# A COMPARISON OF THE AMERICAN AND SCANDINAVIAN CRIMINAL JUSTICE SYSTEMS

by

Alyssa Waller

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Texas Christian University

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### Project Approved:

Supervising Professor: Katherine Polzer, Ph.D.

Department of Criminal Justice

Brie Diamond, Ph.D.

Department of Criminal Justice

Max Krochmal, Ph.D.

Department of History

### **ABSTRACT**

America and the Scandinavian countries provide an interesting comparison when examining their criminal justice systems. America has one of the most punitive criminal justice systems amongst other developed Western nations, while Scandinavia has some of the lowest incarceration numbers. Societal aspects such as the Scandinavian countries being strong welfare states with a huge emphasis on human rights affects how these countries treat their criminals. America relies on prison for the vast majority of punishments while Scandinavia does not. Here, the focus is on alternative and community punishments. Prison conditions are drastically different between America and Scandinavia. Norway is home to the most humane prison in the world, Halden Prison. Drug treatment is much more common in Scandinavia than it is in America. American drug abusers are often locked up. Denmark has started a new treatment known as "fix rooms." At these facilities, addicts can inject prescribed, high quality heroin in the presence of medical staff. After an in-depth and comprehensive look at these two different societies and criminal justice systems, it is clear America has the opportunity to learn from the Scandinavian countries in an effort to become less punitive and more rehabilitative.

In February of 2015 at The Oscars ceremony, John Legend accepted his award and approached the stage to give the usually expected "thank you" speech. However, he deviated from the traditional script and made reference to the injustices in the American criminal justice system. He stated that Americans "live in the most incarcerated country in the world" (Muenster and Trone 9). This is a well-known fact. America, a highly developed Western country, has the largest number of prisoners. Conversely, on the other end of the spectrum, the Scandinavian countries boast some of the lowest incarceration numbers according to two criminal justice professors (Lappi-Seppälä and Tonry 8). How can developed Western countries be so different in terms of their imprisonment rates? The United States and Scandinavian region differ in many aspects, in some ways just as simple as their geographical sizes and their population numbers. In terms of their societies, they vastly differ. From the cultures, religions, races, and ethnicities that form these societies, blatant differences are apparent. These societal distinctions lend itself to major variances in their individual infrastructures. One of the main infrastructural dissimilarities is exemplified in their criminal justice systems. The punitive American criminal justice system compared to the rehabilitative Scandinavian criminal justice system allows for a number of comparisons to be drawn. The way each country treats its criminals in terms of punishment is strikingly different. By simply comparing numbers such as incarceration rates, it appears that Scandinavia is doing a better and more efficient job at dealing with its criminals. However, it is important to note that the societies of the United States and Scandinavia are actually so different that one could question whether the two can really be compared. Is it feasible for America to make changes to their criminal justice system in an effort to be more similar to the Scandinavian countries? A thorough and well examined account of the two countries and their respective criminal justice systems is necessary to determine who really has a better system in place. In

addition, drug addiction and drug-related crimes are major issues in both countries. Studying how each country handles drug abusers provides a telling example that illustrates differences between the two criminal justice systems.

To begin, it is necessary to define the areas and countries that will be studied. The term "Scandinavia" includes the countries of Denmark, Norway, Finland, Iceland, and Sweden (Lappi-Seppälä and Tonry 1). The term "Nordic" is also commonly used and sometimes interchangeably but also includes associated territories including Greenland, the Svalbard Islands, the Faroe Islands, and the Åland Islands. For the purpose of this report, the countries of Denmark, Norway, Finland, Iceland, and Sweden will be the main focus.

The first most basic comparison that must be looked at is population size. In 2013, the population of Denmark was 5.614 million, Norway had a population of 5.084 million, the population of Finland was 5.439 million, Iceland's population was 323,002, and Sweden had a population of 9.593 million (Lappi-Seppälä and Tonry 2). That same year the population of America was 316.5 million. With the Scandinavian populations combined, America's population is a little over twelve times that of Scandinavia. Beyond just numbers, America is a "melting pot" and has one of the most diverse populations in terms of ethnicities, cultures, religions, and races. However, "Scandinavian populations are fairly homogenous" (Lappi-Seppälä and Tonry 2). Homogeneity has a massive effect on how a society functions. This effect trickles over to the criminal justice system. Having a homogenous population greatly reduces racial tensions that often cause crimes in America. Racially motivated crimes that America sees daily, would come as a shock to the Scandinavians as these types of crimes are uncommon.

