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Tyler Truelock
t-truelock@onu.edu

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A Comparative Analysis of Criminal Justice Systems in the United States and Scandinavia

TYLER TRUELOCK*

INTRODUCTION

The criminal justice system in the United States relies heavily on incarceration of convicted and suspected criminals. Out of every 100,000 Americans, 505 are incarcerated, the sixth highest rate in the world.¹ The effects of incarceration in the United States are felt in many aspects on top of restricting a person's liberty: it can affect employment prospects, educational attainment, and can lead to heightened depression, anxiety, and fear.² But these factors, when highlighted, always raise a question in my mind: Is there a better way? Is there actually an "ideal" system that would address the concerns of critics while still providing a mechanism for punishment and rehabilitation? I have no doubt that law review articles could have a field day with theoretical solutions for this problem.

However, while such theoretical discussions aren't unimportant, I wanted to know whether there were any real-world examples of countries who had actually achieved this balance. One region that stood out to me in particular was Scandinavia, composed of Denmark, Norway, Iceland, Sweden, and Finland. Incarceration rates, punishment severity, and rates of violent crime are all measurably lower in comparison to other developed countries.³ Whether such a system is actually preferable is likely open to debate; criminal justice policies often have a moral component tied to them, especially for certain crimes such as drug and sexual offenses.⁴ In this article, I will provide an analysis of how the criminal justice systems in these countries, and their impacts, compare to that of the United States, and consider whether such a model is workable (or even desirable) in the United States.

PLEA BARGAINING

Plea bargaining is a staple of the American criminal justice system. ninety-seven percent of federal felony convictions and ninety-four percent of state felony cases are the result of plea bargaining.⁵ This indicates that the vast majority of criminal defendants end up waiving their right to a jury trial and such trials by jury have become increasingly rare.⁶ For such a system to

¹ Statista, *Countries with the largest number of prisoners per 100,000 of the national population, as of January 2023*, <https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/> (Jan. 2023).

² Bruce Western, *Incarceration, Inequality, and Imagining Alternatives*, 651 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (2014): 302 303 (2014).

³ Tapio Lappi-Seppälä & Michael Tonry, *Crime, Criminal Justice, and Criminology in the Nordic Countries*, 40 CRIME AND JUSTICE IN SCANDINAVIA 1 (2011).

⁴ *Id.* at 2.

⁵ Emily Yoffe, *Innocence Is Irrelevant*, THE ATLANTIC <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/> (last visited Apr. 3, 2023).

⁶ Jennifer L. Mnookin, *Uncertain Bargains: The Rise of Plea Bargaining in America*, 57 STANFORD L. REV. 1721 1726 (2005).

work, prosecutors must be able to convince criminal defendants that accepting a plea deal would be a more desirable outcome than going to trial.⁷ This system gives prosecutors in the United States a great deal of discretion as they can decide whether to grant concessions to a defendant to secure a plea bargain, or even whether to prosecute an individual at all despite evidence of guilt.⁸

Although prosecutors in Scandinavia do have prosecutorial discretion,⁹ this form of plea bargaining is largely not seen in Scandinavian countries. Despite the idea gaining steam in recent years, Sweden currently does not allow plea bargaining.¹⁰ Plea bargaining also is not a possibility in Iceland.¹¹ Norway prohibits plea bargaining, and all criminal cases are tried before a judge.¹² The concept of plea bargaining is also an unknown commodity in Denmark, however Denmark does require that in order for a confession to be accepted, the judge must be independently convinced of the defendant's guilt after weighing the evidence.¹³ Finland, on the other hand, adopted an expansive conception of plea bargaining in 2015, even allowing for bargaining on a police investigation.¹⁴ This could allow a criminal investigation to focus only on a crime that the accused has confessed to and other suspected crimes would no longer be investigated.¹⁵

CRIME RATES

The plea bargaining system (or lack thereof) only comes into effect if someone is accused of a crime. Compared to the United States, the Scandinavian countries on average boast lower crime rates:

⁷ *Id.* at 1728.

