

Article

Norwegian Penal Norms: Political Consensus, Public Knowledge, Suitable Sentiment and a Hierarchy of Otherness

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ABSTRACT

The explanations for Norwegian penal exceptionalism (low level of punishment and enlightened prison conditions) are complex. All previous research explanations and discourses have their value, but are not definitive or conclusive. This paper draws attention to the control mechanisms underlying social reactions to crime and punishment: it is argued that to understand such reactions one needs to consider crime types, public knowledge and socially desirable sentiments, together with a political tradition of consensus, with associated institutional structures. However, a possible discontinuity in these reactions is evident in the challenge posed by “others” and the associated hierarchy of otherness. Norway and other Scandinavian countries provide a good geographical, political and cultural balance to the usual analyses of existing penal research based on the USA or England/Wales. My experience of this other culture (Norway) illustrates that no country has a perfect penal system, but every country, however small, can offer an alternative vision. National cultures of punishment are ‘local’ and embedded in the context of history, social structures as well as human actions; but this only increases the need for genuine comparative understanding.

Keywords: Norway, Penal Norms, Penal Exceptionalism

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I. INTRODUCTION: SOCIAL REACTION TO THE THREE “ROBBERS”
IN CARDAMOM TOWN: AN IDEAL OR NOSTALGIC NORWAY?

In Norway there is a famous children’s book “When the Robbers Came to Cardamom Town”.¹ The author *Thorbjørn Egner (1912-1990)* describes the happy town of Cardamom, where people live a peaceful and content existence, including the three robbers Casper, Jasper and Jonathan. They occasionally steal things they need from people’s houses, shops and at festivals, but do no serious harm to the life of the town. Constable Bastian is there to maintain law and order as well as to try and make everyone happy. There are only three simple rules/laws in Cardamom Town: “one shall not bother others, one shall be nice and kind, otherwise one may do as one pleases”.² One day the three robbers rob a bakery and are arrested by the owner and another previous victim – the butcher. The three suspects are taken to Constable Bastian and then placed in a comfortable jail with beds, a table and chairs. Mrs. Bastian makes them nice meals everyday and cleans the cell. Soon the barber and the Constable found that the three have talents in music and in climbing walls. They become heroes when they extinguish a fire in the tower and save the wise man’s dog. At the end, the good treatment reforms them. Casper becomes a fireman, Jasper becomes the circus manager and Jonathan becomes the baker’s assistant. There is no more crime in Cardamom Town. Constable Bastian and the town go back to a happy and peaceful life again.

The popularity of this story reflects many aspects of Norwegian penal culture – inclusion, de-stigmatization, reintegration, attitudes of tolerance and lenient/mild punishment. That is to say, apart from community sentences or fines, the three robbers might either be diverted to the National Mediation Service by the police, or given a very short prison sentence (indeed 2/3rds of imprisonment sentences are no more than 3 months),³ in a prison of a small size, with a single room their own bed and television, and sharing a common kitchen with other inmates. It is also an exceptional context where they were able to prove their general talents, the courage in climbing up the tower and performing their talents in doing so.

When the distinguished Norwegian criminologist Nils Christie told me the robbers’ story, he made it clear that the crime should be resolved in a “soft way” so that in Cardamom Town the criminals could be treated humanely and be re-integrated (as indeed seen in the actions of Constable

1. THORBJØRN EGNER, *FOLK OG RØVERE I KARDEMOMME BY* (1955).

2. Rhyming in the original Norwegian version: “*Man skal ikke plage andre, man skal være god og snill, og forøvrig kan man gjøre som man vil.*”

3. See Statistics Norway, *Imprisonments*, 2012, <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/fengsling> (last visited Sept. 5, 2014).

Bastian).⁴ *If Norway is a “penal exceptional model”, to quote John Pratt’s terms,⁵ then Cardamom Town is indeed Christie’s ideal Norway – and a vision of a better penal model to strive towards. Yet, does the story and its values really simply reflect a nostalgia on the part of Norwegians?*

II. EVENTS AND FACTS

A. *The Breivik Case, Roma People and Foreign Convicts*

Norway is famous for her high employment rates and social welfare programs, low poverty rates, low income inequality, low crime rates, low imprisonment rates as well as more tolerant attitudes towards offenders.⁶ Commentators have described the “Scandinavian approach”, with the old slogan “good social policy is the best criminal justice policy” or “penal exceptional model”. The last peacetime crime-related execution in Norway was in 1876. Although some wartime Nazi leaders and torturers were executed after the period of Nazi Occupation, this simply shows how war can greatly distort “normal” or peacetime penal values and customs. In 1981, in keeping with its more “normal” penal values, Norway moved to abolish life imprisonment.⁷ Criminologists note that the criminal justice system has been portrayed as “lenient” and has become even more lenient in Norway since the 1970s and 1980s.⁸

The social sciences analyze two sorts of phenomena: facts and events.⁹ Broad “contexts” of change in a country’s crime field concern changes in a variety of social facts. At the same time, though, the power of *events* to shape penal policy should not be overlooked. In the Netherlands, for example, high-profile crimes have helped fuel the country’s shift toward more penal harshness.¹⁰ In the United States as well, the 9/11 suicide attacks have influenced a tightening crime control policy in the name of national security. The March 1995 “sarin” gas attacks in the Tokyo subway have

4. This was a personal communication with Professor Nils Christie, faculty of law school, University of Oslo, in University of Oslo (Sept. 2012).

5. JOHN PRATT & ANNA ERIKSSON, *In Defense of Scandinavian Exceptionalism*, in PENAL EXCEPTIONALISM? NORDIC PRISON POLICY AND PRACTICE 235 (Thomas Ugelvik & Jan Dullum eds., 2011).

6. John Pratt, *Scandinavian Exceptionalism in an Era of Penal Excess. Part I: the Nature and Roots of Scandinavian Exceptionalism*, 48 (2) BR. J. CRIME. 119, 119-37 (2008).

7. HANNS VON HOFER, NOTES ON CRIME AND PUNISHMENT IN SWEDEN AND SCANDINAVIA 291 (2006).

8. THOMAS MATHIESEN, *Scandinavian Exceptionalism in Penal Matters: Reality or Wishful Thinking?* in PENAL EXCEPTIONALISM? NORDIC PRISON POLICY AND PRACTICE 13 (Thomas Ugelvik & Jan Dullum eds., 2011).

9. JON ELSTER, NUTS AND BOLTS FOR THE SOCIAL SCIENCES 1 (1989).

10. David Downes & René van Swaaningen, *The Road to Dystopia? Changes in the Penal Climate in the Netherlands*, 35 CRIME & JUST. 31, 42 (2007).

been called Japan's "9/11" because of the effects they have had on public perceptions of security and on crime and punishment policy.¹¹ And three high profile murder cases in 1997 in Taiwan¹² certainly created a shift towards greater fear of crime, and a public less tolerant towards criminals, encouraging pro-death penalty attitudes.¹³

The Norwegian events of July 2011, namely the Oslo bombing and the Utøya massacre in which 77 young people, public servants and a few passers-by were purposely killed shocked this peaceful society. On the day of the murderous events, local and international media, some politicians, and the public could not help themselves considering initially that this "may be some Muslim revenge for the Norwegian participation in wars in Afghanistan or Libya? Or it could be due to the reprinting those caricature drawings of Mohammed?"¹⁴ Many Norwegians seemed to express some sort of relief when the police arrested the gunman who was a Norwegian man born and raised in Norway (and without any prior police record). He strongly opposed Norway's official government policy of accepting immigrants and refugees, including Muslims and he decided to start a "one-man" war against the "multi-culturalism" friendly government, led by the Norwegian Labor party. The trial took a year to establish and was then broadcast live on TV.

The issues raised by the trial – how to punish Breivik for his crimes, how Norwegian society should adjust to its dramatically more heterogeneous population – were thus present during the summer of 2012 when I was a Visiting Professor at the Department of Criminology and Sociology of Law, University of Oslo. I also encountered the sense of anger arising against the migrant poor and street beggars in Oslo. This anger did not happen overnight but has been a long term issue for Norway in that the "Roma folk" who are mostly from Romania and Bulgaria continued to camp illegally in Oslo. Recently, some Norwegians were frustrated over what they perceived to be a lack of respect by the migrant poor for local authorities and residents and some threatened violence if the police or government officials did not crack down on the illegal "migrant" campers.¹⁵ The concerns were expressed in

11. Koichi Hamai & Thomas Ellis, *Japanese Criminal Justice: Was Reintegrative Shaming a Chimera?*, 10 PUNISHMENT & SOC'Y 25, 25 (2008).

12. The story was about a celebrity's teen daughter Bai Xiao Yan was kidnapped for ransom and later on tortured raped and eventually killed; a female political party leader Pon Wan Ru was raped, killed and dumped in a fishing pond after attending a party conference meeting; and a county mayor Liu Bon Yon along with eight of his family members and house helpers were executed in his official residence by some unknown gunmen.

13. Susyan Jou & Bill Heberton, *Researching and Explaining the Punitive: Lessons and Reflections from a Comparative Empirical Study of Taiwan and England and Wales*, 39 (1) INT'L J. L. CRIME & JUST. 12, 35 (2011).

14. A personal discussion on "seeing the other" with Professor Nils Christie, faculty of law school, University of Oslo, in University of Oslo (July 2012).