Considering there is such a large population size difference between America and the Scandinavian countries, it should not come as a shock that America has far more prisoners.

However, America has an extremely high number of inmates compared to other countries. Since 2002, America has had the highest incarceration rate in the world compared to other developed Western countries (Tsai and Scommegna). From 1970, the United States prison population has risen 700%, making it "the world's largest jailer of its own citizens" (Muenster and Trone 6). America makes up 5% of the world population, however, it holds a quarter of the world's prisoners (Muenster and Trone 6). According to the Bureau of Justice Statistics, at the end of 2015, there were an estimated 1.53 million prisoners held in state and federal facilities. There is a striking difference in prison numbers when comparing the U.S. incarceration rates to the Scandinavian incarceration rates. In America, the incarceration rate is around 500 prisoners per 100,000 residents (Tsai and Scommegna). Scandinavia has the world's lowest. The incarceration rates of the Scandinavian countries range from 65 to 75 prisoners per 100,000 citizens (Lappi-Seppälä and Tonry 8). This remarkably low rate is sometimes referred to as "Scandinavian exceptionalism" according to Kolind et al. In 2013, the total prison population of Sweden was around 6,000 inmates. That is about half the population of Rikers Island jail which has an estimated inmate population of 10,000 (Carson and Anderson). Just one jail in America could house the entire Swedish prison population almost two times over. The diversity of America's population is also very clearly over represented in prison. "Today one in three African-American men has a chance of being sentenced to a prison term of at least a year in his lifetime" (Muenster and Trone 6). Currently, the rate for African-American children to have a parent in prison is 11.4% (Muenster and Trone 6).

High incarceration rates have always been common in America, so it is thought of as the norm, but compared to other similarly developed countries, it is far from normal. American relies heavily on incarceration as a response to crime. Through the last quarter of the 20<sup>th</sup> century, the

incarceration rate began to sky rocket. In 2007, 756 people were incarcerated per 100,000 residents (Lappi-Seppälä and Tonry 9). This exceptionally high number of inmates verifies that the American criminal justice system can be described in one word: punitive. It seems the majority of American citizens and lawmakers are solely focused on locking up criminals for the longest time possible. The American criminal justice system often uses minimum mandatory sentences which can lock up criminals for a predetermined, specified number of years regardless of their behavior and progress while incarcerated. There are also punishments commonly known as "three strikes" laws which requires criminals to immediately be locked up after their third crime regardless of the severity of the crime. America also utilizes life sentences without parole. Currently, there are 45 federal statutes in which a life sentence is considered the minimum penalty (Schmitt and Konfrst 1). In 2013, federally imposed life sentences were most commonly used for drug trafficking crimes. These cases "accounted for 41.8% of all life imprisonment sentences that year" (Schmitt and Konfrst 4). It is also important to consider America is the only developed Western country that still uses the death penalty. This further supports the harshness of the American system. The bottom line is incarceration is the preferred punishment in America, and the laws and policies in place make it simple and easy to give out severe and sweeping sentences.

For years, laws have been implemented that have only increased the number of people incarcerated. Beginning in the 1980s, laws were created that led to a huge spike in imprisonment. In 1984, the Comprehensive Crime Control Act was created and spurred the way for harsh federal sentencing guidelines. "Essentially this required long sentences for a host of crimes regardless of mitigating factors" (Muenster and Trone 13). In 1994, the Violent Crime Control and Law Enforcement Act "provided financial incentives for states to expand police

departments, pass tough-on-crime sentencing laws, and build prisons" (Muenster and Trone 13). "Truth in sentencing" reforms began which focused on guaranteeing offenders spent most of their time behind bars. Aggressive prosecution has been the catalyst in sending huge volumes of people to jail for minor crimes. For example, this massive spike in incarceration can be easily seen as the number of drug crimes increased substantially as American legislators vowed to win the "war on drugs."

