLaughlin and Munchie 2013, “Introduction”; McLaughlin and Newburn 2010, 5–10).

This complexity that is present in the management of crime should not surprise anyone, as governments throughout the world have, since the 1980s, increasingly colluded with the private sector against their own constituents (Leys 2008, 118), even to the extent of bizarrely outsourcing their own responsibility to formulate public policy (Leys 2008, 129). Indeed, in South Africa, the propensity has often been to maintain “in-house” selected state structures and SOEs (state-owned enterprises) for ideological and also accumulative (read: corruption) reasons. Crouch (2004, 4) describes this era of so-called “post-democracy” as follows: “Behind this spectacle of the electoral game, politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business interests.” Hence, McLaughlin (2010, 155) suggests that the value of radical criminology lies in its “critique of correctional criminology in which the questioning of political and social control would take precedence over behavioural and correctional issues ... [as well as a critical understanding of] the capacity of the capitalist state to criminalise problematical behavior.” Similarly, a persuasive case has been made for the application of radical or critical perspectives in South Africa’s somewhat conservative criminological environment (Lötter 2020b, 109–110).

To these excruciating insights, Carlen (2013, 89–91) similarly observes that aspirational criminal justice concepts (such as rehabilitation) have become meaningless until a fundamental socioeconomic change occurs, since these ideological games are nothing if not “penal imag-inaries” which, because of their unrealistic nature, “obstruct

[meaningful] critique.” Said differently, the need for a radical or critical criminology that questions the unexamined rationale of the *status quo* has never been greater (McLaughlin 2010, 169). Next, therefore, I shall consider the salient features of the Finnish criminal justice system.

Salient Features of the Finnish Criminal Justice System

Finnish incarceration policy is based on five principles: 1) the loss of liberty should be the sole penalty; 2) the harms of imprisonment should be avoided as much as possible; 3) the conditions of imprisonment should resemble as closely as possible those in the normal outside world; 4) offenders must be respected and treated with justness and dignity; and 5) the incarceration policy should display a responsiveness to offenders’ concerns. These concepts are embodied in the Sentences Enforcement Act (Act 767 of 2005 [Finnish Government 2005]), which legislative instrument is mercifully attached to an English translation app. They are reproduced below, together with a description after each one of how it has manifested within the Finnish criminal justice system. Needless to say, there will be overlap between the different principles.

Punishment is a mere Loss of Liberty

The enforcement of sentence must be organised so that the sentence is only loss of liberty. Other restrictions can be used to the extent that the security of custody and the prison order require.

One idea became the central precept around which much of the other rules coalesced, namely that incarceration benefits no one and those lesser offences should, therefore, result in lesser punishments or alternative sanctions than incarceration by default (Pajuoja, quoted in Ekunwe and Jones 2012, 6; [Finnish text inaccessible to me]). Curiously enough, the improvement of Finland’s prison conditions has led to a drop in the rate of recidivism (Ekunwe and Jones 2012, 8). Crime has also never been a serious enough issue that it could be significantly politicised in Finnish electoral politics (Ekunwe and Jones 2012, 14). Therefore, whereas harsh measures have poor results, Finland’s gentler approach of respecting offenders’ basic human needs has produced very good outcomes (Ekunwe and Jones 2012, 21). Finland thus promotes rehabilitation rather than incapacitation and warehousing—the latter two being the case in the United States and South Africa (Ekunwe and Jones 2011, 467). Though offenders are punished for their wrongdoings, every effort is made to ensure that their dignity is honoured and that their basic human needs are fulfilled. As such, I argue that my poststructuralist methodology, which must prioritise inclusive “both/and” rather than traditional exclusionary “either/or” logic (the latter of which was handed down to us by Aristotle), is very useful for analysing the Finnish criminal justice system.

Prevention of Harm, Promoting of Placement into Society

Punishment shall be enforced so that it does not unnecessarily impede but, if possible, promote a prisoner's placement in society. Harms caused by imprisonment must be prevented, if possible.

