NEW JERSEY CRIMINAL LAWS: UTILITARIANISM FOR DINNER, DESERT FOR DESSERT

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I. INTRODUCTION

Imagine your favorite dish; think of its ingredients. Consider how each ingredient has a unique role, all in the name of the finished product. Next, consider the consequences of adjusting the quantity of each ingredient. Adding an extra pinch of salt may not do much, but what if the adjustment is to triple the red pepper flakes? The right combination of ingredients creates a hybrid of culinary cornerstones such as salt, fat, and acid, but the dish's ultimate success hinges on one thing: balance. Throwing your dish out of balance could lead to an inedible product, and an insatiable hunger could impact areas well outside your kitchen. The criminal justice system is like a successful dish: competing ingredients are combined to pursue a balanced product. The main difference from eating your favorite dish, however, is that over two million people are seated at this table. As of 2019, "[t]he American criminal justice system holds almost 2.3 million people in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S."[1] In New Jersey alone, there are 19,212 individuals incarcerated in the prison system.[2] Of those 19,212 incarcerated individuals, 14,660 are incarcerated under mandatory minimum sentences.[3] This mandatory minimum sentencing in New Jersey is implemented, in part, by a specific piece of criminal legislation: the New Jersey No Early Release Act ("NERA").

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[1] *Mass Incarceration: The Whole Pie 2019*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/reports/pie2020.html (last visited Aug. 29, 2020).

[2] *Offender Statistics*, STATE OF NEW JERSEY DEP'T OF CORRECTIONS, https://www.state.nj.us/corrections/pdf/offender_statistics/2019/Entire%20Report%20-%20Offender%20Characteristics%20Report.pdf (last visited Aug. 29, 2020).

[3] *Id.*

This Comment will dive into various stages of the New Jersey criminal justice system, with a focus on the theoretical justifications for punishment. Part II will provide an in-depth review of the common justifications for punishment. Part III will examine specific aspects of the New Jersey criminal justice system and illustrate how these aspects evince a hybrid scheme with distinct retributivist qualities, though still skews toward the utilitarian end of the spectrum. Part IV will discuss NERA's framework and impact in New Jersey. This Comment argues that NERA's potentially overly retributive structure creates an inconsistency in the New Jersey criminal justice system. This inconsistency arises because other key areas of the system (such as parole and expungement) create a hybrid scheme that considers culpability and blameworthiness while still emphasizing rehabilitative goals that increase public safety. Thus, the overarching conclusion is that NERA's lack of utilitarian values may hinder the overall maximization of public safety in New Jersey. Accordingly, Part V will note potential changes to NERA, and Part VI will conclude.

Before the discussion proceeds, however, it should be noted that analysis of any area of criminal law is a sensitive process. Assessing whether punishment practices are efficient and acceptable does not make light of crime or provide offenders with any special treatment. Rather, taking a step back and assessing how a system approaches punishment may lead to a more productive equal justice system. Judge Posner of the Seventh Circuit has noted:

> [W]e should have a realistic conception of the composition of the prison and jail population before deciding that they are a scum entitled to nothing better than what a vengeful populace and a resource-starved penal system choose to give them. We must not exaggerate the distance between "us," the lawful ones, the respectable ones, and the prison and jail population; for such exaggeration will make it too easy for us to deny that population the rudiments of humane consideration.[4]

II. PUNISHMENT THEORY

Punishment theory uses moral and societal considerations to justify the imposition of punishments, such as imprisonment. The primary justifications of punishment under this theory are retributivism and utilitarianism.[5] Briefly stated, retributivist justifications are that (1)

[4] Johnson v. Phelan, 69 F.3d 144, 152 (7th Cir. 1995) (Posner, C.J., concurring and dissenting).

[5] It should be noted here that both justifications contain sub-approaches, meaning that painting either justification with a broad brush is not advised. This discussion will

punishment is justified because people deserve it; and (2) the purpose of punishment is to give an offender what he deserves (hence the phrase "just deserts").[6] Under the utilitarian approach, also referred to as "consequentialist," or "instrumentalist," punishment is justified by the useful purposes that it serves.[7] These justifications, along with their strengths and weaknesses, will be explained further below.

A. *What is Punishment?*

Though one can easily identify incarceration as punishment, other side effects of incarceration (such as a lasting criminal record after release) may also be punishment.[8] A prominent commentator on aspects of punishment, Kent Greenawalt, simplified the notion of punishment into six features:

> First, "[punishment] is performed by, and directed at, agents who are responsible in some sense. God and humans can punish; hurricanes cannot. People, but not faulty television sets, are fit subjects of punishment." Second, it involves "designedly" harmful or unpleasant consequences. Third, the unpleasant consequences *usually* are "preceded by a judgment of condemnation; the subject of punishment is explicitly blamed for committing a wrong." Fourth, it is imposed by one who has authority to do so. Fifth, it is imposed for a breach of some established rule of behavior. Finally, it is imposed on an actual or supposed violator of the rule of behavior.[9]

This framework, however, only shows us whether something is or is not punishment. Exhibiting these features—thus being labeled as "punishment"—is not a sufficient condition for justification; rather, it is a necessary one.

B. *Utilitarian Justification of Punishment*

One important aspect of the utilitarian justification of punishment is the desire for a net societal benefit: "[u]pon the principle of utility, if [punishment] ought at all to be admitted, it ought only to be admitted in

not delve into these sub-approaches, and to avoid mislabeling, the discussion will keep things to a birds-eye view of retributivism and utilitarianism.

[6] KENT GREENAWALT, 3 ENCYCLOPEDIA OF CRIME AND JUSTICE 1282, 1284 (Joshua Dressler ed., 2d ed. 2002).

[7] *Id.*

[8] The conclusion that things such as a criminal record are automatically "punishment" is not universally accepted, and it is the source of many philosophical discussions in the criminal law sphere. Such discussions do not fall within the ambit of this Comment, though.

[9] JOSHUA DRESSLER & STEPHEN P. GARVEY, CRIMINAL LAW CASES AND MATERIALS 35 (7th ed. 2015) (quoting GREENAWALT, *supra* note 6, at 1282–83).

as far as it promises to exclude some greater evil."[10] Thus, the utilitarian goal of this net societal benefit is sought via seven means, described below.