15. Julie Ryland, *The Roma People Demonstrate in Oslo*, THE NORWAY POST (Oct. 10, 2014), <http://www.norwaypost.no/index.php/news/latest-news/28531-the-roma-people-demonstrate-in-oslo>

terms of issues of public hygiene of the camps and tents and the verbal disputes between Norwegian neighbors and the Roma campers.¹⁶ Oslo City government leader Stian Birger Røsland of the Conservative Party, who met around 2,000 migrants in Oslo, thought they needed to take responsibility for themselves and abide by Norwegian laws. He expressed his frustration towards visitors who camp illegally, use public areas as their outdoor toilets, litter and beg or commit crimes.¹⁷ Stian Birger Røsland is not alone. *On the contrary, he has around 75% Norwegian public support to ban begging in an effort to discourage thousands of homeless people from southeast Europe from travelling to Norway and thereby living off Norwegian kindness and spare cash.*¹⁸

In terms of the broader crime and punishment context in Norway, some particular statistics attracted my attention. In 2000, 13% of the inmates in Norway were foreigners whereas by 2011 this had risen to 30%, including people from 120 different countries, but mainly from those within the European Union (EU). In addition, 60% of those in Oslo prisons are foreign born and 45% in Bergen prison.¹⁹ With only a 25% migrant population in Oslo, these prison numbers reflect an over-representation. In 2011, Polish, Lithuanian and Romanian nationalities were the largest foreign convicted groups in Norway, usually charged with theft crimes.²⁰ Furthermore, a large but unknown number of those inmates counted as Norwegian citizens have a minority background in Oslo prisons – i.e. immigrants from Pakistan, Yugoslavia, Mediterranean Africa, Romania, sub-Saharan Africa, Russia and the Baltic States.²¹ Foreign criminals, whether foreign born or from “foreign” extraction, have fuelled prison numbers in Norway in the past 10 years.

Given the above facts and events, we as criminologists may wonder how the Norwegian court would sentence Breivik, the Norwegian gunman. Without the availability of the death penalty or indeed judicial life sentence options in Norway, how would public sentiment cope with the sentence given out? In Taiwan or any Asian countries which still practice the death penalty, the public response would predictably be very different – with likely calls for the death sentence to be passed by the court. Will a truly horrible

(last visited Oct. 10, 2014).

16. Where one Roma called the neighbors “Norwegian Nazis” and complained that the migrants had been harassed continuously in Oslo.

17. *Aftenposten* (July 16, 2012).

18. *Aftenposten* (July 17, 2012).

19. See KRIMINALOMSorgen, KRIMINALOMSorgens ÅRSSTATISTIKK 2010 (NORWEGIAN OFFICIAL CRIME STATISTICS BOOK) 28-31 (2012).

20. *Id.* at 43.

21. Thomas Ugelvik, *The Dark Side of a Culture of Equality: Reimagining Communities in a Norwegian Remand Prison*, in PENAL EXCEPTIONALISM? NORDIC PRISON POLICY AND PRACTICE 121-39 (Thomas Ugelvik & Jan Dullum eds., 2011).

crime, like the Oslo/Utøya massacre, change the criminal justice system and public attitudes to offenders more widely in Norway? Will Norwegians remain tolerant towards Roma groups who have been labeled as thieves, beggars, and welfare fraudsters? *Would the foreign or immigrant offenders be assigned a private cell, given sufficient and healthy food, sufficient medical assistance and recreational facilities as with most other Norwegian inmates? If they are placed in an open prison, would they be free to walk around the prison grounds and sometimes out into local communities?*

B. *Research Question and Method*

The research question in this paper is mainly concerned with the continuities and discontinuities of penal norms and practices in Norway. Facing the combined challenges of the Breivik case, Roma, and increasing numbers of foreign prisoners, will Norway continue with or depart from the traditional inclusive, integrative, equality driven penal norms of the past, reflected in the story of Cardamom Town? In answering my research question, I base my conclusions on five months of field work in Norway and a review of Norwegian newspaper coverage in English on the Breivik case, Roma groups, and other crime stories between July 22, 2011 and October 10, 2012.²² During my time at the University of Oslo, I have engaged in detailed conversations, discussions, and interviews;²³ also as a social participant observer. I compiled field notes, trying to capture the social meanings and logical patterns that one can deduce about penal norms in contemporary Norway. Reference groups that the author is familiar with, namely, Asian countries, the UK and USA, are used as a contextual frame to evaluate and construct and make sense of my field data. This is thus a qualitative exercise, one based to some extent in immersion, for a short period, as a resident in Norway. This reflexivity reveals my own involvement with the data, their collection and interpretation.

III. POLITICAL CONSENSUS AND THE STABILITY OF NORWEGIAN PENAL NORM

Green²⁴ compared the penal culture in England and Norway and argued that the form of consensus democracy practiced within Norway

22. Due to limited Norwegian language skills the author has relied upon sources of newspapers and on the translation help of Norwegian colleagues and the English online e-newspaper "News and Views from Norway" which is a summary of all major Norwegian Newspapers.

23. These conversations, discussions and interviews involved some 25 Norwegians from universities, NGOs, restaurants, shops, hospitals, police stations, labor working sectors and the street.

24. David A. Green, *Comparing Penal Cultures: Child-on-child Homicide in England and Norway*, 36 CRIME & JUST. 591, 592 (2007).

*creates and sustains Norwegian penal policy. By consensus democracy, Green refers to a political system and culture that tends to have “coalition or minority governments, multiparty systems, proportional election systems” and “corporatist or coordinated interest group systems and relatively strong legislatures than the strong executives of majoritarian democracies”.*²⁵

In Norway, there are at least eight main political parties from the very right-wing to the very left which comprise over 99% of support from the public (see Figure 1). Where the very right-wing Progress Party holds firm beliefs about anti-immigration policy with a support average of about 15% nationwide (but with remarkably lower poll results after the Breivik murders), the fringe left-wing Red Party are stronger in big cities (Oslo about 5-6% support) but only 2% nationally. Traditionally, the Progress Party (Fremskrittspartiet) tends to form coalition with the Conservative Party (Høyre), whereas the Central Party (Senterpartiet) has been in a Red/Green coalition with the traditionally strongest party in Norway for decades, the Labor Party (Arbeiderpartiet) and the Socialist Left Party (Sosialistisk Venstreparti). These three parties have formed a coalition government that has held for eight years, with the next election in 2013. Obviously, the Conservative and the Labor Parties are dominant, holding 60-70% of the votes, but neither of them are large enough to form a majority in parliament any longer. This may make the policies more inclusive, and increase the tendency for bargaining and compromise. Despite the national tragedy of the Breivik case and increasing numbers of Roma beggars on the streets, the penal policy and norm are only likely to change following a long period of debate among political parties.

In fact, a survey done three months later after the Breivik event by a local newspaper *Dagbladet* in 2011 showed exactly the same number of Norwegians supporting the death penalty as the year of 2010, and the terror did not move the norm one inch. The telephone survey result indicated 16% supported the death penalty (19% of men and 12% of women) 68% were strongly against and 16% belonged to the group who did not know. In the Western part of Norway only 10% were pro-death penalty.²⁶ The newspaper quoted a right wing Progress Party politician's comments on this survey: “*in Norway a pro-death penalty standpoint is seen as an illegitimate standpoint*”.²⁷ By comparison, the UK and USA look extreme. A 2009 MORI survey in the UK showed that 51% of the British favored the death

25. *Id.* at 626.

26. Freya Berry, *Social Response to Killers Is More Important than the Punishment*, THE INDEPENDENT (Apr. 18, 2012), <http://www.independent.co.uk/voices/commentators/freya-berry-social-response-to-killers-is-more-important-than-the-punishment-7657167.html> (last visited Oct. 9, 2014).

27. *Id.*

penalty for adult murder, while 56% in Wales did, 55% in Scotland, and some 49% in England.²⁸ When the poll asked people with a list of crimes which they thought merited the death penalty, support rose to 62% for child

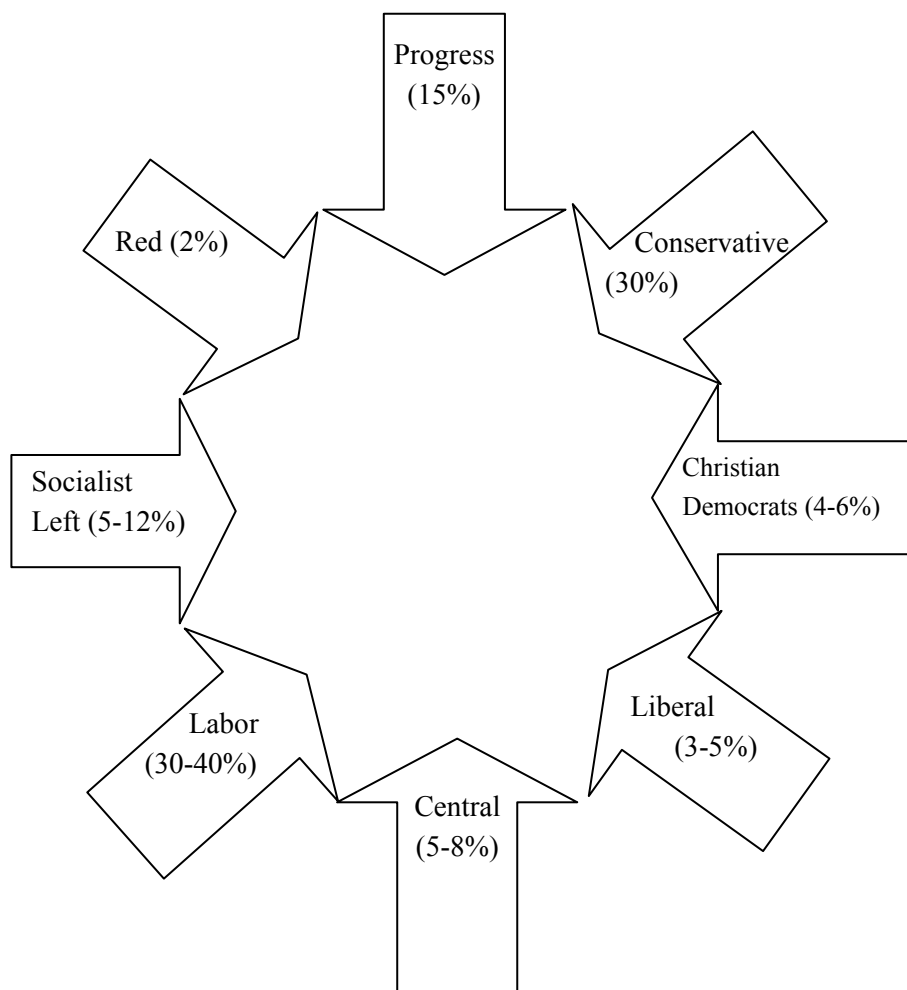


Figure 1: Norwegian Main Political Parties and their average public supports: Their political spectrum from very right-wing to fringe left-wing.

