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THE PRISONER AS ONE OF US: NORWEGIAN WISDOM FOR AMERICAN PENAL PRACTICE

ABSTRACT

The United States suffers from among the highest crime and recidivism rates in the world. This is in part due to its focus on retribution as the purpose of punishment and its high sentencing structure. Norway, on the other hand, has some of the lowest crime and recidivism rates and boasts Halden prison, which has been hailed as the world's most humane prison. In Halden and other prisons, the Norwegian penal system applies the principle of normality. Under the principle of normality, Norway seeks the reintegration of its offenders into society. Its prisoners suffer fewer of the negative, unintended side effects of prison that isolate the prisoner from society, reinforce bad habits, and make reintegration upon release nearly impossible. This Comment proposes that the United States could reduce its high crime and recidivism rates with a penological approach that bridges that of the two countries—a rehabilitative retributivism. The United States can keep its focus on retribution while at the same time making sure that its punishment does not swell to include those negative side effects. By reducing its sentencing structures and incorporating the principle of normality into its retributive goal, the United States could better ensure that prisoners return to society as productive members, and it could experience lower crime and recidivism rates as a result.

INTRODUCTION

On Friday, July 22, 2011, at 3:26 in the afternoon, a car bomb was detonated in Oslo, Norway, killing eight people and damaging a number of government buildings.¹ Less than two hours later, a gun rampage erupted only a short distance away on Utoya,² a Norwegian island to the northwest. In order to gain access to the island and to his victims, the gunman told the ferryman he was

¹ Umberto Bacchi, *Anders Behring Breivik Timeline: The Massacre, The Trial, The Sentence* [VIDEO], INT'L BUS. TIMES (Aug. 24, 2012, 9:09 AM), <http://www.ibtimes.co.uk/breivik-timeline-massacre-trial-sentence-utoeya-oslo-377030> [hereinafter Bacchi, *Anders Behring Breivik Timeline*]; see also Umberto Bacchi, *Anders Breivik Threatens Hunger Strike for Playstation 3 and Adult Games*, INT'L BUS. TIMES (Feb. 14, 2014, 3:29 PM), <http://www.ibtimes.co.uk/anders-breivik-threatens-hunger-strike-playstation-3-adult-games-1436492> (confirming the death of 8 people) [hereinafter Bacchi, *Anders Breivik Threatens Hunger Strike*].

² Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1.

traveling to the island to do research about the bomb blasts.³ He disguised himself in police uniform and shouted offers of help to victims to trick them into coming out of hiding.⁴ The gunman shot and killed sixty-nine people, the majority of which were teenagers attending a youth camp for the Norwegian Labour Party.⁵ When the police arrived a little over an hour after the slaughter began, the gunman surrendered willingly and without struggle.⁶

The above chronicles the short but gruesome affair that has been called “one of the worst terrorist attacks in Europe since the Second World War.”⁷ The gunman, Anders Behring Breivik, was found guilty at trial and sentenced to twenty-one years, the highest penalty available in Norwegian courts.⁸ There was little outrage over the result of the trial and no cries for vengeance.⁹ The public, including the parents of the teenagers killed, actually spoke out against any theoretical application of the death penalty.¹⁰

This crime would have undoubtedly been treated very differently had Breivik committed these atrocities in the United States and been subject to the criminal jurisdiction of the U.S. penal system. Before trial, there would have been public outrage at the crimes. At sentencing, it is unlikely that a sentence as low as twenty-one years would have even been considered.¹¹ Breivik would likely face multiple life sentences, if not the death penalty.¹² After trial, Breivik would be subject to a penal system that would lock him up and throw away the key, and be glad to have done so.¹³

³ *Id.*

⁴ Michael Schwartz, *For Young Campers, Island Turned Into Fatal Trap*, N.Y. TIMES (July 23, 2011), http://www.nytimes.com/2011/07/24/world/europe/24island.html?_r=0.

⁵ Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1; *see also* Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1 (finding the majority of Breivik’s victims to be teenagers).

⁶ Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1; *see also* Schwartz, *supra* note 4 (confirming the lack of struggle from Breivik).

⁷ Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1.

⁸ Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1; *see also* GENERAL CIVIL PENAL CODE § 233 (Nor.), http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_penal_code.pdf (last visited Jan. 30, 2017); Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1. All five judges unanimously found Breivik sane when he committed these atrocities. *Id.*

⁹ Su-Syan Jou, *Norwegian Penal Norms: Political Consensus, Public Knowledge, Suitable Sentiment and a Hierarchy of Otherness*, 9 NAT’L TAIWAN U.L. REV. 283, 301 (2014).

¹⁰ *Id.* at 302.

¹¹ The U.S. Code, which governs federal law across the various States, mandates a punishment of death or imprisonment for life for first-degree murder. 18 U.S.C.S. § 1111 (2015).

¹² *See id.*

¹³ Non-criminals have a tendency to distance themselves from criminals, seeing the criminal as someone “indelible[y] stain[ed] . . . irreclaimable . . . [and thus] thrown away.” MARTHA G. DUNCAN, ROMANTIC OUTLAWS, BELOVED PRISONS 140 (1996).

The differences between the penal practices of the United States and Norway are glaring, especially when comparing the incarceration and recidivism rates. As of October 2013, the United States had the highest prison population rate in the world, housing 716 people for every 100,000 people in the national population.¹⁴ At the same time, Norway housed only seventy-two people in prison for every 100,000 people in the national population, a rate almost one tenth of the United States.¹⁵

What can explain this stark contrast between the two countries? Some might argue it is expected that Norway would have low prison population rates, especially when compared to the United States. Norway is a small, largely homogenous¹⁶ country with deeply embedded social welfare systems.¹⁷ The United States' high prison population rates could simply be the product of national characteristics—its people, geography, economy, and politics—and Norway, a country with radically different characteristics, might have nothing to offer the United States in terms of rethinking penal policy.

Such an argument is too dismissive when considering penal policy in the United States, an area in crucial need of reform. Help from any corner, if applicable, is valuable. Furthermore, while the circumstances surrounding the problems of incarceration and recidivism are different, the problems themselves are the same. The United States and Norway have attempted to solve these problems in different ways, and Norway's methods have borne better results. Admittedly, some circumstantial features of Norway's system are either unlikely or impossible for the United States to adopt. This Comment argues that the United States could stand to change its approach to incarceration and recidivism by learning from the positive aspects of Norway's system and its successes. The United States needs a better response to the problems of incarceration and recidivism. It is time that the United States look to Norway and evaluate whether any of Norway's effective treatments should be exported to the United States.

This Comment does not address the prevention of crime or the entry of people into the criminal justice system. Nor is this Comment about the treatment of people within the criminal justice system at any point prior to sentencing. Rather, this Comment considers the treatment of people who have been adjudged guilty and sentenced to a period of incarceration, and whether they are

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Tapio Lappi-Seppala, *Penal Policy in Scandinavia*, 36 CRIME & JUST. 217, 220 (2007).

¹⁷ *Id.* at 274 (citing the Scandinavian sentiment that “[g]ood social policy is the best criminal policy.”).

effectively reintegrated into society once they are released. While a solution to the problem of crime in the United States must invariably take into consideration pre-conviction issues, those issues are outside of the scope of this Comment.

This Comment will compare the incarceration and recidivism rates of the United States and Norway and analyze the explanations and causes behind these rates. Simply replacing the U.S. system with the Norwegian system is not a solution to the problem of the United States' high incarceration and recidivism rates. Not only would such a replacement not be possible because of inherent differences in the structure, policy, and operations of each country, but it would fail to honor the purposes of punishment as they have come to be understood within the United States. Rather, this Comment argues that the solution is a penological system that bridges each country's approach—a rehabilitative retributivism—that will lead to lower incarceration and recidivism rates than either country's model applied on its own. Specifically, if the United States adopted Norwegian-style lower, indeterminate sentencing and applied the Norwegian principle of normality within prisons, then the consequent changes in the penal system would lower incarceration and recidivism rates.

In Part I, this Comment will provide the background of the different incarceration rates, penal history, and recidivism rates of each country. In Part II, this Comment will compare the different penal approaches of each country to explore the cause of their differing incarceration and recidivism rates. This Comment will also examine Norway's newest prison, Halden, and the terrorist attack of Norwegian national Anders Breivik as examples of Norway's radical penal approach. In Part III, this Comment will argue for a blended penological approach that takes advantage of the Norwegian method of lower sentencing structures and rehabilitative treatment without sacrificing U.S. retributivism.

I. THE NUMBERS—A COMPARISON OF PRISON RATES, PENAL HISTORY, AND RECIDIVISM RATES

Looking at numbers alone can be misleading as only two factors determine a nation's prison population rate: the number of sentences and the length of those sentences.¹⁸ A massive incarceration rate may be the product of long sentences, frequent incarceration, or both.

¹⁸ MARC MAUER, RACE TO INCARCERATE 38 (1999).

