



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

CRIMINAL LAW AND PROCEDURE , MURDER AND MAYHEM

## Norway's sane insanity law

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It hardly takes a brain surgeon -- or rather a specialist in forensic psychiatry -- to recognize that Norwegian mass murderer Anders Behring Breivik is profoundly mentally ill. His writings, including a 1,500 page manifesto, and his explanations for why he needed to slaughter 77 of his countrymen leave little doubt as to his psychiatric impairment.

The issue of legal insanity is somewhat different, however, from a medical definition of mental illness. Also different are the insanity law and procedures used in Norway as compared to the United States.

According to Norwegian law, a psychotic state of mind at the time of the crime can mitigate criminal responsibility. And, based on a detailed assessment of the accused, including more than a dozen face-to-face interviews with the man, two court-appointed forensic experts have concluded that Breivik was suffering from such paranoid delusions of a psychotic nature that would constitute legal insanity.

If this case were to have been deliberated in our country, the accused murderer's psychiatric condition would likely not absolve him of criminal responsibility. In most American jurisdictions, the determining factor is not the extent of mental illness, but much more narrowly whether the accused can discern right from wrong and also conform his or her behavior to the requirements of the law. Arguably, Norway has a more enlightened approach to legal insanity.

In Norway, moreover, the determination of legal insanity is left to the experts -- to its Forensic Board of Medicine. Medical professionals make the critical determination as to whether the accused should be sent to prison as punishment or to a psychiatric facility for treatment. In the United States, this choice is typically left to a jury of ordinary citizens who are untrained in such complex matters and who usually approach the task with a healthy dose of skepticism. The average Joe or Josephine suspects that the defendant is exploiting the insanity plea in an attempt to get away with murder or some other heinous offense.

Of course, a finding of legal insanity is hardly a ticket to freedom. In this regard, Norway and the United States are in sync. Defendants who escape a murder conviction with a successful insanity plea typically spend many long years, and potentially life, locked away in a state psychiatric facility. As for Breivik, like most of his American counterparts of criminality, there is little hope for release no matter where he serves his time.