Source: <http://www.aardal.info/valgstat.htm>, retrieved Sept. 19, 2012.

28. Ipsos MORI, *Survey for Channel 4 on Attitudes towards the Death Penalty* (2009), <https://www.ipsos-mori.com/researchpublications/researcharchive/2504/Survey-for-Channel-4-on-attitudes-towards-the-death-penalty.aspx> (last visited Oct. 9, 2014).

Murder.²⁹ Garland addresses this phenomenon in relation to the USA.³⁰ In societies like the UK and USA, it is normal and easy to generate a public outcry after some horrible crime; but not in Norway.

Nevertheless, whether one regards Norway as a penal paradise or as a case of exceptionalism, it is not a place without voices of opposition. Norwegian penal norms have not remained unchanged without debates, reflecting different ideologies, interests and political agendas. For example, following the Breivik incident, all political declarations and social actions were geared to illustrate how Norwegians unite together, in compassion and solidarity. A year later in August 2012, the court sentenced this gunman to 21 years preventive detention, with a provision that can keep him confined for life (that is after 21 years of imprisonment, it can be extended up to 5 years at a time by the application of the prosecuting authority and the judgment of the court).³¹ A poll following the announcement of this decision showed that 80% of the Norwegian public supported the court sentence term and 54% believed the lead judge behind this case had helped Norwegians' maintain faith in their court system.³² Most of the victim's families were satisfied with the sentencing result and some called it "a victory for democracy and the Norwegian court system." Legal experts and politicians praise the sentencing as well. The gunman himself accepted the sentence without any intention to appeal. In fact, all Norwegians I encountered seem very relieved that the whole ordeal was over and they could get back to their peaceful lives again. Indeed, the results of this local survey are consistent with the 2011 European Social Survey of trust in justice.³³ The ESS result showed Denmark, Norway and Finland have the highest levels of trust in courts and fairness of legal procedures, and those in the UK, Netherlands and France in the middle, and the lowest trust group including Bulgaria, the Russian Federation, Portugal and Slovenia.³⁴ If we turn from the immediate context of the sentence, and consider a wider picture, then a different story seems to emerge. Interestingly, parallel opinion polls indicate a majority of the Norwegian public, 70%, are disappointed with their current Labor government in terms of how the state failed to prepare for or prevent serious

29. UK Polling Report, *Public Opinion on the Death Penalty*, <http://ukpollingreport.co.uk/blog/archives/3802> (last visited Sept. 7, 2014).

30. DAVID GARLAND, *PECULIAR INSTITUTION: AMERICA'S DEATH PENALTY IN AN AGE OF ABOLITION* 1-7 (2010).

31. Norway General Civil Penal Code § 36e (2012).

32. Mark Lewis, *Why Norway Is Satisfied with Breivik's Sentence*, TIME (Aug. 22, 2012), <http://world.time.com/2012/08/27/why-norway-is-satisfied-with-breiviks-sentence/> (last visited Oct. 9, 2014).

33. JONATHAN JACKSON ET AL. (THE EUROPEAN COMMISSION), *Trust in Justice: Toplevel results from Round 5 of the European Social Survey* (2011), http://www.europeansocialsurvey.org/docs/findings/ESS5_toplines_issue_1_trust_in_justice.pdf (last visited Sept. 6, 2014).

34. *Id.* at 9-10.

attacks.³⁵ The support and sympathy both the Labor party and their leader Stoltenberg received during the period after Breivik's attacks seem to have partly disappeared. In the meantime, support for the Conservative Party who propose a tougher security and penal policy has now reached 38%, a record high level³⁶ along with 12% to the conservative Progress Party. There appears, therefore, to be a dissonance between public attitudes towards lenient punishment and public political support for tougher security and penal policy.

*Turning to the camping issue, and the Roma people in Oslo and other cities in the summer of 2012, Torger Ødegaard, acting head of the Oslo city government, stated clearly that Oslo city cannot be held responsible for providing free camping facilities for the migrants. "This is an intolerable situation. Everyone is welcome in Oslo, but when you arrive as a visitor, you must be able to take care of yourself."*³⁷ The Progress Party had earlier proposed an idea to "throw all Romanian beggars out of the country".³⁸ A strict deportation policy for the Roma beggars is debated, although as EU citizens, Roma people have a right to be in Norway³⁹ for up to three months. Some supporters of the deportation policy posted their remarks on the Labor Party leader's social web media, calling *Jens Stoltenberg*⁴⁰ an "idiot" for defending the human rights of Roma folk who have stirred controversy in the summer of 2012. The message said "*It's not strange they're hated when they steal Norwegian citizens' property and beg. You and the other socialists are a shame!*"⁴¹

*Given the increasing numbers of foreign prison inmates, the Conservative Party has proposed a policy to place them in separate jails where there would be less emphasizes the pressing needs for rehabilitation, because they face deportation after serving their jail time.*⁴² "We don't need to offer the foreign convicts education or other help to prepare them a life in Norway", Bent Høie of the Conservative Party reported to the press. The Conservative party also proposed tougher prison terms for those convicted of

35. See Freedom House's official website, *Norway-Freedom in the World*, <http://www.freedomhouse.org/report/freedom-world/2012/norway#.VDeD-LCUfp8> (last visited Oct. 9, 2014).

36. *Id.*

37. Nina Berglund, *Hostility Rises against Migrants*, VIEWS AND NEWS FROM NORWAY (July 17, 2012), <http://www.newsinenGLISH.no/2012/07/17/hostility-rises-against-migrants/> (last visited Oct. 9, 2014).

38. *Id.*

39. Which is not a member of the EU, but a member of the Schengen agreement and thus keeps open borders with EU countries that belong to the Schengen zone.

40. the current Prime Minister of Norway (2005-2013).

41. Berglund, *supra* note 37.

42. Julie Ryland, *Separate Prisons for Foreign Prisoners*, THE NORWAY POST (Oct. 9, 2012), <http://www.norwaypost.no/index.php/news/latest-news/27539-separate-prisons-for-foreign-prisoners> (last visited Oct. 9, 2014).

terrorism and crimes against humanity, along with stricter terms for probation for those convicted of violent crimes. The Conservatives are not alone on this approach. The more right-wing Progress Party has long complained that Norway spends too much on foreign criminals. Progress Party Leader Siv Jensen said “Today’s prison conditions can seem like pure holiday accommodation for many of the foreign criminals” and went on to emphasize that correction authorities must use much tougher measures against foreign prisoners.⁴³ In other words, there will be no private cells with flat-screen TVs and a wide variety of activities and open-prisons for foreign criminals. Still, one can see these initiatives as part of the coming political election campaigns. It will be very difficult, given the rules and regulations in the prison administration and the general institutionalized line of equal treatment, to treat foreigners differently from Norwegian inmates. In this context, the statements may be politically motivated appeals to penal populist norms rather than suggestions about realistic policy implementation of regulations should the Conservative coalition come to power.

But how far do these proposals go and do they indicate further change in the future penal model in Norway? The Labor party, for example, condemned as “irresponsible” those top politicians proposing separate jails for foreign convicts and said that the Progress Party “offers a quite slanted version of reality that almost attracts foreign criminals who can think that’s actually how it is.”⁴⁴ Yet, the consensus democracy of Norway, always contains counter voices, and involves compromise and debate before policy or legislation emerges. The present skirmishes about differential treatment for foreign inmates will probably lead to nothing but that, and will not be a serious issue in “everyday” political life after the election.

The political tradition in Norway (indeed in some other parts of Continental Europe) is very different from the majoritarian democracies in Asian and Anglo-Saxon countries.⁴⁵ In Asia, countries like Japan,⁴⁶ South Korea⁴⁷ and Taiwan,⁴⁸ there are traditionally only two main political parties and small political parties are seldom big enough to get even one seat in parliament. The goal of politicians in this kind of system is to get the “majority votes” in the parliament, and then legislate accordingly. In other words, it is good enough to pass a policy or law with a little over 50% agreement in parliament. It is a “winner takes all” approach, despite the fact that the “winner” may only hold 51% support. The impact of this

43. *Id.*

44. *Id.*

45. *e.g.* UK’s Labor Party vs. Conservative Party and USA’s Democratic Party vs. Republican Party – historically two-party democracies.

46. Democratic Party vs. Liberal Democratic Party.

47. Saenuri Party vs. Democratic United Party.

48. Nationalist Party vs. Democratic Progress Party.

majoritarian model on policymaking and legislation is indeed exclusive, competitive, adversarial and rather unstable⁴⁹ compared with the political coalition tradition in Norway.

A recent Taiwanese example concerns the hurried rush to establish a new policy on drink-driving. Here, the case concerned an incident in May 2012, when a 22 years old man, who was drunk, killed a 47 year old woman with his car and then fled from the scene.⁵⁰ Dramatically, the female victim's husband died three days later, apparently from grief. So, their eight year old daughter became an orphan – all within three days. The young man denied his crime and his well-to-do parents tried to cover for their son. The public were apparently outraged when the wider mass media and internet bloggers exposed the story, covering it extensively. The prosecutor charged him with drunken driving causing death – which carries a maximum seven year prison sentence on a finding of guilt. However, the public, the national victims' association and the victim's family were not satisfied with the "leniency" of such a sentence and called for a far higher sentence for such a crime. They argued that the court should treat this kind of case as akin to murder and with a minimum sentence of 10 years. The Ministry of Justice, as part of the government, responded quickly in June and announced that they would seek to amend the legislation to raise the penalty for such a crime.⁵¹ They openly admitted that they saw this as responding to "the public will and evidence of listening to "the victim's voice".