On the contrary, Scandinavia's criminal justice systems are anything but punitive. In general, compared to the United States, the "Scandinavian criminal justice systems are and long have been humane" (Lappi-Seppälä and Tonry viii). Punishments are much less severe so prisons are small as they are needed less often. Residents of Nordic countries have much less punitive views and are "the least fearful about crime" according to recent studies (Lappi-Seppälä and Tonry 7). Crime rates, especially homicide rates, are some of the lowest in the Western World (Kivivuori and Lehti). The number of drug crimes is significantly less as the Nordics prefer to treat abusers rather than imprison them. "In 2011, the Nordic region had the lowest imprisonment rates in Europe" (Lappi-Seppälä and Tonry 8). Scholars note that "the differences in imprisonment rates cannot be explained by differences in crime" (Lappi-Seppälä and Tonry 8). The types of crimes committed are the same but occur much less frequently.

What societal aspects lead to such low crime rates and low imprisonment rates? Some scholars point to the fact that the Nordic countries are welfare states and are some of the strongest and most efficient in the world (Høigård 265). These countries normally top international standings of indicators of a good society, such as economic productivity and income equality (Høigård 265). It is believed that "penal severity is closely associated with a high level of social trust and political legitimacy," and both can be found in the strong welfare

states of the Nordic countries (Lappi-Seppälä and Tonry 8). The Nordics wholeheartedly believe everyone should have an equal opportunity at succeeding in life. This desire is evident in their laws, especially their criminal justice policies. How will locking up people allow them to live a meaningful and prosperous life? To answer this, these "welfare states sustain less repressive policies by providing workable alternatives to imprisonment" (Lappi-Seppälä and Tonry 8).

In addition to being welfare states, another influential and prominent societal idea that affects the Scandinavian criminal justice systems is a major focus on human rights which has a notable impact on punishments. Because of this emphasis on human rights, all laws relating to punishment of offenders must be humane. According to the United Nations of Human Rights, "human rights are rights inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is entitled to human rights without discrimination" ("What Are Human Rights"). Protecting an individual's well-being, regardless of his or her criminal status, is essential in the Nordic societies. The European Court of Human Rights works to "restrain the urge to punish harshly" and limits the power of politicians to deliver such sanctions (Muenster and Trone 20). These courts defend the basic dignity and rights of offenders even if the public demands harsher punishments (Muenster and Trone 20). When imprisonment is necessary, the court pays utmost attention to the ultimate goal of imprisonment which is the "eventual reentry and integration into society" (Muenster and Trone 21). Because of this objective, Scandinavian prison conditions are rather decent and tolerable. Because human rights are especially important to the Scandinavian countries, imprisonment is not the most common form of punishment. More humane and effective alternatives are preferred. Scandinavian sanctions are molded to rehabilitate criminals with the goal of reducing recidivism. In Scandinavia, sentencing procedures and punishments are constructed and established by criminal justice experts, sociologists, and psychologists. This is a meaningful distinction when compared to the U.S. because politicians are not involved in creating punishment guidelines.

Research shows imprisonment is not the most conducive punishment to helping criminals change their behavior to becoming upstanding citizens. Therefore, Scandinavia most often uses alternative and community sanctions such as formal warnings, community service, treatment, and fines (Von Hofer). Scandinavia makes very good use of their alternative sanctions compared to the U.S. Fines are the most common punishment. They use "day fines" which are courtimposed fines for a specific number of days. "However, the fine amount always relates to the seriousness of the crime but more importantly relates to the offender's income and means" (Lappi-Seppälä and Tonry 18). Some punishments may be used in combinations. For example, a criminal may be given a very short prison stay but is also required to go to treatment or do community service. Mediation is also commonly used (Lappi-Seppälä and Tonry 20). If a settlement is reached between the accused and accuser, no one will be prosecuted. Prison is only used for the most serious offenses which is contrary to America whose citizens rely extensively on prison regardless of the severity of the crime. The death penalty has been abolished in all Nordic countries, so the longest possible prison sentence is "life." That really means a prison term of about 15 years. In Norway, a "life" sentence is 21 years (Von Hofer 49). Almost all that are sentenced to prison will be released after completing just half or two-thirds of their time. Scandinavian countries use open prisons, a concept foreign to Americans. Open prisons hold "between 20% and 40% of prisoners" (Lappi-Seppälä and Tonry 18). Open prisons have no walls and no guards. It is up to the prisoner to stay on site and be accountable for his or her actions. Prisoners must behave themselves if they want to be released. With this high level of

