The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law?

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INTRODUCTION

The recent caning of an American teenager in Singapore\(^1\) has prompted world-wide debate over the international laws governing criminal punishment.\(^2\) Eighteen-year-old Michael Fay pleaded guilty to two charges\(^3\) of vandalism and mischief,\(^4\) for which he received a sentence

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1. See Hank Grezlak, Philadelphia Lawyer Fights to Prevent 'Caning'; Charges in Singapore, U.S. Citizen Faces Brutal Punishment, LEGAL INTELLIGENCER, Mar. 24, 1994, at 1 (summarizing the Michael Fay caning incident). Eighteen-year-old American student, Michael Fay, was living in Singapore with his family when he was arrested in October, 1993 on charges of vandalism. Id. He was arrested along with several other boys based on information provided to the police by his accomplice, Hong Kong native, 16-year-old Shiu Chi Ho. See Ian Stewart, Singapore Reduces Caning Sentence For HK Student, S. CHINA MORNING POST, June 19, 1994, at 1, available in LEXIS, World Library, Allworld File (discussing the case of Fay's accomplice). Fay confessed to the crime of vandalism after nine days in police custody, although he now claims the confession was coerced by threats of torture. See Caned U.S. Teenager Says He Is Innocent, Reuters Info. Services, June 21, 1994, available in LEXIS, World Library, Allworld File (recounting Michael Fay's allegations of torture prior to his confession). Fay's sentence, which in addition to jail time and a fine, included six strokes of the cane, was ultimately commuted to four strokes and was delivered on May 5, 1994. Id.


3. Stewart, supra note 1. Although Michael Fay and his accomplice each faced four charges of vandalism, Fay's charges were reduced to two when he agreed to plead guilty rather than go to trial. Id.

4. See infra note 37 and accompanying text (discussing the specific acts of vandalism and mischief).
of four months in jail, six strokes of the cane, and a $3,500 (Singaporean dollars) fine. Singaporean President Ong Teng Cheong later reduced the caning from six strokes to four in response to an appeal by United States President Bill Clinton.

Despite President Clinton's condemnation of the sentence as disproportionate, both Singapore's Constitution and domestic criminal laws allow caning as a form of punishment. Singapore's current Constitution took effect in 1963, the year Singapore obtained its independence from Great Britain and became a member state in the Federation of Malaysia. Although Singapore's Constitution recognizes fundamental liberties, including due process and equal protection, it fails to protect against cruel, inhuman, or degrading punishment. Therefore, while

6. Id.; see Richard Shears, The Cane Mutiny; Outrage in Singapore as Sentence on American Car Vandal is Reduced, DAILY MAIL, May 5, 1994, at 10 (discussing the ramifications of reducing Fay's sentence). Singaporeans believe that the government's decision to reduce Fay's sentence will undermine Singapore's authority in dealing with other foreign nations. Id. The government, however, stressed the fact that this was "an exceptional decision" and would not set a precedent. Id. Nevertheless, the decision has already resulted in similar reductions in sentences for the other youths involved in the same incident. Id.
10. SING. CONST., supra note 8, pt. IV, art. 9.
11. Id. pt. IV, art. 12(1).
12. See id. pt. IV (protecting fundamental liberties excluding freedom from cruel and inhuman punishment).
Singapore’s caning penalty does not violate a specific constitutional provision, it does raise crucial human rights concerns.

Numerous existing international human rights treaties prohibit torture and cruel, inhuman, or degrading punishment. Singapore, however, is not a signatory to any such bilateral or multilateral agreements. Although no specific treaties or conventions bind Singapore, international customs and legal principles regarding cruel, inhuman, or degrading punishment are well established.

This Comment surveys international human rights laws governing criminal punishment and attempts to reconcile them with Singapore’s punishment of caning. Part I discusses Singapore’s criminal justice system in the context of its culture, Constitution, and statutory law. Part II focuses on the internationally accepted standards that regulate criminal punishment to determine whether caning constitutes cruel or degrading punishment. Part III analyzes the policy options available to Singapore in light of recent international human rights criticism. Finally, part IV recommends a policy of selective incorporation of international law, which will enable Singapore to maintain its national identity without alienating the international community.

I. SINGAPORE’S DOMESTIC CRIMINAL LAWS

A. CULTURAL BACKGROUND

Singapore has a diverse population consisting of seventy-seven percent Chinese, fourteen percent Malaysians, seven percent Indians, and one percent other nationalities. As a result of this Chinese dominance,


16. THE RESOURCE CENTRE, MINISTRY OF INFORMATION AND THE ARTS, THIS IS
Singaporeans maintain a Confucian reverence for law and authority. A powerful Muslim contingency, comprising sixteen percent of the nation’s population, also influences Singapore’s national identity. Amid this diversity, the only customary law that continues to survive in Singapore is Malay Muslim customary law. These and many other examples of the current role of Singapore’s religious and cultural heritage illustrate a deep national regard for history and tradition.

Singapore’s history as a British colony reveals a political commitment to the nation’s unique cultural identity. As early as the nineteenth century, The Second Charter of Justice of 1826 generally adopted English laws, but modified them to avoid injustice to the diverse people of Singapore. In 1965, Singapore finally gained full independence from both Britain and Malaysia, and the government began focusing on uniting its ethnically divided population. In order to maintain soli-

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20. See Smith, supra note 17, at 126 (acknowledging the effects of traditional Chinese influence on Singaporeans). Due to their influential Chinese background, Singaporeans revere strong government and law and order. Id.

21. See Richard J. Ferris, Jr., Note, Aspiration and Reality in Taiwan, Hong Kong, South Korea, and Singapore: An Introduction to the Environmental Regulatory Systems of Asia’s Four New Dragons, 4 Duke J. Comp. & Int’l L. 125, 173 (1993) (noting that Singapore only incorporated English statutes which were suited to the new Republic’s culture and conditions).

22. See Chan, supra note 19, at 39 (explaining that the Second Charter of Justice of 1826 adopted only those English laws which did not offend the religious and customary beliefs of the Singaporean people); see also Ferris, supra note 21, at 173 (acknowledging that English law in force in Singapore exists “by virtue of the Second Charter”).

23. See Ferris, supra note 21, at 171-72 (detailing Singapore’s history until its independence in 1965).

24. See id. at 172 (outlining reasons for Singapore’s paternalistic system of government). When Singapore separated from Malaysia and became an independent republic, it faced potential instability due to its diverse ethnic groups and their “individualistic pursuits.” Id. In order to stabilize Singapore, the government began exercising
darity among the various ethnic groups, the government implemented the
rigid paternalistic policies which remain in force today.25 As a result of
eye problems with conflicting cultural groups, national sovereignty and
cohesion became important priorities that remain ingrained in
Singapore’s political policies.26

B. THE CONSTITUTION OF SINGAPORE

Singapore’s Constitution deviates significantly from British legal stan-
dards,27 encompassing instead the values and diversity of Singaporean
society.28 When Singapore became a republic in 1965, the First Parlia-
ment appointed a Constitutional Commission to help prepare the newly-
independent nation’s Constitution.29 The Commission’s goal was to pre-
serve the multi-racial character of the country, while ensuring equality
for all citizens.30 In light of this goal, the Commission published a se-
ries of recommendations in the Report of the Constitutional Commission
1966.31 The Commission concluded that the best way to protect the
people of Singapore was to fortify the Constitution with certain funda-
mental rights.32 Among those rights, the Commission suggested the

strict control over the population. Id. By stressing the importance of law and order,
the Singaporean government shifted its emphasis from the good of the individual to
the good of the community. Cf. West’s Values Take a Beating in Asia, S. CHINA
MORNING POST, Aug. 21, 1994, at 8, available in LEXIS, Asiape Library, Sing File
(noting arguments among observers that in contrast to Singapore, the United States
placed an exaggerated emphasis on individual rights and subsequently harmed the
“good of the community”).

25. See supra note 24 (discussing the origins of Singapore’s strict system of
government).

26. See Thorpe, supra note 18, at 1046 (noting that the Singaporean
government’s policies are geared towards creating “a common Singaporean identity”);
see also CHAN, supra note 19, at 39 (stressing Singapore’s desire for sovereignty);
Ferris, supra note 21, at 172 (emphasizing Singapore’s pursuit of unity).

27. See Bassiouni, supra note 15, at 262 (noting that protections against “cruel
and unusual punishments” originated in the English Bill of Rights of 1688). But cf.
generally SING. CONST., supra note 8 (failing to incorporate a provision against tor-
ture).