With 2.24 million prisoners, the United States houses more prisoners than any other country;¹⁹ however, the United States comprises less than five percent of the world's total population.²⁰ The number of sentences undoubtedly influences this rate. As of 1999, the United States was sentencing individuals to prison at a rate six to ten times higher than that of most comparable nations.²¹ Additionally, sentence length significantly contributes to this rate. Although some countries sentence more prisoners than the United States, the United States has a higher incarceration rate because it doles out longer sentences.²² Due to mandatory minimums and truth-in-sentencing laws,²³ sentence length has increased to the point where U.S. prisoners are serving an average of twenty-seven months in prison, a five-month increase from 1990.²⁴ Moreover, about twenty percent of state prisoners and thirty-three percent of federal prisoners will have served more than five years.²⁵ As a result of these factors, by October 2013, the United States had the highest prison population rate in the world, housing 716 prisoners for every 100,000 people in the national population.²⁶ At the same time, Norway housed only seventy-two prisoners for every 100,000 people in the national population.²⁷

U.S. incarceration rates have not always been so high. There was a dramatic increase in incarceration in the 1970s.²⁸ In some ways, this can be attributed to a spike in violent crime. The number of murders more than doubled from 1960 to 1974, rising from 9,110 to 20,710.²⁹ Furthermore, 1973 marked the enactment

¹⁹ See Roy Walmsley, *World Prison Population List*, INT'L CTR. FOR PRISON STUD., www.prisonstudies.org/sites/default/files/resources/downloads/wppl_10.pdf (last visited Jan. 30, 2017).

²⁰ Adam Liptak, *U.S. Prison Population Dwarfs that of Other Nations*, N.Y. TIMES (Apr. 23, 2008), [http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all&_r=1&see=Michelle Ye Hee Lee, Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?](http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all&_r=1&see=Michelle%20Ye%20Hee%20Lee,%20Does%20the%20United%20States%20Really%20Have%205%20Percent%20of%20the%20World's%20Population%20and%20One%20Quarter%20of%20the%20World's%20Prisoners?), WASH. POST (Apr. 20, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/?utm_term=.22dc7c570800.

²¹ MAUER, *supra* note 18, at 9.

²² Liptak, *supra* note 20.

²³ Truth-in-sentencing laws require offenders to serve the majority of their sentences—the exact amount varying based on the jurisdiction—and reduce the possibility of early release through probation or parole. *Truth in Sentencing Law & Legal Definition*, US LEGAL, <http://definitions.uslegal.com/t/truth-in-sentencing/> (last visited Jan. 30, 2017).

²⁴ Joan Petersilia, *From Cell to Society: Who is Returning Home?*, in PRISONER REENTRY AND CRIME IN AMERICA 16 (Jeremy Travis & Christy Visser, eds., 2005).

²⁵ *Id.*

²⁶ Walmsley, *supra* note 19.

²⁷ *Id.*

²⁸ MAUER, *supra* note 18, at 32.

²⁹ *Id.* at 31.

of laws codifying mandatory prison terms and limiting plea bargaining for various drug offenses; these laws increased the likelihood of incarceration and the length of resulting sentences.³⁰ In comparison, Norwegian incarceration rates remained stable from the early 1950s to the mid-1980s.³¹

Both countries then experienced a rise in prison populations. From 1980 to 2000, the U.S. prison population rate increased by about one hundred prisoners every five years, jumping from an overall incarceration rate of 220 prisoners per 100,000 people in 1980 to 683 in 2000.³² From 1980 to 1995, the Norwegian prison population increased at a rate of about five prisoners every five years, jumping from an overall incarceration rate of forty-four percent in 1980 to sixty percent in 1995.³³ While both country's rates increased, the United States' rate increased by over 300%, while the Norwegian rate increased by less than twenty percent.

In the United States, the increased incarceration rate was tied closely to drug arrests. From 1980 to 1990, drug arrests nearly doubled.³⁴ Unfortunately, this increased rate says nothing about whether there were more drug offenses being committed. In fact, a closer look shows that drug use was on a decline, with 14.1% of the population using drugs in 1979 and only 5.1% using drugs by 1995.³⁵ Despite this decline, from 1980 to 1992, the likelihood of receiving a prison term for a drug offense increased by an astounding 447%, and most of the terms given were mandatory.³⁶ Judges were left with little discretion, and the United States is still reeling from the effects of this "Get Tough" movement.³⁷ The movement resulted in an eighty-four percent increase in offenders sentenced to prison between 1985 and 1995, but seventy-seven percent of this increase

³⁰ *Id.* at 57.

³¹ Lappi-Seppala, *supra* note 16, at 255.

³² *United States of America*, INT'L CTR. FOR PRISON STUD., <http://www.prisonstudies.org/country/united-states-america> (last visited Jan. 30, 2017).

³³ *Norway*, INT'L CTR. FOR PRISON STUD., <http://www.prisonstudies.org/country/norway> (last visited Jan. 30, 2017).

³⁴ MAUER, *supra* note 18, at 143.

³⁵ *Id.* at 145.

³⁶ *Id.* at 151; see also Marc Mauer & Michael Coyle, *The Social Cost of America's Race to Incarcerate*, in CRIMINAL JUSTICE: RETRIBUTION VS. RESTORATION 8 (Eleanor Hannon Judah & Rev. Michael Bryant eds., 2004) (noting the five year mandatory sentence for possession of five grams of crack cocaine).

³⁷ The "Get Tough" movement marked a period of crackdown on drug crimes. Arit John, *A Timeline of the Rise and Fall of 'Tough on Crime' Drug Sentencing*, WIRE (Apr. 22, 2014, 12:10 PM), <http://www.thewire.com/politics/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/>. In 1986, President Ronald Reagan signed into law the Anti-Drug Abuse Act, resulting in high mandatory minimums for drug crimes. *Id.*

consisted of nonviolent offenders.³⁸ Drug offenders made up over half of the increase and now comprise nearly one in four of the prison population.³⁹

The United States was not alone in its war on drugs. Norway also cracked down on drugs, and this intensified drug control is likely one cause of the increase in prison population rates. Maximum penalties for serious offenses were raised multiple times in the 1970s and 1980s. In 1981, for example, serious drug offenses were placed alongside first-degree murder as having the potential to receive twenty-one years,⁴⁰ the highest sentence in Norway.⁴¹ It is worthwhile to note that such a harsh punishment for drug crimes is an anomaly in a system otherwise based on detached rational assessments and rehabilitation.⁴²

Following the flurry and fervor of these drug crackdowns, prison population rates in both countries slowed or even declined. The United States' rate of increase slowed to about twenty prisoners every two years, leveling out between the years 2006 and 2008 at an overall incarceration rate of about 752–755.⁴³ In 2010, the prison population rate decreased to 731, marking a slow, downward trend that has continued ever since.⁴⁴ Norway's incarceration rate, by contrast, did not merely slow. After a momentary decline from 1995 to 2000 that caused the rate to rest at fifty-seven,⁴⁵ the rate increased in increments of one to five prisoners to reach seventy-four by 2010.⁴⁶ However, in 2012, the rates dipped to seventy-two, which Norway has largely maintained to date.⁴⁷ Although there are some differences in the numbers, the overall prison population rate trends have been somewhat parallel between the two countries.

While the prison rates alone are shocking, it is important to look at whether these rates are specific to new offenders or repeat offenders. A comparative look at recidivism in the two countries reveals no better numbers for the United States. In the United States, an average of nine million prisoners are released

³⁸ MAUER, *supra* note 18, at 32.

³⁹ *Id.* at 32, 151; *see also* Mauer & Coyle, *supra* note 36, at 11.

⁴⁰ Lappi-Seppala, *supra* note 16, at 256–57.

⁴¹ Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1; *see also* GENERAL CIVIL PENAL CODE § 233 (Nor.); Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1.

⁴² Lappi-Seppala, *supra* note 16, at 261.

⁴³ *United States of America*, *supra* note 32.

⁴⁴ *Id.*

⁴⁵ *Norway*, *supra* note 33.

⁴⁶ *Id.*; *see also* Lappi-Seppala, *supra* note 16, at 218 (confirming that all the Nordic countries were experiencing an increase in prison population rate in the late 1990s).

⁴⁷ *Norway*, *supra* note 33.

back into the community each year.⁴⁸ Unfortunately, “about two-thirds (67.8%) of released prisoners were arrested for a new crime within 3 years, and three-quarters (76.6%) were arrested within 5 years.”⁴⁹ Over a five-year study of state prisoners released in thirty states, almost 1.2 million arrests occurred, and 16.1% of these arrests were attributable to released prisoners.⁵⁰ Norway, on the other hand, has the lowest reoffending rate of all the Nordic countries; about one-fifth of ex-prisoners reoffend within two years of release, contrasted with a rate of 24–31% for other Nordic countries.⁵¹ Comparing the United States’ 67.8% to Norway’s approximately twenty percent paints a bleak picture for the United States.

However, the differences are not as drastic as they might appear at first glance. When looking at re-incarceration rates, not merely re-arrest rates, the U.S. rate is lower, at 28.8%.⁵² Norway’s rate of actual re-incarceration is higher, at about twenty-five percent.⁵³ Furthermore, discrepancies also arise from the types of offenders being jailed. If a country jails offenders who commit crimes without a high degree of recurrence, it naturally follows that its recidivism rates will be lower than those countries that jail offenders who commit crimes with high degrees of recurrence. For example, one study confirmed that, “[e]xcluding traffic offenders, [a group few other countries jail and a type of crime without a high degree of recurrence,] Norway’s recidivism rate would . . . be around 25 percent after two years.”⁵⁴ Both the United States and Norway, however, face the difficulty of reoffenders charged with property crimes.⁵⁵ In the United States,

⁴⁸ Eleanor Hannon Judah & Rev. Michael Bryant, *Rethinking Criminal Justice: Retribution vs. Restoration*, in *CRIMINAL JUSTICE: RETRIBUTION VS. RESTORATION 2* (Eleanor Hannon Judah & Rev. Michael Bryant eds., 2004) (quoting 2002 Bureau of Justice Statistics).