freedom, it would be very easy for one to run away. However, that very rarely happens. There is high level of trust between offenders and law enforcement, and if punishment is successfully completed without issue, release back into society is swift and guaranteed.

With regard to human rights, Scandinavia places a large focus on a youth's well-being. People younger than 15 cannot be criminally prosecuted. However, "young offenders above the age of criminal responsibility are dealt with in adult courts" but under guidelines that insist upon alleviated punishments (Lappi-Seppälä and Tonry 19). Nordic countries have legal constraints that do not allow custodial sentences to be a possible punishment for young people (Lappi-Seppälä 199). Prison is never the best option for an individual to grow and mature and change for the better so they do not imprison youth, unless for an exceptional reason (Lappi-Seppälä 224). According to Lappi-Seppälä, a professor at the University of Helsinki, all Nordic youth prisons were abolished in the 1970s (220). In the year 2016, there were almost 5,500 juveniles in an adult jail or prison on any given day in the U.S (Campaign for Youth Justice). While in custody, most youth are refused the proper "educational and rehabilitative services" that are pertinent to their development. In addition, there are around 54,000 juvenile offenders a day living in youth residential facilities such as detention centers (Campaign for Youth Justice). Almost 21% of these detention centers are over capacity which limits how well a youth is treated (Campaign for Youth Justice). In Lappi-Seppälä's article "Nordic Youth Justice," Scandinavian alternatives to prison for youth are explained. The most common program is called "youth care" which consists of working together with the parents, mentors, and therapists to change behavior and often combined with community service. This treatment of youth offenders is quite opposite of America's dealings with youth.

After examining characteristics of the Scandinavian societies, it is evident the U.S. strongly differs. The U.S. is not a strong welfare state whatsoever. In the United States, welfare policies have a negative connotation. Because criminal justice laws and punishments are decided by politicians who often have little to no experience in the field, the initial, hasty response by lawmakers is to increase time in prison for criminals. Although human rights apply to everyone, America is not nearly as focused on protecting offenders and their rights and basic needs as the Nordic countries are. If human rights were stressed as much as they are in Scandinavia, perhaps less American criminals would be behind bars, including youth offenders.

Although imprisonment is not the first choice for the Nordic people, the prisons in Scandinavia are known to be the most humane in the world. Halden Prison, a closed prison located in Norway, is dramatically different than that of an American prison. From personal experience touring Halden, it is quite evident that America treats its prisoners like animals, whereas Halden treats their offenders as human beings. They focus on helping prisoners become productive, high functioning citizens. In Scandinavia, there is no life sentence, so they are well aware everyone will be released back into society at some point. Knowing this, staff are encouraged to help prisoners in any way possible so they can thrive in the free world. It is not about punishing offenders but rather teaching them how to live a crime free life once released.

Halden officials do their best to make life inside Halden resemble real society (Kolind et al. 13). Prisoners live in a communal setting. They have flat screen TVs in their room along with a desk, mini-fridge, their own personal toilet and shower, and the windows are unbarred and can be opened. They are given a daily allowance to allow them to buy food and other personal items. While the prison provides high quality food for every meal, prisoners are encouraged to cook their own meals in their group kitchens. They have access to knives, although this has never been