⁸ Wayne R. Lafave, *The Prosecutor's Discretion in The United States*, 18 OXFORD U. PRESS 532 545 (1970).

⁹ Tapio Lappi-Seppälä, *Penal Policy in Scandinavia*, 36 CRIME AND JUSTICE 217 227 (2007).

¹⁰ Laura Ervo, *Plea Bargaining Changing Nordic Criminal Procedure: Sweden and Finland as Examples*, 90 IUS GENTIUM: COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE 1 225 (2021).

¹¹ Laura Ervo, *Plea Bargaining as an Example of the Recent Changes in the Finnish Criminal Procedure Paradigm*, 7 BALTIC J. OF L. & POL. 97 99 (2014).

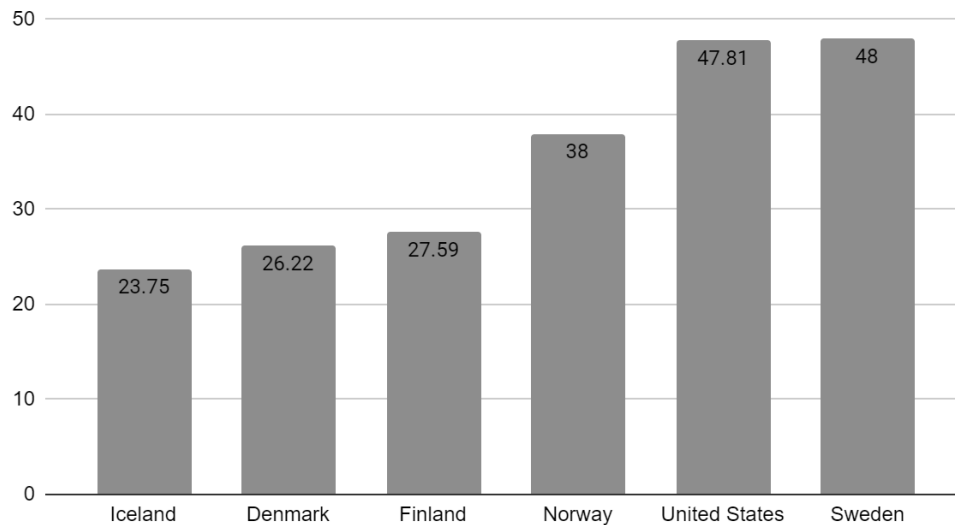
¹² Ulf Stridbeck & Philos Svein Magnussen, *Prevention of Wrongful Convictions: Norwegian Legal Safeguards and the Criminal Cases Review Commission*, 80 U. OF CINCINNATI L. REV. 1373 1375 (2013).

¹³ Peter Garde, *The Right to Fair Trial in the Kingdom of Denmark*, HILLERØD CRIMINAL COURT <http://hrlibrary.umn.edu/fairtrial/wrft-pg.htm#:~:text=Formal%20agreements%20between%20parties%2C%20%22plea,withdrawn%20until%20the%20last%20moment> (last visited Apr. 3, 2023).

¹⁴ Laura Ervo, *supra* note 10, at 257.

¹⁵ *Id.* at 258.

Crime Rate per 100,000 People



Source: 2023 World Population Review

With the lone exception of Sweden, the Scandinavian countries outpace the United States with considerably lower rates of crime.¹⁶ The four Scandinavian countries with crime rates lower than the United States are also recognized as some of the safest countries in the world.¹⁷ Raw data on crime rates does not tell us exactly why Scandinavian countries have (for the most part) less crime than the United States. However, they do provide good context for why debates about the American criminal justice system continue to thrive today.