This emphasis on re-socialisation has replaced the outmoded regime of work and mind-altering religiosity—the so-called “moralising attitude of prison education” (Ekunwe and Jones 2012, 9–10). Since 1965, the presumption of Nordic criminology has been that the more repressive the prison atmosphere becomes, the worse the performance outcomes will be, and so a paradigm shift occurred from prison as “punishment” to that of “treatment” (Ekunwe and Jones 2011, 446; 2012, 9). For example, long sentences have been shown to impact negatively on the success of reintegration (Ekunwe and Jones 2011, 444). Since the majority of offenders serve short sentences (Ekunwe and Jones 2011, 435), Finland’s criminal justice system employs neither minimum sentencing (unlike South Africa [Cameron 2020]) nor indeterminate sentencing (unlike the United States [Ekunwe and Jones 2011, 445]), and an unconditional sentence of incarceration must be justified by the seriousness of the offence (Ekunwe and Jones 2012, 12). The Finnish system, therefore, places a strong emphasis on “the humane treatment of prisoners” (Ekunwe and Jones 2012, 13). In this regard, Irwin and Owen (2005, 108) observe that among the most frequent complaints by offenders in American and British penitentiaries, is that the “most persistent and insidious degradation is the hostility and contempt” that they receive from wardens and medical personnel. Furthermore, they explain that:

Treating prisoners with contempt and hostility and persistently and systematically casting them as ill-worthy, harms prisoners in complicated and somewhat unexpected ways. Many are psychologically scarred. More reject their rejecters, turn away from conventional society and embrace an outsider, usually criminal, viewpoint.

This unfortunate situation is no different in South African prisons with the concomitant backlash in terms of social conflict (Lötter 2018a, 152–162).

Normality

The circumstances in a penal institution must be organised so that they correspond to those prevailing in the rest of society.

This principle is a very popular belief in Finland (Ekunwe and Jones 2012, 8), and is based on an understanding that the vast majority of offenders are members of marginalised groups that are already experiencing developmental challenges in their daily lives (Ekunwe and Jones 2011, 465). In the South African context, it has been demonstrated that neglect and/or abuse in youth often shapes a criminal career (Marqua-Harries, Stewart, and Padayachee 2019). One positive development from this insight is Finland’s “open prisons,” which allow offenders to keep the keys to their own rooms and to work in the community before returning to the prison at night (Marqua-Harries

et al. 2019, 446). Neither are these facilities surrounded by either walls or fences, but instead utilise inconspicuous camera technology and other forms of electronic surveillance (Ekunwe and Jones 2011, 466; 2012, 15). Finnish prison wardens have also been demilitarised, with ranks and uniforms having been phased out (Ekunwe and Jones 2012, 16). In addition, in Finland, every effort is made to maintain familial bonds between the offender and their family, including by permitting temporary release and conjugal visits in the family cottage on the prison grounds (Ekunwe and Jones 2011, 461; Moran and Keinänen 2012). As for the devastating impact that Covid-19 had on prison life, Heard (2020) points out “the critical role that family contact plays in keeping prisons stable.” Therefore, although the socioeconomic conditions of Finland are obviously very different from those in South Africa, the DCS should still investigate how to greatly reduce the alienation of prison life from the outside world.

Justness, Respect for Human Dignity, Prohibition of Discrimination

Prisoners must be treated justly and respecting [sic] their human dignity.

As these principles show, Finnish criminal justice policy aims to punish offenders for their misdeeds while also ensuring that their basic human needs (dignity, respect, a habitable environment, etc.) are met (Ekunwe and Jones 2012, 19). However, let us supplement these findings with three additional considerations,

Firstly, all citizens in Finland, including ex-offenders, are entitled to certain forms of government assistance that include unemployment payments and an accommodation subsidy. A few years ago (in 2018), a piece appeared in the *Conversation [Africa]* (Lötter 2018b) in which the author advocated for a resettlement grant for released ex-offenders that would ease their transition back into the community. Although the article generated a great deal of interest (and bewilderment) from South African readers, as well as accrued more than 13 000 hits, it did absolutely nothing to create a more habitable environment for ex-offenders. This was almost certainly the result of an acute indifference among the public to the suffering of both offenders and ex-offenders in our stigmatising shaming culture.