It might be too early to see how those facts and events above have or have not changed the Norwegian penal norm. From a comparative perspective, however, the consensus democratic tradition is certainly an important protection for Norway; militating against any rapid and dramatic change of direction for penal policy. Arguably, this institutional approach to politics in Norway has helped the stability of the penal norm in Norway, and certainly in comparison to those in majoritarian democratic countries.

IV. THE CONTROL OF SOCIAL REACTIONS TO CRIME IN NORWAY

Penal policy is a political and social reaction to crime. It is also a reflection of the balance of continuities and discontinuities in penal norms. Apart from the political tradition mentioned above, other underpinnings of

49. AREND LJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES 1999 (1999); Green, *supra* note 24.

50. Wei-Hsin, Lin (林偉信), *Jiujia Hai San Min, Yeh Shauye P'an Liu Nian Dingyan* (酒駕害3命 葉少爺判6年定讞), TAIWANESE LOCAL E-NEWS YAHOO NEWS (2013), <https://tw.news.yahoo.com/%E9%85%92%E9%A7%95%E5%AE%B33%E5%91%BD-%E8%91%89%E5%B0%91%E7%88%BA%E5%88%A46%E5%B9%B4%E5%AE%9A%E8%AE%9E-213000029.html> (last visited Sept. 6, 2014).

51. *Id.*

the Norwegian penal norms lie in a prominent intellectual tradition and a socially desirable sentimental culture. Before I illustrate these points, social reactions to property and violent crimes in Norway should be differentiated and acknowledged.

A. *Crime Type Matters*

In addition to how the world sees the high level of rationality Norwegians bring to their reaction to crime and deviance (facts and events), we should notice that crime types interact with such a response. There is almost no strong social reaction to property crime⁵² by the victim, their family/friends and the police. As shown in Statistics Norway in 2010, 1/3 of crimes in Norway were property or profit related and about 6% violent and sex crimes. In other words, property crime happens frequently and routinely, and is part of “everyday life” to Norwegians. On the other hand, within the strong social insurance culture, victims of these types of crime can expect to receive compensation via insurance, following reporting the crime to police. Indeed, Norway was ranked number four among European countries in property/casualty and accident premiums per capita in both 2009 and 2010.⁵³ Indeed, the incentive to protect property is less in an affluent welfare state, while the incentives to protect the physical integrity of individuals are greater.⁵⁴ This bureaucratic-process approach to victims of property theft was confirmed to me following my personal experience as a theft victim (albeit) in Stockholm (Sweden) in the summer of 2012: police were polite, recorded my “story” and clearly from their point of view, the job was done. I also noticed that at the police station in the victims’ queue, there was another lady telling a similar story before me to another police officer. No one was stressed, and clearly no sympathy was needed to be expressed towards the victim. My victim experience echoes the Knutsson and Juhlhorn findings⁵⁵ that the Swedish law enforcement agencies appear to assign less resource priorities to theft crime by the evidence of low theft clearance rate, together with sentence levels of decreasing average length imposed and actually served (5.3 and 3.1 months respectively in 1992).⁵⁶ Police appeared to have no pressure or expectation on themselves, or from the victim, the public or the politicians to clear the case or to reduce the crime rate as such. The

52. Or “profit crime” as it is called in Norway.

53. CEA Statistics N46: European Insurance in Figures (2013), *Belgium: Insurance Europe* 25, <http://www.insuranceeurope.eu/uploads/Modules/Publications/eif-2013-final.pdf> (last visited Sept. 6, 2014).

54. Johannes Knutsson & Eckart Kuhlhorn, *Changes in Social Values and Criminal Policy*, in *CRIME AND JUST. IN SCANDINAVIA* 410 (Ulla V. Bondeson ed., 2005).

55. *Id.*

56. Knutsson & Kuhlhorn, *supra* note 54, at 415.

insurance system, combined with the apparently low valence of property crime, have transformed the social reaction to property crime into a standardized bureaucratic response, with little public sentiment necessary. In countries without this insurance and existing public provision of welfare, such as Taiwan and China, arresting the criminal and filing a civil case against this person is the only way to possibly compensate the victim's loss. The pressure on police to capture some suspects, thus, is high. Sometimes, in Taiwan, a high property crime rate can put the government in a crisis of accountability. Burglary and motorcycle/car theft stories are often shown on TV media where they are very rarely covered on TV news here in Norway. In sum, there appears, in Norway, to be no evident publicly expressed "moral" dimension to the crime – it lacks the moral "valence" or power that "everyday" crime possesses in other countries.⁵⁷

B. *Public Knowledge Relevant to Crime and Punishment*

Social reaction to violent crime, on the other hand, is a different story from that of property crime. Violence is part of human nature and yet induces more human emotional response. In modern times, apart from personal experiences, the media is the main platform to reproduce our societal understandings of crime and the victim, and to produce and trigger possible massive social reactions.⁵⁸

There are many different ways to run a violent crime story in media terms – for example, (i) the creation of the "monster"; the tearful and heart-broken victim and his/her family's story; (ii) the media can criticize how the system fails both offenders and victims and call for a new reform or change of the penal/social systems; (iii) a knowledgeable expert explaining the causes and forensic investigation of the crime and criminals. From the media perspective in any democratic society, the more commercially newsworthy the story, the higher the possibility they would run it. And the more competitive the media environment is, the more use is made of extreme, fast, and cheap emotional triggers on the crime story in the media.

In Norway, there are three state-run television channels (NRK 1, 2, 3), two commercial TV channels (TV2 and TVNorge) and more than 200 newspapers.⁵⁹ The example of Britain is also of interest here: there are some

57. Bill Heberton & Susyan Jou, *Unmasking Crime and Criminology in Taiwan*, in *The Routledge HANDBOOK OF CHINESE CRIMINOLOGY* 253, 263. (Liquan Cao, Ivan Sun & Bill Heberton, eds., 2013).

58. Chris Greer, *Crime, Media and Community: Grief and Virtual Engagement in Late Modernity*, in *CULTURAL CRIMINOLOGY UNLEASHED* 109, 201 (Jeff Ferrell, Keith Wayward & Wayne Morrison eds., 2004); David Altheide, *Moral Panic: From Sociological Concept to Public Discourse*, 5(1) *CRIME MEDIA CULTURE* 77, 79 (2009).

59. See *Opplagstall Norske Aviser 2011 [Newspapers and Daily Sales in 2011 in Norway]*,

ten national daily newspapers, three are tabloids (Sun, Daily Mirror and Daily Star) and some six TV channels, two of them (BBC1 and BBC 2) are state-run. Taiwan, another example, with a population of 23 millions, had more than 100 TV channels in 2012 (only one state run channel) and nine 24-hours news channels. All nine news channels have been more or less tabloidized in the past ten years. There are about 25 national daily newspapers, but four of them (Liberty Times, China Times, Apple Daily and United Daily News) account for 85-90% of the market share. Since the famous tabloid Hong Kong newspaper *Apple Daily* started their operations in Taiwan in 2003, all three mainstream print newspapers have become tabloidized in response to the competition.⁶⁰

All countries mentioned above have faced an extremely competitive media market over the past 10 years; some pressure is on print media (Norway and Britain) and some are more on TV media (Taiwan). Regardless of the form of media competition, as a result, the coverage of crime stories is driven towards greater populist responses. As part of a global trend, do the media in different countries have a pattern, tendency or preference on how crime stories are portrayed? And what reactions do they expect to generate from the public? By asking these questions, I hope to find out the extent of differences in the content of media coverage in Norway, compared to those in the Western European, American or Asian (at least Taiwan and Hong Kong) regions.

Green⁶¹ compared the media coverage of two child-on-child homicide cases in England and Norway, and found that in England, media reaction reflects “rising crime rates, poor parenting violent Britain and evil children.” Thus calls for tougher punishment, strengthening family values, and more moral education of children were emphasized. In Norway, though, the debate takes on a more diagnostic angle, focusing on the tragedy of the accident, TV violence and brain dysfunction of the offender, thus calling for more resources for such crises and better mental treatment services.⁶² That is to say, media coverage in Norway tends to be more based on “rationality and knowledge”, which generally are presented via media by experts and intellectual commentary and interviews, especially given by legal, medical and academic professionals.

Compared with Green’s analysis of both Norway and Britain,⁶³ Taiwan

MEDIENORGE, <http://medienorge.uib.no/?cat=statistikk&page=avis&queryID=190> (last visited Sept. 6, 2014).

60. Man Ping Sun (孫曼蘋), *Pinguojihbau Duei Taiwan Juliu Baiyeh De Chungji* (蘋果日報對台灣主流報業的衝擊), CROSS STRAIT CONFERENCE ON MANAGEMENT OF PRINT MEDIA (2004) (in Chinese).