an issue. Guards here are not armed. Guards are trained to talk out issues rather than be physically confrontational. A good rapport between guards and inmates is preferred. Inmates have access to many activities including a recreational center where inmates can play sports, exercise, climb a rock wall, and even enjoy concerts. Spending time outside is a part of the daily routine as prison officials know nature is beneficial to a person's mind and mental health. While in prison, inmates are taught a skill whether it be cooking, carpentry, metalworking, mechanic work, pottery making, or learning how to run a restaurant. Halden has its own state of the art kitchen and its own restaurant which is maintained completely by the inmates. There is a radio station for the inmates to run as well as a recording studio. The prison is equipped with a large library full of books, DVDs, and CDs. Education is very valuable for everyone in society including those in prison. Topnotch teachers are provided so the inmates can keep up in school. Staying well connected with family and friends is vital to one's happiness. Prisoners are given two hour sessions twice a week to spend with visitors. This is completely private as a guard does not sit with them. There is a designated house within the prison that is used for 24 hour overnight visits. The prison even provides condoms should those be needed. There are play rooms as well in which the prisoners can spend time with their children as a way to stay involved in their child's life. This prison is considered a maximum security prison and houses the most dangerous criminals which includes murderers and rapists. Yet by the outstanding conditions of Halden, an American would never expect such serious offenders to reside here. One third of the prison population are drug offenders. Drug offenders are offered counseling and treatment as it is important to the Scandinavians that when the drug offender is released, he is fully capable of staying away from drugs and maintaining a healthy life. Prison officials are always mindful of the fact that inmates will be released so their constant focus is providing care, services, and

programs to ensure they will be good citizens. At Halden, the mere deprivation of freedom is enough punishment in itself so efforts are made to help inmates have as much of an enjoyable experience as possible.

American prison conditions are awful compared to Scandinavian prisons. Overcrowding, the lack of treatment for drug and mental illness, the lack of learning a trade or a skill, and the lack of contact with family leads to a harsh and dismal life in prison (Muenster and Trone 7). Time spent outside, working on hobbies, and schooling are minimal. American prisons do not work nearly as hard as Scandinavian prisons to ensure that inmates will be able to live a crime free life on their own and not recidivate once released. American prisons are just thick concrete walls surrounded by barbed wired fences that create a cruel and unforgiving environment that does nothing but diminish an inmate's quality of life. Supermax and high security prisons conditions are so bad, there is no incentive to behave.

Punitive punishments have been most exemplified during America's "war on drugs." Essentially, this "war" just increased prison time for all drug offenses no matter how menial. Scandinavia does imprison those accused of drug trafficking; however, policy makers and law enforcement are open to new, liberal ideas to help drug abusers without locking them up. While there is often treatment in prison for helping addicts no longer depend on drugs, Denmark has started a new kind of "treatment" that allows drug users to continue using but in a safe and secure environment that also provides fundamental resources. Access to basic needs such as a toilet and medical help are rights everyone is entitled to including addicts (Boffey). This new treatment focuses on heroin addicts as they are the addicts in need of the most help. There are many names for this new treatment such as fix rooms, drug consumption rooms, and SIFs which stands for safe/supervised injection facilities. Harm reduction is the main goal. The idea first

started in 2011 when volunteers in Copenhagen purchased an old ambulance and provided a mobile, safe and secure place to inject. This idea of a "safe room" quickly gained popularity, and the municipality of Copenhagen took over and extended the idea by creating permanent drug consumption rooms (Kuik).

The fix rooms are state funded clinics "that have all shown signs of success" (Wojcik). The main goal of this treatment is to help addicts live "calmer lives that are easier to control" (Wojcik). Technically, the state is the dealer which is a hard concept for some to understand. The state provides high quality heroin for the users. The heroin is prescribed by a doctor, and the dosage is determined based on the user's level of dependence. While in these rooms, a nurse watches over all addicts to ensure they do not overdose. These rooms come equipped with machines that illuminate veins on a user's body to help find a place to shoot up. The process for a user to start utilizing these rooms begins with anonymous registration. The only requirement is the users must have attempted detox treatment before and failed. They simply provide a nickname and their year of birth (Overgaard). The users must show up twice a day so they can be monitored more than once per day. Medical staff on site is not required to force users into treatment (Overgaard). However, if a user reaches out and wants help, then staff can direct them to a treatment facility meant to end their addiction through detox. These rooms are also connected with over 1,000 organizations that will help users find housing and medical care (Overgaard). These rooms greatly reduce the daily stress a user goes through as they no longer have to struggle to get the drug themselves, and street drugs can always be laced with something deadly. Users can come to these rooms knowing they are using clean needles. To the drug users, these rooms are safe havens free from worry of being caught on the street with drugs and free from the disapproving looks from the public (Savage).

