

Defining Fair Punishment: Cultural, Historical and Philosophical Influences on Capital Punishment

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Abstract

This paper examines how cultural, historical and philosophical influences shape societal definitions of fairness in relation to capital punishment. It first considers retributive, consequentialist, rehabilitative and human-rights approaches to punishment before comparatively examining Singapore, the Philippines and Norway. The analysis finds that differences in capital punishment cannot be explained solely through opposing positions of retention and abolition. Singapore demonstrates how collective protection and deterrence can remain central to a retentionist conception of fairness while being moderated by proportionality and conditional public attitudes. The Philippines illustrates how historical change, religious and civil-society influences and concerns surrounding judicial reliability can shift the boundaries of acceptable punishment over time. Norway demonstrates an abolitionist approach emphasizing human dignity, proportionality and rehabilitation while continuing to permit extensive restrictions on liberty for public protection. Overall, the comparison finds that societal definitions of fair punishment are neither uniform nor historically fixed, but reflect changing priorities among competing principles of justice.

Keywords: Capital punishment; fairness; punishment theory; comparative criminal justice; human rights

Introduction

All legal systems are meant to protect their citizens, respond to crime, and maintain social order. However, each legal system carries out these duties in a different way. Fairness determines punishment, victims' rights, and the state's responsibility in legal systems. Capital punishment, often known as the death penalty, is a controversial legal process where a person is put to death for a crime they have committed (Merriam-Webster, 2019). In countries such as Singapore, it remains active and in use, while others such as the Philippines have completely abolished the practice for its "inhumanity". The contrast in these legal approaches provides an opportunity to explore how societies interpret fairness in different ways.

Fairness, while used as a universal word, can be interpreted differently depending on societal ideals. Fairness is often seen as the right way to treat people, aiming to be impartial (Walters, 2012). While international human rights frameworks establish principles governing the use of capital punishment, societies continue to disagree over what entails fair punishment and how competing objectives, such as public protection, proportionality and individual rights, should be prioritized. Consequently, countries faced with similar crimes often reach different conclusions about capital punishment's use morally and legally. This raises an important question about the factors that shape societal understandings of fairness and why legal systems arrive at different outcomes despite pursuing the same objective of justice. Accordingly, this paper aims to answer the following question: **How do cultural, historical and philosophical influences shape different societal definitions of fairness, with particular reference to capital punishment?**

This paper argues that differences in the way societies define fairness are shaped by their historical development, cultural influences and dominant philosophies of justice rather than by universal legal principles. By examining theories including retributive justice, restorative justice and utilitarian approaches, alongside comparative case studies of countries with differing positions on capital punishment, the paper will demonstrate that legal responses to serious crime reflect broader societal priorities and beliefs about justice.

Theoretical Frameworks of Fairness and Punishment

In understanding why societies approach capital punishment differently, it is necessary to examine the philosophical principles that underlie their conceptions of justice. Theories of punishment offer competing interpretations of fairness, differing mainly in whether punishment should reflect the moral responsibility of an offender, serve broader societal interests or prioritize rehabilitation and individual rights.

One such approach is retributive justice. According to the Stanford Encyclopedia of Philosophy, moral desert, proportionality and responsibility are identified as central principles of retribution (Walen, 2014). Under this framework, punishment is justified principally because an offender is deserving of it rather than because it produces desirable consequences for society. In doing so, retributive justice interprets fairness primarily through the relationship between wrongdoing and deserved punishment. Therefore, it differs from approaches that evaluate punishment principally according to its ability to prevent future offenses. With regard to capital punishment, while some retributive arguments defend execution for particularly serious crimes, the theory does not establish a universally agreed threshold at which an offense deserves death. As a result, disagreement over proportionality becomes central to debates surrounding capital punishment. So, while retributivism provides an important philosophical framework, institutional and historical differences may influence the manner in which societies

determine which punishments are proportionate to particular offenses (Whitman, 2005).

Another prominent approach is utilitarianism, a form of consequentialism that evaluates punishment based on its anticipated social benefits. Contrary to retributivism, its primary concern is not whether punishment is deserved in itself but more so whether it produces beneficial consequences such as deterrence, public protection and crime prevention (Duff & Hoskins, 2021). A punishment such as the death penalty may therefore be defended on utilitarian grounds when it is expected to protect society even where its severity raises competing ethical concerns. However, the empirical evidence supporting deterrence-based justifications for capital punishment remains inconclusive. For instance, a 2012 review by the National Research Council (2012) concluded that existing research did not establish whether the death penalty increases, decreases or has no effect on homicide rates. Moreover, a consequentialist defense of capital punishment must consider not only whether executions deter crime but also whether less severe alternatives could achieve comparable results.