Secondly, it is illegal in Finland to discriminate against ex-offenders on the basis of their criminal records, unless certain risks associated with their previous offences have a direct bearing on the job in question. It has been suggested that the stigma under which ex-offenders labour in South Africa should be criminalised (Lötter 2020a), since this dynamic holds back their possible resettlement and effects knock-on re-offending tendencies (as Braithwaite, for example, argues in a different context).

Finally, all Finnish offenders receive assistance with substance abuse treatment and with securing employment both during and after incarceration (Ekunwe and Jones 2011, 447 and 457). Finnish prison wardens also only resort to *limited* solitary confinement if they are unable to remonstrate with the erring offender (Ekunwe and Jones 2012, 16). This corrections methodology thus emphasises “the moral-creating and value-shaping effect

of punishment” rather than its power for retribution (Ekunwe and Jones 2012). In this respect, the Finnish system is optimistic for the potential of ex-offenders as positive agents in their communities (Ekunwe and Jones 2011, 448).³

Interestingly, China (on the one end-point of the shaming continuum) employs model ex-offenders as prison wardens after their release, a policy that has even been adopted by many states in the USA (on the other end-point of the shaming continuum). It has been suggested elsewhere that South Africa should also implement this innovation in order to promote rehabilitation efforts and to reduce prison violence (Lötter 2019). Liebling (2005, 209) and her group of co-researchers have also found, after studying “the uneven experience of unfairness, disrespect and lack of safety” in the management of offenders, that offenders’ perceptions that their treatment is fair leads to reduced attempts at self-harm, notably suicide, by such offenders, as well as to them suffering from significantly lower levels of distress. I argue that these significant findings greatly strengthen my argument that the DCS should take advantage of the successes of the Finnish criminal justice system.

Responsiveness to Offenders’ Concerns

In order to facilitate greater responsiveness to offenders’ needs and concerns, Finland’s government promotes considerable continuity between social service delivery and correctional services (Ekunwe 2011, 438).

That this fifth principle is both important and necessary is evident from the worldwide prison riots that have resulted from the unilateral lockdown of correctional facilities which, although they were meant to combat the Covid-19 pandemic, did not include consultation with the offenders involved (Heard 2020). In this respect, note the observation by King (2005, 131), an acknowledged expert on “supermax” confinement, that “[i]t is a commonplace in the literature that prisoners have a profound sense of justice and fair play.” Nevertheless, Finnish criminal justice policy has also been characterised as “exceptionally expert-oriented” (Ekunwe and Jones 2011, 466; 2012, 7, 11–14), which is unsurprising, given its outstanding achievements.

Finally, specialist input is bound to add value to the idea of fairness in mitigating conflict. Bradshaw (2008, 79), for example, argues the following in support of using integrative negotiation, as opposed to power bargaining, in South Africa, as well as provides the crux of the conflict transformational perspective:

Fairness is an important guiding principle throughout. Because [of] the importance of maintaining good working relationships in a country as fraught with conflict as South Africa, it would be advisable to use integrative negotiation techniques as far as possible.

3 I respectfully disagree with my reviewer on this point since, as I explained in the “Introduction,” the exercise of cross-cultural learning allows for a historical slice of reality from a certain culture (selected features from Finland’s criminal justice system between 1980-2010) to be transplanted to another culture (present day South Africa) in either space or time or both.

Most recent research work on negotiation also supports the fact that integrative approaches are usually far more effective [than power bargaining]. (emphasis added)

This emphasis on fairness has tremendous potential for rehabilitation from a conflict transformation perspective, and is certainly something the DCS should look into.

Meanwhile, the purportedly humane treatment of offenders in Western countries today is largely a myth. Regarding the South African context, Ballard (2017), who is involved with the penal reform programme of Lawyers for Human Rights in Johannesburg, suggests that “[p]rison issues have fallen off the radar. They’re being interrogated less and less.” In contrast, the Finnish justification for their use of incarceration as punishment is their “humane neoclassical crime policy,” which prioritises “general prevention” (Moran and Keinänen 2012, 64) over direct “deterrence”—the latter of which is the rationale of hyperincarceration societies. These strategies of general prevention aim to cultivate the “moral-creating and value-shaping effect” of punishment (Von Hofer 2003, 28), rather than simply a fear of it.