61. Green, *supra* note 24.

62. Green, *supra* note 24, at 619-20.

63. Green, *supra* note 24.

shows an even more extreme case of how the media can be obsessed by laying peoples' anger and emotional reaction to crime. In a study on how media crime coverage relates to fear of crime, Chong et al, used content analysis of the frequency of crime elements covered by prime time news. The content analysis revealed the order of the top three most frequent TV news scenes on crime as follows: the description of the crime by police detectives, the suspect photo or image and the victim and/or family expressing emotional breakdown (tears, shouting, screaming or trying to physically attack the suspect).⁶⁴ Chong et al. also found that the appeal of dramatic elements, dead body, blood, victim family emotional breakdown and the reproduction of the crime scene were strongly associated with fear of crime, with stronger reactions in females.⁶⁵ The leading Tabloid newspaper in Taiwan, *Apple Daily*, is famous for using two kinds of bodies – nude and dead. In other words, experts, intellectuals and academics are not favored by the media in Taiwan in portraying crime or victims of crime. They produce comments which viewers find “unfamiliar”, not easily digested or categorized and rather dull. These experts often gain no appreciation or respect from the public.

Norwegian scholars have also criticized the trends of “media tabloidization” which shift the focus more onto the subjective drama of crime and criminals than experts' comments.⁶⁶ Green recalls his personal conversation with Norwegian criminologists and stated that “deference to experts in penal policy in Norway appears to have weakened”.⁶⁷ Similar observations have been recently made by Swedish researchers: “*In Sweden, homicide reporting has become more sentimental and it appeals more and more to the subjective experiences of lay people.*”⁶⁸

However, as Green pointed out, all these accounts have to be situated in a comparative context.⁶⁹ The media tends to report more on the sentimental and subjective experiences of lay people now more than before, given market-driven news values. Nevertheless, the appeal to intellectual values in Scandinavian countries as a basis for penal policy stands out in comparison with apparent emotional appeals (anti-intellectual?) in Asia (that is, Taiwan,

64. Pei Jon Chong, Jia Yu Chen, Wen Yin Kuan & Bei Shan Jen (莊佩容、陳健瑜、管偉筠、簡碧萱), *Dianshr Fantzuei Shinwen, Shingbie yu Beihai Kungjiu* (電視犯罪新聞、性別與被害恐懼), 19 GUANGBO YU DIANGSHR (廣播與電視) 99, 112 (2002).

65. *Id.* at 116.

66. Thomas Mathiesen, *Contemporary Penal Policy: A Study in Moral Panics*, in CRIME AND JUSTICE IN SCANDINAVIA 445, 445 (Ulla V. Bondeson ed., 2005).

67. David A. Green, *Media, Crime and Nordic Exceptionalism: the Limits of Convergence*, in PENAL EXCEPTIONALISM? NORDIC PRISON POLICY AND PRACTICE 58, 58 (Thomas Ugelvik & Jan Dullum eds., 2011).

68. Mirka Smoleg & Janne Kivivuori, *Crime News Trends in Finland: A Review of Recent Research*, 9(2) J. OF SCANDINAVIAN STUD. IN CRIMINOLOGY AND CRIME PREVENTION 202-03 (2008).

69. Green, *supra* note 24.

China, Japan), and other parts of Europe (.such as the UK) and the USA. The voice of intellectuals and experts on crime policy receive greater exposure and are mostly trusted by the public in Norway and other Scandinavian countries.⁷⁰ This was especially true during the late 1980s and the era of Norway's prison reform movement. Intellectuals and scholars participated in public debates and political meetings, later witnessing the successful transformation of conditions within prisons in Norway.⁷¹ Public knowledge in which intellectuals and expert opinion and critiques is highly prevalent arguably creates a more rational-based social reaction to violent crime.

It appears that, in turn this cultural tradition of high respect for intellectuals and experts in Norway has its origins as far back as in the 19th century national Romantic Movement. The Napoleonic Wars resulted in the dissolution of the union between Denmark and Norway in 1814, and nearly 400 years Norway was colonized by Sweden. The country emerged in 1905 as an independent constitutional monarchy when Norway dissolved the union with Sweden.⁷² Parliamentarism, however, was introduced in the Norwegian parliament as early as in 1884 when the Liberals managed to modernize the parliamentary system in a democratic fashion even before the freedom from Swedish rule in 1905. The Swedes mainly controlled Norway's foreign policy, and radical reforms could thus be made in other areas at this early stage. In the late 18th century, Norway was predominantly rural, with small elites of religious and government officials under the king of Denmark. The educated bourgeoisie and intellectuals began to collect information and record the history before the union with Denmark and imbued it with nostalgic reference to the natural landscape.⁷³ The work of these educated groups helped make a distinct Norwegian land, culture, and history, which were quite different from those of other Nordic countries. The idea of a distinct Norwegian culture was instigated through the interest of writers, painters, dramatists, musicians, religious leaders and other intellectuals. Of course, the culture of the rural peasants was not the culture of the intellectual elite, but it was seen by Norwegians that the intellectuals re-interpreted and identified with that tradition, and thus were highly regarded, trusted and valued. The "big names" in Norwegian culture stems from the period under Swedish rule, Henrik Ibsen in literature, Edvard Grieg in classical music, both of them linked their literature and music to Norwegian folk traditions although they represented classic modern literature and music as well.

70. Pratt, *supra* note 6.

71. Mathiesen, *supra* note 66, at 446-49.

72. ANNE COHEN KIEL, CONTINUITY AND CHANGING: ASPECTS OF CONTEMPORARY NORWAY 1-2 (1993).

73. *Id.*

The institutionalization of knowledge about “crime and punishment” and its production and diffusion by intellectuals and experts in Norway allows the country to stabilize levels of punishment. The importance of this kind of institutionalization in the political sphere to an understanding of punishment is reflected in Joachim Savelsberg’s work.⁷⁴ Savelsberg argues that institutions filter the impact global change has on policy outcomes in a given country to such a degree that global processes produce distinct cultures of control in different national contexts. Savelsberg’s approach was developed in response to the difference between US and West German incarceration practices: essentially the puzzle of the stability of rates post-WWII in West Germany and the change from stability in the late 1970s USA. He extends his later analyses to former state socialist regimes in Poland and the German Democratic Republic.⁷⁵ He identifies three distinct empirical patterns, each is associated with a distinct type of social organization: decentralized domination–personalistic; decentralized domination–bureaucratic; and monopolized domination – bureaucratic.⁷⁶ A democratic socialist state, combined high autonomy in the courts and high competing public discourse; bureaucratization works better in stabilizing legal/political decision making, which appears as the case in Norway.

Unlike many other countries which face the challenge of an anti-intellectual media culture⁷⁷ and decentralized public knowledge, involving appeals to populism, Norway, along with other Scandinavian countries, tends not to engender swift penal norms in a short-term fashion. This continuity in trust in intellectual thought and expert opinion allows the Norwegian public to enhance their rational reactions to crime, limit moral panic and fear of crime and strengthen the consensual lenient penal model.

C. *Suitable Amount of Sentiment towards Crime and Punishment*

How do the public express their sentiments when a violent crime takes place? What kinds of emotions are socially permitted and praised in Norway?

The July 22 killings triggered a surprisingly low level of social reaction in terms of hatred, aggression and vengeance; certainly emotions expected in many other countries (US, Asia, or Muslim societies) after an unusual massacre like this occurs. The immediate reaction for the Labor party

74. Joachim Savelsberg, *Knowledge, Domination and Criminal Punishment*, 99(4) AM. J. OF SOC. 911, 913-15 (1994).

75. Joachim Savelsberg, *Knowledge, Domination and Criminal Punishment Revisited: Incorporating State Socialism*, 1(1) PUNISHMENT & SOC’Y 45, 45-49 (1999).

76. Savelsberg, *supra* note 74 and 75.

77. THOMAS SOWELL, *INTELLECTUALS AND SOCIETY* 1 (2010). PAUL JOHNSON, *INTELLECTUALS: FROM MARX AND TOLSTOY TO SARTRE AND CHOMSKY* 3 (1988).

Prime-minister *Jens Stoltenberg* was to preserve the basic values of the country – no talk of vengeance. No media or public demand for vengeance either. No voice of vengeance and anger from the survivors and the victims' family either. During and after the trial a year later, there is still no clear sense of vengeance or anger anywhere in Norway. One of my interviewees – a Norwegian nurse whose husband is a police officer – told me that “*no need to blame Breivik's mother or to make her appear like a monster. No one knows what kind of difficult personal life she had when raising her son alone. Perhaps the State did not provide enough resources to help her raise the son.*” (Subject #1). A colleague commented “*Breivik's mother is one of the victims too. I feel sorry for her and how her son has damaged her life.*” (Subject #2). “*Breivik should be locked away for the rest of his life because he is dangerous, but no need to sentence him to death.*” (Subject #3). Christie⁷⁸ in his short essay on the July 22 bombing mentions “*only flowers(roses), in words and reality, not hatred*”. A mother whose 18 year-old daughter was killed said “*there will be enough punishment*”, and she does not want to see the death penalty for a terrorist or for any other person at all.⁷⁹ One of the famous lines remembered from the 22 July massacres was one of the girls who survived the ordeal on the Island. She said: “*If one man's hatred can cause so much damage, think of all the good so many people's love can create in return*” (*Om en mann kan vise så mye hat, tenk hvor mye kjærlighet vi alle kan vise sammen*).⁸⁰ These words have become an important aphorism describing the “revenge is no option” penal norm in Norway.

In May 2012, during court trial proceedings, one of the victim's brother threw a shoe at Breivik and was captured on TV, shouting “*you killed my brother, you go to hell!*” Some people in the gallery briefly clapped while police quickly ushered the man out of the courtroom. To many of us from non-Norwegian culture, it is very natural to see a victim or the family expressing their outburst of anger towards the murderer by taking such dramatic action (or even more dramatic). A BBC reporter made a remark which captures this well: “*It is perhaps surprising that such an outburst has not happened before, given the gut-wrenching nature of the evidence being heard and the palpable tension in the courtroom...*”⁸¹

78. A personal discussion on “why Norwegians are so peaceful” with Professor Nils Christie, faculty of law school, in University of Oslo (Sept. 30, 2012).