PRISON SENTENCES

In the United States, it is not uncommon to hear of convicted criminals being sentenced to lengthy, or even deadly, prison sentences. Over 200,000 prisoners in the United States are currently serving life sentences for their crimes.¹⁸ Currently, about 2,500 prisoners received the death penalty for their crimes and are sitting on death row.¹⁹

¹⁶ 2023 World Population by Country (Live), WORLD POPULATION REVIEW, <https://worldpopulationreview.com> (last visited Apr. 3, 2023).

¹⁷ David Nikel, *Nordic Countries are the World's Safest, new Report Reveals*, FORBES (Nov. 18, 2019 5:30 AM) <https://www.forbes.com/sites/davidnikel/2019/11/18/nordic-countries-are-the-worlds-safest-new-report-reveals/?sh=15c8ffdfdd7>.

¹⁸ Tom Jackman, *Study: 1 in 7 U.S. Prisoners is serving life and two-thirds of Those are People of Color*, WASHINGTON POST (Mar. 2, 2021 8:00 AM) <https://www.washingtonpost.com/nation/2021/03/02/life-sentences-growing/>.

¹⁹ John Gramlich, *10 Facts About the Death Penalty in the U.S.* PEW RESEARCH CENTER (Jul. 19, 2021) <https://www.pewresearch.org/fact-tank/2021/07/19/10-facts-about-the-death-penalty-in-the-u-s/>.

Such sentences are not typically seen in Scandinavia. Not a single Scandinavian country still utilizes the death penalty as punishment.²⁰ Denmark's harshest sentence is life imprisonment with the possibility of parole after twelve years, with the average sentence lasting around seventeen years.²¹ Iceland allows life sentences, but any other form of punishment cannot exceed sixteen years.²² In Finland, a court can impose a maximum sentence of twelve years for a single offense, or fifteen years for multiple offenses.²³ Sweden allows life sentences, however the court's decision on punishment is highly dependent on the individual circumstances of the given crime.²⁴ In Norway, the maximum sentence is twenty-one years, yet in rare cases sentences can be extended indefinitely in five-year increments if the person is still considered to be a threat to society.²⁵

Just like with raw data on crime rates, prison sentences alone do not tell us exactly why Scandinavian countries have (for the most part) less crime than the United States. Nevertheless, they do provide a lens into how crime is treated by these societies and why outcomes may differ between the United States and the five Scandinavian countries.

RECIDIVISM RATES

A country's recidivism rates are determined by whether a person is rearrested, reconvicted, or sent back to prison within three years of their initial release from prison.²⁶ Recidivism inevitably leads to inmates returning to prison shortly after being released and having their liberty restricted even further. Such recidivism negatively affects employment opportunities and makes it even more difficult for prisoners to one day successfully reenter society.²⁷

Consistent with both crime rates and sentencing, there is a great disparity between the United States and the majority of Scandinavian countries in terms of recidivism rates:

²⁰ Reality Check, *Death Penalty: How Many Countries still have it?*, BBC (Dec. 11, 2020)

<https://www.bbc.com/news/world-45835584>.

²¹ Christian Corell, *Disse Personer har Siddet Længst tid bag Tremmer i Danmark*, NYHEDER (Oct. 2, 2017 19:16)

<https://nyheder.tv2.dk/krimi/2017-10-02-disse-personer-har-siddet-laengst-tid-bag-tremmer-i-danmark>.

²² General Penal Code [Gen. Penal C.] No. 19/1940, ch. V, art. 34 (Ice.).

²³ Laatikot, *The Finish Criminal Procedure from a Summons to a Sentence*, OIKEUS.FI (Feb. 7, 2021)

<https://oikeus.fi/en/index/laatikot/rikosjarangaistus.html#:~:text=The%20maximum%20period%20of%20imprisonment,is%20therefore%20served%20in%20prison>.

²⁴ Swedish Prosecution Authority, *Sanctions and Sentences*, <https://www.aklagare.se/en/from-crime-to-sentence/sanctions-and-sentences/> (last visited Apr. 3, 2023).