28. See REPORT OF THE CONSTITUTIONAL CONVENTION 1966, reprinted in KEVIN
TAN YEW LEE ET AL., CONSTITUTIONAL LAW IN MALAYSIA & SINGAPORE, 794 app.
(1991) [hereinafter REPORT] (quoting the Speaker of Parliament’s desire to assure
constitutional safeguards for a multi-racial nation).

29. Id.

30. Id.

31. Id.

32. See id. at 795 app., ¶ 11-13 (determining that the best way to safeguard
right to freedom from torture, inhuman, or degrading punishment. Despite the Commission's recommendation, the government failed to include such a provision in the new Republic's Constitution.

Almost thirty years later, Singapore's Constitution protects most fundamental liberties except freedom from cruel or inhuman punishment. Article 11 of the Constitution, which protects against retrospective criminal laws and repeated trials, is the only provision that even attempts to regulate criminal justice. Consequently, punishments which constitute torture by Western standards are legally sound under Singapore's Constitution.

C. THE VANDALISM ACT

A Singaporean court sentenced Michael Fay on two counts of vandalism, one count of retention of stolen property, and one count of mischief for violating Singapore's Vandalism Act. According to the Vandalism Act, Fay's maximum legal sentence for each count of vandalism could consist of a fine of two thousand Singaporean dollars or a
prison sentence of three years, and caning of three to eight strokes.\textsuperscript{39} His sentence of four strokes for two counts of vandalism, therefore, did not violate the provisions of the Act.

Caning sentences for property crimes are not uncommon in Singapore.\textsuperscript{40} Since 1989, twelve Singaporeans and two foreigners between the ages of eighteen and twenty-one received caning sentences under the Vandalism Act.\textsuperscript{41} Fay’s own accomplice, Shiu Chi Ho, a native of Hong Kong but a citizen of Singapore, was sentenced to six strokes under the Act.\textsuperscript{42}

Although the Vandalism Act permits caning as a method of punishment, it also provides safeguards to protect citizens.\textsuperscript{43} The Act does not allow caning for a first conviction unless the vandal uses an indelible substance to commit the crime.\textsuperscript{44} Michael Fay’s acts allegedly involved spray paint, an indelible substance;\textsuperscript{45} therefore, although this was his first offense, caning was a legal punishment.

II. INTERNATIONAL LAW

A. SOURCES

Binding international law comes from three sources: treaties and conventions, custom, and “general principles of law.”\textsuperscript{46} Treaties and con-

\textsuperscript{39} Id. ch. 108, § 3.
\textsuperscript{40} See Singapore to Cane Second Foreigner for Vandalism, supra note 2 (compiling juvenile caning statistics for crimes of vandalism). One reason for Singaporeans’ acceptance of caning as a punishment for property crimes is the high cost of car ownership in Singapore. See Thorpe, supra note 18, at 1045 (stating that cars in Singapore cost two to three times what they do in the United States).
\textsuperscript{41} Singapore to Cane Second Foreigner for Vandalism, supra note 2.
\textsuperscript{42} See Stewart, supra note 1 (comparing Shiu Chi Ho’s caning sentence with that of Michael Fay). Although Shiu was initially sentenced to twelve strokes of the cane, his sentence was cut in half after Great Britain and Hong Kong appealed to the Singapore government. Id. His reduced sentence of six strokes still exceeded that of Michael Fay. Id.
\textsuperscript{43} See Vandalism Act, supra note 8, ch. 108, § 3(a) (announcing an exception to the caning law which prohibits caning first time offenders under certain circumstances).
\textsuperscript{44} Id. ch. 108, § 3(a).
\textsuperscript{45} But see Grezlak, supra note 1, at 1 (explaining how Fay’s attorney disputed the indelible nature of the spray paint by arguing that it was successfully removed from the cars with paint thinner).
\textsuperscript{46} See Statute of the International Court of Justice, opened for signature June 26, 1945, art. 38, 59 Stat. 1055, 1060 (including conventions, customary law, and
ventions are bilateral or multilateral agreements which only bind their signatories. Customary international law, on the other hand, originates from either *opinio juris*, or from acceptance of an international agreement by a number of influential world powers. Finally, "general principles of law" are rules of law which are frequently applied, but are not officially stated in binding international agreements.

**B. Limits on Punishment**

1. The Universal Declaration of Human Rights and Other General Human Rights Treaties

Singapore is not a signatory to any international treaties or conventions that protect against cruel forms of punishment. The oldest of the existing conventions is The Universal Declaration of Human Rights, adopted in 1948, which protects individuals from torture and cruel, inhuman, or degrading punishment. Since the Universal Declaration, the United Nations ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, followed by the International Convention on Civil and Political Rights in 1966. Both of these conventions also contain provisions prohibiting cruel or torturous punishment. Whereas the three aforementioned documents are general conventions which target a variety of human rights concerns, a more recent agreement focuses specifically on problems regarding punishment.

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"general principles of law" as sources of international law).


48. *Id.* § 102(1) cmt. c. *Opinio juris* simply means that states feel legally obligated to abide by a custom. *Id.*

49. *See id.* § 102(1) cmt. i (describing the derivation of customary international law from international agreements).


51. *See, e.g.,* Convention Against Torture; Universal Declaration; Fundamental Freedoms; Civil Rights, *supra* note 13 (demonstrating that none of these international agreements include Singapore as a signatory).

52. Universal Declaration, *supra* note 13, art. 5.


56. *See* Convention Against Torture, *supra* note 13 (prohibiting torture and other
2. The Convention Against Torture

In 1984, the United Nations General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.\(^\text{57}\) Although Singapore did not sign this convention, fifty nations, including the United Kingdom, Canada, and China, are parties to the agreement, while the United States advised and consented with reservations, and is also expected to ratify.\(^\text{58}\) Due to such strong international acceptance, this convention is no longer merely an agreement, but rather rises to the level of customary law.\(^\text{59}\) Accordingly, it binds other nations in addition to its signatories.\(^\text{60}\) Moreover, the incorporation of the right to freedom from torture and cruel, inhuman, or degrading punishment into eighty-one national constitutions,\(^\text{61}\) further renders the provision a "general principle of law."\(^\text{62}\)

Under this convention, the definition of an act of torture is any act which causes "severe pain or suffering," excluding pain and suffering which result from "lawful sanctions."\(^\text{63}\) Although caning may cause "severe pain or suffering,"\(^\text{64}\) it is a "lawful sanction" in Singapore.\(^\text{65}\)

\(^{57}\) Id.

\(^{58}\) Id.

\(^{59}\) See, e.g., Restatement, \textit{supra} note 47, § 702 (announcing that the right to freedom from torture and other cruel, inhuman, or degrading punishment has risen to the level of customary law); David Weissbrodt, \textit{An Introduction to the Sources of International Human Rights Law}, C399 ALI-ABA 1, 9 (1989) (recognizing that many provisions from the Universal Declaration are now binding customary law); Bassiouni, \textit{supra} note 15, at 249 (attributing the creation of customary law to widespread international recognition of a convention).

\(^{60}\) See Bassiouni, \textit{supra} note 15, at 249 (explaining that customary law stems from conventions, but has the capacity to bind nonsignatories).

\(^{61}\) Id. at 292.

\(^{62}\) See \textit{id.} at 240 (noting that "general principles" of international law arise from "reaffirmation" of those principles in nonbinding documents).

\(^{63}\) Convention Against Torture, \textit{supra} note 13, pt. I, art. 1(1).

\(^{64}\) See \textit{U.S. Trade Unaffected by Singapore Caning Incident}, Reuters Info. Services, Apr. 10, 1994, \textit{available in LEXIS}, World Library, Allwld File (describing caning as a beating which is inflicted with a rattan cane which cuts the skin and causes bleeding, intense pain, and permanent scarring).

\(^{65}\) See SING. CONST., \textit{supra} note 8, pt. IV, (delineating fundamental liberties available to Singapore's citizens); Vandalism Act, \textit{supra} note 8, ch. 108 (citing caning as a possible punishment for vandalism); CRIM. PROC. CODE, \textit{supra} note 8, Cap. 113, (setting parameters for execution of caning sentences).
Similarly, the death penalty causes severe pain and suffering, and is considered cruel and unusual by the European Court on Human Rights, yet it remains in practice as a legal sanction in the United States. Consequently, a comparison of caning in Singapore and the death penalty in the United States reveals that both countries are potentially guilty of violating international law.

C. CANING

Although international law consistently prohibits torture and cruel, inhuman, or degrading punishment, the question remains whether caning fits in that category of punishment. Singapore does not necessarily practice cruel and inhuman punishment just because its Constitution does not explicitly prohibit such sanctions. Zimbabwe's Constitution forbids


67. See Bassiouni, supra note 15, at 264 n.130 (reciting the outcome of the Soering case, 161 Eur. Ct. H.R. (ser. A) at 3945 (1989)). In Soering, the European Court on Human Rights refused to extradite a prisoner from the United Kingdom to face the death penalty in the United States, because the extradition would violate the person's human rights. Id.