Next, I shall turn to a critical discussion of how the Finnish government’s correctional methodology can help improve the South African DCS’s rehabilitative efforts.

Discussion

Since the 1950s, when Finnish penal policy was still heavily influenced by the Soviet Union, its prison population has dropped from 200/100 000 to a mere 52/100 000 (in 2012), and this paradigm shift is the result, if at least in part, of “a conscious, long-term and systematic criminal policy” (Lappi-Seppälä 2000, 37–38).

The carceral containment of urban marginality (in particular poverty) has led Wacquant (2010, 611) to suggest that offenders in the US do not, in fact, “re-enter” society after release, but instead oscillate between liberty and captivity in “a continuum of forced confinement formed by the prison and ... the metropolis.” This similarly describes the situation in South Africa.

At the time of writing (February 2022), Finland had a prison population of 53/100 000 and occupancy levels at 101%, having also managed a still very acceptable 72/100 000 in 2006 (Institute for Crime and Justice Policy Research 2021). South Africa’s prison population, on the other hand, is 259/100 000, with overcrowding at 137%. The US, disturbingly enough, currently has a 639/100 000 prison population and an occupancy of 99.8%, with an all-time high of 755/100 000 during 2008 (Institute for Crime and Justice Policy Research 2021). Finally, the PRC (China) claims an impressive 121/100 000 based on a projected national population of 1.415 billion in 2018. In this respect, it is also worth comparing China with India, the latter of which has a prison population of 35/100 000 within an estimated nationwide population of 1,380 billion (at the end of 2019) and soon to overtake China as the most populous country in the world.

Curiously enough, 69% of India's prison population consists of remand inmates, meaning that they have not yet been sentenced and are awaiting trial.

Now, I have previously stated that I am very sceptical of the assumed capacity of criminology to meaningfully influence South African criminal justice policy because, among other reasons, powerful stakeholders with vested interests (as previously explained) incessantly militate against effective forms of crime fighting. The controversy surrounding the Harvard academic J. Mark Ramseyer's misrepresentation of his sources, in order to justify an ultra-right defence of the Japanese government's denial that comfort women were enlisted by the Imperial Japanese Army during World War II through force, deception, or both, is a case in point. In a recent opinion piece in *The New Yorker*, Gersen (2021) contends that Ramseyer's misrepresentation of his sources is unacceptable, and argues that:

I defend the right of academics to express unpopular opinions or views with which I strongly disagree. But the Ramseyer matter has revealed a strong consensus that academic freedom comes with the responsibility, when making claims about facts, to have proper grounding in evidence. In continuing to investigate Ramseyer's work, scholars have found that he misused historical sources in several recent articles on minority groups that have been subject to severe discrimination in Japan, the Burakumin, a formerly hereditary outcast group; Okinawans; and Koreans.

By analogy, I argue that the international tendency (including in South Africa) of professional criminologists to collude with the state, has significantly compromised the discipline's authority to make truth claims, which will (and has) greatly hurt offenders, ex-offenders and general society. In the words of Chomsky, "intellectual responsibility" is sorely called for.

Conflict transformation has also drawn attention to the necessity for criminologists to prioritise both basic human needs and possible applications of integrative negotiation. In particular, the Finnish experience has shown how simply meeting offenders' and ex-offenders' basic human needs (respect, dignity, basic income, accommodation, caring, etc.) can greatly forestall social conflict. Moreover, the contemporary German philosopher Habermas (1983) argues that the criterion for truth is consensus, which is embedded in our very ability to communicate, as a central feature of our common humanity (Habermas 1984; 1987). It, therefore, follows that one could, in principle, get all relevant stakeholders (media, politicians, the public, Big Business, etc.) on board, as the Finnish government has managed to do, in order to greatly reduce crime and recidivism by means of simple, yet effective, Finnish safeguards. From an African restorative justice perspective (Murambadoro, Wielenga, and Batley 2020), this should not be difficult to motivate. This is a practice which prioritises reconciliation and holistic community healing over punishment, and applies conflict resolution tools to disputes between members of the same community. Traditional African justice necessitates a general if not overwhelming consensus before adopting policy. Clearly, however, the re-inscription of this contribution's designated signifier (namely the Finnish

correctional obligation to meet offenders' and ex-offenders' basic human needs) to the post-apartheid South African context, would be an immensely complex undertaking—not least because of the influences of the stakeholders who most benefit from our stigmatising shaming culture and the prison-industrial complex.