1. General Deterrence

Simply put, if people know they will be punished for an act, and they assess that the punishment outweighs the perceived benefit of that act, they will avoid doing it.[11] General deterrence is not thwarted just because people commit the act that is sought to be curtailed.[12] Out of all seven of the utilitarian means, however, it is general deterrence that seems to value the severity of punishment the most according to Greenawalt:

> With a properly developed penal code, the benefits to be gained from criminal activity would be outweighed by the harms of punishment, even when those harms were discounted by the probability of avoiding detection. Accordingly, the greater the temptation to commit a particular crime and the smaller the chance of detection, the more severe the penalty should be.[13]

Additionally, the sheer knowledge that society punishes a certain action goes a long way to achieve the general deterrence sought by utilitarians; this is true even when a potential actor does not even believe he is likely to be caught.[14]

2. Individual Deterrence

Individual deterrence differs from general deterrence in two ways: (1) the deterrent effect does not present itself until *after* punishment, and (2) the deterrent effect is concentrated solely on punishing the actor rather than affecting the wider population.[15] Like general deterrence, however, the severity of the administered punishment is considered,

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[10] JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 134 (1999).

[11] GREENAWALT, *supra* note 6, at 1286.

[12] *Id.* ("The person who has already committed a crime cannot, of course, be deterred from committing that crime, but his punishment may help deter others.").

[13] *Id.*

[14] *Id.* ("Seeing others punished for certain behavior can create in people a sense of association between punishment and act (sic) that may constrain them even when they are sure they will not get caught. Adults, as well as children, may subconsciously fear punishment even though rationally they are confident it will not occur.").

[15] *Id.* at 1287 ("Adults are more able than small children to draw conclusions from the punishment of others, but having a harm befall oneself is almost always a sharper lesson than seeing the same harm occur to others.").

and an increase in severity is required in some cases, such as those involving repeat offenders.[16]

3. Norm Reinforcement

This is not a strong tenet of utilitarian justification for punishment, but it is certainly present. Simply put, when someone is punished for doing (or not doing) an act, the punishment reinforces our belief that the act is bad and contrary to the normative values that we should possess.[17] "Serious criminal punishment represents society's strong condemnation of what the offender has done, and performs a significant role in moral education."[18]

4. Incapacitation

Incapacitation is likely what most people think of when they envision criminal punishment. But utilitarian justifications are not solely intended to give the individual what he deserves; rather, the incapacitation is implemented to hide the actor away and prevent any further physical contact with the public—i.e., public safety via separation.[19] To note, though, there are two aspects of utilitarian incapacitation that stand apart from what is traditionally thought of as the retributivist "just-deserts" imprisonment. Many utilitarians (1) emphasize "other forms" of risk management within this umbrella of incapacitation, some being probation or parole (with additional obligations such as drug testing) and (2) know that incapacitation may not always be the answer, especially when the actor is replaced in the public under a "next-man-up" type scheme (e.g., the drug dealer's replacement), or when the imprisonment impacts the actor in such a way as to make him *more* dangerous once he is released back into the public.[20] This last point will be expanded upon shortly, as there are a few instances where utilitarians believe the punishment (which, in some cases, maybe imprisonment) is *not* justified.

[16] *Id.* ("To deter an offender from repeating his actions, a penalty should be severe enough to outweigh in his mind the benefits of the crime. For the utilitarian, more severe punishment of repeat offenders is warranted partly because the first penalty has shown itself ineffective . . . .").

[17] GREENAWALT, *supra* note 6, at 1286–87.

[18] *Id.*

[19] *Id.* at 1287.

[20] *Id.*

5. Reform

This specific goal will be heavily emphasized throughout this Comment. The goal of "reform" under the utilitarian framework is to make the actor a better person through punishment, which, in turn, will make him a healthy and productive member of society.[21] Here, the actual punishment is geared toward yielding a more productive, healthy individual. As such, the "punishment" takes the form of education or vocational training.[22] "Thus," Professor Francis T. Cullen says, "the rehabilitative ideal draws its power from its nobility and its rationality—from the promise that compassionate science, rather than vengeful punishment, is the road to reducing crime. Rehabilitation allows us to be a better and safer people . . . ."[23]

6. Vengeance

Vengeance is self-explanatory. It cannot (and should not) be overlooked that there is utilitarian value placed upon the overall notion of vengeance. Though this will look similar to the retributivist justification of punishment, the true justification (or utilitarian argument in support) of vengeance is that it "increase[s] the happiness, or reduce[s] the unhappiness, of those who want the offender punished."[24] Greenawalt points to two other values that vengeance carries within the utilitarian framework: (1) by allowing the victims to enact their vengeance through society's imposition of punishment, it increases their respect for the law; and (2) if society enacts punishment upon the actor, the associated victims will be satiated, in a sense, and it will dissuade them from carrying out their own acts of private self-help.[25] Note, again, these are added layers to the justification that the retributivist camp does not deem as necessary.

7. Community and Victim Restoration

Unlike reform, which focuses on the punished actor, this final justification of punishment focuses on those affected *by* that actor.[26] This aim has gained much traction recently under the term "restorative

[21] *Id.*

[22] *Id.*

[23] Francis T. Cullen, *Rehabilitation: Beyond Nothing Works*, 42 CRIME & JUST. 299, 310 (2013).

[24] GREENAWALT, *supra* note 6, at 1287.

[25] *Id.*

[26] *Id.* at 1287–88.

justice."[27] Restorative justice entails an overall healing process that centers on a level of contriteness exhibited by the actor, which, in turn, is accepted by the victim and/or wider community, leading to forgiveness and repair.[28] While some of the aforementioned means can be tied together with the aim of restoration, Greenawalt points out one specific aim that is replaced or quieted by restoration: vengeance.[29]

C. *Instances in Which Punishment Cannot Be Justified from a Utilitarian Perspective*

Keeping in mind the overarching "net societal good" proposition upon which utilitarian justification for punishment sits, scholars have identified four hurdles that a punishment must overcome before it can enter into the club of justified punishments under utilitarian principles.[30] Jeremy Bentham articulates these hurdles, and, in doing so, he frames them within the context of mischief. "[M]ischief," according to Bentham, is not necessarily solely confined to the virtually innocuous acts committed by children on October 30th; rather, "mischief" is any act that subtracts from societal happiness.[31] Further, Bentham points out that the wrongful act that brings about the punishment—*as well as* the punishment itself—detract from societal happiness; thus, both the punishment and the punished act are, in this regard, mischief.[32] To frame the mischief analysis, therefore, within the "net societal good" goal of utilitarian justification, the implementation of punishment must not leave the overall balance of mischief higher than it would have been if no punishment had been implemented at all.[33] Thus, the four hurdles that would immediately fail the mischief analysis arise when the punishment is (1) groundless, (2) inefficacious, (3) unprofitable, or (4) needless.[34]

Under the first hurdle, punishment is groundless (and, thus, not justifiable) when no mischief has occurred.[35] The most common example of this (it may be the sole example, as it was the only one Bentham articulated) is consent: if there was consent for the actor to

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[27] *Id.* at 1288.