68. See, e.g., Gregg v. Georgia, 428 U.S. 153, 169 (1976) (holding that the death penalty, given the right circumstances, does not violate the Eighth Amendment); Christopher Adams Thorn, Retribution Exclusive of Deterrence; An Insufficient Justification for Capital Punishment, 57 S. CAL. L. REV. 199, 199 n.1 (1983) (listing the 35 states that retain the death penalty, as well as the crimes for which they allow it); Lisa Kline Arnett, Death at an Early Age: International Law Arguments Against the Death Penalty for Juveniles, 57 U. CIN. L. REV. 245, 248 (1988) (asserting that federal law allows the use of the death penalty to punish treason, espionage, first-degree murder, felony-murder, rape, and homicides that result from air piracy).

69. See Pak, supra note 66, at 257 n.116 (evaluating “lashing” and the death penalty to determine which is the more inhumane punishment).

70. See Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore, supra note 7 (asserting that although a sentence may constitute torture in one country, it may be the norm in another).

71. Universal Declaration, supra note 13, art. 5; Fundamental Freedoms, supra note 13, art. 3; Civil Rights, supra note 13, pt. III, art. 7; Convention Against Torture, supra note 13, pt. I, art. 1(1); see Bassiouni, supra note 15, at 293 (classifying the right to freedom from torture, or cruel, inhuman, or degrading punishment as a “general principle” of international law).

72. See Bassiouni, supra note 15, at 252 (explaining that absence of constitutional protection of a right does not equate to a violation of that right).
inhuman or degrading punishment,\textsuperscript{73} yet caning remains a statutorily-imposed penalty.\textsuperscript{74} Although the legislature recognizes caning as a valid punishment, Zimbabwean courts have found it unconstitutional\textsuperscript{73} based on international norms that define inhuman and degrading punishment.\textsuperscript{76}

1. History

As a former British territory, Singapore was influenced by Britain's use of corporal punishment in schools.\textsuperscript{77} This influence is evident in Singapore's current practice of caning. Caning is a punishment that dates back to Singapore's early days as a Republic.\textsuperscript{78} The moderate People's Action Party first enacted caning laws to curb Communist graffiti and slogans in the early 1960s.\textsuperscript{79} Despite its original narrow purpose, can-
ing has endured as a more general form of punishment in Singapore.\textsuperscript{80} It is currently prescribed for certain types of vandalism,\textsuperscript{81} as well as for possession of small quantities of drugs.\textsuperscript{82}

2. Procedure

To administer the punishment of caning, a trained officer uses a wet rattan rod to inflict blows which cut the skin, causing bleeding and intense pain, and leaving permanent scars.\textsuperscript{83} In some cases, the subject goes into shock and faints;\textsuperscript{84} however, doctors are present to revive prisoners and to make certain they are fit to undergo the remainder of their punishment.\textsuperscript{85}

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\textsuperscript{80} See Singapore Doctors Defend Presence at Canings, Reuters Info. Services, June 22, 1994, available in LEXIS, World Library, Allwld File (quoting Singapore government statistics which reveal that approximately 1,000 prisoners per year receive caning sentences). \\
\textsuperscript{81} Vandalism Act, supra note 8, ch. 108, § 3. The Vandalism Act allows a punishment of no less than three strokes and no more than eight strokes of the cane for all acts of vandalism. \textit{Id.} The only exception to this law is for a first conviction that involves the use of a “pencil, crayon, chalk or other delible substance or thing . . . .” \textit{Id.} § 3(a).
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\textsuperscript{82} Misuse of Drugs (Amendment) Act, 1989, Second Schedule. According to this Act, trafficking the following substances is punishable by twenty to thirty years in jail and fifteen strokes of the cane: between 800 and 1200 grams of opium, between 10 and 15 grams of heroin, between 330 and 500 grams of cannabis, between 20 and 30 grams of morphine and cocaine, and between 130 and 200 grams of cannabis resin. \textit{Id.} \\
\textsuperscript{83} U.S. Trade Unaffected by Singapore Caning Incident, supra note 64 (explaining the process of caning); see Michael Arkus, \textit{Public Opinion Against U.S. Teen in Singapore}, Reuters Info. Services, Apr. 6, 1994, available in LEXIS, Asiapc Library, Sing File [hereinafter \textit{Public Opinion Against U.S. Teen in Singapore}] (reporting that according to Singaporean newspapers, “pieces of skin and flesh fly at each stroke”). \\
\textsuperscript{84} See \textit{Public Opinion Against U.S. Teen in Singapore}, supra note 83 (discussing the physical effects of caning); see also Michael Arkus, \textit{Human Rights Groups Want to Hear Flogged U.S. Teen}, Reuters Info. Services, June 19, 1994, available in LEXIS, Asiapc Library, Sing File (attributing the shock that some prisoners experience to the fact that some caners put their full body weight into each blow). \\
\textsuperscript{85} See generally CRIM. PROC. CODE, supra note 8, § 231 (requiring the presence of doctors at canings to ensure health of the prisoner); see also AMA Urged to Respect Rights of Singapore Doctors, Xinhua News Agency, June 22, 1994, available in LEXIS, World Library, Curnws File (discussing the controversy over the presence of Singaporean doctors at canings).
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3. Safeguards

Singapore’s Criminal Procedure Code sets forth a series of procedural safeguards for caning. Although American medical organizations, including the American Medical Association (AMA), condemn the presence of doctors at canings, their presence is one element of Singapore’s caning laws which distinguishes caning from cruel and inhuman punishment. The doctor’s role is to protect prisoners by ensuring that they are sufficiently healthy and able to endure the punishment. Singapore’s Criminal Procedure Code provides further protection for prisoners by specifically prohibiting caning of women, men sentenced to death, and men over the age of fifty. These safeguards reveal that Singapore does not haphazardly cane its citizens, but rather provides a careful set of rules for carrying out the punishment.

86. See CRIM. PROC. CODE, supra note 8, §§ 226-32 (providing guidelines for implementing caning sentences); see also infra notes 89, 90 (quoting the specific language of the Criminal Procedure Code’s caning guidelines).

87. See AMA Urged to Respect Rights of Singapore Doctors, supra note 85 (delineating the conflict between American and Singaporean doctors over the presence of Singaporean doctors at canings); Public Opinion Against U.S. Teen in Singapore, supra note 83 (quoting from Physicians for Human Rights which characterized caning as “torture”).

88. See Singapore Doctors Defend Presence at Canings, supra note 80 (comparing the presence of Singapore doctors at canings to that of American doctors at administrations of the death penalty).

89. CRIM. PROC. CODE, supra note 8, § 231. This section provides:
   (1) The punishment of caning shall not be inflicted unless a medical officer is present and certifies that the offender is in a fit state of health to undergo such punishment.
   (2) If during the execution of a sentence of caning a medical officer certifies that the offender is not in a fit state of health to undergo the remainder of the sentence the caning shall be finally stopped.

90. Id., supra note 8, § 230.

This section provides:
No sentence of caning shall be executed by installments and none of the following persons shall be punishable with caning:
(a) females;
(b) males sentenced to death;
(c) males whom the court considers to be more than fifty years of age.

91. See id., supra note 8, §§ 226-32 (setting parameters for execution of caning sentences). Similarly, the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972), held that the Georgia death penalty statute violated the Eighth Amendment’s protection against “cruel and unusual” punishment because it arbitrarily
The governing human rights treaties which equate caning with torture reflect Western standards of just punishment. Nevertheless, in Singapore, as well as in a number of other countries, caning is considered a legitimate form of deterrence. By restricting the class of people eligible for caning, requiring the presence of doctors at canings, and establishing the size and type of instrument that constitutes a cane, imposed the death penalty. Id. at 360.


93. See, e.g., David Seymour, supra note 92, at 245 (emphasizing that many countries, including former British colonies, still allow corporal punishment); Sidney L. Harring, Death Drugs and Development: Malaysia's Mandatory Death Penalty for Traffickers and the International War on Drugs, 29 COLUM. J. TRANSNAT'L L. 365, 376 (1991) (explaining that in addition to the mandatory death penalty for drug trafficking, Malaysia's Dangerous Drugs (Amendment) Act of 1986 requires that all persons convicted under the Act receive a mandatory whipping); Shannon Minter, Sodomy and Public Morality Offenses Under U.S. Immigration Law: Penalizing Lesbian and Gay Identity, 26 CORNELL INT'L L. J. 771, 803 n.223 (1993) (stating that “Afghanistan, Bahrain, Bangladesh, Iran, Kuwait, Libya, Malaysia, Mauritania, Yemen and other Islamic countries” use “flogging” to punish homosexuality). In Pakistan, Islamic law allows 30 lashes with a stick for theft, 80 lashes for drinking or possessing alcohol, and 100 lashes for rape. Cava, supra note 77, at ID. In Trinidad and Tobago, violent offenders over age 16 may receive up to 20 strokes with a birch rod. Id. Malaysia uses caning in addition to imprisonment for 40 crimes including embezzlement. Id.