79. See Marie De Rosa, *Kjærlighetsbudskapet Sprer seg i Alle Kanaler* (Love Message spreading in all channels), VG NEWS (July 24, 2011) (in Norwegian), <http://www.vg.no/nyheter/innenriks/terrorangrepet-22-juli-politikk-og-samfunn/kjaerlighetsbudskapet-sprer-seg-i-alle-kanaler/a/10080708/> (last visited Oct. 09, 2014).

80. *Id.*

81. Caroline Hawley, *Breivik Trial: Shoe Thrown at Norway Mass Killer*, BRITISH BBC NEWS EUROPE (May 11, 2012), <http://www.bbc.com/news/world-europe-18034156> (last visited July 30, 2013).

However, three unique aspects of this shoe incident are worthy of note (a) this is unexpected and seen as exceptional. The normal Norwegian trial is sedate, calm, polite and dignified; (b) an apparent attempt to “pathologize” this man’s anger by stating “*he was so upset that he was taken to a local emergency clinic for a medical check-up*”, (c) cultural rationalization (alienation?) of this man’s anger by mentioning “*this man lives outside of Norway (Iraqi background) ...hurling a shoe at someone can be viewed as a grave insult in the Arab world, because a shoe is considered unclean.*”⁸² Overall, the lesson I take from this single but notable incident is that emotional anger as a reaction to crime is taken as understandable but deviant, abnormal and alien in Norwegian culture. It is tolerated, but not endorsed.

Another recent murder case in Oslo has well demonstrated how a suitable amount of sentiment is prized in Norwegian culture. A 16-year-old Oslo teenage girl disappeared while walking home on the night of August 4, 2012 and was later found murdered in a small forest area very close to the city.⁸³ Her disappearance unleashed a massive search that involved hundreds of volunteers over a four-week period. More than 600 persons attended her funeral. The family’s reaction was “*It was a day with more tears but also some smiles and nice memories of the girl.*” and the police were amazed by the extraordinary public support for their search and investigation. The funeral ceremony was described as “gripping, dignified and beautiful, full of fine music and speeches. No anger or vengeance was directed towards the two arrested suspects. Neither did there appear to be great public pressure on police to solve the case.”⁸⁴ The community and the media both showed large scale support and sympathy. The family’s sadness, dignity and calmness were highly praised.

The above reactions to crime, criminals and their family symbolize two important socially desirable elements of Norwegian cultural sensibilities. First, rationality is pre-eminent as Norwegians tend to reason the facts when expressing their emotions and sentiments to crime and punishment. Sympathy, on the other hand, as they identify equally with the offender and the victim – the killer and his/her family could be one of us. As a normal human being, the offender’s personal problems have to be understood and heard before judging or punishing.

Over a lunch conversation with a group of colleagues at the University

82. *Id.*

83. See Sigrid Schjetne, *Missing Norway Teen, Found Dead*, THE WORLD POST (Sept. 4, 2012), http://www.huffingtonpost.com/2012/09/04/sigrid-schjetne-dead_n_1855004.html (last visited Oct. 9, 2014).

84. Nina Berglund, *Hundreds Bid Final Farewell to Sigrid*, VIEWS AND NEWS FROM NORWAY (Sept. 19, 2012), <http://www.newsinenglish.no/2012/09/19/hundreds-bid-final-farewell-to-sigrid/> (last visited Oct. 9, 2014).

of Oslo, I asked “*when was the last time you got angry and what did you do when you got angry?*” There was silence for quite a long time around the table, because most of them could not readily remember when they were last angry. One of them reflected later that her friend ordered a white wine but received a red one in a restaurant. She was angry at the poor service and the waitress’s careless and unfriendly attitude. Her reaction was to tell the waitress that it’s unacceptable to have such poor service. Seemingly, anger is seen as “no use” in rectifying the situation or to make up one’s loss or pains. If one expresses anger, it could simply be socially degrading for oneself.

In Jonassen’s large historical qualitative and quantitative study, he found the “modal” personality of Norwegians to be best described by terms such as “modest” and “reserved”, which tend to indicate detachment or to “distance from others”.⁸⁵ Alongside this “national” personality, there is coupled a demand for overt conformity, which eventually leads to rigidity, overweening rationality and the nullification of self-esteem. The physical aggressiveness of the Viking norm, argues Jonassen, has been thoroughly expunged by Christianity. Moral aggression is permitted, but not physical, in order to defend self-esteem.⁸⁶

This paper argues that selected emotions (tears and sadness) are seen as normal responses to violent crime, but anger and a desire for vengeance are socially undesirable in Norway. In fact, all emotions to violent crime are understood and acceptable but have their limits in that country. Anger and over-indulgence in sadness for victims or their families are seen as no practical use, abnormal or simply a result of “pathology”. With a rather reserved and modest emotional expression, this “suitable amount of sentiment” is highly regarded in Norwegian culture. To all Norwegians, the July 2011 terror attack is indeed a “cultural trauma”, which Alexander defines as “a horrendous event subject to the members of the group collectively and leaves members indelible marks on their group consciousness, marking their memories forever and changing their future identity in fundamental and irrevocable ways”.⁸⁷ However, this cultural trauma has not been represented and imagined in a fashion of “revenge, anger, hatred, tears, condemnation” claimed by Norwegian lay people and “carrier groups” (those who have particular discursive talents for articulating the claim and for meaning making in the public sphere).⁸⁸ Rationality and a “suitable amount of sympathy” as socially acceptable sentiments make emotions less inflamed in Norwegian penal norm. The collective social

85. CHRISTEN T. JONASSEN, *VALUE SYSTEMS AND PERSONALITY IN A WESTERN CIVILIZATION: NORWEGIANS IN EUROPE AND AMERICA* 1-20 (1983).

86. *Id.*

87. JEFFREY ALEXANDER, *TRAUMA: A SOCIAL THEORY* 6 (2012).

88. *Id.*

suffering takes a shorter time in such a culture to become routinized and objectified in annual memorial services, museums, and collections of historical artifacts. As a matter of fact, the one year long terror attack trial broadcast on Norwegian TV soon became subject to the technical and desiccating attention of psychologists and psychiatrists who detach affect from meaning. The Norwegian detachment and suitable sentiment culture re-constructs and represents the trauma in such a unique way that it might lead to a less punitive norm.

V. THE DOUBLE CHALLENGE TO NORWEGIAN PENAL NORMS: OTHERNESS AND THE HIERARCHY OF OTHERNESS

The homogeneity of Norway with a population of five million plays an important part in reaffirming egalitarian values, tolerance and trust; people who are similar to each other and often know each other are more likely to be content with inclusionary rather than exclusionary punishment.⁸⁹ People are also likely to be an acquaintance/friend/family member of lawbreakers, and thus less likely to view them as alien others or monsters. For example, people in Cardamom Town all know the three robbers by their first names and are aware of where they live and what they do. Releasing one of them back to their house to feed their pet Lion for a couple of hours every day without a guard is not a problem. All deviants can be tolerated because they are known by the village and are in fact, villagers themselves, no different from all the others. Ugelvik's study⁹⁰ noticed the changing likhet culture ("being of the same worth", "having the same status" and "looking alike") in Norway in the past 20 to 30 years. "Nordic countries become natural laboratories for students of rapid population change... Today, more than one in four people living in Oslo is an immigrant or a child of immigrants."⁹¹ The "homogeneous" character no longer offers the best description of the Norwegian society, especially in the capital city. Scholars described this phenomenon of increasing migration in combination with crime scene in Norway as the "suitable enemy",⁹² "ethnic folk devil" (kriminell innvandrers),⁹³ "alien other",⁹⁴ or simply "otherness".⁹⁵ No doubt this is similar to social changes in many other previously highly homogeneous

89. Pratt, *supra* note 6.

90. Ugelvik, *supra* note 21.

91. Ugelvik, *supra* note 21, at 12.

92. Christie, *supra* note 78.

93. SUNE QVOTRUP JENSEN, FREMMED, FARLIG OG FRÆK: UNGE MÆND OG ETNISK/RACIAL ANDENHED - MELLEM MODSTAND OG STILISERING (FOREIGN, DANGEROUS AND CHEEKY: YOUNG MEN AND ETHNIC/RACIAL OTHERNESS - BETWEEN RESISTANCE AND STYLIZATION) 4 (2007).

94. Pratt, *supra* note 6.

95. Ugelvik, *supra* note 21.

countries in today's globalized world. Without an exception, our tolerance and trust of "otherness" is different. However, my question is, is this tolerance to "others" the same for all "others"? Or is the "other" itself in need of differentiation? Would there still be 80% support for the sentencing decision if "Breivik" had another name "Mohammad"? What about if his surname was "Adebayo"? or "Chen", or perhaps "Yokoyama"?

Table 1 shows percentages of indictment (charged of a crime) and imprisonment by citizenship in Norway. Within the "foreign criminal" category, one can see clearly that the profile of "others" fall into inner and outer circles from the closest "Nordic countries" to the farther "African countries".

Table 1: Probability of Indictment and Imprisonment in Norway by Citizenship in 2010

Citizenship	% of indicted * (t=83635)	% of imprisonment** (t=11678)	Under/over representation
Norway	82%	76%	-.07
Other Nordic	3%	1.7%	-.43
Other Europe	9.5%	10.8%	.14
Asia	2.7%	3.4%	.26
Africa	2.5%	5.7%	1.28

Source: *Statistics Norway Table 20, ** kriminalomsorgens ars statistikk 2010

The above figures strikingly fit into what one of my interviewees – a South Asian Norwegian migrant, told me: "You know, after 20 years living in this country, and speaking fluent Norwegian, I still think that I am not treated as one of "them". Norwegians treat migrants differently based on where they come from, Scandinavia first, then Europeans, followed by Asians and the Africans. That is why they would not force Romanians to leave. Many of them are criminals and a source of social problems, but they are still Europeans. Asians and Africans, on the other hand, are another story." (Subject #4).