⁴⁹ MATTHEW R. DUROSE ET AL., *RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 1* (Apr. 2014). These numbers were not compiled from the whole nation but from a study done among state prisoners released in thirty states in 2005. *Id.*

⁵⁰ *Id.*

⁵¹ Ragnar Kristoffersen, *Abstract: Relapse Study in the Correctional Services of the Nordic Countries*, KRIMINALOMSorgen, www.kriminalomsorgen.no/getfile.php/2819934.823.xpewptatwc/Nordic+relapse+study+abstract+.pdf (last visited Jan. 30, 2017); see also *About the Norwegian Correctional Service*, KRIMINALOMSorgen, <http://www.kriminalomsorgen.no/index.php?cat=265199> (last visited Jan. 30, 2017).

⁵² Jessica Benko, *The Radical Humaneness of Norway’s Halden Prison: The Goal of the Norwegian Penal System is to Get Inmates Out of It*, N.Y. TIMES MAG. (Mar. 25, 2015), http://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html?_r=0.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ According to the Federal Bureau of Investigation, in the United States, property offenders are identified as those who have committed any of the property crimes of burglary, larceny-theft, motor vehicle theft, or arson. *Property Crime*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the->

“82.1% of property offenders were arrested for a new crime, compared to 76.9% of drug offenders, 73.6% of public order offenders, and 71.3% of violent offenders,”⁵⁶ while in all the Scandinavian countries (Norway included) criminals sentenced for theft showed the highest reoffending rates.⁵⁷

Although these rates are close, it is still necessary to examine Norway’s penal system for guidance. While patterns may be the same, the overall picture is not. The United States’ incarceration rate is ten times that of Norway.⁵⁸ Accordingly, even if each country faces a comparable likelihood of recidivism of its criminal offenders, a much larger portion of U.S. society is affected. The recidivism rate applies to a larger group of people and thus has a greater impact. Cumulatively, these small differences can have a major impact.

II. FACTORS AND CAUSES

What causes this disparity in incarceration rates between the United States and Norway? Many factors are at work in both countries. Factors in the United States include higher levels of violent crime, harsh sentencing, public sentiment of fear and distrust, and pressure on elected judges to cater to that public sentiment.⁵⁹ A study comparing the imprisonment rates of Scandinavian countries found that differences in those countries rates were rooted in public sentiment, the extent of welfare provisions, income equality or lack thereof, and political and legal structures, rather than any differences in the rate of crime.⁶⁰ This panoply of factors shows that there is no easy solution to the problems surrounding imprisonment and recidivism. This Comment will compare some of the main factors contributing to the incarceration and recidivism rates in each country. While the list of factors is by no means exhaustive, this Comment will analyze some of the core reasons for the differences between the two countries.

A. *Purposes of Punishment*

A country’s beliefs about punishment and its purposes are a significant driving factor in shaping its penal system. The United States began with a

u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/property-crime (last visited Jan. 30, 2017).

⁵⁶ DUROSE ET AL., *supra* note 49, at 1.

⁵⁷ Kristoffersen, *supra* note 51.

⁵⁸ Walmsley, *supra* note 19.

⁵⁹ Liptak, *supra* note 20.

⁶⁰ Lappi-Seppala, *supra* note 16, at 219.

rehabilitative goal. The Quakers formed the first prisons, calling them “penitentiaries,” and these and subsequent prisons of the early colonial period assumed “that an offender is someone who has erred but is capable of change, and that the period of incarceration can be viewed as a time to effect interventions that may bring about more law-abiding behavior.”⁶¹ For many years after this period, prisons followed the model set out in its early origins. Then, in 1962, the Model Penal Code adopted nearly the entire list of penal purposes.⁶² In 1968, forty-eight percent of the public thought the primary purpose of prison was rehabilitation, with seventy-two percent thinking the purpose *should* be rehabilitation.⁶³ In the 1970s, courts continued ruling in favor of rehabilitation. As one federal court in Texas declared: “[r]ehabilitation must be the overriding goal of our correctional institutions. Unless society subordinates all of the correctional purposes to the goal of rehabilitation, it faces the paradox of promoting the production rather than the reduction of crime.”⁶⁴ Similarly, a New Hampshire federal court found that “[p]unishment for one crime, under conditions which spawn future crimes and more punishment, serves no valid legislative purpose” and thus, prisoners must be housed in conditions that do not decrease their efforts towards rehabilitation or increase their chances of recidivism.⁶⁵

At the same time, the Norwegian government was pressing for greater focus on rehabilitation. In 1978, the Ministry of Justice and Public Security presented the Norwegian Parliament with a report on crime.⁶⁶ Among its main goals, the report included the construction of new alternatives to imprisonment, shortened sentences for property offenses, and restricted use of indeterminate sentencing.⁶⁷ During this time period, both countries were traveling firmly on the path towards continued and deeper rehabilitation as their guiding approach to penal theory. While Norway continued on this path, the United States took a pendulum swing in the opposite direction.

⁶¹ MAUER, *supra* note 18, at 42. The penitentiary developed during the 18th century. DUNCAN, *supra* note 13, at 147.

⁶² Albert W. Alschuler, *Centennial Tribute Essay: The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 6 (Winter 2003).

⁶³ MAUER, *supra* note 18, at 44 (citing FRANCIS T. CULLEN & KAREN E. GILBERT, REAFFIRMING REHABILITATION (1982)).

⁶⁴ Taylor v. Sterrett, 344 F. Supp. 411, 420 (N.D. Tex. 1972).

⁶⁵ Laaman v. Helgemoe, 437 F. Supp. 269, 316 (D.N.H. 1977).

⁶⁶ Lappi-Seppala, *supra* note 16, at 255.

⁶⁷ *Id.*

Rehabilitation was still the principal goal of the U.S. criminal justice system until the final quarter of the twentieth century.⁶⁸ Gradually, other justifications for punishment gained prominence. In 1984, a Florida court declared retributivism to be only one element of all punishment imposed by society.⁶⁹ Norway, on the other hand, was experiencing a revolution of a different kind in its penal system: in 1998, when an explicit focus was placed on rehabilitation, and again in 2007, when reintegration and helping inmates find housing and jobs even before release was prioritized.⁷⁰

The United States has now declared a preference for deterrence, incapacitation, and retribution as goals for punishment, but has pointedly avoided indicating a preference for rehabilitation or restorative justice.⁷¹ Alternatively, the Norwegian view of punishment is that the restriction of liberty is the punishment—the offender retains the same rights as non-offending citizens.⁷² While American cases have also affirmed incarceration as the punishment, this affirmation has not prevented stripping the prisoner of his rights. Rather, this affirmation has been used only to prevent poor prison conditions and mistreatment, such as beatings and physical deprivations.⁷³ It has certainly not been used as a basis for rehabilitative efforts. The American approach to punishment centers on retributivism, while the Norwegian approach centers on rehabilitation and restoration. Understandings of the purposes of punishment shape consequent penal policy, and the differences between these two countries will be highlighted even more as this Comment dives deeper into each country's respective penal practice.

B. Sentencing Structures

Sentencing structures also play a major role in the differences between the two countries' incarceration and recidivism rates. The United States started with indeterminate sentencing just as it started with rehabilitation. Indeed, the rationales of the two were inextricably linked. Indeterminate sentencing

⁶⁸ Alschuler, *supra* note 62, at 6.

⁶⁹ Spaziano v. Florida, 468 U.S. 447, 461–62 (1984).

⁷⁰ Benko, *supra* note 52.

⁷¹ Melanie Reid, *Crime and Punishment, a Global Concern: Who Does It Best and Does Isolation Really Work?*, 103 KY. L.J. 45, 74 (2014-2015) (citing RICHARD J. TERRILL, *WORLD CRIMINAL JUSTICE SYSTEMS: A COMPARATIVE SURVEY* 252–53 (8th ed. 2013)); *see also* Daniel W. Van Ness, *Justice that Restores: From Impersonal to Personal Justice*, in *CRIMINAL JUSTICE: RETRIBUTION VS. RESTORATION* 100 (Eleanor Hannon Judah & Rev. Michael Bryant eds., 2004).

⁷² *About the Norwegian Correctional Service*, *supra* note 51.

⁷³ Barnes v. Gov't of V.I., 415 F. Supp. 1218, 1224 (D.V.I. 1976).

incentivized the prisoner to participate in rehabilitative programs.⁷⁴ Unfortunately, indeterminate sentencing also left open potential for abuse and injustice as a result of prison officials' and parole board members' biases.⁷⁵ Indeterminate sentencing was also criticized for allowing early release of offenders who many thought deserved lengthier terms and contributed to a rise in crime as a result of their early release.⁷⁶ Thus, the argument for determinate sentencing and rejection of rehabilitation emerged.