95. See supra note 90 (reproducing the section of Singapore’s Criminal Procedure Code which restricts the class of people eligible for caning).

96. See supra note 89 (setting forth the section of Singapore’s Criminal Procedure Code which requires the presence of medical officers at canings).

97. See CRIM. PROC. CODE, supra note 8, § 228 (restricting the diameter of the rattan cane to a maximum of half an inch). This provision also protects juveniles by
Singapore's laws safeguard citizens from cruel, inhuman, or degrading punishment.

III. POLICY OPTIONS

A. NO ACTION

1. Reasons Not to Change the Caning Laws

Despite international human rights concerns, Singapore's simplest option is to continue to enforce its current laws. Although the West condemns Singapore's punishment of caning as cruel and inhuman, the West must remember that the Republic of Singapore is only thirty years old. Many of the world's older criminal justice systems still do not fully conform with internationally accepted standards.

allowing their punishment to be carried out with a light rattan. Id. 98. See Singapore to Cane Second Foreigner for Vandalism, supra note 2 (noting that British and American governments disapprove of Singapore's caning sentences). While Western governments publicly denounce caning, many of their citizens support the use of caning to deter crime. Id. A Los Angeles Times Poll found that 49 percent of those surveyed supported Michael Fay's sentence, while 48 percent did not. Id.

99. See Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore, supra note 7 (arguing that more developed societies tend to have less cruel forms of punishment).

100. See, e.g., Singapore and the Culture of Caning, Reuters Info. Services, May 7, 1994, available in LEXIS, World Library, Cumws File (stating that Australia used the punishment of caning until the 1950s); Lisa Brennan, Inmate Cites International Law in Rights Suit, LEGAL INTELLIGENCER, Apr. 5, 1993, at 1 (discussing a Philadelphia inmate's lawsuit which claims that the international minimum standards for treatment of prisoners exceed the protections of the United States Constitution); Joan F. Hartman, "Unusual" Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty, 52 U. CIN. L. REV. 655, 699 (1983) (concluding that juvenile executions in the United States violate international customary law). In fact, American courts have repeatedly rejected international law as the sole means of Eighth Amendment interpretation. Tamela R. Hughlett, International Law: The Use of International Law as a Guide to Interpretation of the United States Constitution, 45 OKLA. L. REV. 169, 192 (1992). In Thompson v. Oklahoma, 487 U.S. 815 (1988), the plurality employed international law to hold that execution of juveniles younger than age 16 is a violation of the Eighth Amendment. Id. at 838. In his dissenting opinion, Justice Scalia remarked that international law should not have influenced the Court's decision, and that "[w]e must never forget it is a Constitution for the United States of America we are expounding." Id. at 868 n.4. Despite the Thompson holding, American laws still do not conform with the international norms that prohibit execution of juveniles under the age of eighteen. Arnett, supra note 68,
Furthermore, caning as a formal punishment is deeply rooted in Singapore's cultural and religious background, and Singapore cannot simply discard the practice in favor of traditionally Western punishments. Similarly, regardless of their views about caning, other nations would not necessarily abandon their traditional laws to adopt Singapore's standards of punishment. For example, Indonesian government officials do not inherently disapprove of caning; however, they find that it is an unacceptable form of punishment for their country. Likewise, human rights treaties that address Western concerns may not meet with the approval of Singaporean society.

at 251-54 (listing a number of international treaties and practices that prohibit execution of juveniles below the age of 18).

101. See Seymour, supra note 92, at 245 (attributing varying national views on individual liberties to differences in cultural and religious values). Singapore's current system is affected by the strong Chinese and Malay Muslim influence over the population. See also supra notes 17-19 and accompanying text (discussing the strength of cultural influences in Singapore).

102. See Seymour, supra note 92, at 245 (stating that it is difficult to change the fundamental values of a society). Once a society grows accustomed to its rules and customs, it can not simply change them overnight. Id. This same obstacle is at issue in Europe, where Western Europe is considering the difficulty of extending the European Convention on Human Rights to the former Eastern bloc of Soviet states. Id.

103. See Editorial—Singapore's Version of Crime and Punishment, Reuters Info. Services, Apr. 18, 1994, available in LEXIS, Asiapc Library, Sing File (asserting that caning offends Western standards of just punishment); see also Singapore Caning Sparks Debate in Indonesia, Reuters Info. Services, May 7, 1994, available in LEXIS, News Library, Allwld File (expressing Indonesian reaction to Singapore's caning of Michael Fay). Indonesia is a predominantly Muslim nation which neighbors Singapore. Id. Michael Fay's caning prompted Indonesian Muslims to advocate the use of caning in Indonesia. Id. Despite Indonesia's proximity to Singapore, its Muslim make-up, and its own history of human rights violations, Indonesian parliamentarians argue that caning is not "abhorrent," but simply would not be accepted in their country. Id. But see Edmund Teo, Australians Praise Singapore's Anti-Vandalism Laws, STRAITS TIMES, Oct. 26, 1993, at 17 (expressing overwhelming Australian support for Singapore's caning sanction). Some Australians want their government to follow Singapore's example and impose mandatory caning sentences for graffiti vandals. Id. Ironically, Australia officially discontinued flogging in the 1950s. Singapore and the Culture of Caning, supra note 100.

104. See supra note 103 and accompanying text (discussing Indonesian sentiment regarding caning).

105. See supra note 103 and accompanying text (recounting Indonesian viewpoints of caning).

106. See Seymour, supra note 92, at 247 (linking the origin of human rights documents to Western Europe).

107. See AMA Urged to Respect Rights of Singapore Doctors, supra note 85
Finally, the fact that most nations choose not to implement caning does not on its own render the punishment a form of torture. For example, while most nations prohibit capital punishment for juveniles under age eighteen, the United States Supreme Court upholds the practice, rejecting the notion that it constitutes torture. Although caning could qualify as torturous, cruel, and inhuman under certain circumstances, if properly regulated, it is a valid, judicially-administered (explaining that Singaporeans are generally satisfied with their system of punishment). Doctors are quoted as applauding their system of criminal justice because it “helps to preserve life and the quality of life for the majority of law-abiding residents, unlike the situation in many cities in the U.S.....” Id.; see also Ian Stewart, Fay Cane Sentence Reduced to Four Lashes, SOUTH CHINA MORNING POST, May 5, 1994, available in LEXIS, Asiapc Library, Sing File (illuminating Singaporean discontent regarding United States attempts to reduce Michael Fay’s sentence). Law Minister S. Jayakumar expressed concern that if the United States could influence the imposition of caning sentences, then it would eventually try to restrict other Singaporean laws. Id.

108. See infra note 109 and accompanying text (explaining that although most nations choose not to use capital punishment, it does not universally constitute torture).

109. Thompson v. Oklahoma, 487 U.S. 815 (1988) (holding that execution of juveniles under age 16 violates the “cruel and unusual” clause of the Eighth Amendment); see Tamela R. Hughlett, supra note 100, at 196 (articulating an international custom against executing juveniles under age 18). Although most nations do not allow execution of juveniles under 18, the United States continues to employ the practice. Id. at 194. Hence, while most nations deem the death penalty cruel and inhuman punishment for juveniles under 18, the United States Supreme Court disagrees. Thompson v. Oklahoma, 487 U.S. 815 (1988).

110. See supra note 109 and accompanying text (discussing the discrepancy between international law and the laws of the United States regarding juvenile executions).

111. See Hartman, supra note 100, at 688 n.120 (stating that cruelty “is a relative rather than an absolute concept”); see also Richard Lillich, The Paris Minimum Standards of Human Rights Norms in a State of Emergency, 79 A.J.I.L. 1072, 1078 (1985) (classifying “flogging” as inhumane punishment). The Paris Minimum Standards are a series of rights which require protection during a state of emergency. Id. at 1072. They incorporate basic human rights from Article 4 of the International Covenant on Civil and Political Rights, Article 15 of the European Convention on Human Rights, and Article 27 of the American Convention on Human Rights. Id. Article 6 of the Paris Minimum Standards sets forth the right to be free from torture. Id. at 1077. Article 6(7) further specifies: “The establishment or infliction of such punishment as summary executions by firing squads, public hangings, floggings, the mutation of limbs and other cruel, inhuman or degrading forms of punishment are gross violations of international standards of humane treatment.” Id. at 1078. This document classifies floggings in the same context as mutation and public hangings. Id. Not all floggings rise to this degree of inhumanity. See supra notes 89, 90 and accompanying text (quoting sections of Singapore’s Criminal Procedure Code which safeguard caning
form of punishment. Consequently, caning does not always violate international prohibitions against torture and cruel, inhuman, or degrading punishment.