[28] *Id.*

[29] *Id.* ("Restorative measures can also be seen as a means of deflecting the desires of victims and the public for vengeance, and providing a more constructive outlet for such feelings.").

[30] BENTHAM, *supra* note 10, at 134.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 134–38.

[35] *Id.* at 134.

conduct his "wrongful" act, then he has committed no wrong, and there is nothing to punish (no "mischief").[36]

Any risk regarding the second hurdle is usually cleared so long as (1) the violated law in question actually applied to the actor, and (2) the actor actually violated the law.[37] In reality, the only times this hurdle cannot be met will be when issues are triggered related to (1) ex post facto laws; (2) lack of proper notice; (3) an inability to form the requisite mens rea (infancy, intoxication, insanity); (4) additional shortcomings regarding the mens rea (mistake or lack of intent); (5) external influences implicating duress, self-defense, or necessity; and (6) an inability to satisfy the actus reus of the offense (lack of voluntary action).[38]

The "unprofitable" hurdle cannot be met if the imposition of *any* punishment in response to the proscribed act can never result in the net societal good.[39] This specific hurdle (like the prior two) will not play much of a role in this Comment.

Unfortunately, there is not much discussion about the "needless" hurdle, but it is likely to be triggered when analyzing NERA's fit in the current New Jersey criminal justice system. In short, Bentham says that the punishment in question will be needless (and thus not justifiable) "[w]here the purpose of putting an end to the practice may be attained as effectually at a cheaper rate."[40] This reinforces the notion of the net societal good and adds a layer of efficiency: not only do we want to achieve that net societal good through our punishment but we also want to *maximize* that net good.

It is important to always remember that the utilitarian scheme is focused on achieving the greater good end via the punishment mean.[41] Consequently, much of the aims of utilitarian punishment (restoration, reformation, etc.), while applicable to wide swaths of the population, lead to an individualization of the assessment regarding what (and how much) punishment to implement.[42] This leads to "long confinement for

[36] BENTHAM, *supra* note 10, at 134–35.

[37] *See id.* at 135–37.

[38] *Id.*

[39] *Id.* at 137–38.

[40] *Id.* at 138.

[41] GREENAWALT, *supra* note 6, at 1288. ("[T]he acts for which criminal punishment should be authorized are those with respect to which the good consequences of punishment can outweigh the bad; the persons who should be punished are those whom it is useful to punish; and the severity of punishment should be determined not by some abstract notion of deserts but by marginal usefulness.").

[42] *Id.*

those judged irredeemably antisocial, and to rehabilitation and prompt release for those whose character can be positively transformed."[43]

D. *Retributivism*

1. Brief History of Retributivism's Return to Prominence

Though retributivism's popularity and public acceptance have fluctuated over the recent decades, its return to prominence in the mid-to-late 1970s is of particular interest to this discussion because its rise came coupled with a sharp decline in the acceptance of rehabilitative (utilitarian) goals.[44] According to Cullen's research, this decline in the belief of rehabilitation was facilitated by (1) an overall distrust in the system to be *able* to rehabilitate offenders, and (2) negative public feelings associated with the concept of rehabilitating rather than punishing offenders.[45] Regarding distrust in the system, Cullen points to three sub-issues, two of which deserve special note: (1) the adequacy of the prison environment to facilitate rehabilitation, and (2) the ulterior motives of those in charge of "rehabilitation."[46]

Cullen points to intrinsic shortcomings of the prison system as one reason for its perceived inadequacy.[47] Additionally, prison-based emergencies in America during this time—such as the Attica riots of 1971—painted the system as something that did not even resemble one associated with "corrections."[48] To make matters worse for those who championed rehabilitation, the Stanford Prison Experiment[49] seemed to illustrate not only the lack of rehabilitative qualities of prison but also the negative transformative qualities of it.[50] On the ulterior motive

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[43] *Id.*

[44] *See* Cullen, *supra* note 23, at 314 ("By the mid-1970s, it had become common to ask, 'Is rehabilitation dead?'").

[45] *Id.* at 314–18, 324–25.

[46] *Id.* at 317–19.

[47] *Id.* at 317 ("Custodial goals [in prisons]—the need to maintain order and to prevent escapes—would always trump the therapeutic. Those in charge might give lip service to rehabilitation, but their jobs hinged on keeping prisons quiet, not curing offenders.").

[48] *Id.*

[49] The Stanford Prison Experiment was a psychological study conducted in 1973. What started as a seemingly innocuous study of the power dynamic between the student guards and prisoners turned abusive and raised significant ethical concerns about the propriety of the entire study. For more information on the Stanford Prison Experiment, see Saul McLeod, *The Stanford Prison Experiment*, SIMPLY PSYCHOL. (last updated 2020), https://www.simplypsychology.org/zimbardo.html.

[50] Cullen, *supra* note 23, at 317–18 (quoting Philip G. Zimbardo et al., *A Pirandellian Prison: The Mind Is a Formidable Jailer*, N.Y. TIMES MAG., Apr. 8, 1973, at 56) ("If this could happen in so short a time, . . . and if it could happen to the 'cream-of-the-crop of

point, Cullen points to a "mirage" of the system: there was no well-oiled machine where judges methodically assessed risk factors and prison officials systematically and carefully guided the offender through the process; instead, malicious, racially prejudicial actions were taken by those in power, and rehabilitation was but a false flag.[51]

The public's negative perception of rehabilitation played a major role in its decline, and that perception stemmed, in part, from public sentiments regarding other supposedly "weak" links in society, such as (1) single mothers (disrespectfully labeled as "welfare queens"[52]) being able to receive benefits without having to join the workforce;[53] (2) a distancing from physical punishment in the schools plus a shift away from traditional teaching curriculum;[54] and (3) a lack of serious punishment of young offenders.[55] These societal judgments led people to believe that rehabilitation was weak on crime: "Judges were placing dangerous predators not in prison but back on the streets, and kindhearted or duped parole boards were being conned into releasing career criminals prematurely."[56] Thus, the shift toward desert-based punishment that was tough on crime swung back in favor of retributivism.

