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THE CANING OF MICHAEL FAY: CAN SINGAPORE'S PUNISHMENT WITHSTAND THE SCRUTINY OF INTERNATIONAL LAW?

Firouzeh Bahrapour*

INTRODUCTION

The recent caning of an American teenager in Singapore¹ has prompted world-wide debate over the international laws governing criminal punishment.² Eighteen-year-old Michael Fay pleaded guilty to two charges³ 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, Allwld 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, Allwld 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.*

2. See *Singapore to Cane Second Foreigner for Vandalism*, Reuters Info. Services, Apr. 22, 1994, available in LEXIS, World Library, Allwld File (acknowledging worldwide controversy over the justifications for caning).

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.⁵ 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.⁶

Despite President Clinton's condemnation of the sentence as disproportionate,⁷ both Singapore's Constitution and domestic criminal laws allow caning as a form of punishment.⁸ 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.⁹ Although Singapore's Constitution recognizes fundamental liberties, including due process¹⁰ and equal protection,¹¹ it fails to protect against cruel, inhuman, or degrading punishment.¹² Therefore, while

5. *Moving on After Michael Fay*, SINGAPORE, Jul.-Aug. 1994, at 17.

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.*

7. See *State Department Regular Briefing*, Federal News Service, Mar. 9, 1994, available in LEXIS, World Library, Allwld File (discussing the United States government's stance on the Michael Fay caning). But see *Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore*, Reuters Info. Services, Apr. 22, 1994, available in LEXIS, Asiapc Library, Sing File (providing a Singaporean reaction to President Clinton's criticism of the Fay sentence).

8. See generally SING. CONST. pt. IV, reprinted in 17 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., Nov. 1991) (delineating fundamental liberties available to Singapore's citizens); Vandalism Act, ch. 108 (1966) (Sing.) (citing caning as a possible punishment for vandalism); CRIM. PROC. CODE, Cap. 113, Reprint 1970, §§ 226-32 (Sing.) (setting parameters for the execution of caning sentences).

9. Valentine S. Winslow, *Republic of Singapore: The Constitution of the Republic of Singapore*, in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 627, 628 (Lawrence W. Beer ed., 1992). Singapore was affiliated with a number of different countries before gaining its full independence in 1965. *Id.* In 1819, the State of Johore ceded Singapore to the East India Company, and in 1867 it became part of the British Crown Colony "Straits Settlement." *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.¹³ Singapore, however, is not a signatory to any such bilateral or multilateral agreements.¹⁴ Although no specific treaties or conventions bind Singapore, international customs and legal principles regarding cruel, inhuman, or degrading punishment are well established.¹⁵

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.¹⁶ As a result of this Chinese dominance,

13. See, e.g., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/RES/39/46 (1984) [hereinafter Convention Against Torture]; Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration]; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter Fundamental Freedoms]; International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter Civil Rights].

14. See, e.g., Convention Against Torture, Universal Declaration, Fundamental Freedoms, Civil Rights, *supra* note 13.

15. See M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*, 3 DUKE J. COMP. & INT'L L. 235, 262-63, nn.118-28 (1993) (observing that the right to freedom from torture and cruel, inhuman, or degrading punishment appears in numerous international agreements as well as 81 national constitutions).

16. THE RESOURCE CENTRE, MINISTRY OF INFORMATION AND THE ARTS, THIS IS

Singaporeans maintain a Confucian reverence for law and authority.¹⁷ A powerful Muslim contingency, comprising sixteen percent of the nation's population, also influences Singapore's national identity.¹⁸ Amid this diversity, the only customary law that continues to survive in Singapore is Malay Muslim customary law.¹⁹ 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.²⁰

Singapore's history as a British colony reveals a political commitment to the nation's unique cultural identity.²¹ 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.²² In 1965, Singapore finally gained full independence from both Britain and Malaysia,²³ and the government began focusing on uniting its ethnically divided population.²⁴ In order to maintain soli-

SINGAPORE 1 (Aug. 1993).