Restorative justice and rehabilitation introduce alternative considerations to retributive and utilitarian approaches in determining the fairness of punishment. As per the United Nations Office on Drugs and Crime (2020), restorative justice places emphasis on repairing the harm caused by crime through meaningful participation by offenders, victims and affected communities alongside offender accountability. Meanwhile, rehabilitation focuses on reducing future offending by supporting behavioral change and reintegration (United Nations Office on Drugs and Crime, 2018). These approaches introduce an important consideration in the debate regarding capital punishment, as execution permanently eliminates the possibility of rehabilitation and reintegration. As a result, fairness may extend beyond the severity and deterrent effects of punishment to include the possibility of reform and the needs of those affected by crime.

These philosophical approaches establish different objectives of punishment, but the international human rights frameworks introduce legal and normative limits on the extent to which states can pursue them. The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) (1989) establishes an international treaty framework focused on abolishing capital punishment. Additionally, the UN Human Rights Committee's General Comment No.36 (2019) interprets the ICCPR's restriction of capital punishment to the most serious crimes as applying only to offenses of extreme gravity that involve intentional killing, thus excluding drug-related offenses. These standards pose a possible conflict between national approaches to punishment and international human rights principles, particularly when governments justify capital punishment through deterrence or public protection. However, differences in treaty commitments and domestic legal frameworks imply that these international standards are not uniformly incorporated in international legal systems. Therefore, disagreements surrounding capital punishment are not concerned only with the objectives of punishment but also with the extent to which states should be permitted to pursue them.

Case Study I - Singapore

In analyzing nations and their differing approaches to capital punishment, Singapore proves to be an interesting case study, maintaining a strict retentionist stance. For offenses classified by Singapore among its most serious, including intentional murder and trafficking specified quantities of controlled drugs, capital punishment forms part of a broader punitive framework. Importantly, Singapore's conception of punishment has been developed around public security, strict enforcement and crime prevention, making it particularly relevant to the utilitarian framework established in the previous section.

Singapore's Misuse of Drugs Act provides capital penalties for specified drug-trafficking offenses. The system is no longer entirely mandatory in the way that it was before 2013. Misuse of Drugs (Amendment) Act 2012 (Singapore Statutes Online, 2025) created limited circumstances in which courts could impose life imprisonment instead, including for qualifying couriers who provide substantive assistance to the Central Narcotics Bureau. In line with this, government data reported that between January 2013 and February 2022, a total of 104 people whose capital drug convictions remained after appeal/review were found to be couriers, and out of these, 82 successfully received certificates stating that they had provided substantive assistance and could consequently be considered for life imprisonment rather than death (MHA, Singapore, 2026). This is crucial because Singapore's system cannot accurately be characterized simply as applying death automatically to every serious drug offender. The 2012 reform introduced limited differentiation as per an offender's role and assistance to law enforcement. However, at the same time, the nature of that differentiation is revealing. The possibility of avoiding execution can partly depend upon whether the offender contributes to disrupting the trafficking network. Therefore, sentencing is not only connected to the seriousness of the offense and the offender's role but also to the practical consequences of sentencing for wider crime control.

Moving beyond what Singapore does, one of the more important questions is why the state says it does it. The Ministry of Home Affairs describes capital punishment as a component of a broader anti-drug regime involving enforcement, legislation, education, and rehabilitation

(MHA, Singapore, 2023). It has repeatedly been argued by the government that severe penalties help deter traffickers from bringing drugs into Singapore. This reasoning is also evident in government explanations emphasizing the harm trafficking can cause to drug users, families and the wider community. This exhibits a predominantly consequentialist construction of fairness, whereby the punishment is defended not just because the trafficker is deserving of death but because imposing a severe sanction is presented as protecting many other individuals from future harm. Moreover, it also reveals a particular way of balancing competing interests; the offender's right to life is weighted against the state's claimed responsibility to protect potential victims and society.