In fact, the state of California, prompted by the Michael Fay caning incident, is currently considering a bill which would institute court-ordered paddling of juveniles for property crimes. The bill did not pass the first time it was introduced, but it appears to have a good chance of approval despite questions about its constitutionality. Although paddling is not necessarily as painful as caning, it is equally as

punishments against abuses). Indeed, the United States is considering implementing its own version of Singapore's caning law. See infra note 115 and accompanying text (discussing a proposed paddling law in California).

112. See supra notes 90, 91 and accompanying text (discussing the Criminal Procedure Code's restrictions on the use of caning).

113. See Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore, supra note 7 (remarking that 16 countries continue to practice corporal punishment and do not equate it with torture).

114. See Hightet and Kahale, supra note 74, at 769 (citing various international cases which have dealt with corporal punishment). International Courts have never ruled on Singapore's caning policies. But see Public Opinion Against U.S. Teen in Singapore, supra note 83 (repeating the proclamation by Amnesty International that the caning carried out in Singapore is torture). Courts have, however, ruled that whipping and flogging violate international law, but only as punishments for property crimes. Hightet and Kahale, supra note 74, at 769 nn.7-9. Although the European Court of Human Rights held that "birching" in the Isle of Man violated international human rights, the European Commission of Human Rights concluded that corporal punishment in Scottish schools did not. Jordan J. Paust, Human Dignity as a Constitutional Right: A Jurisprudentially Based Inquiry into Criteria and Content, 27 How. L.J. 145, 176 (1984).

115. See Mark Walsh, Paddling Law Up for Debate?, THE RECORDER, Aug. 10, 1994, at 3 (describing the proposed paddling bill and its reception in California). Assemblyman Mickey Conroy of California introduced the proposed paddling law which would allow juvenile graffiti vandals to receive sentences of up to 10 blows with a wooden paddle. Id.


117. See Walsh, supra note 115, at 3 (questioning the constitutionality of state-imposed beatings, especially for graffiti crimes); Eric Bailey, Big Stick for Graffiti, GUARDIAN, June 30, 1994, at 17 (asserting that the American Civil Liberties Union questions the bill's constitutionality). But see Walsh, supra note 115, at 3 (quoting Justice Antonin Scalia's caveat that this bill is not comparable to the more severe caning punishment of Singapore).
degrading; and therefore, offends internationally accepted notions of hu-
man rights.\(^\text{118}\)

The recent trend in the United States reflects a desire to impose strict-
ner punishments like those of Singapore.\(^\text{119}\) Since California first pro-
posed its paddling bill, at least eight other states have attempted to pass
similar legislation.\(^\text{120}\) Various versions of paddling laws were intro-
duced in Missouri, New Mexico, and New York.\(^\text{121}\) Some states, in-
cluding Louisiana, Mississippi, and Tennessee, have even considered
public canings for a series of property crimes including vandalism.\(^\text{122}\)
The most radical proposal, however, was the Arkansas bill that would
allow jury-sanctioned public hangings.\(^\text{123}\) Nevertheless, despite their
own practices, the United States and much of the Western world contin-

\(^{118}\) See Hight and Kahale, \textit{supra} note 74, at 769 (citing Tyrer v. United
Kingdom, 26 Eur. Ct. H.R. (ser. A) (1978) (ruling that the punishment of birching is
degrading and therefore violates the European Convention on Human Rights);
Warwick v. United Kingdom, Eur. Comm'n H.R., Report of July 18, 1986 (unre-
ported) (holding that corporal punishment, even one cane stroke on the hand, is
degrading and violates the European Convention on Human Rights). Corporal punishment
is defined as "physical punishment as distinguished from pecuniary punishment or a
fine; any kind of punishment of or inflicted on the body." \textit{BLACK'S LAW DICTIONARY}
235 (abridged 6th ed. 1991). Although the Supreme Court has officially upheld cor-
poral punishment, many states have outlawed it by statute. \textit{Id.}

\(^{119}\) See generally O'Hanlon, \textit{supra} note 116, at A21 (discussing current corporal
punishment legislation under consideration in California, Tennessee, Mississippi, and
New York); \textit{Singapore, USA?}, \textit{USA TODAY}, Feb. 9, 1995, at 10A (revealing that
according to the National Conference of State Legislatures, there is growing support
for flogging and paddling criminals).

\(^{120}\) See \textit{Singapore, USA?}, \textit{supra} note 119, at 10A (describing corporal punishment
legislation under consideration in Mississippi, Tennessee, New York, California, Louisi-
a, Missouri, and New Mexico); \textit{see also} Curtis Wilkie, \textit{Mississippi Flogging De-
bate Opens Old Wounds}, \textit{BOSTON GLOBE}, Feb. 21, 1995, at 1 (indicating that Arkan-
sas is considering jury approved public hangings).

\(^{121}\) See \textit{Wilkie, supra} note 120, at 1 (providing that New Mexico, New York,
and Missouri have considered imposing forms of corporal punishment).

\(^{122}\) See \textit{id.} at 1 (evaluating Louisiana, Tennessee, and Mississippi's corporal pun-
ishment legislation). In Mississippi, where the state House has already passed the
caning law, the debate over public canings is especially heated. \textit{Id.} Mississippi is the
only state which has not yet ratified the Thirteenth Amendment abolishing slavery. \textit{Id.}
Furthermore, until the 1960s, Mississippi state penitentiary prisoners were beaten with
a six-inch-wide leather strap called a "Black Annie." \textit{Id.} Mississippi's proposed caning
law is under attack because it brings back notions of slavery and of whites beating
blacks. \textit{Id.}

\(^{123}\) See \textit{id.} at 1 (stating that an Arkansas House committee is preparing a bill
that would allow public hangings as a form of punishment).
ue to criticize Singapore’s caning of Michael Fay.124 Ironically, the West virtually ignored the fact that Singapore was caning its own citizens for thirty years prior to this incident.125

2. Domestic Ramifications

Singapore will benefit domestically from its decision to reject Western human rights standards. Most importantly, Singapore will retain its remarkably low crime rate.126 Singapore’s present success in preventing crime is a result of the nation’s strict adherence to law and order.127 Regardless of human rights considerations, Singapore’s criminal justice system is an effective deterrent to crime.128 Unfortunately, the same is not necessarily true of capital punishment which also offends international human rights standards, but remains in practice in the United States.129 By refusing to conform to international standards and continuing to enforce its laws, Singapore will maintain its envied crime-free atmosphere.

Singapore must also consider the negative ramifications of refusing to change its criminal justice system to suit the West. This decision opens the door to future foreign relations problems with that region.130 Al-

124. See infra note 216 and accompanying text (discussing capital punishment in the United States and the practice of caning in Australia).
125. See Editorial—Singapore’s Version of Crime and Punishment, supra note 103 (asserting that the United States never condemned Singapore for caning Singaporeans); Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore, supra note 7 (observing that the Clinton administration has not condemned corporal punishment in any countries other than Singapore).
126. See Singapore Doctors Defend Presence at Canings, supra note 80 (attributing Singapore’s low crime rate to its tough laws); School in Singapore Has Few Disciplinary Problems, supra note 94 (discussing the lack of drugs, cigarettes, and disciplinary problems in Singaporean schools).
127. See supra note 94 (recognizing the deterrent effects of Singapore’s laws).
128. See supra note 94 (noting the effectiveness of Singapore’s strict laws).
129. See An Extreme Penalty—The Death Penalty, Reuters Textline, May 12, 1994, available in LEXIS, World Library, Curnws File (criticizing the United States death penalty). John Wayne Gacy, who was executed in Illinois on May 10, 1994, became the 237th person put to death in the United States since 1976. Id. As evidenced by the need for its repeated use, the death penalty does not appear to serve as a deterrent to murder. Id.
130. See generally Singapore to Cane Second Foreigner for Vandalism, supra note 2 (expressing British and American disapproval of Singapore’s caning policies); see also infra note 132 and accompanying text (discussing United States retaliatory actions against Singapore).
ready the United States, a close ally and major trading partner of Singapore,\textsuperscript{131} has taken retaliatory action in response to the Fay controversy.\textsuperscript{132} The United States, without reason, recently opposed Singapore's bid to host the first meeting of the World Trade Organization.\textsuperscript{133} Singapore anticipated such ramifications when it attempted to appease the United States by reducing Michael Fay's sentence.\textsuperscript{134} Although Singapore made this unprecedented move out of respect for its friendship with the United States,\textsuperscript{135} the gesture backfired.\textsuperscript{136} Michael Fay's family and the United States government expected a complete pardon, and therefore did not appreciate the reduction from six cane strokes to four.\textsuperscript{137} Additionally, Singapore's neighbors voiced anger at the special treatment accorded to United States citizens.\textsuperscript{138}

\textsuperscript{131} See Zuraidah Ibrahim and Chiang Yin Pheng, \textit{What Political Price Will Government Pay?}, STRAITS TIMES, May 7, 1994, at 32 (stressing the strategic and economic importance of friendly relations with the United States).