²⁵ Associated Press, *Norway Killer Breivik Tests Limits of Lenient Justice System*, VOA (Jan. 22, 2022 9:20 AM)

<https://www.voanews.com/a/norway-killer-breivik-tests-limits-of-lenient-justice-system/6407441.html>.

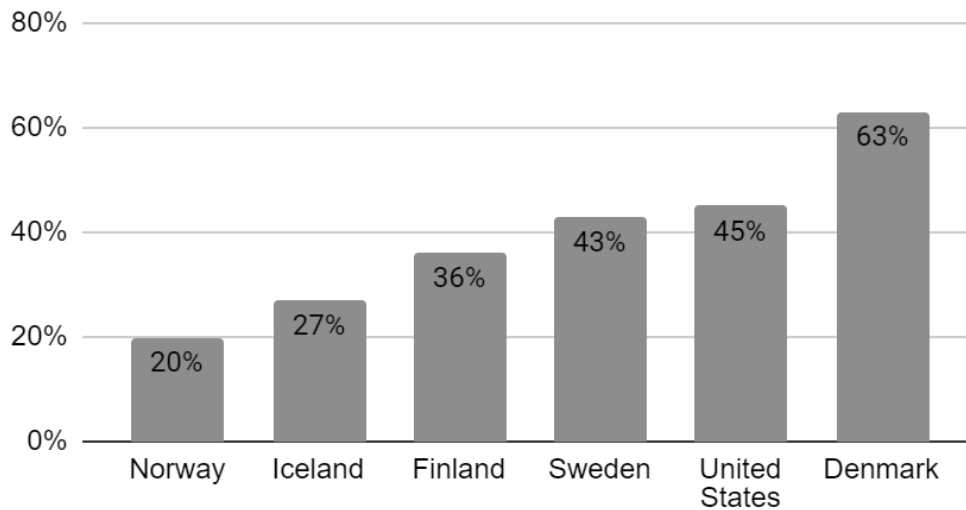
²⁶ Recidivism, NAT'L INST. OF JUSTICE

<https://nij.ojp.gov/topics/corrections/recidivism#:~:text=Recidivism%20is%20measured%20by%20criminal,period%20following%20the%20person's%20release> (last visited Apr. 3, 2023).

²⁷ Liz Benecchi, *Recidivism Imprisons American Progress*, HARV. POL. REV. (Aug. 8, 2021)

<https://harvardpolitics.com/recidivism-american-progress/>.

Recidivism Rate (Reconviction)



Source: 2023 World Population Review

With the lone exception (and outlier) of Denmark, the Scandinavian countries largely outpaced the United States in recidivism rates. One potential reason for this is an increased focus on rehabilitation over punishment, as Scandinavian prisons provide inmates with skills and tools they can use to contribute to society once they are released from prison.²⁸ This emphasis reflects the Scandinavian ideal that criminal behavior is a trait that can be unlearned through rehabilitation.²⁹ This stands in direct contrast to the United States' approach, which tends to emphasize retribution and harsh sentencing over rehabilitation.³⁰ It may very well be the case that the Scandinavian model of rehabilitation is the cause of their superior recidivism rates. However, such correlation doesn't necessarily indicate causation, and it might overlook concerns from those who feel that punishment is an important (if not necessary) aspect of the criminal justice system.

CONCLUSION

This article barely scratches the surface of the vastly different approaches to criminal justice between the United States and Scandinavia. Whether one approach is superior to the other is likely open to interpretation and may vary heavily on a person's cultural background and experiences. Nevertheless, it is undeniable that these differences have led to different criminal justice outcomes, and such differences in outcomes will continue to fuel debate over

²⁸ Alexis Riep, *The Effects of Culture and Punishment Philosophies on Recidivism: Comparing Prison Systems in the United States and Scandinavia*, ENCOMPASS 1-2 (2019).

²⁹ *Id.* at 21.

³⁰ *Id.* at 27.

whether the Scandinavian model of criminal justice is preferable and should be utilized in the United States.