2. Retributivist Justifications for Punishment

As noted earlier, one of the main retributivist justifications for punishment concerns only the culpability of the actor. To quote commentator Michael S. Moore, "[t]he distinctive aspect of retributivism is that the moral desert of an offender is a *sufficient* reason to punish him or her; the principle [that only those who are guilty should be punished] make[s] such moral desert only a *necessary* condition of punishment."[57] Regarding the prospect of these greater goods or additional goals of punishment, Moore says that many retributivists "ha[ve] no room" for them.[58] "That future crime might also be prevented by punishment is a happy surplus for a retributivist, but no part of the

American youth,' then one can only shudder to imagine what society is doing both to the actual guards and prisoners who are [in the real prison system].").

51 *Id.* at 318.

52 *Id.* at 324.

53 *Id.*

54 *Id.*

55 *Id.*

56 Cullen, *supra* note 23, at 324.

57 Michael S. Moore, *The Moral Worth of Retribution*, *in* RESPONSIBILITY, CHARACTER, AND THE EMOTIONS: NEW ESSAYS IN MORAL PSYCHOLOGY 179, 180 (Ferdinand Schoeman ed., 1987); DRESSLER & GARVEY, *supra* note 9, at 42.

58 Moore, *supra* note 57, at 180–81.

justification for punishing."[59] To cement the notion that the actor's culpability and blameworthiness is justification in and of itself, Moore explains that such blameworthiness does not merely *justify* the imposition of punishment; rather, it impresses upon society the *duty* to impose punishment.[60]

Though they do not expressly do away with the traditional justification for punishment, Jeffrie G. Murphy and Jean Hampton view the retributivist justification for punishment from a different perspective: bringing balance back to society.[61] Murphy and Hampton classify illegal wrongdoing as causing a victim to suffer, thus taking something from that victim.[62] The commentators note that "if [the victim] cause[s] the wrongdoer to suffer in proportion to [the victim's] suffering at [the wrongdoer's] hands, [the wrongdoer's] elevation over [the victim] is denied, and moral reality is reaffirmed."[63] At first glance, this may seem to be utilitarian in nature: the punishment is proportional to the suffering, and it is implemented to bring about balance, which may be argued as a net good. This notion is quickly dispatched, however, as Hampton firmly notes:

> [E]ven in a situation where neither the wrongdoer nor society will either listen to or believe the message about the victim's worth which the "punitive defeat" is meant to carry, and where the victim doesn't need to hear (or will not believe) that message in order to allay any personal fears of diminishment, the retributivist will insist on the infliction of punishment insofar as it is a way of "striking a blow for morality" or (to use a phrase of C.S. Lewis's) a way to "plant the flag" of morality.[64]

Thus, it does not matter whether the victim will feel restored—retributivist justifications demand punishment in the face of the wrong, and that, alone, is sufficient.

III. NEW JERSEY PAROLE AND EXPUNGEMENT: A DASH OF RETRIBUTIVISM TO THE UTILITARIAN MEAL

No sources found during the research for this Comment argue that an effective criminal justice system can *only* embody or implement one justification for punishment. Thus, systems that form a hybrid of both

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59 *Id.* at 180.

60 *Id.* at 182.

61 JEFFRIE G. MURPHY & JEAN HAMPTON, FORGIVENESS AND MERCY 124–28, 130 (1988); *see also* DRESSLER & GARVEY, *supra* note 9, at 49–50.

62 MURPHY & HAMPTON, *supra* note 61, at 128–30.

63 *Id.* at 125.

64 *Id.* at 130.

retributivist and utilitarian justifications could maintain a safe and healthy society. This Part illustrates the hybrid nature of two key aspects of the New Jersey criminal system (parole and expungement), showing that a fair balance of retributivist and utilitarian purposes allows for both just punishment and meaningful rehabilitation.

A. *Parole*

Parole's hybrid nature can be seen in a few different ways. For instance, determining whether an individual is entitled to parole turns, in part, on his rehabilitation while incarcerated—an inquiry that has a fairly distinct utilitarian flavor.[65] On the other hand, we see a dash of retributivist principles at play in certain facets of parole, such as the fact that an individual is not *eligible* for parole until a certain point in his incarceration. This Section will evaluate the overarching hybrid nature of parole by examining three statutory provisions in New Jersey: (1) Eligibility;[66] (2) Supervision for Life;[67] and (3) Victim Input.[68]

1. Parole Eligibility

Whether an individual is granted parole turns on a set of primarily utilitarian-geared factors. Whether (and when) the individual is eligible to seek parole *at all*, however, is a horse of a different color; indeed, it seems to be part of the dash of retributivism that gives parole its hybrid flavor. For example, under the parole eligibility provision, if an individual is sentenced to life imprisonment without any mandatory minimum sentence, he is eligible for parole after serving 25 years.[69] Alternatively, if an individual is sentenced to a non-life term without any mandatory minimum sentence, he is eligible for parole after serving one-third of the imposed sentence.[70] A 2002 informational article titled "A Brief Overview of the Parole Process in New Jersey" outlines the many utilitarian factors taken into account by the Parole Board when determining whether an individual is eligible for parole.[71] Employing what appears to be utilitarian-geared considerations, the Parole Board weighs factors, such as (1) the actor's participation in programs while incarcerated, which show "improvement of problems diagnosed at

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65 N.J. STAT. ANN. § 30:4-123.52 (2020).

66 N.J. STAT. ANN. § 30:4-123.51 (2020).

67 § 30:4-123.51b; § 2C:43-6.4.

68 N.J. ADMIN. CODE § 10A:71-3.48 (2020).

69 N.J. STAT. ANN. § 30:4-123.51(b) (2020).

70 *Id.* § 30:4-123.51(a).

71 New Jersey State Parole Board, *A Brief Overview of the Parole Process in New Jersey* 7 (Feb. 2002), https://www.nj.gov/parole/docs/ParoleProcess.pdf.

admission or during incarceration";[72] (2) the actor's employment history and/or education;[73] (3) the actor's family history and current familial relationships;[74] and (4) proof of the actor's change (for better or worse) in his attitude toward others (or even himself).[75] This retributivism-first-utilitarian-second approach allows for culpability to be assessed on the front end of punishment (in determining how long an individual must be incarcerated before becoming eligible for parole), with rehabilitation and reformation picking up the baton after sentencing. This approach appears to incorporate the retributivist principle that those who do wrong should be punished, without sacrificing the ever-growing understanding that individuals can change and redeem themselves to at least become law-abiding members of society.