17. See Brian C. Smith, Note, *Singapore: A Model of Urban Environmentalism in Southeast Asia*, 16 HASTINGS INT'L & COMP. L. REV. 123, 126 (1993) (analyzing Singapore's modern environmental success in the context of its ancient Asian social ethic).

18. See David J. Thorpe, *Some Practical Points About Starting a Business in Singapore: "Give Me Liberty Or Give Me Wealth,"* 27 CREIGHTON L. REV. 1039, 1040 (1994) (providing statistics of Singapore's religious make-up).

19. See HELENA H.M. CHAN, AN INTRODUCTION TO THE SINGAPORE LEGAL SYSTEM 39 (1986) (discussing the current role of Malay Muslim customary law in Singapore).

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

parity among the various ethnic groups, the government implemented the rigid paternalistic policies which remain in force today.²⁵ As a result of early 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 standards,²⁷ encompassing instead the values and diversity of Singaporean society.²⁸ When Singapore became a republic in 1965, the First Parliament appointed a Constitutional Commission to help prepare the newly-independent nation's Constitution.²⁹ The Commission's goal was to preserve the multi-racial character of the country, while ensuring equality for all citizens.³⁰ In light of this goal, the Commission published a series 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 fundamental 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, Asiapc 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 torture).

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.³³ 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.³⁴ Article 11³⁵ 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.³⁶

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 mischief³⁷ for violating Singapore's Vandalism Act.³⁸ 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

"racial, linguistic and religious minorities" was to protect the fundamental rights of all citizens). In so doing, the Commission hoped that eventually, all the varied cultures would unite under the Constitution of the new Republic. *Id.* ¶ 13.

33. *Id.* ¶ 40. The Commission acknowledged that the Malaysian Constitution did not protect against inhuman punishment; however, based on the existence of such protection in all other written constitutions, the Commission recommended including it in Singapore's Constitution. *Id.* The suggested provision reads as follows: "13(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment." *Id.*

34. See SING. CONST., *supra* note 8, pt. IV, arts. 9-16 (listing fundamental liberties as follows: liberty of the person; slavery and forced labour prohibited; protection against retrospective criminal laws and repeated trials; equality; prohibition of banishment and freedom of movement; freedom of speech, assembly and association; freedom of religion; rights in respect of education).

35. *Id.* pt. IV, art. 11.

36. See *supra* note 34 and accompanying text (explaining that although Singapore's Constitution acknowledges certain fundamental liberties, it still fails to recognize the right to freedom from torture and cruel, inhuman, or degrading punishment).

37. Grezlak, *supra* note 1, at 1; see *Moving on After Michael Fay*, *supra* note 5, at 17 (listing Fay's alleged offenses to include: spray painting two cars with red paint; damaging the right front door of a car and pelting it with eggs; switching the license plate of a car and pelting it with eggs; and keeping flags, taxi and road signs, stolen by others, in his home).

38. Vandalism Act, *supra* note 8, ch. 108.

prison sentence of three years, and caning of three to eight strokes.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.⁴⁰ Since 1989, twelve Singaporeans and two foreigners between the ages of eighteen and twenty-one received caning sentences under the Vandalism Act.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.⁴²

Although the Vandalism Act permits caning as a method of punishment, it also provides safeguards to protect citizens.⁴³ The Act does not allow caning for a first conviction unless the vandal uses an indelible substance to commit the crime.⁴⁴ Michael Fay's acts allegedly involved spray paint, an indelible substance;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."⁴⁶ Treaties and con-

39. *Id.* ch. 108, § 3.

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).

41. *Singapore to Cane Second Foreigner for Vandalism, supra* note 2.

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.*

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).

44. *Id.* ch. 108, § 3(a).

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).

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.⁴⁷ Customary international law, on the other hand, originates from either *opinio juris*,⁴⁸ or from acceptance of an international agreement by a number of influential world powers.⁴⁹ Finally, "general principles of law" are rules of law which are frequently applied, but are not officially stated in binding international agreements.⁵⁰

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.⁵¹ 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.⁵² Since the Universal Declaration, the United Nations ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950,⁵³ followed by the International Convention on Civil and Political Rights in 1966.⁵⁴ Both of these conventions also contain provisions prohibiting cruel or torturous punishment.⁵⁵ 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.⁵⁶

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

47. See Restatement (Third) of the Foreign Relations Law of the United States § 321 (1993) [hereinafter Restatement] (explaining that international agreements only bind the signing parties).