In 1984, Congress passed the Sentencing Reform Act.⁷⁷ In it, Congress replaced the previous indeterminate sentences with ““guidelines [that] reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.””⁷⁸ The Act therefore embodied the radical transformation occurring within the United States to reject the role of rehabilitation in punishment.

While these reforms initially appeared to have the goal of rooting out sentencing disparities resulting from differing views of various judges, in practice, the reforms led to a harsher penal practice that disregarded each offender's individual characteristics while simultaneously increasing the severity of sentences.⁷⁹ Determinate sentencing produced an atmosphere, which is still present, in which “[w]e punish by the book, by the numbers, by rigid guidelines, by unnecessarily cruel minimum sentences. The result is overfilled prisons and unnecessary havoc and suffering for those within and without incarcerating walls . . . indirectly punishing families and communities.”⁸⁰ Determinate sentencing gifted America with length and certainty of sentences unseen in the rest of the world. Looking at the years 1980–1996, over one half of the increase in incarceration rates was attributed to a greater likelihood of a prison sentence upon arrest, whereas only about one tenth was attributed to an actual rise in crime.⁸¹ Judge Richard Posner acknowledged the role that our sentencing structure plays, citing the United States' ““exceptionally severe criminal punishments (many for intrinsically minor, esoteric, or archaic

⁷⁴ MAUER, *supra* note 18, at 46.

⁷⁵ *Id.*

⁷⁶ *Id.* at 47.

⁷⁷ Jack B. Weinstein, *Notes for the 58th Benjamin N. Cardozo Lecture: The Role of Judges in a Government of, by, and for the People*, 63 RECORD 326, 521 (2008) (citing 28 U.S.C. § 994(k)).

⁷⁸ *Id.*

⁷⁹ Alschuler, *supra* note 62, at 9–10.

⁸⁰ Weinstein, *supra* note 77, at 347.

⁸¹ MAUER, *supra* note 18, at 34.

offenses)’ as one of the factors making the United States ‘one of the most penal of the civilized nations.’”⁸²

Norway has resisted the pressure to give harsh sentences. In 1981, around the same time that the United States was implementing the Sentencing Reform Act, Norway abolished the life sentence⁸³ and replaced it with a twenty-one-year maximum sentence.⁸⁴ Imprisonment in Norway is generally imposed for terms between fourteen days and fifteen years, in certain cases for a term not exceeding twenty years, and “in cases in which it is specially provided, for a term not exceeding 21 years.”⁸⁵ For example, the minimum penalty for committing a homicide is six years, but the maximum of twenty-one years may be applied only in cases of premeditation, felony murder, or if the offender acted to conceal a felony or evade its penalty.⁸⁶ Breivik received this maximum sentence of twenty-one years.⁸⁷ Furthermore, the death penalty is prohibited in Norway, and even use of imprisonment as a punishment is limited to serious offenses—the majority of non-serious offenses are punished by fines.⁸⁸ For those that do receive a prison sentence, the average sentence in Norway is around eight months,⁸⁹ whereas the average sentence in the United States is twenty-seven months.⁹⁰ In Norway, “[o]ver 60% of unconditional prison sentences are up to 3 months, and almost 90% is [sic] less than a year.”⁹¹

The availability of judicial discretion and shorter sentences does not necessarily mean that Norway’s penal system is lenient. For instance, Norway’s new Penal Code provides for a sentence as high as thirty years for international crimes—crimes related to genocide, crimes against humanity, and some war crimes.⁹² Another example comes from the Breivik case. Since sentencing, Breivik has been kept in “near constant solitary confinement, under orders which are renewed ‘almost automatically’ every six months,” and has been banned

⁸² DUNCAN, *supra* note 13, at 224 n.6.

⁸³ Benko, *supra* note 52.

⁸⁴ Lappi-Seppala, *supra* note 16, at 223; *see also About the Norwegian Correctional Service*, *supra* note 51.

⁸⁵ GENERAL CIVIL PENAL CODE (Nor.), *supra* note 8, § 17.

⁸⁶ *Id.* § 233.

⁸⁷ Bacchi, *Anders Behring Breivik Timeline*, *supra* note 1; *see also* GENERAL CIVIL PENAL CODE (Nor.), *supra* note 8, § 233; Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1.

⁸⁸ Lappi-Seppala, *supra* note 16, at 223.

⁸⁹ *About the Norwegian Correctional Service*, *supra* note 51.

⁹⁰ Petersilia, *supra* note 24, at 16.

⁹¹ *About the Norwegian Correctional Service*, *supra* note 51.

⁹² *Id.*

from sending or receiving letters.⁹³ The Norwegian Correctional Service justified this treatment because of the terroristic nature of Breivik's crime and his subsequent misbehavior in jail.⁹⁴ It is significant that such treatment is not given to every prisoner who receives the twenty-one year maximum; rather, it is the result of individualized discretion applied to Breivik. However, even these "harsh" treatments by Norway fall within the lighter end of American treatment, both in terms of length of time in prison and the treatment applied. While most prisoners in solitary confinement in the United States are housed in cells measuring from 6 x 9 to 8 x 10 feet,⁹⁵ Breivik's solitary confinement initially gave him use of an entire suite of rooms.⁹⁶

The United States' harsh approach to crime could in some ways be understood if it faced more crime than other countries. Because the United States certainly faces more crime by dint of population size alone, crime rates must be compared instead. However, even these rates can be difficult to compare due to problems of reporting and differing definitions of crime. Therefore, one study compared victimization rates of eleven industrialized nations in lieu of crime rates.⁹⁷ While the United States matched the average rate of victimization,⁹⁸ the homicide rates in the United States are five to seven times the rate of most industrialized nations.⁹⁹ For instance, the homicide rate in Norway was the lowest of the nations studied, at 0.9 homicides per 100,000 people, while the rate of the United States was the highest at 7.4 homicides.¹⁰⁰ Since the United States has the same average rate of victims as other countries but significantly higher homicide rates, more of the U.S. victim population consists of homicide victims than in the victim populations of other countries. If the United States has more homicide victims, it likely has more homicide offenders. Because homicide offenders typically receive lengthier sentences than offenders who commit less egregious crimes, the U.S. incarceration rate jumps higher as well.

⁹³ Justin Huggler, *Mass Murderer Breivik to Sue Norway Over Prison Conditions*, TELEGRAPH (Feb. 11, 2015, 5:46 PM), <http://www.telegraph.co.uk/news/worldnews/europe/norway/11406616/Mass-murderer-Breivik-to-sue-Norway-over-prison-conditions.html>.

⁹⁴ *Id.*

⁹⁵ *FAQ*, SOLITARY WATCH (2015), <http://solitarywatch.com/facts/faq/>.

⁹⁶ *Inmates in Norway Prison Are Not Happy with Breivik's Conditions*, NORDIC PACE (Feb. 14, 2015), <http://www.tnp.no/norway/panorama/4821-inmates-in-norway-prison-are-not-happy-with-breiviks-conditions>.

⁹⁷ MAUER, *supra* note 18, at 25.

⁹⁸ *Id.* at 26. Victimization means that the United States has the same rate of victims as comparable countries. *Id.* at 25–26.

⁹⁹ *Id.* at 27–29.

¹⁰⁰ *Id.* at 28.

C. *Social Atmosphere and Policy*

Another factor fueling the difference between the U.S. and Norwegian penal systems is the economic disparity or lack thereof within each country. Research suggests that “the greater a society’s tolerance of inequality, the more extreme the scale of punishment utilized.”¹⁰¹ This link between economic disparity and harsh punishment seems to be quickly confirmed by examining the United States’ harsh, determinate sentencing and Norway’s lower, discretionary sentences. Norway, unlike the United States, operates within a “controlled capitalist market economy in which inequalities in incomes and distribution of wealth and power are not tolerated as much as in most other countries.”¹⁰² It is a social welfare state that operates under the penal ideologies that “[g]ood social policy is the best criminal policy”¹⁰³ and that “[s]ociety does better investing in schools, social work, and families than in prisons.”¹⁰⁴ President Barack Obama has recently recognized the wisdom in this approach and voiced his own iteration of the need for social investment, saying, “[t]he best time to stop [crime] is before it even starts. . . . If we make investments early in our children, we will reduce the need to incarcerate those kids.”¹⁰⁵

Social policies contribute greatly to Norway’s low levels of incarceration and recidivism. There is less economic disparity, less social marginalization, and more prosperity than in non-welfare states like the United States.¹⁰⁶ For example, in Norway, rights of health care, education, and a pension are available to all citizens.¹⁰⁷ Certain motives to commit crime, such as hunger and desperate need, are thus eviscerated. While citizenship in the United States does not carry the same rights, it has been shown that investment in similar provisions, such as preschool for young children and summer jobs for teenagers, reduces crime rates in the future and, at the same time, increases overall federal savings.¹⁰⁸

¹⁰¹ *Id.* at 39 (quoting Warren Young & Mark Brown, *Cross-National Comparisons of Imprisonment*, in 17 CRIME AND JUSTICE: A REVIEW OF RESEARCH 1–49 (Michael Tonry ed., 1993)) (internal quotation marks omitted).

¹⁰² Lappi-Seppala, *supra* note 16, at 221.

¹⁰³ *Id.* at 274; *see* Su-Syan Jou, *supra* note 9, at 286 (confirming Norway’s commitment to good social policy in the form of high employment rates, social welfare programs, low poverty rates, and low income inequality) (internal quotation marks omitted).