2. Supervision for Life

Though New Jersey's Supervision for Life provision is relatively simple, it does impose lifetime parole supervision in certain cases.[76] The provision illustrates that a hybrid of retributivist and utilitarian goals can still be achieved without being "weak" on crime. Here, the New Jersey legislature determined that lifetime supervision is *mandatory* in some instances, a consequence that depends on the type of crime of which an individual has been convicted.[77] This seemingly culpability-based (read: retributivist) approach is contrasted with a different provision regarding lifetime supervision that pulls on utilitarian principles:

> A court imposing sentence on a person who has been convicted of endangering the welfare of a child . . . or an attempt to commit either of these offenses shall include . . . a special sentence of parole supervision for life . . . *unless the court finds on the record that the special sentence is not needed to protect the community or deter the defendant from future criminal activity*.[78]

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] N.J. STAT. ANN. § 2C:43-6.4(a) (2020).

[77] *Id.* ("Notwithstanding any provision of law to the contrary, a judge imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault . . . or an attempt to commit any of these offenses *shall* include . . . a special sentence of parole supervision for life.") (emphasis added).

[78] *Id.* (emphasis added).

Under a purely retributivist approach, community protection and deterrence are merely a "happy surplus," rather than an express consideration.[79] Thus, since the above-quoted passage of the lifetime supervision section expressly takes those utilitarian considerations into account, the hybrid nature of New Jersey's parole system is reinforced.

3. Victim Input

One specific piece of parole legislation pertains to the ability of a victim (or nearest relative of the victim in cases of manslaughter or murder) to speak to the impact of the actor's crime. Depending on the circumstances of the parole hearing, the victim's statements may be written or videotaped.[80] The victim's statements may include "(1) [t]he continuing nature and extent of any physical, psychological or emotional harm or trauma suffered; (2) [t]he extent of any loss of earnings or ability to work suffered by the victim; and (3) [t]he continuing effect of the crime upon the victim's family."[81] This provision is another example of the blending of retributivist and utilitarian principles in the New Jersey parole system. On the retributivist side, victim input seems to speak directly to the actor's continuing culpability or blameworthiness. At the same time, however, one can view victim input as triggering the sixth aim of punishment under the utilitarian framework—vengeance—by allowing victims or their relatives to have their day in court. They can feel like they have had a tangible impact on keeping the actor incarcerated, as their input is considered in determining parole eligibility. As noted earlier, this can help dissuade any desire to engage in self-help. Thus, victim input continues to reinforce the hybrid nature of parole in New Jersey.

4. Case Law Discussing the Hybrid Nature of Parole

The Supreme Court of New Jersey expounded upon the principles and goals behind parole in *State v. Black*.[82] There, the *Black* court pointed to the United States Supreme Court's characterization of parole, noting that its purpose is "to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed."[83] The *Black* court noted that parole is "clearly" rehabilitative rather than punitive, and the court even pointed to the fact that the current parole scheme in New Jersey calls for

79 Moore, *supra* note 57, at 180.

80 N.J. ADMIN. CODE § 10A:71-3.48(a) (2020).

81 § 10A:71-3.48(f).

82 State v. Black, 153 N.J. 438, 447–51 (1998).

83 *Id.* at 447 (quoting Morrissey v. Brewer, 408 U.S. 471, 477 (1972)).

a presumption in *favor* of parole and a belief that the punitive aspects of the sentence are complete once eligibility is triggered.[84] This shows the hybrid nature of parole in action, reinforcing the aforementioned retributivism-first-utilitarian-second approach.

Following its discussion of the system's overarching purposes, the *Black* court turned to specific aspects of parole, noting that they, too, are consistent with the rehabilitative (utilitarian) goal of parole. When discussing parole restrictions, the court again pointed to the United States Supreme Court's commentary that restrictions, such as mandatory reporting to parole officers, "are part of the administrative system designed to assist parolees and offer them guidance."[85] The *Black* court concluded that "the restrictions placed on parolees are . . . rehabilitative rather than punitive in purpose."[86]

Within the context of parole revocation (a mechanism that seems punitive and retributivist), the *Black* court determined that notwithstanding an accompanying deterrent component, parole revocation still sits within the overarching rehabilitative purpose of parole.[87] The *Black* court continued to rely upon the *Morrissey* court's characterizations and quoted its interpretation of the process behind revoking parole.[88]

One final parole condition illustrates the blend of retributivist and utilitarian principles within the New Jersey parole system: restitution and reparations. At first glance, this may appear to exhibit *solely* retributivist qualities. How else could the prospect of having to lose money and/or property as a result of your wrongful actions be categorized as anything other than a retributive measure akin to an "eye for an eye?" For the *Trantino*[89] court, showing the hybrid nature of this condition was easy: restitution and reparations assure "rehabilitation of the offender and . . . prevent the recurrence of future criminal conduct."[90] Remember, these explicit goals noted by the *Trantino* court

84 *Id.*

85 *Id.* (quoting *Morrissey*, 408 U.S. at 478).

86 *Id.*

87 *Id.* at 448.

88 *Black*, 153 N.J. at 447–51 (quoting *Morrissey*, 408 U.S. at 479–80) ("The first step in a revocation decision thus involves a wholly retrospective factual decision: whether the parolee has in fact acted in violation of one or more conditions of his parole. Only if it is determined that the parolee did violate the conditions does the second question arise: should the parolee be recommitted to prison or should other steps be taken to protect society and improve chances of rehabilitation? . . . The second question involves the application of expertise by the parole authority in making a prediction as to the ability of the individual to live in society without committing antisocial acts.").