\textsuperscript{132} See Michael Stutchbury, \textit{U.S. Rejects Singapore as WTO Host}, AUSTRALIAN FIN. REV., May 11, 1994, at 8 (discussing United States opposition to Singapore's bid to host the first meeting of the World Trade Organization). The new World Trade Organization is designed to promote worldwide free trade. \textit{Id.} Singapore, which boasts a successful economy while imposing little to no import tariffs for most of its goods, is a perfect illustration of the Organization's ideals. \textit{Id.} Hence, the only apparent reason for United States opposition to Singapore's bid to host the meeting is the recent Michael Fay episode. \textit{Id.} Despite Secretary of State Warren Christopher's assurances that United States trade would not be affected by the caning, the United States indirectly allowed the controversy to affect its trade relations with Singapore. \textit{See U.S. Trade Unaffected by Singapore Caning Incident, supra note 64} (assessing the potential impact of the Fay incident on United States/Singapore relations). In addition to official retaliation by the United States government, the United States media launched its own campaign which included a suggestion by the New York Times that United States companies in Singapore put pressure on the Singaporean government. \textit{Editorial—Singapore's Version of Crime and Punishment, supra note 103}.

\textsuperscript{133} See \textit{supra} note 132 and accompanying text (assessing United States retaliatory actions against Singapore).

\textsuperscript{134} See Ibrahim and Chiang, \textit{supra} note 131, at 32 (assessing the reasons for Singapore's decision to reduce Fay's sentence).

\textsuperscript{135} See \textit{id.} (emphasizing the importance of maintaining friendly relations with the United States); see also \textit{Singaporean Author Attacks Fay Caning in New Book, supra note 78} (stating that Clinton's plea for clemency placed Singapore's government in a difficult position of choosing between friendship and sovereignty).

\textsuperscript{136} \textit{See Fay Cane Sentence Reduced to Four Lashes, supra note 107} (assessing various responses to Fay's reduced sentence). George Fay, Michael Fay's father, was quoted as saying, "[a]s far as I'm concerned four strokes or six doesn't matter ... there should be no caning at all." \textit{Id.}

\textsuperscript{137} \textit{Id.}

\textsuperscript{138} See Ibrahim and Chiang, \textit{supra} note 131, at 32 (noting that Singapore's
These reactions reveal that Singapore's rejection of international human rights principles will impact its relationship with both East\textsuperscript{139} and West.\textsuperscript{140} Whereas relations with the West will weaken,\textsuperscript{141} Singapore will improve relations with its Eastern neighbors. In the past, Singapore's neighbors were suspicious about its close friendship with the United States.\textsuperscript{142} Singapore confirmed their suspicions when it made an unprecedented\textsuperscript{143} reduction in Michael Fay's sentence. Historically, such leniency was routinely denied to citizens of other Eastern countries.\textsuperscript{144} Since Western favoritism fostered distrust among Singapore's Eastern neighbors, Singapore's rejection of Western human rights notions will re-affirm its sovereignty and thus allow it to regain the trust of its neighbors.

\begin{itemize}
  \item[139.] See Ferris, supra note 21, at 173 (recognizing that Singapore's small size renders it susceptible to the influence of its Eastern neighbors).
  \item[140.] See supra note 132 and accompanying text (discussing United States reactions to Singapore's caning of Michael Fay); see also Ibrahim and Chiang, supra note 131, at 32 (assessing the impact of Singapore's decision to reduce Fay's caning sentence). Whereas Singapore's Eastern neighbors will expect similar leniency in the future, the West is angry that the sentence was not commuted. Id.
  \item[141.] See supra note 131 and accompanying text (noting United States opposition to Singapore's hosting of the World Trade Organization meeting); see also Michael Fay Released From Jail Early, Reuters Info. Services, June 22, 1994, available in WESTLAW, Int-news Database (recounting United States government reaction immediately following the caning of Michael Fay). After Fay was caned, President Clinton invited Singapore Ambassador S.R. Nathan to the State Department and intimated that the United States was contemplating a \textit{appropriate} response. Id. Despite the President's retaliatory tone, Vice-President Al Gore renounced the caning, but diplomatically explained that the United States would not allow it to affect United States/Singapore relations. Id.
  \item[142.] See Ibrahim and Chiang, supra note 131, at 32 (reporting that Singapore's neighbors resent its closeness to the United States).
  \item[143.] See id. (emphasizing the rarity of Singapore’s decision to reduce a criminal sentence). In 1965, the President of Indonesia appealed for clemency for two Indonesian paratroopers who killed three people. \textit{Id.} His appeal for clemency was rejected. \textit{Id.;} see infra note 190 and accompanying text (announcing Singapore's refusal to grant clemency to a Dutch man convicted of drug trafficking and sentenced to death).
  \item[144.] See supra note 143 and accompanying text (noting that in 1965, Indonesian appeals for clemency were rejected); see also Stewart, supra note 1 (questioning the discrepancy between Fay's sentence of four strokes and the six stroke sentence of his Hong Kong-born accomplice).
\end{itemize}
3. International Ramifications

Singapore's decision will also impact the types of punishments imposed in other countries. As an economic leader in the East, Singapore has the power to influence its neighbors. By refusing to accept current international human rights standards, Singapore will set a precedent for other nations to do the same. The only way to uphold international law is to ensure that states adhere to its provisions. Consequently, Singapore's failure to adhere will weaken international human rights law by discouraging other nations from complying with it.

B. COMPLETE CONFORMITY

1. Reasons to Conform

By tailoring its criminal justice system to comport with international human rights standards, Singapore will enjoy the benefits of friendly relations with the United States and the West. The advantages of such a relationship outweigh the benefits of sovereignty. Singapore

145. See Mary Y. Pierson, East Asia—Regional Economic Integration and Implications for the United States, 25 Law & Pol'y Int'l Bus. 1161, 1164-65 (1994) (acknowledging Singapore's influential economic position in Southeast Asia); see also In Defence of the Sing Dollar, Reuters Info. Services, Sept. 26, 1994, available in WESTLAW, Int-News Database (stating that a joint report by the Institute for International Management Development and the World Economic Forum rated Singapore the most competitive newly industrialized economy for the fourth year in a row).

146. See Singapore Caning Sparks Debate in Indonesia, supra note 103 (discussing Indonesian sentiment in favor of emulating Singapore's caning punishment); Teo, supra note 103, at 17 (expressing the desire of Australian citizens to follow Singapore's example and implement caning in Australia).

147. See Weissbrodt, supra note 59, at 3 (stating that international law is only valid if governments conform to it). The strongest international law is that which is in the mutual interests of governments to obey. Id.

148. Id.

149. See supra note 132 and accompanying text (discussing the negative United States reaction to Singapore's decision to cane Michael Fay).

150. See, e.g., Ibrahim and Chiang, supra note 131, at 32 (discussing the important economic and strategic impact of the United States on Singapore); Labour Shortage Seen Slowing Down Singapore Growth, Reuters Info. Services, Oct. 27, 1994, available in WESTLAW, Int-News Database (stating that the United States is Singapore's largest export market); Bassiouni, supra note 15, at 238 (arguing that international human rights law overcomes state sovereignty). Due to the strength of existing treaties, custom, and general legal principles, sovereignty is no longer a valid
owes much of its economic success to the United States government and private American companies. With Western support, Singapore will retain its prominent economic and political position as a leader in the Asia-Pacific Region.

2. Domestic Ramifications

Although espousing Western standards will benefit Singapore's international standing, it will significantly undermine the nation's domestic control. By succumbing to Western demands, Singapore's government will lose credibility with its people. Singaporean citizens will view their government's acquiescence as a loss of power and control. Although this outcome appears drastic by American standards, Singaporeans differ from Americans in that they have a more traditional excuse for ignoring international law. Id.