The social image of Norwegian immigrants are as "from economically dependent countries", "asylum-seekers", "students", "unemployed and here for work" based on their nationalities. "Norway's strong economy is attracting nearly 25,000 citizens in the first half of year 2012 from countries suffering economic problems....Most of the new European arrivals came, once again, from Poland, followed by Lithuanians and Germans. Most of those coming from outside the European area came from Somalia and the Philippines, followed by Eritrea, India and Russia. Most of those from Somalia and Eritrea were asylum seekers, while those from the Philippines

were students and those from India and Russia were looking for work.”⁹⁶

Thus, “others” in Norway seem to have different names with different possibilities of entering the punishment system. If tolerance to crime and criminals is a norm in Norway, it is arguable that the penal norm has its own hierarchy towards “others” (see Figure 2).

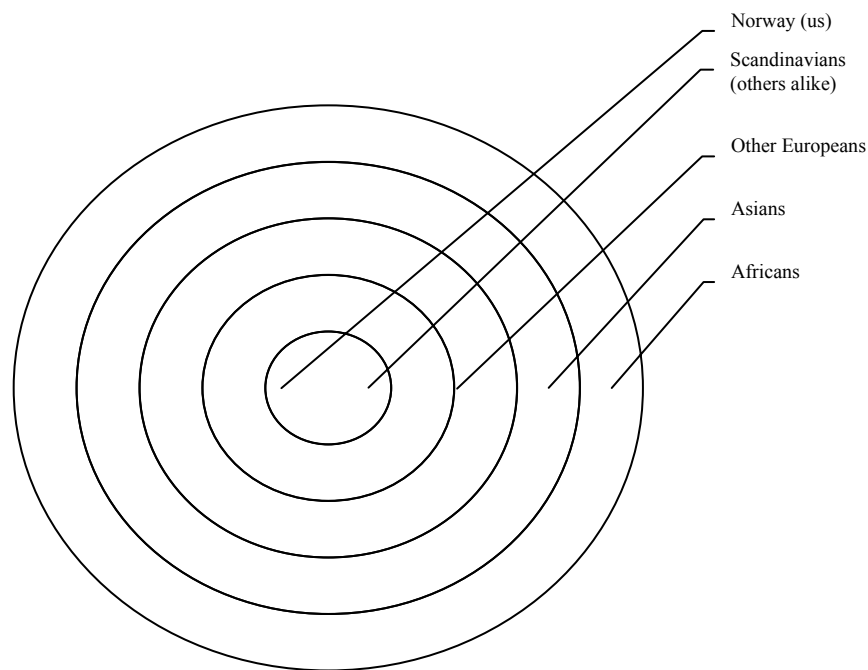


Figure 2: The “Foreign Criminal” Profile Based on Norwegian Penal Practice

The challenge of “criminal immigrants” is therefore not only one of difference between us and “them”, but also of a hierarchy within this otherness, containing its own differences. This is what I see as the double challenge facing future Norwegian penal norm/policy – an equal integration and tolerance between “us” and “others” as well as within others. Difference can be tolerated if within physical or cultural “closeness” (that is, look like Nordic people, Christian); on the other hand, tolerance is strained and becomes possibly merely “neglect” when there is no obvious basis for this “closeness” (for instance, Asians, Africans, or Muslims?).

Pratt and Eriksson⁹⁷ refer to four explanations of Norwegian soft penal

96. See Statistics Norway, *Immigrants and Norwegian-born to Immigrant Parents* (2014), <http://www.ssb.no/en/innvbeif> (last visited Oct. 9, 2014).

97. John Pratt & Anne Eriksson, *Den Skandinaviska Exeptionalismen I Kriminalpolitiken* (The

norm tradition – namely, the welfare state, the political economy, the political culture and the mass media. Green⁹⁸ argues that consensus democracy (political culture) and “non-victim dominated” media culture make Norwegian penal culture unique, certainly compared to English penal culture. Mathiesen⁹⁹ states that over-focusing on historical origins sometimes omits the turning points of penal norm change. He points out that resistance, human agency and the cultural revolution of the 1970s played an active part in reforming today’s Norwegian penal norm and practice¹⁰⁰. Christie¹⁰¹ remarks that what makes Norwegian penal norm so lenient are the small population, welfare state and strong core values (such as pleasure of nature, non-violence). This paper draws attention to the control mechanisms underlying social reactions to crime and punishment: it is argued that to understand such reactions one needs to consider crime types, public knowledge based on an intellectual media culture and socially desirable and suitable amount of sensibilities, together with a consensus political tradition, with associated institutional structures. And yet, a possible discontinuity is evident in the challenge posed by “others” and the associated hierarchy of otherness.

These social arrangements and values have helped to produce Norwegian “differences” in penal policy. However, these “differences” are not definitive or conclusive, but are now being challenged by Norway’s transition into a much more heterogeneous society, with profound implications for the “*likhet*” centered culture that had ordered and given meaning to the world. Will contemporary Norway leave the fictional Cardamom Town forever, imbued as it is with its deep nostalgia or will it be able to continue with its exceptional model? This paper offers no conclusive answer to Christie’s vision of Norway’s past/future ideal. The three rules of Cardamom certainly seem to appeal to everyone as a penal paradise. National cultures of punishment are “local” and embedded in the context of history, social structures as well as human actions; but this only increases the need for comparative understanding by criminologists.¹⁰² Norway, as part of Scandinavia, is an ideal site for such comparative research on the continuum of traditional penal norm and practice. Norway and other Scandinavian countries provide a good geographical, political and cultural balance to the usual analyses of existing penal research based on the USA or

Scandinavian Exceptionalism in Penal Policy), 98(2) NORDISK TIDSSKRIFT FOR KRIMINALVIDENSKAB 135, 135-51 (2009).

98. Green, *supra* note 24.

99. MATHIESEN, *supra* note 8.

100. *Id.*

101. A personal discussion on “is it possible to restore after atrocities” with Professor Nils Christie, faculty of law school, in University of Oslo (Sept. 10, 2012).

102. Jou & Heberton, *supra* note 13.

England/Wales. My limited experience of this other culture (Norway) illustrates to me that no country has a perfect penal system, and every country, however small, can offer an alternative vision. Through understanding these matters, we learn and change, both as individuals and as professional criminologists.

REFERENCES

- Alexander, J. (2012). *Trauma: A Social Theory*. Hoboken, NJ: Wiley.
- Altheide, D. (2009). Moral Panic: From Sociological Concept to Public Discourse. *Crime Media Culture*, 5(1), 79-99.
- Berglund, N. (2012a). *Hostility Rises against Migrants*. Retrieved from <http://www.newsinenglish.no/2012/07/17/hostility-rises-against-migrants/>.
- Berglund, N. (2012b). *Hundreds Bid Final Farewell to Sigrid*. Views and News from Norway. Retrieved from <http://www.newsinenglish.no/2012/09/19/hundreds-bid-final-farewell-to-sigrid/>.
- Berry, F. (2012). Social Response to Killers Is More Important than the Punishment. *The Independent*. Retrieved from <http://www.independent.co.uk/voices/commentators/freya-berry-social-response-to-killers-is-more-important-than-the-punishment-7657167.html>.
- CEA Statistics (2013). CEA Statistics N46: European Insurance in Figures 2013. *Belgium: Insurance Europe* Retrieved from <http://www.insuranceeurope.eu/uploads/Modules/Publications/eif-2013-final.pdf>.
- Chong, P. J., Chen, J. Y., Kuan, W. Y. & Jen, B. S. (2002). Dianshr Fantzuei Shinwen, Shingbie yu Beihai Kungjiu (電視犯罪新聞、性別與被害恐懼). *Guangbo Yu Dianshr (廣播與電視)*, 19, 99-126.
- Christie, N. (2012a). *Latin American prison problems: Nurtured by Western drug policy?* Unpublished manuscript, Law School, University of Oslo, Oslo, Norway.
- Christie, N. (2012b). *Why so Peaceful?* Unpublished manuscript, Law School, University of Oslo, Oslo, Norway.
- Christie, N. (2012c). *Restoration after Atrocities – Is it Possible?* Unpublished manuscript, Law School, University of Oslo, Oslo, Norway.
- De Rosa, M. (2011). *Kjærlighetsbudskapet Sprer seg i Alle Kanaler (Love Message Spreading in All Channels)*. Retrieved from VG NEWS (in Norwegian). Retrieved from <http://www.vg.no/nyheter/innenriks/terrorangrepet-22-juli-politikk-og-samfunn/kjaerlighetsbudskapet-sprer-seg-i-alle-kanaler/a/10080708/>.
- Downes, D. & van Swaaningen, R. (2007). The Road to Dystopia? Changes in the Penal Climate of the Netherlands. *Crime and Justice a Review of*

Research, 35, 31-72.

Egner, T. (1955). *Folk og Røvere i Kardemomme by*, Norway: Cappelen.

Elster, J. (1989). *Nuts and Bolts for the Social Sciences*. Cambridge: Cambridge University Press.

Freedom House's official website (2012). *Norway-Freedom in the World*. Retrieved from <http://www.freedomhouse.org/report/freedom-world/2012/norway#.VD eD-LCUfp8>.

Garland, D. (2010). *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge, Mass: Belknap Press (Harvard University).

Green, D. (2007). Comparing Penal Cultures: Child-on-child Homicide in England and Norway. *Crime and Justice: A Review of Research*, 36, 591-643.

Green, D. A. (2011). Media, Crime and Nordic Exceptionalism: the Limits of Convergence. In T. Ugelvik, & J. Dullum (Eds.), *Penal Exceptionalism? Nordic Prison Policy and Practice* (pp. 58-75). London and New York: Routledge.