89 In re Trantino, 446 A.2d 104 (N.J. 1982).

90 *Id.* at 111.

are simply a "happy surplus" to many retributivists (thus, this implicates *both* retributivist and utilitarian principles).[91] The *Trantino* court conducted a lengthy analysis of the goals behind restitution within the context of a parole condition, and it interpreted this measure as a tool to ensure the inmate realizes "the enormity of his conduct" and "disgorge[s] the fruits of his offense" to restore those fruits to the victim.[92] The *Trantino* court even determined that requiring restitution to the victim's family members in the case of homicide does not run afoul of the rehabilitative goal to be achieved.[93] Finally, the *Trantino* court expressly advocated for a careful calculation of the specific amount of restitution to be ordered to preserve this hybrid scheme.[94]

B. *Expungement*

Expungement's effect in New Jersey is simple: with only minor exceptions, once an individual's record is expunged, he can proceed with his life as if his arrest/conviction did not happen, effectively extinguishing a large aspect of the collateral consequences associated with that initial arrest/conviction.[95] Of all three facets of New Jersey criminal laws discussed in this Comment, expungement appears to have the least amount of retributivism in its recipe. According to the relevant statutory provisions, and as interpreted in the foundational case of *In re LoBasso*,[96] once a petitioner can show the mechanical aspects of the petition are satisfied (such as a clear record for the prior decade (or five years, if the petitioner falls within a certain statutory provision that is not pertinent to this Comment)), a presumption in favor of expungement arises.[97] This is not a static presumption, however; after the initial presumption takes effect, the burden shifts to the state, which is tasked with satisfying the reviewing court that the "'need for the availability of records' outweighs the 'desirability of having a person freed from any disabilities' associated with the conviction record."[98] The *LoBasso* court noted the policy behind expungement in New Jersey

91 Moore, *supra* note 57, at 180.

92 *Trantino*, 446 A.2d at 109.

93 *Id.* at 110 ("If a crime causes injury not only to the immediate victim but also to others, as is the case with a homicide, there is no reason why payment to suffering third persons will not make the offender appreciate the loss which he has caused as greatly as payment to the victim would.").

94 *Id.* at 111 ("If restitution or reparation is not honed closely to the contours of rehabilitation, there is a danger that it will become nothing more than a weapon for retribution, rather than a useful tool for personal progress and socialization.").

95 *See* N.J. STAT. ANN. § 2C:52-27 (2020).

96 In re LoBasso, 33 A.3d 540 (N.J. Super. Ct. App. Div. 2012).

97 *Id.* at 547–48.

98 *Id.* at 548 (quoting N.J. STAT. ANN. § 2C:52-14(b) (2020)).

as focusing on not only enhancing the enforcement of New Jersey criminal laws but also on aspects of crime prevention, reentry of offenders into society, and promoting employability of former offenders.[99] The express reference to rectitude and disassociation from unlawful activity in the expungement statutes themselves also lends credence to the notion that expungement in New Jersey places a heavier emphasis on utilitarian rather than retributivist objectives.[100]

To effectuate this policy, the *LoBasso* court developed a multi-factor analysis that all reviewing courts should employ when faced with a decision as to whether expungement is outweighed by the public interest in retaining records.[101] Overall, the reviewing court must consider the "conduct and character" of the petitioner, as well as the "nature of the offense" for which he was incarcerated.[102]

In analyzing the conduct and character, the court may consider whether the petitioner has engaged in activities that have reduced the risk that he will re-offend, or, on the other hand, whether the petitioner has *avoided* engaging in activities that would *increase* the risk of re-offending.[103] This consideration can include four sub-considerations: (1) the employment and/or educational status of the petitioner (job training or other education);[104] (2) the petitioner's compliance with legal obligations other than the ones directly related to expungement, such as child support, alimony, and parking tickets;[105] (3) whether the petitioner has maintained community ties or strong familial ties that promote law-abiding tendencies;[106] and (4) whether the petitioner has cut ties with his past criminal cohorts.[107]

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99 *Id.* at 549 (citing GOV. JON S. CORZINE, A STRATEGY FOR SAFE STREETS AND NEIGHBORHOODS, EXECUTIVE Summary 24 (2007)).)

100 *See* N.J. STAT. ANN. § 2C:52-32 (2020) (noting that expungement "shall be construed with the primary objective of providing relief to the reformed offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby persistent violators of the law or those who associate themselves with continuing criminal activity have a regular means of expunging their police and criminal records").

101 In re LoBasso, 33 A.3d at 491–95.

102 *Id.* at 491–93.

103 *Id.* at 550.

104 *Id.*

105 *Id.*

106 *Id.*

107 In re LoBasso, 33 A.3d at 550.

The petitioner's conduct while incarcerated or released on parole or probation will certainly factor into the decision-making process for expungement.[108] Interestingly, but in line with ensuring that the petitioner truly has rehabilitated himself and demonstrated a new path in life, a court "may consider facts related to an arrest that did not lead to a conviction" in between the incident to be potentially expunged and the time of the expungement petition "if supported by cognizable evidence, and the court makes an appropriate finding, after a hearing if necessary."[109] It should be noted that this specifies arrests that did not lead to a conviction because, in the case of expungement, a subsequent conviction would bar the petitioner's ability to expunge his record, as the clean record is one of the mechanical requirements before the balancing test can be reached.

Yet retributivist flavors are not wholly absent from expungement. While reviewing the circumstances surrounding the "nature of the offense," the court may weigh facts "surrounding the grade and definition of the offense, and the facts relating directly to the elements of the offense."[110] This part of the inquiry can also include circumstances surrounding the offense, such as the petitioner's age at the time of the offense or the presence of any "overbearing cohort."[111] Thus, it appears that facts relating to blameworthiness and culpability *do* make it into the pot.

As mentioned above, however, the hybrid nature of expungement skews closer to the utilitarian end. This is illustrated in *LoBasso*, as the court reinforced that the focus is on rehabilitation, noting that even when reviewing the circumstances of the underlying conviction, a court may consider "cognizable evidence that the conviction record actually has impeded the petitioner's efforts to resume a productive, law-abiding life."[112]

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108 *Id.* ("Exemplary performance on probation and early discharge would be a positive factor. On the other hand, a record of probation violations, or an extension of probation, would not.").

109 *Id.*

110 *Id.* at 551 ("Thus, the nature of an eluding offense might include that a petitioner drove at high speed or over a great distance to flee an officer, and the nature of risks presented. The nature of an assault case might include the age of the victim.").

111 *Id.* at 551–52.

112 *Id.* at 552.