As per the outset of this contribution, I have referred to Finland's criminal justice system as the penal platypus, as it is a stigmatising shaming culture that somehow still produces remarkably low rates of both incarceration and recidivism. I shall now proceed accordingly to offer some constructive critique of our Nordic exemplar.

Critique of the Finnish System

Though pleased with their admirable rates of both incarceration (53/100 000) and re-offending (31%), the Finnish government has expressed a desire to improve upon even these (by international standards) brilliant results (Ekunwe and Jones 2011, 447).⁴ Finland's stigmatising shaming culture is obviously their primary obstacle in this regard. Ekunwe (2007, 97–98), for example, has remarked upon the harassment and continuous surveillance of ex-offenders by Finnish law enforcement. There is simply no getting away from it; dignity and respect (in terms of my thesis of meeting basic human needs) must continue once the offender has left the prison.

For these reasons, I argue that Finland's stigmatising shaming culture has actually breached the first Finnish principle of carceral corrections, namely that loss of freedom should be treated as the only appropriate punishment, since post-incarceration stigma, or what Geiger (2006, 1192) calls “collateral consequences,” amounts to a life sentence and also functions as an indeterminate sentence (Lötter 2018a, 265–266). If the proportionality of sentencing is to continue to have any meaning, stigma must go. A number of suggestions have already been made on how to improve the existing integrative features within stigmatising shaming environments (Lötter 2018a, 270–273), and I thus note two particularly pertinent ones here. Firstly, stigma against ex-offenders should be criminalised, and significant civil damages should be attached to compensate ex-offenders who are wronged by such practices (Lötter 2020a). Secondly, it is absolutely vital that the public be educated about the societal costs of stigma if we are serious about creating safer communities.

In this regard, the ideological constructs that attempt to rationalise stigma, such as the “Just World” hypothesis (an idea which suggests that our station in life is somehow “deserved”), an idea proposed by Lerner (1980), and Festinger's (1957) notion of cognitive dissonance (a concept which explains our tendency to rationalise our built-in biases), should be more greatly researched and problematised to the public. Finally, Cyrulnik's (2009) thesis that resilience can overcome calamity (incarceration and the

4 Should the reader wonder about the “fairly dated” source references, it might be noted that the management of cross-cultural learning allows for the transplantation of selected features collected from a slice of reality which may be transplanted to another context in either space or time or both.

shame of an interrupted career path) could motivate offenders and ex-offenders with supportive interpersonal relationships and a willingness to persevere despite the adversity of stigma.

Overall, integrative shaming's distinctive advantage over stigmatisation is its acknowledgement of Goffman's (1990) "unspoilt" self and, therefore, also of the social contract as the foundation for any "commitment to a shared ethical identity" (Harris 2010, 113).

I conclude with a few observations on the prospect of applying the lessons of the Finnish experience to South African conditions.

Conclusion and Recommendations

Finland is indeed the platypus of the carceral world—a curious animal indeed but one well worth the effort to explore and understand. Although Finland has a stigmatising shaming culture in place, it nevertheless exhibits wonderful integrative shaming features (such as meeting offenders' basic human needs, if at least in part), which is also partly the reason why it has achieved its acceptable rate of recidivism (31%), as opposed to that of the US (67%) and South Africa (86–94%). The South African Department of Correctional Services (DCS) has, therefore, clearly (and atrociously) failed in its rehabilitation mandate. One should, however, acknowledge that the DCS's hands are tied, to a certain extent, in its efforts to achieve its purported rehabilitative mission, seeing as all odds are stacked against any such integrative shaming strategy. The illusive ideal of resettlement is, after all, an integrative, as opposed to a stigmatising, strategy. In particular, without this commitment to meeting both offenders' and ex-offenders' basic human needs, rehabilitation and resettlement are and will remain a pie in the sky.