Further examining the government's position and how closely it corresponds with public attitudes, the 2023 MHA survey of approximately 2,000 Singapore citizens and permanent residents found that 77.4% were in support of using the death penalty for the most serious crimes compared with 73.7% in 2021. With regard to trafficking a significant quantity of drugs, specifically, around 68.7% supported the mandatory death penalty and 75.5% supported either mandatory or discretionary capital punishment (MHA, Singapore, 2023). This can also be compared with independent academic work. A 2016 survey of 1,500 Singaporeans by Chan et al. (2017) found that 72% reported being in favor of the death penalty, although only 9% described themselves as strongly in favor. Interestingly, support became significantly weaker when the respondents were presented with specific cases - only 10% supported imposing death in both of the drug-trafficking scenarios that were presented to them. In fact, one of the most important findings of the survey was the relatively limited knowledge people possessed on the issue: six in ten respondents reported knowing little or nothing about the death penalty. While both bodies of research present considerable general support for capital punishment, they also demonstrate that the apparent strength of that support changes when respondents confront particular factual circumstances. This creates an important distinction between supporting the death penalty in principle and believing that death is the appropriate punishment in an individual case. It also connects strongly back with retributive proportionality because once respondents are given information about culpability and circumstances, their assessment of what an offender is actually deserving of becomes more nuanced. This introduces another limitation; public opinion is clearly relevant when investigating societal conceptions of fairness, but majority support should not be automatically treated as a fully informed or uniform moral consensus. Singapore, therefore, provides evidence of substantial societal acceptance of capital punishment, while simultaneously demonstrating that societal fairness cannot be reduced to a single approval percentage.

Nonetheless, despite Singapore's emphasis on deterrence and collective protection, questions remain regarding the effectiveness and proportionality of capital punishment. An independent analysis conducted by Mai Sato (2023) for Monash University's ELEOS challenges whether the existing Singapore-specific research sufficiently establishes a causal relationship between executions and reduced drug trafficking. This is of particular significance given that deterrence forms an important part of the consequential justification for capital punishment established earlier: if execution is justified through the additional protection it provides to society, then uncertainty surrounding its independent deterrent effect complicates that justification significantly.

Singapore therefore demonstrates a conception of fairness that gives substantial weight to collective protection and deterrence, while continuing to face questions surrounding proportionality, effectiveness and the extent of societal consensus.

Case Study II - The Philippines

Unlike Singapore, the Philippines cannot be described through a historically stable retentionist or abolitionist philosophy. The country constitutionally prohibited capital punishment in 1987, restored it through legislation in 1993 and abolished it again in 2006. Academic scholarship, therefore, characterizes the Philippine death penalty policy as considerably volatile and ambivalent (Johnson & Zimring, 2009).

After the fall of Ferdinand Marcos, the 1987 Constitution was adopted, wherein capital punishment was removed, with the allowance for Congress to restore it in the future for “compelling reasons involving heinous crimes.” It was in 1993 that Congress enacted Republic Act No. 7659 and restored capital punishment amid rising concerns about criminality and crimes in the country. In 2006, Republic Act No. 9346 (Supreme Court E-Library, 2006) prohibited the death penalty again and substituted reclusion perpetua or life imprisonment. This back-and-forth displays how societal or legal definitions of fairness are historically contingent; following an authoritarian period associated with extensive state violence, restrictions on the state's capacity to take life formed part of a wider post-authoritarian emphasis on limiting state power, yet concerns surrounding serious crime subsequently shifted the balance towards public protection and severe punishment, enabling restoration. The 2006 abolition shifted the boundary again.

Furthermore, the Philippines case also shows how cultural and religious institutions can influence which moral principles become prominent in public understandings of punishment. For instance, the Catholic Church has played a historically significant political and civil-society role in the Philippines, including opposition to the Marcos regime and involvement in human-rights initiatives (Cartagenas, 2010). Recent comparative scholarship on abolition recognizes the Catholic Bishops' Conference of the Philippines (CBCP) as a persistent participant in abolitionist resistance and argues that it helped place political pressure on legislators (Strange et al., 2024). Additionally, research on the Philippine human-rights movement also demonstrates how Catholic opponents framed capital punishment around the sanctity of life, including priests explicitly arguing that human life belongs to God and should not be deliberately taken by the state (Chow, 2022). That said, this religious influence did not produce universal opposition to capital punishment.