¹⁰⁴ Lappi-Seppala, *supra* note 16, at 274.

¹⁰⁵ David Hudson, *President Obama: “Our Criminal Justice System Isn’t as Smart as It Should Be,”* WHITE HOUSE (July 15, 2015, 1:12 PM), <https://www.whitehouse.gov/blog/2015/07/15/president-obama-our-criminal-justice-system-isnt-smart-it-should-be> (internal quotation marks omitted).

¹⁰⁶ Lappi-Seppala, *supra* note 16, at 274.

¹⁰⁷ Benko, *supra* note 52.

¹⁰⁸ Hudson, *supra* note 105.

Recidivism may be curbed by Norwegian social policy. For example, “[t]he Norwegian government has . . . a reintegration guarantee for those who have served their sentence. They shall — if relevant — have an offer of employment, education, suitable housing accommodation, some type of income, medical services, addiction treatment services and debt counseling.”¹⁰⁹ In turn, Norway alleviates the problem of ex-convicts prowling the streets for jobs, shelter, or food, and, upon finding none, turning back to the crimes they know can, at least temporarily, provide money or relief.

D. *Public Sentiment*

Discrepancies between the United States and Norway can also be explained by public sentiment and the political need of the state to respond. Because most criminal justice officials are elected in the United States, there is great pressure to match one’s sentencing decisions with public sentiment.¹¹⁰ In a culture where the public sentiment regarding crime is fear and a desire to seek vengeance over rehabilitation, this cannot help but lead to higher sentencing. Public sentiment in the United States also reflects a loss of public confidence, caused in part by the conflict model of penal justice, which welcomes criticism.¹¹¹ Examples of public sentiment in the United States are easily found, from protesters in 1997 yelling, “Hang those white boys!”¹¹² to the more recent protests in Baltimore, Maryland following the death of Freddie Gray while in police custody.¹¹³

By contrast, in Norway, fear and anger surrounding crime are low.¹¹⁴ Consequently, imprisonment rates are low.¹¹⁵ Eighty percent of the Norwegian public and most of the victims’ families supported the court sentence for Breivik.¹¹⁶ Even Breivik himself accepted the sentence with no intention to appeal.¹¹⁷ The actions of the criminal justice system are more likely to be trusted within Norway, which means that Norway’s rehabilitative approach is more likely to be met with cooperation than antagonism by the public with which it seeks to reintegrate its offenders. Not only does this suggest the role that public

¹⁰⁹ *About the Norwegian Correctional Service*, *supra* note 51.

¹¹⁰ Lappi-Seppala, *supra* note 16, at 283.

¹¹¹ *Id.* at 280.

¹¹² STEVE BOGIRA, COURTROOM 302, at 65 (2005) (internal quotation marks omitted).

¹¹³ *Timeline: Freddie Gray’s Arrest, Death, and the Aftermath*, BALTIMORE SUN, <http://data.baltimoresun.com/news/freddie-gray/> (last visited Jan. 30, 2017).

¹¹⁴ Lappi-Seppala, *supra* note 16, at 271.

¹¹⁵ *Id.*

¹¹⁶ Su-Syan Jou, *supra* note 9, at 292.

¹¹⁷ *Id.*

sentiment has to play on incarceration, but this also suggests the role that heavy-handed incarceration has to play on public sentiment. Where prisoners get longer sentences, such sentencing has the potential to cultivate fear of prisoners, which fuels longer sentencing structures. The cycle perpetuates.

E. The Principle of Normality

Reintegration is core to Norwegian penal policy and probably the most significant factor in its low incarceration and recidivism rates. The Norwegian correctional service operates under the principle of normality—which says “progression through a sentence should be aimed . . . at returning to the community.”¹¹⁸ In this way, prison is not viewed as a permanent or even long-term placement of prisoners. Prisoners are members of society temporarily removed. The United States has no counterpart to this principle of normality and is effectively hamstrung when it comes to successful reintegration.

Recognizing the difficulty offenders face upon returning to a community and that this difficulty is only exacerbated by a closed system, Norway designs life inside correctional facilities to resemble life outside prison as much as possible.¹¹⁹ Punishment is viewed solely as the loss of freedom;¹²⁰ accordingly, prison can be modeled to look like non-prison without frustrating the practical application of justice. Furthermore, the country employs an import model in its prisons, meaning that no prison staff members deliver “medical, educational, employment, clerical or library services. [Instead, t]hese are imported from the community.”¹²¹ As a result, inmates not only mimic the lives that they hope to live upon their release; they form relationships they can continue outside of prison. Prison is not a time or place set apart from the community. Instead, prison is a place where prisoners are drawn back into the society against which they set themselves as aggressors, where they can gain the tools and relationships they will need to thrive post-release.

This principle of normality can best be seen in the administration of Halden prison. Halden, which sometimes is referred to as the most humane prison in the world, is Norway’s newest prison and one of its largest.¹²² Halden is the first Norwegian prison built after the reformation of the Norwegian penal system, in

¹¹⁸ *About the Norwegian Correctional Service*, *supra* note 51.

¹¹⁹ *Id.*

¹²⁰ *Id.*; *see also* Benko, *supra* note 52.

¹²¹ *About the Norwegian Correctional Service*, *supra* note 51.

¹²² Benko, *supra* note 52.

which the primary goal became rehabilitation and reintegration into society.¹²³ Even its architecture reinforces Norwegian penal goals. Galvanized steel, a hard material, is used to represent detention, while untreated larch wood, a soft material, is used to represent rehabilitation and growth.¹²⁴ While the architecture acknowledges the need for punishment, it also encourages movement towards rehabilitation.

Rehabilitation is chiefly encouraged, not only by these inanimate structures, but also by the treatment of inmates. Halden is run under a system of “dynamic security,” in which interpersonal relationships between prison staff and inmates are seen as the primary factor in preserving safety.¹²⁵ Guards socialize with inmates over meals or card games, and inmates often move unaccompanied by guards and unwatched by surveillance.¹²⁶ Whereas static security—the system generally employed in the United States—aims to create an environment that prevents an inmate with bad intentions from carrying them out, dynamic security—the system generally employed in Norway—strives to prevent an inmate from developing bad intentions in the first place.¹²⁷ Static security assumes antagonism; dynamic security extends trust. This trust is not without its risks—almost “half of [the Halden prisoner population is] imprisoned for violent crimes like murder, assault, or rape”¹²⁸—but the risk of this trust bears out in the results. Disciplinary measures such as an isolation cell with a restraining bed have never been used in five years, prisoners instead responding to mild measures such as the restriction of their television privileges.¹²⁹

Additionally, the principle of normality is encouraged not only through guard-prisoner interaction, but also in daily prison life, which models life outside Halden. Prisoners have access to board games and magazines, make waffles once a week (a Norwegian ritual), play video games, and go to the grocery store and stock their mini-fridges.¹³⁰ The similarities between life inside and outside prison are especially striking when considering the furniture and kitchen available to inmates. None of the furniture is specially designed to prevent it from being reworked into a weapon and the kitchen contains plenty of potential

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

weapons in the form of silver utensils, glass and ceramic dishes, and even some large knives (although these are tethered to the wall).¹³¹

By contrast, prisoners in the United States Penitentiary Administrative Maximum Facility (ADX), the United States' only federal supermax facility, spend about twenty-three hours in solitary confinement—time that is often spent working out to exhaustion or finding creative ways to inflict self-harm.¹³² Even the warden admitted that the prison was not designed with rehabilitation in mind, going so far as to say, “[t]his place is not designed for humanity.”¹³³ Although the lack of rehabilitation does not necessarily unbalance the scales of retributivism, which call for the punishment to match the crime, subjecting prisoners to terrible treatment seems to be little more than thinly veiled “indulgence of the noncriminals’ sadistic drive.”¹³⁴

The Norwegian prison conditions combat the dangerous ‘us versus them’ mentality that isolates prisoners and ex-prisoners from society more than any physical separation imposed by prison walls. When prisoners feel that they are not part of the ‘us’ of society, what motivation do they have to follow the laws and norms of the society that has rejected them? Without that motivation, it is highly possible that they will instead find identity and community within the society of fellow prisoners, thus allowing their crime to define and refine them. In the words of one prisoner, “I mean, you know, that’s why I have a problem, because I always been [sic] rejected from society.”¹³⁵

Furthermore, when society views prisoners as ‘them’ rather than part of ‘us,’ what motivation does society have to want ‘them’ reintegrated as part of the whole? When we, as a society, see prisoners as ‘them,’ we see them as oppositional to ourselves and have no desire or need to help them. This attitude only hurts society in the long run by perpetuating the antagonism between each group, rather than uniting prisoners and non-prisoners.

However, it is much more comfortable for non-prisoners to consider prisoners as ‘them.’ If the prisoner is ‘them,’ then there is no problem in U.S. society and no problem that needs curing. One author describes the U.S. tendency to separate the prisoner into ‘them’:

¹³¹ *Id.*

¹³² Mark Binelli, *Inside America’s Toughest Prison*, N.Y. TIMES MAG. (Mar. 26, 2015), http://www.nytimes.com/2015/03/29/magazine/inside-americas-toughest-federal-prison.html?_r=0.