IV. NERA: ADDING TOO MUCH RETRIBUTIVIST HEAT TO THE DISH

NERA[113] is a straightforward, mechanical piece of criminal legislation. Simply put, NERA mandates that "[a] court imposing a sentence of incarceration for a crime of the first or second degree enumerated in subsection d. of this section shall fix a minimum term of 85% of the sentence imposed, during which the defendant shall not be eligible for parole."[114] The offenses which fall within the purview of NERA include: (1) murder;[115] (2) Aggravated manslaughter or manslaughter;[116] (3) vehicular homicide;[117] (4) aggravated assault;[118] (5) disarming a law enforcement officer;[119] (6) kidnapping;[120] (7) aggravated sexual assault;[121] (8) sexual assault;[122] (9) robbery;[123] (10) carjacking;[124] (11) aggravated arson;[125] (12) burglary;[126] (13) extortion;[127] (14) "[b]ooby traps in manufacturing or distribution facilities";[128] (15) drug-induced deaths that carry strict liability;[129] (16) terrorism;[130] (17) "[p]roducing or possessing chemical weapons, biological agents or nuclear or radiological devices";[131] (18) first-degree racketeering;[132] (19) firearms trafficking;[133] and (20) "causing or permitting a child to engage in a prohibited sexual act, knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance."[134]

113 N.J. STAT. ANN. § 2C:43-7.2 (2020)
114 *Id.* § 2C:43-7.2(a).
115 *Id.* § 2C:43-7.2(d)(1).
116 *Id.* § 2C:43-7.2(d)(2).
117 *Id.* § 2C:43-7.2(d)(3).
118 *Id.* § 2C:43-7.2(d)(4).
119 N.J. STAT. ANN. § 2C:43-7.2(d)(5) (2020).
120 *Id.* § 2C:43-7.2(d)(6).
121 *Id.* § 2C:43-7.2(d)(7).
122 *Id.* § 2C:43-7.2(d)(8).
123 *Id.* § 2C:43-7.2(d)(9).
124 *Id.* § 2C:43-7.2(d)(10).
125 N.J. STAT. ANN. § 2C:43-7.2(d)(11) (2020).
126 *Id.* § 2C:43-7.2(d)(12).
127 *Id.* § 2C:43-7.2(d)(13).
128 *Id.* § 2C:43-7.2(d)(14).
129 *Id.* § 2C:43-7.2(d)(15).
130 *Id.* § 2C:43-7.2(d)(16).
131 N.J. STAT. ANN. § 2C:43-7.2(d)(17) (2020).
132 *Id.* § 2C:43-7.2(d)(18).
133 *Id.* § 2C:43-7.2(d)(19).
134 *Id.* § 2C:43-7.2(d)(20).

Supreme Court of New Jersey has admitted that legislative history regarding NERA is "scant," but the court has expressed that it is clear that "the purpose of the Act was to 'increase prison time for offenders committing the most serious crimes in society.'"[135] Indeed, the Appellate Division has noted that punishment is the focus of the legislative policy behind NERA.[136] This purpose, when compared to parole and expungement, should not sit right with the utilitarian. There is no balancing to be done, nor are there considerations of rehabilitation or the possibility that the actor could be restored to a meaningful contributor to society. It is true, however, that the acts that trigger the application of NERA are certainly those that society deems to be the most heinous.

Based upon NERA's mainly retributivist makeup, one may question how it fits within the utilitarian framework. If one attempts to justify NERA on utilitarian grounds, one may point to deterrence (both general and specific), but they would likely fall short. In fact, pointing to any of the utilitarian justifications likely raises a problem, due to one potentially fatal shortcoming—the four hurdles.[137] Specifically, the final hurdle—utilitarian justifications—will not be satisfied when the implementation of the punishment is needless and can be implemented at a cheaper rate.[138]

It may be helpful to analyze this problem in dollars, and some slight extrapolation will be in order. According to a 2018 survey of Atlantic County jails, the average per-inmate/per-year incarceration cost was $29,674.[139] Recent statewide figures are not available, but using this figure as the number across all New Jersey counties and multiplying it by the previously mentioned figure of 19,212 incarcerated individuals in New Jersey yields an estimated cost of $570 million statewide. Considering that roughly 76% of incarcerated individuals in the New Jersey prison system are serving mandatory minimum sentences[140] (such as NERA), we can break this $570 million down to show that the (very rough) estimated cost of mandatory minimum programs in New Jersey is $433 million. Though the above-mentioned Atlantic County

135 State v. Thomas, 166 N.J. 560, 569 (2001) (citing The S. Law and Pub. Safety Comm., Statement to S. B. No. 855 (N.J. 1996)).

136 State v. Jules, 784 A.2d 722, 725 (N.J. Super. Ct. App. Div. 2001).

137 *See supra* notes 30–40 and accompanying text.

138 BENTHAM, *supra* note 10, at 137–38.

139 Molly Bilinski, *Cost of Incarceration: South Jersey Jails by the Numbers*, THE PRESS OF ATLANTIC CITY (Sept. 5, 2018), https://www.pressofatlanticcity.com/news/cost-of-incarceration-south-jersey-jails-by-the-numbers/article_7ca40896-d67f-5b2f-9a06-a75e654aa2dc.html.

140 *Offender Statistics*, *supra* note 2.

survey was conducted in 2012 and noted that some data points could not be calculated at the time, a comparison between the economic costs of restorative justice (which, as noted above, serves utilitarian goals) and the traditional system yielded a finding that restorative justice is a more cost-efficient approach to punishment.[141] If one subscribes to the utilitarian principle stated above that a less costly avenue automatically renders a given punishment unjustifiable, graduate student Jillian M. Furman's study seems to point in a direction that would render traditional mandatory minimum sentences (like NERA) potentially unjustifiable.[142]

Perhaps the best way to illustrate the negative impact of NERA's heavy retributivist presence is to show how NERA frustrates the hybrid objectives of other legislation, namely parole. The Appellate Division dealt with this issue in *State v. Webster*.[143] There, the court addressed the fact that the mandatory minimum sentence imposed by NERA impacts an incarcerated individual's ability to accumulate "front end" work credits to lessen his sentence and be up for parole early:

> The Parole Board interprets NERA to preclude the application of commutation and work credits to the "front end" of a sentence subject to NERA so as to lessen the period of parole ineligibility, and instead recognizes those credits as applicable only to the remaining base term or "back end" of a sentence. As the result of the operation of statutory sentence maximums, which effectively require a period of custody that is less than the custodial term stated by the sentencing court, the credits thus *become of little or no substantive use to an inmate*, since the end of the period of parole ineligibility imposed under NERA will usually be coterminous with the maximum sentence pursuant to statute.[144]

This effectively means that an individual's ability to reform himself and accrue work credits while incarcerated ends up having no impact on his overall sentence. In a world where incentives often bring about action, this scheme acts as an empty offer, forcing inmates to serve as much of a sentence as they would have had they accrued *no* work

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141 Jillian M. Furman, *An Economic Analysis of Restorative Justice*, THE UNIV. OF MASS. BOSTON 1, 67, 73 (Aug. 2012) (determining that restorative justice, from an economic perspective, is "nearly six times more cost-effective that traditional criminal justice methods").