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).

50. See Bassiouni, *supra* note 15, at 240 (defining "general principles" of international law).

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.

53. Fundamental Freedoms, *supra* note 13.

54. Civil Rights, *supra* note 13.

55. Fundamental Freedoms, *supra* note 13, art. 3; Civil Rights, *supra* note 13, pt. III, art. 7.

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.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.⁵⁸ Due to such strong international acceptance, this convention is no longer merely an agreement, but rather rises to the level of customary law.⁵⁹ Accordingly, it binds other nations in addition to its signatories.⁶⁰ Moreover, the incorporation of the right to freedom from torture and cruel, inhuman, or degrading punishment into eighty-one national constitutions,⁶¹ further renders the provision a "general principle of law."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."⁶³ Although caning may cause "severe pain or suffering,"⁶⁴ it is a "lawful sanction" in Singapore.⁶⁵

cruel, inhuman, or degrading forms of punishment).

57. *Id.*

58. *Id.*

59. *See, e.g.*, Restatement, *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, *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, *supra* note 15, at 249 (attributing the creation of customary law to widespread international recognition of a convention).

60. *See* Bassiouni, *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 id.* at 240 (noting that "general principles" of international law arise from "reaffirmation" of those principles in nonbinding documents).

63. Convention Against Torture, *supra* note 13, pt. I, art. 1(1).

64. *See U.S. Trade Unaffected by Singapore Caning Incident*, Reuters Info. Services, Apr. 10, 1994, available in LEXIS, World Library, Allwid 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., *supra* note 8, pt. IV, (delineating fundamental liberties available to Singapore's citizens); Vandalism Act, *supra* note 8, ch. 108 (citing caning as a possible punishment for vandalism); CRIM. PROC. CODE, *supra* note 8, Cap. 113, (setting parameters for execution of caning sentences).

Similarly, the death penalty causes severe pain and suffering,⁶⁶ and is considered cruel and unusual by the European Court on Human Rights,⁶⁷ yet it remains in practice as a legal sanction in the United States.⁶⁸ Consequently, a comparison of caning in Singapore and the death penalty in the United States⁶⁹ reveals that both countries are potentially guilty of violating international law.⁷⁰

C. CANING

Although international law consistently prohibits torture and cruel, inhuman, or degrading punishment,⁷¹ 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.⁷² Zimbabwe's Constitution forbids

66. See John Pak, *Extradition and the Death Penalty: Seeking a Constitutional Assurance of Life*, 26 CORNELL INT'L L.J. 239, 257 n.117 (1993) (citing to ROBERT JOHNSON, CONDEMNED TO DIE: LIFE UNDER SENTENCE OF DEATH 86 (1981)) (comparing death by the electric chair to burning at the stake).

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,⁷³ yet caning remains a statutorily-imposed penalty.⁷⁴ Although the legislature recognizes caning as a valid punishment, Zimbabwean courts have found it unconstitutional⁷⁵ based on international norms that define inhuman and degrading punishment.⁷⁶

1. History

As a former British territory, Singapore was influenced by Britain's use of corporal punishment in schools.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.⁷⁸ The moderate People's Action Party first enacted caning laws to curb Communist graffiti and slogans in the early 1960s.⁷⁹ Despite its original narrow purpose, can-

73. ZIMB. CONST. § 15(1) (Zimbabwe).

74. See Keith Highet and George Kahale III, *Zimbabwe—Human Rights—Inhuman or Degrading Punishment—Incorporation of International Law and Diplomacy*, 84 A.J.I.L. 768 (1990) (analyzing *Juvenile v. State*, Judgment No. 64/89, Crim. App. No. 156/88. Supreme Court of Zimbabwe, March 22 and June 19, 1989). The issue in this case was whether a statute, which allowed the whipping of juveniles with rattan canes, violated Zimbabwe's constitutional protection against inhuman or degrading punishment. *Id.* The court found that caning a juvenile for the crime of assault with intent to do grievous bodily harm violated Zimbabwe's Constitution. *Id.* Although this was not the first time Zimbabwe's courts ruled that whipping violated their constitution, this was the first time they relied on international norms to confirm the inhuman and degrading nature of whipping. *Id.*