These drug consumption rooms are considered a type of "treatment" because addiction is an illness; it is a disease. The state provided heroin is their medicine which allows them to go out in society and be a productive citizen. Many of these users do have jobs that they are able to execute successfully after shooting up. This treatment idea is relatively new so official research is limited. But from the little research that has been done, signs point to success. Success is taking drugs off the street, lowering the number of fatal overdoses, and lowering the number of crimes related to drugs which in turn reduces the number of drug users in prison. The staff that work in the fix rooms often build rapports with the users which has a positive effect on users. The idea of fix rooms has spread to other places such as Germany, the Netherlands, the UK, and Switzerland. This idea has even made its way to America. Seattle, San Francisco, and the state of New Mexico have shown interest in these fix rooms (Overgaard). In 2016, a doctor actually went to Capitol Hill and advocated for this type of treatment. He explained that these treatment rooms reduce government spending related to drug crimes as well as helping addicts' mental and physical health (Nelson). Also, in Copenhagen these rooms have reduced drug-related litter "tenfold over the past few years," and there has been a decrease in street fights between addicts and burglaries around the local area (Savage). There are critics who believe these rooms promote and condone criminal activity, while also keeping an addict consumed in drug activity. Initially, it does sound odd: "fighting heroin abuse by giving addicts an open-ended, high-quality and free supply of the drug" (Nelson). More time and more research is needed to determine if the positive effects outweigh the cons.

While studying abroad in Scandinavia this summer, I was fortunate enough to visit one of the fix rooms in Copenhagen. The facility was very clean and run by very knowledgeable and respected medical staff. The facility consisted of a room designated for injection with individual stalls for users to relax in. Just a few feet away, a nurse watches over. There is also a café area for users to eat and socialize in. The staff told us police know they cannot fix users. "They need treatment, not punishment" (Overgaard). Police are more concerned with fighting drug dealers and traffickers than they are the drug users. In Copenhagen, abusers in possession will not be criminally prosecuted, but the Nordic police will not ease up on drug traffickers. The single most desired outcome of this treatment is to prevent overdoses and to save someone who has overdosed. By coming to these rooms, addicts receive the correct amount of heroin as well as medical help if someone does overdose. Denmark is "high on the international roster for the number of people who have died from overdoses" as there are 8,000 known heroin users just in the Copenhagen area (Boffey). In just one of these treatment facilities during the year 2013, there were up to 800 injections a day (Overgaard). 135 people overdosed, but not a single one died thanks to the nurses on site. This is a large improvement considering 285 people died from overdosing in 2011 in Denmark (Overgaard). "Criminal justice policies tend to have a moralistic tinge, especially in relation to drug offenses," and the idea of fix rooms are a perfect example of trying to "treat" rather than imprison addicts (Lappi-Seppälä and Tonry 2).

By examining key differences between the American and the Scandinavian societies and their criminal justice systems, it is apparent that America could learn a number of things from the Nordic countries. However, America will never be a strong welfare state like the Nordic countries, nor will American put such an emphasis on human rights anytime soon. Americans have had a punitive mindset for decades now so huge ideological changes will be necessary if America truly wants a substantially lower number of inmates behind bars. It would also be beneficial if criminal justice experts made sentencing laws rather than politicians who know very little about criminological theories and how alternative punishments can be used effectively.

Drug addiction related crimes are treated far differently in Scandinavia through the use of drug consumption rooms. Although research is relatively new for these safe rooms, it seems as though they are beneficial to both addicts and society. Scandinavia will continue to be a guiding role model for America in many ways, especially in how they operate their criminal justice system.

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