¹³³ *Id.*

¹³⁴ DUNCAN, *supra* note 13, at 145.

¹³⁵ BOGIRA, *supra* note 112, at 47.

It was so much easier to blame it on Them. It was bleakly depressing to think that They were Us. If it was Them, then nothing was anyone's fault. If it was Us, what did that make Me? After all, I'm one of Us. I must be. I've certainly never thought of myself as one of Them. *No one* ever thinks of themselves as one of Them. We're always one of Us. It's Them that do the bad things.¹³⁶

The Norwegian penal approach removes the isolating line between the 'us' of society and the 'them' of criminals. By eliminating this line, Norway cultivates community. If both prisoners and non-prisoners see each other as part of the same 'us,' then each has a reason to seek the preservation of society. Prisoners are taught to see themselves as part of society, and thus may lose their identities as antagonists against it. Non-prisoners are taught to see prisoners as never having lost their place in society, and thus prisoners are not forgotten about upon incarceration but are expected to return to society. As we learn from the experience of Pip in Charles Dickens' *Great Expectations*, "When . . . we can call the convict 'my convict,' . . . then at least we will be able . . . to act wholeheartedly as we endeavor to cope with criminal behavior."¹³⁷

Compared to the United States, Norway's penal system may seem radical. One Norwegian political party leader admitted, "[t]oday's prison conditions can seem like pure holiday accommodation for many of the foreign criminals."¹³⁸ In addition to prison conditions, treatment at trial is also shaped by the principle of normality. For example, the Norwegian correctional authorities, while denying Breivik permission to wear a combat uniform in all public appearances, acceded to his demand to wear a Lacoste sweater instead.¹³⁹ By contrast, in the United States, prisoners commonly show up to court in orange jumpsuits unless the defense makes a specific request to the judge that his client be allowed to wear civilian clothes and the judge finds that prison garb would be unduly prejudicial to the jury.¹⁴⁰

¹³⁶ TERRY PRATCHETT, *JINGO* 214 (1997) (emphasis in original).

¹³⁷ DUNCAN, *supra* note 13, at 117.

¹³⁸ Su-Syan Jou, *supra* note 9, at 294.

¹³⁹ Robert Mendick, *Norway Massacre: The Real Anders Behring Breivik*, TELEGRAPH (July 31, 2011, 7:00 AM), <http://www.telegraph.co.uk/news/worldnews/europe/norway/8672801/Norway-massacre-the-real-Anders-Behring-Breivik.html>; see Ben Quinn, *Stop Anders Breivik Wearing Our Clothes, Lacoste Reportedly Ask Police*, GUARDIAN (Sept. 9, 2011, 6:13 PM), <http://www.theguardian.com/world/2011/sep/09/anders-breivik-clothes-lacoste-police>.

¹⁴⁰ Brett Snider, *Can an Orange Jail Jumpsuit Prejudice a Jury?*, FINDLAW BLOTTER (May 7, 2014, 8:54 AM), <http://blogs.findlaw.com/blotter/2014/05/can-an-orange-jail-jumpsuit-prejudice-a-jury.html>.

As aforementioned, Breivik has been kept in solitary confinement since his trial concluded.¹⁴¹ At one point, he had access to a whole unit of rooms,¹⁴² a PlayStation 2, and video games, in addition to receiving weekly benefits the equivalent of about forty-three U.S. dollars.¹⁴³ This is more than many Americans, criminal or otherwise, own or have access to. Yet Breivik threatened a hunger strike because he did not have the latest PlayStation 3 console, more “adult” games, and a doubled weekly benefit.¹⁴⁴ Failure of the Norwegian Correctional Services to provide these conditions amounted to, in the words of Breivik, “torture” and “treating [him] worse than an animal.”¹⁴⁵ In addition to his amenities, Breivik has not lost his rights or the freedom to exercise them. Education is a right of all Norwegian citizens¹⁴⁶ and Breivik was recently allowed to study political science at nearby Oslo University.¹⁴⁷ This course of study exposed Breivik to concepts that are radically different from the prejudicial beliefs that motivated his attack, such as the benefits of multiculturalism in Europe.¹⁴⁸

This treatment of Breivik, while kind, is not blind to the need for protective and disciplinary measures. Breivik is banned from sending or receiving any letters.¹⁴⁹ Due to disruptive behavior in prison, Breivik has now been isolated to only one room for twenty-three hours a day, and his studies have been interrupted.¹⁵⁰ While this treatment is similar to the solitary confinement that U.S. prisoners experience,¹⁵¹ it is crucial to note that this type of punishment is not standard practice in Norway. In fact, it was an extra measure, employed only after Breivik continued to be disruptive. The base level of punishment is aimed at returning prisoners to society, but disciplinary measures are still utilized. In

¹⁴¹ Huggler, *supra* note 93.

¹⁴² *Inmates in Norway Prison Are Not Happy with Breivik's Conditions*, *supra* note 96.

¹⁴³ Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; see also Huggler, *supra* note 93 (noting that Breivik compared his prison conditions to a “mini-Abu Ghraib.”).

¹⁴⁶ Benko, *supra* note 52.

¹⁴⁷ Dominic Gover, *Anders Breivik: Norway's Anti-Muslim Mass Killer to Study Multiculturalism*, INT'L BUS. TIMES (Sept. 13, 2013, 2:05 PM), <http://www.ibtimes.co.uk/breivik-murder-rights-education-norway-505941>.

¹⁴⁸ *Id.*

¹⁴⁹ Huggler, *supra* note 93.

¹⁵⁰ Richard Orange, *Mass Killer Anders Breivik Threatens to Go on Hunger Strike in Protest at Prison Conditions*, TELEGRAPH (Sept. 30, 2015, 11:32 AM), <http://www.telegraph.co.uk/news/worldnews/europe/norway/11901031/Mass-killer-Anders-Breivik-threatens-to-go-on-hunger-strike-in-protest-at-prison-conditions.html>.

¹⁵¹ *FAQ*, *supra* note 95.

the United States, where the base level of punishment is harsh, there is little recourse when prisoners act out. Either there is no further level of punishment and the prisoners, knowing their treatment cannot become worse, may act without fear of consequences, or the next level of discipline is even harsher, even more brutal, even more inhumane.

The treatment of both Breivik and the prisoners at Halden is justified by the Norwegian principle of normality. Halden certainly looks like the world's most humane prison; it hardly looks like a prison at all. However, Norway's low incarceration and recidivism rates demonstrate that something is working. Prisoners are less removed from society, and that treatment eases their return and avoids the harms that can come with isolation.¹⁵²

While the principle of normality ought to be imported into the United States' penal system, the United States should not lose the proportionality called for by retributivism. A balance between retributive treatment and rehabilitative treatment is necessary. The Norwegian example suggests that "a poor environment fosters criminality, a benevolent environment overcomes it."¹⁵³ If the punitive environment of U.S. prisons is made to also be rehabilitative, the United States could experience a decline in its incarceration and recidivism rates. In the words of one of the survivors of Breivik's slaughter, "[i]f one man [sic] hatred can cause so much damage, think of all the good so many people [sic] love can create in return."¹⁵⁴ Perhaps the better approach to prisoners is love, not hate.

III. REHABILITATIVE RETRIBUTION—A PROPER APPROACH TO PUNISHMENT AND ITS EFFECTS

A. *The Problem: Punishment as Overreaching*

Inmates emerge from prison in various ways, depending on both their treatment and their personal choices. Some may use their time behind bars for

¹⁵² Examples similar to Halden have played out in other countries. For example, in 1840, Alexander Maconochie took control of Norfolk Island, where Britain's worst convicts were housed. DUNCAN, *supra* note 13, at 162–63 (citing Christopher Hibbert, *THE ROOTS OF EVIL* 149 (reprint 1996)). Although Norfolk Island was designed to be a place of "the extremest punishment, short of death," Maconochie overhauled that bleak focus by establishing indeterminate sentences, allowing prisoners to earn credit on their sentences for good behavior, building churches and schools, and allowing prisoners to cultivate gardens. *Id.* His reforms worked. "Only three percent of the 1,450 prisoners discharged during Maconochie's tenure are known to have been reconvicted." *Id.*

¹⁵³ DUNCAN, *supra* note 13, at 54.

¹⁵⁴ Su-Syan Jou, *supra* note 9, at 302.

personal reflection and growth. Others, however, may return to society “more socially isolated, embittered, and committed to a criminal lifestyle.”¹⁵⁵ Imprisonment carries a unique risk of exacerbating the very problem it seeks to solve. While society cannot dictate an individual’s choice, it can encourage choices that follow positive pathways. Society does this by making certain actions illegal, creating treatment programs, and maintaining societal expectations and behavioral norms.

When offenders are segregated from society for years with no one to socialize with but other offenders, is it any wonder that criminal behavior is reinforced, rather than positive behavior, which must be taught as a new alternative to previous actions? Isolation from society causes prisoners “to fall deeper into their own negative patterns and cause[s] feelings of alienation from the rest of society.”¹⁵⁶ “Peer pressures to fail from within the deprived, segregated community are especially hard to overcome” and are the cause of much recidivism.¹⁵⁷ Furthermore, the longer an offender is separated from society, the more difficult the return.¹⁵⁸ Without reintegration into society, release may be, in the words of one prisoner, merely “going from one prison to another, from a cell to a cage.”¹⁵⁹ That cage keeps prisoners from society and within the cycle of recidivism. With its intractable problems of incarceration and recidivism, the United States has much to learn from the Norwegian model.