151. See Labour Shortage Seen Slowing Down Singapore Growth, supra note 150 (noting that the United States is Singapore's largest exporter).

152. See Michael S. Bennett, Securities Regulation in Singapore: The City-State as an International Financial Center, 12 UCLA PAC. BASIN L.J. 1, 1 (1994) (attributing Singapore's economic success to foreign corporations); Editorial—Singapore's Version of Crime and Punishment, supra note 103 (noting that American companies enjoy Singapore's crime-free atmosphere).

153. See Labour Shortage Seen Slowing Down Singapore Growth, supra note 150 (stating that the United States provides Singapore's largest export market); see also Ibrahim and Chiang, supra note 131, at 32 (emphasizing the strategic importance of Singapore's friendly relations with the United States).

154. See Ibrahim and Chiang, supra note 131, at 32 (discussing the disappointed reaction of Singaporeans in response to their government's reduction of Fay's sentence).

155. See id. (discussing the effects on Singapore's government, of the decision to reduce Michael Fay's caning sentence). Former Senior Minister S. Rajartnam is quoted as saying "Where is this going to end? What signal is going out to Singaporeans about our justice system?" Id. Meanwhile, a newspaper poll revealed that close to 50 percent of Singaporeans view the decision as a "dangerous precedent" which will encourage other nations to ask for similar acquiescence. Id. But see Singapore and the Culture of Caning, supra note 100 (arguing that the rule of law will not break down because of Singapore's willingness to reduce Fay's sentence). This argument, however, relies on an analogy between Singapore and Australia, another nation which practiced caning until the 1950s. Id. The author argues that the rule of law in Australia did not break down when caning was banned. Id. Australia, however, currently faces an increase in crime which has caused public outcry in favor of Singapore's system of deterrence. Teo, supra note 103, at 17.

156. See supra note 155 and accompanying text (evaluating the reaction of Singaporean citizens to their government's decision to yield to Western demands).
respect for order and authority. 157 If they sense that their government’s authority is weak and easily undermined, the nation will face political unrest and increased crime. 158

In addition to causing social upheaval, acceptance of Western standards will jeopardize Singapore’s national sovereignty. 159 A nation’s laws reflect its cultures and traditions. 160 If Singapore relinquishes its laws in favor of international human rights principles, it risks losing its identity. 161 This was precisely the situation Singapore sought to avoid when it separated from the British Empire. 162 Singapore chose to retain only those British laws which were compatible with Singaporean interests. 163 By simply acquiescing to Western notions of just punishment, Singapore will revert back to its subordinate position as a colonial territory.

3. International Ramifications

Despite the detrimental domestic ramifications for Singapore, both the Western world and the cause of human rights will benefit from

157. See Smith, supra note 17, at 126 (announcing that Singaporeans have a “cultural tolerance of, if not a preference for a strong, paternalistic government”); Ibrahim and Chiang, supra, note 131, at 32 (explaining that Singaporeans generally supported their government’s decision to cane Fay, but that many were disappointed when Singapore reduced his sentence by two strokes).

158. See Kenny, supra note 94, at 23 (stressing the importance of retribution as a deterrent). The social order is in jeopardy when citizens feel that the rule of law is breaking down. Id. Consequently, governments must firmly impose punishments in order to deter crime and uphold the social order. Id.

159. See Ibrahim and Chiang, supra note 131, at 32 (recognizing the importance of sovereignty for both domestic and international relations). When Singapore reduced Michael Fay’s sentence, officials began to fear that other nations would expect the same special treatment accorded to the United States. Id. As a result, Singapore’s laws would become meaningless. Id. Singapore would then lose the respect of its people, as well as that of other nations. Id.

160. See supra notes 17-20 (discussing the impact of Singapore’s culture on its legal system); see also Seymour, supra note 92, at 247 (attributing a nation’s views on fundamental rights to its cultural and religious background).

161. See supra notes 17-20 (revealing that a nation’s laws are deeply rooted in its culture and religion); see also Singapore and the Culture of Caning, supra note 100 (stressing the effectiveness of caning in Singapore); Editorial—Singapore’s Version of Crime and Punishment, supra note 103 (stating that Singapore has practiced caning for years without United States interference).

162. See CHAN, supra note 19, at 39 (describing Singapore’s rejection of British laws which were not harmonious with its new independent framework).

163. Id.
Singapore’s adoption of governing international standards. As a leader in the Southeast Asian region, Singapore will pave the way for its neighbors to adopt international standards. Apart from Eastern Europe, the Asia-Pacific is the only region of the world that lacks a human rights charter. Singapore’s acquiescence will eventually lead to similar conformity by other countries. Southeast Asian nations will follow first, since they previously joined Singapore in handling economic issues through the Association of South-East Asian Nations (ASEAN). Eventually, enough countries will follow Singapore’s example to create the first Asian-Pacific human rights charter.

Although this chain of events appears remote, Singapore’s adoption of international human rights standards will bring it closer to realization.

C. SELECTIVE INCORPORATION

1. Reasons to Selectively Incorporate

Based on the ramifications of the “no action” and “complete conformity” policy options, the benefits of “selective incorporation” are fairly evident. By modifying certain of its laws to comply with international standards, Singapore will abate the ongoing criticism sparked by the
Michael Fay incident. Specifically, the United States will view this incremental acceptance of international law as a reconciliatory move. As a result, Singapore will avert future acts of vengeance such as the United States Trade Representative's recent refusal to accept Singapore's bid to host the first meeting of the World Trade Organization. Although Singapore is a strong political and economic power in Southeast Asia, it relies on its allies, including the United States, for both economic and military support. Without Western backing, Singapore's financial and political prosperity will diminish.

More importantly, selective incorporation will allow Singapore to maintain its sovereignty. Singapore will choose which laws to modify and how to modify them, so as not to offend the cultural and religious foundations of its criminal justice system. For example, Singapore may retain the punishment of caning, but restrict its application to crimes against the person. As a result, Singapore will remedy the disproportionality concerns of the West, while retaining a form of punishment with firm historical roots.

169. See Singapore Still Lacks True Sense of Justice, Advoc., Oct. 25, 1994, at 6B (criticizing Singapore for violating the freedom of expression guarantee of the Universal Declaration of Human Rights). Nearly five months after Michael Fay was caned, an American professor named Christopher Lingle was interrogated by police about an article in which he criticized Southeast Asian nations for human rights violations. Id. After the interrogation, police threatened to arrest the professor for criminal defamation. Id. The U.S. State Department characterized Singapore's behavior as an "apparent attempt by the Singapore authorities to intimidate Professor Lingle." Id.

170. See supra note 132 and accompanying text (discussing United States refusal to support Singapore's bid to host the first meeting of the WTO).

171. See Pierson, supra note 145, at 1164-65 (describing Singapore's influential economic and political role as a member of ASEAN).

172. See Labour Shortage Seen Slowing Down Singapore Growth, supra note 150 (emphasizing the economic and strategic influence of the United States over Singapore).

173. See Fay Cane Sentence Reduced to Four Lashes, supra note 107 (asserting that Singapore values the economic and security function of the United States in Southeast Asia).

174. See State Department Regular Briefing, supra note 7 (voicing the State Department's concern regarding the severity of caning as punishment for acts of vandalism).

175. See supra notes 24, 77 and accompanying text (providing historical reasons for Singapore's strict system of government and its caning sanction).
2. Domestic Ramifications

The West will reward Singapore for its willingness to respect international human rights standards. Foreign investment will continue, as will international trade. The United States, Singapore's largest export market, will overlook the Michael Fay affair and continue to trade with Singapore. As a result, Singapore will retain its influence as an economic leader in the Southeast Asian region.

If Singapore modifies its caning practices, it will eventually also revise the rest of its legal system to conform with international standards. Singaporeans, however, need time to adapt to the initial changes before they can accept more radical future transformations. Singapore's swift economic growth, coupled with the Michael Fay affair, have already created a foundation for change. In the aftermath of the caning incident, the opposition Singapore Democratic Party asked for the installment of a human rights commission to regulate government behavior. Although it will take time to rally the support of citizens behind

176. See Bennett, supra note 152, at 1 (crediting Singapore's economic success to vast foreign investment).

177. See Labour Shortage Seen Slowing Down Singapore Growth, supra note 150 (discussing the role of the United States as Singapore's largest export market).

178. Id.

179. See Ibrahim and Chiang, supra note 131, at 32 (asserting that even if Singapore's government had not reduced Fay's sentence, relations with the United States would have returned to normal in less than a year). Many Singaporeans believe that President Clinton's harsh stance on the incident was a reaction to massive media pressure. Id.

180. See Pierson, supra note 145, at 1164-65 (acknowledging Singapore's economic influence in Southeast Asia); In Defence of the Sing Dollar, supra note 145 (discussing Singapore's designation as the most competitive newly industrialized economy).