In abolishing the death penalty in 2006, the case of the Philippines also demonstrates that fairness can concern how reliably punishment is administered rather than only whether an offender deserves a severe sentence. Research by De Ungria and Jose (2020) reports that more than 71% of death penalty convictions reviewed by the Philippine Supreme Court between the years 1993 and 2004 were modified or revoked. Such findings are important because capital punishment is irreversible, and a high rate of alteration on review raises a different fairness problem from the philosophical question of whether certain crimes even deserve death. Even if retributive reasoning proposes that a sufficiently culpable offender may deserve an exceptionally severe punishment, retribution is dependent upon

correctly establishing culpability and imposing the proportional punishment on the correct person. When the system itself demonstrates substantial sentencing or conviction errors alongside problems surrounding forensic investigation, legal representation, evidentiary procedures and socio-economic inequalities among death-row defendants, confidence that death is being imposed where deserved becomes harder to sustain. When the country ultimately abolished capital punishment in 2006, it did not replace punishment with leniency; it replaced it with life imprisonment. The distinction was therefore not simply between punishment and mercy. Rather, abolition introduced a limit on the type of punishment the state could impose where the consequences of judicial errors could not subsequently be corrected. In this sense, the Philippines demonstrates how institutional experience is capable of shaping a society's conception of fair punishment.

The abolition of capital punishment did not, however, establish a permanent societal consensus concerning what constituted fair punishment in the Philippines. During the presidency of Rodrigo Duterte, capital punishment, once again, became a prominent political issue, particularly in relation to illegal drugs. As of 2019, 19 bills seeking its reimposition had been filed in the 18th Congress, out of which 15 included drug trafficking or other drug-related offenses (De Ungria & Jose, 2020). Similarly, individual proposals sought to restore capital punishment for specified heinous crimes such as those involving dangerous drugs, demonstrating the continued political relevance of severe punishment as a response to perceived threats to public safety. These attempts at reimposition are significant as they demonstrate that the abolitionist conception of fairness did not eliminate competing priorities surrounding punishment. While abolition placed greater emphasis on the protection of life, procedural reliability and limits on irreversible state punishment, arguments for reinstatement continued to prioritize the seriousness of particular offenses and the protection of society. As a result, the Philippines' experience demonstrates that societal definitions of fairness are neither uniform nor historically fixed. Instead, cultural and historical influences, experiences of the criminal justice system and changing political concerns can alter the relative importance that is attached to competing principles of justice, allowing different understandings of fair punishment to gain prominence at different moments.

Case Study III: Norway

In 1893, a Norwegian Law Commission first developed proposals for preventive measures against offenders considered dangerous (Appleton et al., 2025). These ideas subsequently influenced Norway's 1902 Criminal Code, which introduced a 'second track' of indeterminate sanctions alongside ordinary punishment (Lappi-Seppälä, 2023). Specific forms of preventive detention were subsequently established in 1929, including forvaring for certain repeat offenders. The 1902 Criminal Code also abolished the death penalty for ordinary civilian crimes (The Norwegian Government, 1999). Capital punishment was therefore treated differently according to the nature and historical context of the offense. This is shown by the fact that the death penalty was repealed for ordinary crimes in 1902 but remained legal under the Military Penal Code for the most serious crimes (The Norwegian Government, 1999). In periods of war, such as World War II, the right to impose the death sentence was expanded through

provisional decrees under the Civil Penal Code, for crimes such as treason. Historical circumstances, such as the war, changed what constituted a fair punishment. This reveals that the definitions of fair punishment are historically constructed, rather than remaining constant within a society. This also demonstrates how Norway's understanding of what constitutes a fair and proportionate punishment has evolved. In 1979, all Norwegian legal provisions involving capital punishment were repealed (Hansen, 1991). The complete abolition of capital punishment therefore marked a further shift in the boundaries of what Norway considered an acceptable exercise of state punishment.

Norway utilizes principles surrounding human dignity, proportionality, and rehabilitation as limits on state authority to punish. This is seen as it rejects formal life imprisonment, opting instead to emphasize humane imprisonment and reintegration. It is important to note that Norway has not completely rejected severe and/or indefinite punishment. The practice of *forvaring*, which is indefinite preventative detention, is seen as Norway's "ultimate penalty". *Forvaring* is often used when a determined sentence is considered not enough "to protect others' lives, health, or freedom" (Appleton et al., 2025). Since individuals are only released when they are no longer at risk of committing a serious or dangerous crime, *forvaring* can function as a life sentence, keeping someone imprisoned until death. This creates tension between individual rights and collective security. Norway emphasizes rehabilitation, suggesting that punishment must be limited and should remain humane, but *forvaring* shows that restricting individual liberty indefinitely can be justified if it protects society. "Primacy given to collective interests above those of the individual" may mean that "individual human rights might receive little regard".