B. The Norwegian Solution

The Norwegian model fights prison’s negative effects by applying the principle of normality, utilizing members of the community to provide services for prisoners, and sentencing offenders to shorter terms. The principle of normality and the import of members of the community ensure that prisoners do not feel more segregated from society than their imprisonment necessarily requires. They are physically removed from society, but not relationally removed. They avoid the downward spiral away from society that can increase crime—for there is little incentive for an individual to follow the laws of a

¹⁵⁵ Petersilia, *supra* note 24, at 37.

¹⁵⁶ Reid, *supra* note 71, at 47; see Ken Strutin, *Incarceration in the United States: Issues in America’s Jails and Prisons: The Realignment of Incarcerative Punishment: Sentencing Reform and the Conditions of Confinement*, 38 WM. MITCHELL L. REV. 1313, 1320–21 (2012) (confirming the difficulties faced when offenders return to society after years of de-socialization).

¹⁵⁷ Weinstein, *supra* note 77, at 350–51.

¹⁵⁸ Reid, *supra* note 71, at 72.

¹⁵⁹ DUNCAN, *supra* note 13, at 38 (citing Edgar Smith, *Life in the Death House, in GETTING BUSTED: PERSONAL EXPERIENCES OF ARREST, TRIAL, AND PRISON* 339–46 (Ross Firestone ed., 1970)).

society that has rejected him. Lower sentencing reduces the impact that even the minimal separation may have. Most prisoners are not removed from society for long enough that they can think of themselves as separate from it. The return to society is inevitable and quick.

The Norwegian model offers guidance to the United States, a country plagued by high incarceration and recidivism rates. Admittedly, some aspects of the Norwegian model cannot cross the Atlantic. For instance, the United States is not a social welfare state and will always face the effect of economic disparity on its prison population rates more heavily than Norway. Other parts of the model that may look inapplicable are actually quite attainable. More than \$93,000 is spent on each inmate at Halden per year and this already staggering amount looks all the more outrageous when compared with the \$31,000 average spent in the United States per prisoner each year.¹⁶⁰ However, if the incarceration rate in America were adjusted to that of Norway, the United States could spend the same amount per prisoner as Norway and *save* more than \$45 billion per year.¹⁶¹ If the United States were able to effect change and lower its incarceration rate, it could perhaps employ an even larger part of the Norwegian strategy. The question then becomes how to achieve that lower rate.

C. Rehabilitative Retributivism: A Proposed Solution

As this Comment has explained, the U.S. penal system focuses on retributivism, whereas Norway's penal system focuses on rehabilitation. In order to emulate the effective rehabilitation system in Norway, the U.S. penal system must incorporate both purposes of punishment. A penal system that operates on the basis of rehabilitative retributivism would be a greater asset in addressing the United States' incarceration and recidivism problems than either penal purpose on its own.

In the United States, retribution, not rehabilitation, is the goal of punishment.¹⁶² Instead of seeking to prevent further evils from arising, retributivist punishments seek to address evils already done.¹⁶³ The mere fact that evil is done catches the eye of the justice system. Retributivism is not

¹⁶⁰ Benko, *supra* note 52.

¹⁶¹ *Id.*

¹⁶² Reid, *supra* note 71, at 74 (quoting RICHARD J. TERRILL, *WORLD CRIMINAL JUSTICE SYSTEMS: A COMPARATIVE SURVEY* 252–53 (8th ed. 2013)); see Van Ness, *supra* note 71, at 100.

¹⁶³ Don E. Scheid, *Kant's Retributivism*, 93 *ETHICS* 262, 268 (1983).

revenge as revenge takes pleasure in another's suffering.¹⁶⁴ Instead, it is only "[t]he fact that a person has committed a legal offense [that] is the necessary and sufficient condition for the just imposition of punishment on that person."¹⁶⁵ Philosopher Immanuel Kant's categorical imperative prohibits punishment for any consequentialist means, such as deterrence, restraint, or rehabilitation.¹⁶⁶ Such a consequentialist focus would lead to both over-inclusive results—as any aberrant or in-need individuals would be imprisoned—and under-inclusive results—as those criminals who committed crimes but showed adequate remorse and returned to society's norms and rules would not be imprisoned.

Kant's retributivism also includes the idea that punishment, in order to be just, must be proportionate to the crime committed.¹⁶⁷ It is this idea that fuels the offense at Breivik's complaints about not having the latest video game system.¹⁶⁸ It is this idea that, when applied, prevents prisoners from receiving better provisions and utilities than non-criminals. It is this idea that demands that there be punishment and that it match the harm done to society, not that prisoners be made better off for their crimes. This proportionality principle is thus not entirely compatible with the Norwegian model; however, it fits within the U.S. model. It is also this idea that recoils in disgust at the treatment in ADX, where a prisoner who attempted suicide by slashing his throat was forced to clean up his own blood.¹⁶⁹ It is this idea that views twenty-three hours in solitary confinement as inhumane. Neither Norwegian treatment nor U.S. treatment is entirely proportionate.

Kant's idea of proportionality necessarily leads to rehabilitation. Rehabilitation must be sought as a means to "prevent and neutralize the unwanted harmful side effects of [the state's] own punitive intervention," which includes the social deprivation of the offender.¹⁷⁰ Although retributivism repudiates a forward-looking approach that would find *justification* in the

¹⁶⁴ Alec Walen, *Retributive Justice*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (June 18, 2014), <http://plato.stanford.edu/entries/justice-retributive/>.

¹⁶⁵ Scheid, *supra* note 163, at 262; *see* Reid, *supra* note 71, at 50 (explaining the "backward looking" nature of retributivism).

¹⁶⁶ *See* IMMANUEL KANT, *GROUNDWORK FOR THE METAPHYSICS OF MORALS* 46–47 (Allen W. Wood ed. and trans., Yale Univ. Press 2002) (1785) ("Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means.").

¹⁶⁷ Scheid, *supra* note 163, at 263; *see* Reid, *supra* note 71, at 50 (citing the proportionality principle as a main feature of retributivism).

¹⁶⁸ Bacchi, *Anders Breivik Threatens Hunger Strike*, *supra* note 1.

¹⁶⁹ Binelli, *supra* note 132.

¹⁷⁰ Edgardo Rotman, *Criminal Law: Do Criminal Offenders Have a Constitutional Right to Rehabilitation?*, 77 J. CRIM. L. & CRIMINOLOGY 1023, 1028 (Winter 1986).

consequences of punishment, one must not forget the consequences of punishment altogether. Rehabilitation prevents the consequences of punishment from swelling over-and-above the proportionate punishment imposed. While retributivism asks the question, “how do we punish?”¹⁷¹ rehabilitation asks, “how do we prevent more harm from being done?” Rehabilitation is not properly a part of punishment, but something that happens concurrently with and consecutive to the punishment. Rehabilitation is fueled by the hope that criminals can be reformed for the better while being punished so that, at the end of their punishment, they may re-integrate with society and not reoffend.¹⁷² Though rehabilitative efforts may occur at the same time as retributive punishments, the two are more properly thought of as separate approaches with separate goals.

Some state constitutions within the United States are already providing for rehabilitation by writing provisions mandating that their penal codes or the administration thereof be based upon purposes of reformation.¹⁷³ However, provisions on paper do not always translate to practice. U.S. recidivism rates alone show that reintegration into society is not being fully achieved. When asked about rehabilitation within the United States, one prisoner stated, “[r]ehabilitation works; it is just expensive and time-consuming, two factors which work against it in a society dominated by politicians who want immediate results to gloat over and a public that is accustomed to 15 minute solutions.”¹⁷⁴ If the United States were willing to make the necessary changes in its penal system now, bearing the investments of time and money, it could achieve lower incarceration rates as well as save billions of dollars down the road.¹⁷⁵ Society would be better off, even if the means to achieve the end result are difficult. Delayed gratification is better than no gratification.

D. Practical Application: An End to High, Fixed Sentences

Practically speaking, what should the United States do? First, the United States should return flexibility and discretion to its sentencing, while at the same time lowering sentencing structures. As was shown, when the United States

¹⁷¹ Judah & Bryant, *supra* note 48, at 1 (quoting RESTORATIVE JUSTICE: CONTEMPORARY THEMES AND PRACTICE (Jim Consedine & Helen Bowen eds., 1999)).

¹⁷² Reid, *supra* note 71, at 64.

¹⁷³ Rotman, *supra* note 170, at 1062–64 (listing Oregon, Indiana, Wyoming, Alaska, and Illinois).

¹⁷⁴ Reid, *supra* note 71, at 66–67 (quoting JOHN M. BURKOFF & RUSSELL L. WEAVER, *INSIDE CRIMINAL LAW: WHAT MATTERS AND WHY* 6, 8 (2008)).

¹⁷⁵ See Benko, *supra* note 52.

introduced determinate sentencing, it experienced a spike in incarceration rates from which it has not recovered.¹⁷⁶ In the 58th Benjamin N. Cardozo Lecture about the role of judges, Jack B. Weinstein reminded listeners that, “[s]entencing is the point where the heart of the law . . . is most clearly revealed.”¹⁷⁷ Right now, the heart of the law is cold, harsh, and often refuses the application of particularized discretion to treat the individual standing before it.