75. *State v. Ncube*, 2 S. Afr. L. Rep. 702 (Zimb. Sup. Ct. 1988) (holding that whipping is "inherently brutal and cruel"); *Juvenile v. State*, *supra* note 74 (deciding that whipping with a rattan cane is inhuman and degrading punishment which violates section 15(1) of Zimbabwe's Constitution).

76. See Highet and Kahale, *supra* note 74, at 769 (asserting that worldwide and regional human rights instruments "enrich" the interpretation of Zimbabwe's Constitution). The court referred to the International Bill of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Inter-American Convention on Human Rights, along with cases from the European Court of Human Rights, to support its characterization of whipping as inhuman and degrading. *Id.*

77. See Marco R. della Cava, *Is the Citizen Caned a Lash of Brutality?*, USA TODAY, Apr. 18, 1994, at 1D (explaining that Singapore's punishment policies reflect its former English ties); see also Daniela Deane, *Use of "The Cane" Lives On; In Parts of Asia, Flogging Still Exists*, L.A. TIMES, June 18, 1989, at 29 (attributing the prevalence of flogging in Asia to the influence of Britain's strict school systems).

78. See *Singaporean Author Attacks Fay Caning in New Book*, Reuters Info. Services, Aug. 15, 1994, available in LEXIS, Asiapc Library, Sing File (explaining that caning dates back to the 1960s).

79. See *West's Values Take a Beating in Asia*, *supra* note 24 (describing caning

ing has endured as a more general form of punishment in Singapore.⁸⁰ It is currently prescribed for certain types of vandalism,⁸¹ as well as for possession of small quantities of drugs.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.⁸³ In some cases, the subject goes into shock and faints;⁸⁴ however, doctors are present to revive prisoners and to make certain they are fit to undergo the remainder of their punishment.⁸⁵

as a tactic that was originally used by moderates to quiet left-wing political uprisings).

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).

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. *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 . . ." *Id.* § 3(a).

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. *Id.*

83. *U.S. Trade Unaffected by Singapore Caning Incident*, *supra* note 64 (explaining the process of caning); see Michael Arkus, *Public Opinion Against U.S. Teen in Singapore*, Reuters Info. Services, Apr. 6, 1994, available in LEXIS, Asiapc Library, Sing File [hereinafter *Public Opinion Against U.S. Teen in Singapore*] (reporting that according to Singaporean newspapers, "pieces of skin and flesh fly at each stroke").

84. See *Public Opinion Against U.S. Teen in Singapore*, *supra* note 83 (discussing the physical effects of caning); see also Michael Arkus, *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).

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).

3. Safeguards

Singapore's Criminal Procedure Code sets forth a series of procedural safeguards for caning.⁸⁶ Although American medical organizations, including the American Medical Association (AMA),⁸⁷ 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.⁸⁸ The doctor's role is to protect prisoners by ensuring that they are sufficiently healthy and able to endure the punishment.⁸⁹ 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.⁹⁰ These safeguards reveal that Singapore does not haphazardly cane its citizens, but rather provides a careful set of rules for carrying out the punishment.⁹¹

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.⁹² Nevertheless, in Singapore, as well as in a number of other countries,⁹³ caning is considered a legitimate form of deterrence.⁹⁴ By restricting the class of people eligible for caning,⁹⁵ requiring the presence of doctors at canings,⁹⁶ and establishing the size and type of instrument that constitutes a cane,⁹⁷

imposed the death penalty. *Id.* at 360.