Also, Norway "has not been immune to the impact of the punitive turn", which is shown through increased sentence lengths and *forvaring* (Appleton et al., 2025). Fairness within this system therefore depends not only on the seriousness of the offense, but also on whether restrictions imposed upon the offender remain necessary, proportionate and compatible with human dignity.

Norway's contemporary correctional system shows that punishment means restricting liberty rather than implementing additional suffering. The Norwegian Correctional Services' "principle of normality" states that "the punishment is the restriction of liberty; no other rights have been removed by the sentencing court" (Kriminalomsorgen, 2021). Prisoners keep their rights such as access to health care, education, and welfare services. Additional restrictions may be imposed where considered necessary for security. This is significant because it alters the meaning of proportional punishment. Fairness does not require the state to make imprisonment harsh just because the offense was serious. Instead, the restriction of liberty is the punishment. Unnecessary additional suffering remains limited. Rehabilitation and reintegration are important to this approach as well. Norwegian prisons aim to transition prisoners towards freedom gradually through lower-security facilities, education, work, and other services, which aim to prepare them to return to normal society. The intention is not to abandon punishment, but to prevent punishment from increasing further harm by making criminality more likely. This shows the dynamic between proportionality and human dignity, as an offender can receive a deprivation of liberty while being treated like a

person who can change. This approach suggests that fair punishment is not measured by suffering, but by whether the deprivation is necessary, proportionate, and compatible with rehabilitation and reintegration.

While Norway rejects capital punishment, this does not mean that individual rights invariably take priority over considerations of public safety. This is seen with forvaring, as release depends on whether or not an offender is still considered a continuing risk of serious offending, allowing forvaring to function as a life sentence. The growth of forvaring demonstrates that Norway allows for extensive restrictions of liberty as long as the state deems them necessary to protect society. Norway does distinguish between restricting liberty and imposing unnecessary suffering. Norway's approach suggests that proportionality does not require the state to inflict suffering equivalent to how serious an offense is. Punishment can be severe while also limiting additional deprivation and retaining opportunities for rehabilitation. Norway's international human-rights commitments further reinforced this boundary. It ratified Protocol No. 6 to the European Convention on Human Rights in 1988, prohibiting capital punishment in peacetime, before ratifying Protocol No. 13 in 2005, which prohibits the death penalty in all circumstances. Norway's understanding of fairness balances human dignity and rehabilitation with collective security. The state can deprive people of liberty, even seriously, but its authority to impose irreversible punishment is constrained.

Evaluation and Conclusion

Comparing Singapore, the Philippines and Norway shows that definitions of fair punishment are shaped not by a single principle of justice, but by the relative importance societies assign to competing objectives. From a historical perspective, each case demonstrates that these priorities can change. Singapore has retained capital punishment while introducing greater sentencing discretion in particular cases, whereas the Philippines has moved between abolition, restoration and renewed abolition as concerns surrounding state power, serious crimes and individual rights have shifted. Similarly, Norway's gradual restriction and eventual complete abolition of capital punishment demonstrates that the boundaries of acceptable state punishment can evolve over time. Therefore, historical influence does not produce a uniform movement towards either retention or abolition, but changes the context within which society determines what punishment is considered proportionate.

With regard to cultural and societal influences, these also operate differently across the three cases. While in the Philippines, Catholic institutions contributed to abolitionist discourse through principles of human dignity and the sanctity of life, Singapore's public opinion and evidence instead demonstrate substantial but conditional societal support for capital punishment. Further, Norway's contemporary penal institutions reflect established principles surrounding human dignity, retained rights and reintegration. These differences highlight that culture should not be understood as a uniform national belief either, but through the institutions, public attitudes and social values that influence how competing ideas of justice are interpreted. Philosophically, the cases ultimately confront similar concerns but assign them different weight. Singapore places comparatively greater emphasis on deterrence and

collective protection; the Philippines demonstrates continuing tension between severe punishment and concerns surrounding life, procedural reliability and irreversible state power; and Norway places stronger limits on punitive suffering through rehabilitation and human dignity, although forvaring demonstrates that public protection can still justify extensive restrictions on liberty.

Overall, cultural, historical and philosophical influences do not independently determine whether capital punishment will be considered fair. Instead, they shape how societies balance moral responsibility, proportionality, individual rights, public protection and rehabilitation. Fairness in capital punishment is consequently best understood as a contested and evolving judgment about which principles of justice should receive greatest weight within a particular social and historical context.

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