President Obama has identified harsh sentencing as an area of the U.S. criminal justice system in need of major reform, saying, “[f]or nonviolent drug crimes, we need to lower long mandatory minimum sentences—or get rid of them entirely. Give judges some discretion around nonviolent crimes so that, potentially, we can steer a young person who has made a mistake in a better direction.”¹⁷⁸ Legislative, determinate sentencing results in “judges . . . being directed to impose fixed amounts of pain on criminals in a machine-like manner.”¹⁷⁹ Mandatory sentencing results in spending millions of dollars for years on low-level offenders who might be sentenced to shorter terms or probation.¹⁸⁰ With the current sentencing structure encouraging longer time in prison, prisoners experience a longer period of separation from society, which in turn makes the challenge of reintegration even more difficult to surmount.

Though prisoners with shorter sentences comprise the bulk of prison admissions, total prison population is determined more by prisoners serving longer terms.¹⁸¹ Accordingly, shortening the length of sentences would decrease incarceration rates. However, the United States should not merely doctor sentences to achieve a less startling statistic. It should make more sustainable changes, which leads to this Comment’s second proposal for the United States.

E. Practical Application: Adoption of the Norwegian Principle of Normality

In addition to reforming its sentencing structure and returning discretion to judges, the United States should institute the principle of normality within its

¹⁷⁶ MAUER, *supra* note 18, at 34.

¹⁷⁷ Weinstein, *supra* note 77, at 508.

¹⁷⁸ Hudson, *supra* note 105; *see also* David McCabe, *Senators Unveil Prison Reform Bill*, HILL (Feb. 10, 2015, 2:44 PM), <http://thehill.com/blogs/blog-briefing-room/232325-senators-unveil-prison-reform-bill> (a prison reform bill introduced in the Senate also proposes a reduction in mandatory minimums); DEP’T OF JUSTICE, SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY 4 (2013) (affirming that alternatives to incarceration should be sought).

¹⁷⁹ MAUER, *supra* note 18, at 49 (quoting Donald Cressey, *Forward* to FRANCIS T. CULLEN & KAREN E. GILBERT, REAFFIRMING REHABILITATION (1992)).

¹⁸⁰ Mauer & Coyle, *supra* note 36, at 12.

¹⁸¹ MAUER, *supra* note 18, at 39.

prisons. The prisoner would then be viewed as someone expected to rejoin society.¹⁸² Halden provides an adequate example of what treatment of prisoners under this principle could look like. While some of its applications would likely offend ideas of retributivism and fairness, (such as punishment taking the form of cell confinement without TV privileges)¹⁸³ the majority of measures employed at Halden are feasible. Life inside Halden mirrors life outside. Prisoners learn how to live in society rather than how to live in prison or among a subset of society that rebels against it.

When life in prison is drastically different from that of the outside world, release “immediately confronts [the ex-prisoner] with a variety of problems that often shock and overwhelm him,”¹⁸⁴ causing him to return to the life and strategies he knows—the same life and strategies that resulted in his incarceration. In the United States, the Justice Department has identified the challenges of restrictions on travel and securing employment as just some of the problems that impede a prisoner’s transition back into society.¹⁸⁵ Instituting the principle of normality within prisons would prevent some of these shocks and problems. The prisoner is less removed from society, and thus less shocked by the return to society. Furthermore, explicit rehabilitative programs would give prisoners the opportunity to develop a sense of purpose or self-worth, which are much better collateral consequences than the destabilization and alienation that are currently created by forced isolation in prison.¹⁸⁶ Rehabilitative treatment would also allow the criminal justice system to be internally consistent. Because part of the role of the criminal justice system is to protect society, rehabilitative treatment becomes necessary for offenders who would otherwise re-offend when released from prison.¹⁸⁷

During his Administration, President Obama addressed both prison conditions and rehabilitation. He called for a change in prison overcrowding and violence, as well as the institution of job training for inmates.¹⁸⁸ Likewise, a

¹⁸² See *About the Norwegian Correctional Service*, *supra* note 51.

¹⁸³ Benko, *supra* note 52.

¹⁸⁴ Edward V. Long, *The Prisoner Rehabilitation Act of 1965*, FEDERAL PROBATION: A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE, Dec. 1965, at 3, 4 (recommending work release for prisoners).

¹⁸⁵ DEP’T OF JUSTICE, *supra* note 178, at 5.

¹⁸⁶ Reid, *supra* note 71, at 86; see Long, *supra* note 184, at 7 (arguing that the work release program will allow a prisoner to develop self-respect and thus become self-supporting).

¹⁸⁷ Daniel J. Misleh & Evelyn U. Hanneman, *Emerging Issues: The Faith Communities and the Criminal Justice System*, in CRIMINAL JUSTICE: RETRIBUTION VS. RESTORATION 121 (Eleanor Hannon Judah & Rev. Michael Bryant eds., 2004).

¹⁸⁸ Hudson, *supra* note 105.

prison reform bill is making its way through the United States Senate that would introduce programs, such as drug counseling or job training, to help prevent recidivism among prisoners.¹⁸⁹ These recent initiatives, though helpful, are not sufficient. They decrease the destabilizing effect of prison and increase the talent set of inmates, but they do not teach inmates how to function in society or prepare them for reintegration. President Obama's suggestions maintain an 'us' versus 'them' mentality that Halden does away with, a mentality that, as Norway and Halden suggest, lies at the heart of reintegration and overcoming recidivism.

CONCLUSION

This Comment has examined the high incarceration rate of the United States and its contributing factors. As previously mentioned, the United States had the highest incarceration rate in the world as of October 2013.¹⁹⁰ Its recidivism rates bode no better. About three in four prisoners are re-arrested within five years of release¹⁹¹ and over one-quarter of released prisoners are re-incarcerated.¹⁹² Norway, by contrast, does not suffer from similar issues. Its prison population rate is dwarfed by the United States, at almost one-seventh the amount.¹⁹³ Its recidivism rate, at its highest, was around twenty-five percent.¹⁹⁴

Penal policy is a complicated beast and the result of a great number of factors in each country. Each country's penal goals, structures, and laws show just why these different rates have been realized. While the United States was moving away from its origins of rehabilitation and toward retributivism, Norway was striving for greater rehabilitative focus in its penal application. The United States has a markedly harsher sentencing structure than Norway, focusing on mandatory minimums and determinate sentencing while Norway has sought to keep its sentencing low and to seek alternatives to imprisonment. Economic disparity aggravates incentives for crime within the United States, whereas the social welfare provisions of Norway both discourage crime and deter recidivism as citizens are provided with the jobs, education, and healthcare they need.

However, the chief differentiating factor between the two countries' penal policy is likely the principle of normality that Norway espouses and the United

¹⁸⁹ McCabe, *supra* note 178.

¹⁹⁰ Walmsley, *supra* note 19.

¹⁹¹ DUROSE ET AL., *supra* note 49, at 1.

¹⁹² Benko, *supra* note 52.

¹⁹³ Walmsley, *supra* note 19.

¹⁹⁴ Benko, *supra* note 52.

States lacks. By this principle, Norway seeks to reintegrate its offenders into society. It is aware of the harmful effects of prisons and seeks to overcome them. The United States has no comparable principle or application. Punishment in the United States has expanded from the sentence. The prisoner suffers not only the time served, but also what the time served does to them—removing them from society, reinforcing bad habits, and making reintegration upon release nearly impossible and recidivism inevitable.

The United States is at a crucial junction in its penal policy. Senators are calling for change.¹⁹⁵ President Obama has called for change.¹⁹⁶ As a result, this year, thousands of prisoners are being released early from federal prisons, more than ever have been released at one time.¹⁹⁷ Of course, releasing every prisoner could quickly remedy the United States' high incarceration rates. However, the question becomes: what will happen to these released prisoners? Will they recidivate? Statistics suggest that if U.S. penal policy is left unchanged, a good portion of them will reoffend. Furthermore, given the United States' penal culture and sentencing structure, those released prisoners' empty cells will quickly be filled.

If, instead, the United States were to learn from the model of Norway, it could stop the cycle of high incarceration and recidivism rates. By integrating retributivism as adequate punishment with rehabilitation, the United States could curtail the negative, unintended side effects of that punishment. To craft a penal policy based on rehabilitative retributivism, the United States should seek to lower its sentences and rid itself of harsh mandatory sentences that rob judges of discretion and prevent particularizing the punishment to the individual. Chiefly, the United States should incorporate the principle of normality into how it treats its prisoners. Prisoners may then be properly reintegrated into society after release and no longer pose a threat of recidivism. This change will help

¹⁹⁵ McCabe, *supra* note 178.

¹⁹⁶ Hudson, *supra* note 105.

¹⁹⁷ Dara Lind, *The Biggest Prisoner Release in US History, Explained*, VOX (Oct. 7, 2015, 1:57 PM), <http://www.vox.com/2015/10/7/9470683/prisoners-released-early>.

prisoners, both those incarcerated and those released, and it will also help the United States as a whole. It is time for change and Norway's penal model provides apt guidance for the form that change ought to take.

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