Greer, C. (2004). Crime, Media and Community: Grief and Virtual Engagement in Late Modernity. In J. Ferrell, K. Wayward & W. Morrison (Eds.), *Cultural Criminology Unleashed* (pp. 109-118), London: Glasshouse.

Hamai, K. & Ellis, T. (2008). Japanese Criminal Justice: Was Reintegrative Shaming a Chimera?. *Punishment & Society*, 10, 25-46.

Hawley, C. (2012). *Breivik trial: Shoe thrown at Norway Mass Killer*. British BBC News Europe. Retrieved from website: <http://www.bbc.com/news/world-europe-18034156>.

Hebenton, B. & Jou, S. (2013). Unmasking Crime and Criminology in Taiwan. In L. Cao, I. Sun & B. Hebenton (Eds.), *Handbook of Chinese Criminology* (pp. 253-267). London, U.K: Routledge.

Ipsos MORI (2009). *Survey for Channel 4 on attitudes towards the death penalty*. Retrieved from <https://www.ipsos-mori.com/researchpublications/researcharchive/2504/Survey-for-Channel-4-on-attitudes-towards-the-death-penalty.aspx>.

Jackson, J., Pooler, T., Hohl, K., Kuha, J., Bradford, B. & Hough, M. (the European Commission) (2011). *Trust in Justice: Topline Results from Round 5 of the European Social Survey (2011)*. Retrieved from http://www.europeansocialsurvey.org/docs/findings/ESS5_toplines_issue_1_trust_in_justice.pdf.

- Jensen, S. O. (2007). *Foreign, Dangerous and Cheeky: Young Men and Ethnic/racial Otherness – Between Resistance and Stylization. (in Norwegian)*. Aalborg, Denmark: Aalborg University.
- Johnson, P. (1988). *Intellectuals: From Marx and Tolstoy to Sartre and Chomsky*. New York, NY: Harper Perennial.
- Jonassen, C. T. (1983). *Value Systems and Personality in a Western Civilization: Norwegians in Europe and America*. Columbus, Ohio: Ohio State University Press.
- Jou, S. & Heberton, B. (2011). Researching and Explaining the Punitive: Lessons and Reflections from a Comparative Empirical Study of Taiwan and England and Wales. *International Journal of Law, Crime and Justice*, 39(1), 12-36.
- Knutsson, J. & Kuhlhorn, E. (2005). Changes in Social Values and Criminal Policy. In Ulla V. Bondeson (ed.), *Crime and Justice in Scandinavia* (pp. 405-426). Denmark: Forlaget Thomson.
- Kiel, A. C. (1993). *Continuity and Changing: Aspects of Contemporary Norway*. Oxford, U.K.: Oxford University Press.
- Kriminalomsorgen (2012), *Kriminalomsorgens årsstatistikk 2010 (Norwegian official Crime Statistics Book)*. Norway: the Ministry of Justice, Norway.
- Kriminalosorgen (2012). Retrieved from www.kriminalomsorgen.no/utenlandske-innsatte.237929.no.html.
- Lewis, M. (2012). Why Norway Is Satisfied with Breivik's Sentence. *Time*. Retrieved from <http://world.time.com/2012/08/27/why-norway-is-satisfied-with-breiviks-sentence/>.
- Lijphart, A. (1999). *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries*. New Haven, CT: Yale University Press.
- Lin, W. H. (2013), Jioujia Hai San Min, Yeh Shauye P'an Liu Nian Dingyan (酒駕害 3 命 葉少爺判 6 年定讞). *Taiwanese Local e-news Yahoo News (2013)*. Retrieved from <https://tw.news.yahoo.com/%E9%85%92%E9%A7%95%E5%AE%B33%E5%91%BD-%E8%91%89%E5%B0%91%E7%88%BA%E5%88%A4%E5%B9%B4%E5%AE%9A%E8%AE%9E-213000029.html>.
- Mathiesen, T. (2005). Contemporary Penal Policy: A Study in Moral Panics. In U. V. Bondeson (Ed.), *Crime and Justice in Scandinavia* 445-462. Denmark: Forlaget Thomson.

- Mathiesen, T. (2011). Scandinavian Exceptionalism in Penal Matters: Reality or Wishful Thinking. In Ugelvik, T. & J. Dullum (Eds.), *Penal Exceptionalism? Nordic Prison Policy and Practice*. London and New York: Routledge.
- Medienorge (n.d.). Opplagstall Norske Aviser 2011 (Newspapers and Daily Sales in 2011 in Norway). Retrieved from <http://medienorge.uib.no/?cat=statistikk&page=avis&queryID=190>.
- Norway General Civil Penal Code § 36e (2012).
- Pratt, J. (2008a). Scandinavian Exceptionalism in an Era of Penal Excess. Part I: the Nature and Roots of Scandinavian Exceptionalism. *British Journal of Criminology*, 48(2), 119-137.
- Pratt, J. (2008b) Scandinavian Exceptionalism in an Era of Penal Excess. Part II: Does Scandinavian Exceptionalism Have a Future? *British Journal of Criminology*, 48(3): 275-292.
- Pratt, J & Eriksson, A. (2009). Den Skandinaviska Exeptionalismen I Kriminalpolitiken (The Scandinavian Exceptionalism in Penal Policy), *Nordisk Tidsskrift for Kriminalvidenskab*, 98(2), 135-151.
- Pratt, J. & Eriksson A. (2011). In Defense of Scandinavian Exceptionalism. In Ugelvik, T. & Dullum J. (Eds.), *Penal Exceptionalism? Nordic Prison Policy and Practice*. London and New York: Routledge.
- Ryland, J. (2012). Separate Prisons for Foreign Prisoners. *the Norway Post*. Retrieved from <http://www.norwaypost.no/index.php/news/latest-news/27539-separate-prisons-for-foreign-prisoners>.
- Ryland, J. (2014). The Roma people demonstrate in Oslo. *the Norway Post*. Retrieved from <http://www.norwaypost.no/index.php/news/latest-news/28531-the-roma-people-demonstrate-in-oslo>.
- Savelsberg, J. (1994). Knowledge, Domination and Criminal Punishment. *American Journal of Sociology*, 99(4), 911-943.
- Savelsberg, J. (1999). Knowledge, Domination and Criminal Punishment Revisited: Incorporating State Socialism. *Punishment and Society*, 1(1), 45-70.
- Schjetne, S. (2012). *Missing Norway Teen, Found Dead*. The World Post. Retrieved from http://www.huffingtonpost.com/2012/09/04/sigrid-schjetne-dead_n_1855004.html.
- Smoleg, M. & Kivivuori, J. (2008). Crime News Trends in Finland: A

- Reveiw of Recent Research. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 9(2), 202-219.
- Sowell, T. (2010). *Intellectuals and Society*. New York, NY: Basic Books.
- Statistics Norway (2010). *Imprisonments: Discharges by Prison Time and Type of Principle of Offence*. Retrieved from http://www.ssb.no/a_krim_tab_en/tab/tab-2012-03-08-60-en.html.
- Statistics Norway (2014a). *Imprisonments, 2012*. Retrieved from <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/fengsling>.
- Statistics Norway (2014b). *Immigrants and Norwegian-born to Immigrant Parents*. Retrieved from <http://www.ssb.no/en/innvbef>.
- Sun, M. P. (2004). Pinguojihbau Duei Taiwan Juliu Bauyeh De Chungji (蘋果日報對台灣主流報業的衝擊). *Cross Strait Conference on Management of Print Media*. Taipei: United News Cultural Foundation. (in Chinese).
- Von Hofer, H. (2002). *Notes on Crime and Punishment in Sweden and Scandinavia*. Stockholm: University of Stockholm.
- UK Polling Report (2011). *Public Opinion on the Death Penalty*. Retrieved from <http://ukpollingreport.co.uk/blog/archives/3802>.
- Ugelvik, T. (2011). The Dark Side of a Culture of Equality: Reimagining Communities in a Norwegian Remand Prison. In Ugelvik, T. & Dullum, J. (Eds.), *Penal Exceptionalism? Nordic Prison Policy and Practice*. London and New York: Routledge.

挪威的刑罰常態：政治傳統、 公民教育、文化情感表達以及 階層化的他者圈

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摘 要

挪威的刑罰規範常態是世界特例（如：最低度刑罰、最人性化監獄），試圖解讀，何其複雜。過去對此這個特例國家之刑罰常態的研究與分析不少，但並未達成一致或確定的結論。本文目的企圖從該國對犯罪與懲罰的社會反應出發，分析背後的社會控制機制，並列對照臺灣，梳理挪威刑罰常態如何可能之脈絡。

本文認為挪威文化中對犯罪與刑罰的寬容與同理，與其已經滲透在該國各種社會制度中的理性犯罪觀、尊重知識公民教育、節制的文化情感表達，以及政治多黨傳統有關。雖然這些傳統歷史、文化與制度設計對挪威人習以為常的寬容刑罰觀有重大影響，但本文也發現一個可能斷裂這種寬容刑罰觀的力量正在發酵，那就是因為移工、移民與難民激增，導致「他者」圈開始階層化。對比臺灣人熟悉的美國、英國、澳洲、紐西蘭、加拿大這些盎格魯薩克遜人的報復性刑罰觀，挪威的斯堪地亞文化提供了一個地理、政治、文化上炯然不同的典範。本文以他者的觀點凝視這個文化，發現挪威六百年來雖一直是面對強鄰惡劣氣候的一介小國，卻能在各種制度（包括刑罰制度）中，獨樹一格，甚至成為支撐挑戰歐美主導刑罰主流論述之少數對立觀點。透過比較，解構鑲嵌在挪威歷史、社會結構與個人行動中的在地性，以及其習以為常的寬容刑罰觀，或許可反身看見臺灣刑罰之常態，以及臺灣人何以習以為常而不自覺的身影。

關鍵詞：挪威、刑罰常態、刑罰特例