Finland's criminal justice system has also demonstrated that a greatly reduced rate of recidivism is indeed possible, even in a stigmatising shaming culture, without any heavy reliance on incarceration. I, therefore, suggest the following 10 recommendations to be considered by DCS as lessons learnt from the Finnish experience with a view to implementation, which is almost certain to assist them in achieving their rehabilitation mandate (bearing in mind the *caveats* explored above).

- 1) It is of the utmost importance that minimal sentencing, which only exacerbates the problem of hyperincarceration and overcrowding, be abolished, and deincarceration incentives (despite the risk of offending vested interests) be investigated without delay. The Finnish experience has shown that improved prison conditions actually lead to a drop in re-offending. Incapacitation and warehousing, which are dominant features of corrections in South Africa at present, are not the way to go if we are serious about curbing our unsustainable crime and re-offending rates.
- 2) DCS should consider an urgent paradigm shift, as embedded in their mandate, from one of "punishment" to one of "treatment." The pursuance of the express notion of

punitivity is not bound to give us positive outcomes, as the Finnish experience has demonstrated.

- 3) The humane, fair and decent treatment of offenders is of the utmost importance, and so correctional officers (particularly medical personnel) should receive sensitivity training to disabuse them of the notion that offenders are “trash.” Additionally, there is a great need to enhance offenders’ self-esteem and post-release resettlement chances despite the inevitable challenges awaiting them. These psychological “prison harms” forestall desistance in many complicated ways.
- 4) In amplification of the previous point, prison personnel should be made to understand that most offenders are already drawn from marginalised and disadvantaged communities and, therefore, already experience developmental trajectory challenges. I consider this notion one of Finland’s most profound insights into our transnational efforts to understand crime.
- 5) In this regard, the idea of normality is an important one. Notably, DCS would be well advised to consider the feasibility of “open prisons” as halfway houses between incarceration and the community-at-large. The Finnish experience shows the clear remedial value of this initiative.
- 6) As DCS no doubt knows, it is important that familial ties between the offender and his/her family be maintained and even treasured. For this reason, DCS should consider permitting temporary and compassionate leave for low-risk offenders.
- 7) Stigma against ex-offenders is another very significant driver of recidivism and, as the Finnish experience has made evident, has to be outlawed with significant civil and criminal remedies attached to such prohibition.
- 8) Ex-offenders must be assisted with employment opportunities, or all our efforts would equate to barking at the moon, unless we agree with Carlen that the rehabilitation paradigm is redundant as we are unable or unwilling to affect fundamental social change. In this regard, the international experience has shown that ex-offenders make for high-performing prison wardens and could also provide excellent guidance and mentoring for those in their charge.
- 9) It is suggested that DCS should emphasise “the moral-creating and value-shaping effect of punishment” (Ekunwe and Jones 2012, 16) rather than its power for retribution.
- 10) In this regard, fairness and responsiveness to offenders’ concerns are important values to embrace, in order to ensure that this central source of conflict (Bradshaw 2008, 79; Liebling et al. 2005, 209; Moran and Keinänen 2012, 64) is as far removed from the equation as possible.

Before these suggestions and recommendations can become feasible in South Africa, however, a way will have to be found to overcome the vested interests (such as the workings of the prison-industrial complex) that—bizarrely—profit from our unsustainably high crime and re-offending rates. Perhaps there is, in the final analysis, something to be said for Carlen’s (2013) argument that under present conditions, the rehabilitation paradigm in corrections has become redundant and that it would, therefore, be more productive, if not also more honest, to now work without reference to it.

In the final analysis, the Finnish experience has shown the value of the application of sensible conflict transformation perspectives in the management of crime. As I indicated above in the section devoted to “Derrida and Lacan on intercontextually transplanting the signifier,” both Lacan and Derrida, two influential exponents of the poststructuralist movement, have demonstrated that the original context from which the signifier has been removed (namely, the author’s intention) becomes irrelevant when the signifier is re-inserted into a new context where it might take on an entirely new meaning, which may or may not differ from that which it had inhibited in the original context. The exercise of transplanting the signifier to a new context “presupposes” (Derrida) a successful re-interpretation in the new context, which renders the author’s intention moot.

The hope is expressed that other criminologists with a comparative bend might use this blueprint, even if only in part, to investigate and consider the lessons to be learnt by South African corrections from the myriad cultures around the globe.

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