142 The utility of the Cape May example may not be very strong. The author of this Comment does not purport to be a statistics expert, and he recognizes the shortcomings of using one county's prison statistics in estimating the cost of a prison system for an entire state.

143 State v. Webster, 892 A.2d 688 (N.J. Super. Ct. App. Div. 2006).

144 *Id.* at 689 (emphasis added).

credits. This may not *discourage* rehabilitation and reformation, but it certainly does not *encourage* it, effectively leaving the utilitarian side of the hybrid system with one arm tied behind its back.

Finally, if searching for examples of the effects of a heavily retributivist-leaning system, one could point to California in the late 1970s.[145] As Cullen chronicled in his discussion, California had, at one time, been a shining example of an effective prison system—one in which rehabilitation was a focus.[146] Unfortunately, as the societal climate shifted toward hating criminals and perceiving rehabilitation as a weakness, the political process forced officials to drastically swing the California prison system in the opposite direction, even going so far as to declare the goal of its system as one of "punishment and not rehabilitation."[147] The result, according to Cullen, was a system that was "'increasingly stark, depressing, and punitive,' with offenders having 'few genuine opportunities to change their lives.'"[148] The key point to take away here is not that the system was bad (which, according to Cullen and Page, it was), but that once decisionmakers within the state decided to turn toward a more balanced, hybrid system, it proved to be a "daunting challenge."[149] Indeed, as Cullen notes, when a state turns away from rehabilitation and opens the door for all things punitive and retributivist, it lets in things that *damage* a system that values rehabilitation rather than aid it.[150]

V. A MORE BALANCED DIET

The level of insight, knowledge, and overall skill to effectively isolate and implement changes to NERA far surpass what the author of this Comment possesses. But the overarching conclusion remains: should NERA remain in its current form, its heavy retributivist framework puts the efficacy of New Jersey's hybrid scheme in jeopardy. To visualize the author's suggested split between NERA's framework and the framework of the other discussed aspects of New Jersey criminal law, see the following diagram:

145 Cullen, *supra* note 23, at 332.

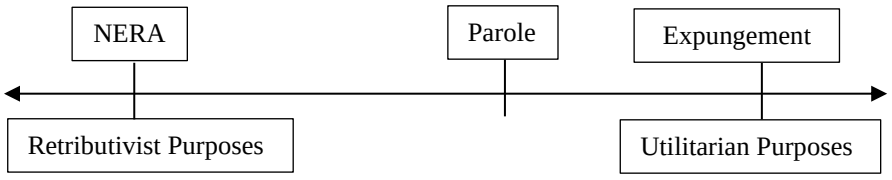
146 *Id.* at 331–32.

147 *Id.* at 332.

148 *Id.* (quoting JOSHUA PAGE, THE TOUGHEST BEAT: POLITICS, PUNISHMENT, AND THE PRISON OFFICERS IN CALIFORNIA 4 (2011)).

149 *Id.* (citing PAGE, *supra* note 148).

150 Cullen, *supra* note 23, at 333 ("[T]he abandonment of rehabilitation created space for the spread of new forms of . . . punitive interventions that, if anything, increased recidivism. . . . Their utter ineffectiveness not only wasted untold millions of dollars but also needlessly endangered public safety.").



If searching for any scintilla of evidence that this suggested split is detrimental and potentially in need of reassessment, the reader need look no further than an official report published by the New Jersey Criminal Sentencing & Disposition Commission ("the Commission") in November of 2019.[151] The Commission noted two principles on which its findings stood: (1) "individuals convicted of crimes should spend no more time in prison than is necessary to achieve the purposes of sentencing";[152] and (2) "to the extent individuals must spend time in prison, that time should be used as productively as possible to encourage rehabilitation and prepare for their return to society."[153] If this Comment has done even *part* of its job, the readers should have bells and whistles going off, alerting them to the fact that the Commission's first principle seems to skew toward the retributivist end of the spectrum, while the second principle skews toward the utilitarian end. Thus, it appears that the Commission desires to bring NERA closer to the hybrid structure of other aspects of the New Jersey criminal system.

The Commission makes various recommendations in its report, but its third touches directly on NERA: the Commission recommends that the mandatory sentence for second-degree robbery and burglary should be reduced from 85% to 50%.[154] The Commission based its decision, in part, on the fact that those offenses (1) often result in no physical injury and (2) are charged with a relatively high frequency.[155] The Commission also noted economic savings associated with these changes.[156] The Commission did not *quantify* the savings, and this Comment does not attempt to do so.[157] But the Commission *did* conclude that the savings can be reinvested back into the system, ideally to be used to identify strategic areas in which public safety can be increased.[158] The

151 N.J. CRIMINAL SENTENCING & DISPOSITION COMM'N, ANNUAL REPORT (2019) [hereinafter COMMISSION REPORT].

152 *Id.* at 2.

153 *Id.*

154 *Id.* at 23–24.

155 *Id.* at 24.

156 *Id.* at 33.

157 This Comment has already engaged in enough speculative statistics in Part IV.

158 COMMISSION REPORT, *supra* note 151, at 33.

Commission's report was just one small step in the direction of bringing NERA toward a more hybrid status, but achieving a balanced diet takes time.

VI. CONCLUSION

New Jersey lawmakers should view the current version of NERA through the lens of punishment theory. By placing more emphasis on the hybrid scheme that our current system seems to embody, potential future NERA alterations could bring this piece of legislation more in line with the other discussed aspects of the New Jersey criminal system. Not only would this approach make our state criminal justice system more consistent, but it could also lead to an overall healthier society. This most certainly does *not* advocate for an outright repeal of NERA or an approach that rewards the type of offenders that would normally fall within the purview of NERA; rather, it aims to make sure those individuals are held accountable with an appropriate level of force while making sure they are given the opportunity to reform themselves and benefit society.