181. See Weissbrodt, supra note 59, at 4 (characterizing adoption of international law as a process that takes time).

182. See id. (acknowledging that it takes time to persuade nations to comply with international standards).

183. See Ferris, supra note 21, at 173 (characterizing Singapore's environment as "vulnerable"). Due to its diverse population, rapid economic growth and uncertain relations with neighboring states, Singapore faces potential social unrest. Id.

such a commission, its mere contemplation is an important first step toward domestic acceptance of change.

3. International Ramifications

Singapore's decision to selectively incorporate international norms will serve as an example for other Southeast Asian nations. Despite their distrust of Singapore's relationship with the West, Singapore's neighbors also rely on Western economic and strategic support. Selective incorporation will slowly gain greater acceptance if the West continues to indirectly punish nations like Singapore for failure to conform with international law. Unlike "complete conformity," selective incorporation offers the additional benefit of allowing these sovereign states to retain their national identities while maintaining prosperous relations with the West.

IV. RECOMMENDATIONS

Singapore's most desirable policy option is selective incorporation. This proposal combines the benefits of "no action" with those of "complete conformity" to provide Singapore with a workable solution. If Singapore refuses to alter its punishment policies, it will eventually alienate other nations in addition to the United States. On the other
hand, Singapore cannot simply ignore its own cultural and political policies in order to completely conform to customary international law. Selective incorporation strikes a balance between these opposing concerns of sovereignty and foreign diplomacy.

Although international law prohibits torture and cruel, inhuman, or degrading punishment, caning is no more cruel and inhuman than capital punishment which is regularly practiced by the United States. The only difference between American capital punishment and Singaporean caning is degree of proportionality. The proportionality principle dates back to the English Magna Carta of 1215, and was again repeated in the English Bill of Rights in 1689. The Eighth Amendment of the United States Constitution employs proportionality language similar to that found in the English Bill of Rights. In interpreting the Eighth Amendment, American courts have construed the term “cru-
el" to consist of two factors: "the cruelty of pain," and disproportionality. Although both Singapore and the United States have historical ties to Great Britain, Singapore, unlike the United States, failed to adopt a proportionality requirement. Hence, while American capital punishment and Singaporean caning are both painful, they are not both disproportionate. Capital punishment is proportionate for such crimes as first degree murder and treason; however, caning is disproportionate punishment for property crimes.

Disproportionality of punishment is the true flaw in Singapore's criminal justice system. Caning is not inherently cruel and inhuman. If properly regulated and proportionately imposed, caning is equally as valid as paddling or capital punishment. Singapore can conform with international human rights standards without abolishing caning. Although caning is disproportionate penance for property crimes such as vandalism and drug possession, it is proportionate for crimes against the person, including assault, rape, and domestic violence.

199. But see Pak, supra note 66, at 256 (stating that the death penalty is no more proportionate than caning).
200. See Arnett, supra note 68, at 248 (noting that federal law upholds the use of the death penalty for treason, espionage, first-degree murder, felony-murder, rape, and homicides resulting from air piracy). Each of these crimes is a crime against the person which either involves a homicide, or a crime against the state, such as espionage, which could jeopardize the nation as a whole.
201. See State Department Regular Briefing, supra note 7 (voicing American opposition to the disproportionality of Singapore's caning punishment); Public Opinion Against U.S. Teen in Singapore, supra note 83 (explaining that vandalism is not a violent crime, whereas caning is a violent punishment).
202. See supra note 114 and accompanying text (stressing that caning does not universally constitute torture and cruel, inhuman, or degrading punishment); see also Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore, supra note 7 (stating that "in many countries [caning] is not considered particularly cruel and certainly not unusual").
203. See Walsh, supra note 115, at 3 (stating that the constitutionality of the proposed California paddling bill is at issue); see also supra notes 113-118 (discussing a number of corporal punishment cases with varying outcomes based on the specific characteristics and implementation of the punishment).
204. See supra notes 68-70 and accompanying text (demonstrating that the United States continues to employ capital punishment although the sanction violates international law).
205. See supra note 201 (expressing the United States government's view that caning is disproportionate punishment for property crimes).
206. See supra note 200 (revealing that the United States finds the death penalty proportionate for some crimes against the person).
can solve the problem of disproportionality by merely outlawing caning for property crimes. If Singapore modifies section 230 of its Criminal Procedure Code to include persons convicted of property crimes among the class of people who may not be caned, the disproportionality problem will no longer exist.

Singapore can further extend the policy of selective incorporation by amending its Constitution. As suggested by the Constitutional Commission of 1966, Singapore can add the following provision, “No person shall be subjected to torture or to inhuman or degrading punishment or treatment.” Although Singapore emulated Malaysia and refused to adopt this provision in 1966, this amendment is appropriate in 1995. Just as American courts interpret the Eighth Amendment not to prohibit the death penalty, Singaporean courts will interpret this amendment not to prohibit caning for crimes against the person. American courts claim that the Eighth Amendment requires proportionality; similarly, Singaporean courts may construe a proportionality requirement in their amendment. By including a prohibition against torture and inhuman or degrading punishment in its Constitution, Singapore will incorporate international human rights standards into its domestic laws, thereby preserving its sovereignty.

The only problem with selective incorporation is that it allows for potential discrepancies within a legal system. For example, while Singapore may alter some of its laws to conform with international human rights norms, it will not necessarily change all of its legislation. Hence, some of Singapore’s laws will comply with international law while others will not. For example, although Singapore may restrict the imposition of caning to crimes against the person, it could conceivably retain the death penalty as punishment for the property crime of drug trafficking. This discrepancy, however, is the natural result of the selective

207. See supra note 33 and accompanying text (discussing the Constitutional Commission’s recommendation to protect against torture and inhuman or degrading punishment).

208. See REPORT, supra note 28, at 799 app., ¶ 40 (explaining that the Malaysian Constitution provided no protection against cruel forms of punishment).

209. See supra note 68 (exemplifying United States acceptance of the death penalty as legal under the Eighth Amendment).

210. See Weems v. United States, 217 U.S. 349, 367 (1910) (standing for the proposition that punishment must be proportional to the crime committed).

211. See Misuse of Drugs (Amendment) Act, 1989, supra note 82, Second Schedule (prescribing punishments for various drug-related crimes). The following quantities are punishable by death: more than 15 grams of heroin, 30 grams of morphine, 30
incorporation compromise. It is unreasonable to expect that the West will ever entirely approve of Singapore’s system of punishment.  

Singapore’s brief history as an independent country is one factor that significantly distinguishes it from the more established nations that created customary international law. The Republic of Singapore is only thirty years old. When the United States and other Western nations first gained their independence, they too implemented punishments that are considered cruel and inhuman by today's international standards. Consequently, while Singapore can appease those nations somewhat, it can not do so completely at the expense of its own newly-gained domestic authority and sovereignty.

**CONCLUSION**

The threshold question facing Singapore after the Michael Fay incident is whether to choose its sovereignty over friendly foreign relations. The only answer that strikes a balance between these two competing interests is “selective incorporation.” Ideally, Singapore would prefer not to vary its current laws at all; however, given the potential economic and political ramifications from Western countries, Singapore must implement some changes. The most significant problem with caning is that it is disproportionate punishment for property crimes. By restricting grams of cocaine, 500 grams of cannabis, 200 grams of cannabis resin, and 1200 grams of opium. *Id.*

212. See Seymour, *supra* note 93, at 245 (asserting that different nations possess their own unique values which are reflected in their laws); Weissbrodt, *supra* note 59, at 4 (noting that even the nations that created international human rights law are guilty of violating it).

213. See *supra* note 9 and accompanying text (stating that Singapore gained full independence in 1965).

214. See *supra* note 92 and accompanying text (discussing the Western European origins of major international human rights documents).

215. See *supra* note 9 and accompanying text (revealing that Singapore became a Republic in 1965).

216. See Richard B. Lillich, *The United States Constitution and International Human Rights Law*, 3 HARV. HUM. RTS. J. 53, 60 (providing that "a penalty that was permissible at one time in our nation's history is not necessarily permissible today") (quoting State v. Ncube, 2 S. Afr. L. Rep. 702 (Zimb. Sup. Ct. 1988)); see also *Singapore and the Culture of Caning, supra* note 100 (noting that Australia employed the punishment of caning until the 1950s). The United States continues to employ the death penalty against juveniles under age 16 in violation of current international law. See *supra* note 100 and accompanying text.

217. See *supra* note 201 (recounting repeated United States criticism of caning as
caning to crimes against the person, Singapore will retain this traditional punishment without further alienating the international community.