92. See Thomas M. Franck, *Of Gnats and Camels: Is There a Double Standard at the United Nations?*, 78 A.J.I.L. 811, 831 (1984) (stating that UN resolutions merely reflect the ideologies of a group of sovereign states); *Editorial—Hard Justice—The West Should Take Care When Lecturing Singapore*, *supra* note 7 (contrasting Western viewpoints with those of other societies); see also David Seymour, *The Extension of the European Convention on Human Rights to Central and Eastern Europe: Prospects and Risks*, 8 CONN. J. INT'L L. 243, 247 (1993) (quoting Judge Brian Walsh of the European Court of Human Rights as stating that the Universal Declaration of Human Rights reflects the traditions of Western European countries).

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 1D. 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.*

94. See Mary Kenny, *Crime Goes Unpunished: But Just Try Double—Parking*, DAILY TELEGRAPH, May 4, 1994, at 23 (emphasizing the effectiveness of retribution as a form of deterrence); see also CNN News: *School in Singapore Has Few Disciplinary Problems*, Cable News Network, Apr. 20, 1994, Transcript # 714-13, available in LEXIS, World Library, Allwld File [Hereinafter *School in Singapore Has Few Disciplinary Problems*] (attributing the orderly nature of Singaporean schools to Singapore's strict laws).

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,⁹⁸ the West must remember that the Republic of Singapore is only thirty years old.⁹⁹ Many of the world's older criminal justice systems still do not fully conform with internationally accepted standards.¹⁰⁰

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, Curnws 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,¹⁰¹ and Singapore cannot simply discard the practice in favor of traditionally Western punishments.¹⁰² Similarly, regardless of their views about caning, other nations would not necessarily abandon their traditional laws to adopt Singapore's standards of punishment.¹⁰³ For example, Indonesian government officials do not inherently disapprove of caning;¹⁰⁴ however, they find that it is an unacceptable form of punishment for their country.¹⁰⁵ Likewise, human rights treaties that address Western concerns¹⁰⁶ may not meet with the approval of Singaporean society.¹⁰⁷

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.¹⁰³ For example, while most nations prohibit capital punishment for juveniles under age eighteen, the United States Supreme Court upholds the practice,¹⁰⁹ rejecting the notion that it constitutes torture.¹¹⁰ Although caning could qualify as torturous, cruel, and inhuman under certain circumstances,¹¹¹ if properly regulated,¹¹² 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.¹¹³ Consequently, caning does not always violate international prohibitions against torture and cruel, inhuman, or degrading punishment.¹¹⁴

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.¹¹⁵ The bill did not pass the first time it was introduced,¹¹⁶ but it appears to have a good chance of approval despite questions about its constitutionality.¹¹⁷ 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* Highet 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. Highet 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.*

116. *See* Ann O'Hanlon, *New Interest in Corporal Punishment*, *WASH. POST*, Mar. 5, 1995, at A21 (explaining that although California's paddling bill did not pass, it was reintroduced by Assemblyman Mickey Conroy in February, 1995).

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 human rights.¹¹⁸

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

118. See Hight and Kahale, *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 (unreported) (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." BLACK'S LAW DICTIONARY 235 (abridged 6th ed. 1991). Although the Supreme Court has officially upheld corporal punishment, many states have outlawed it by statute. *Id.*

119. See generally O'Hanlon, *supra* note 116, at A21 (discussing current corporal punishment legislation under consideration in California, Tennessee, Mississippi, and New York); *Singapore, USA?*, 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 *Singapore, USA?*, *supra* note 119, at 10A (describing corporal punishment legislation under consideration in Mississippi, Tennessee, New York, California, Louisiana, Missouri, and New Mexico); see also Curtis Wilkie, *Mississippi Flogging Debate Opens Old Wounds*, BOSTON GLOBE, Feb. 21, 1995, at 1 (indicating that Arkansas is considering jury approved public hangings).

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

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

123. See *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,¹³¹ has taken retaliatory action in response to the Fay controversy.¹³² The United States, without reason, recently opposed Singapore's bid to host the first meeting of the World Trade Organization.¹³³ Singapore anticipated such ramifications when it attempted to appease the United States by reducing Michael Fay's sentence.¹³⁴ Although Singapore made this unprecedented move out of respect for its friendship with the United States,¹³⁵ the gesture backfired.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.¹³⁷ Additionally, Singapore's neighbors voiced anger at the special treatment accorded to United States citizens.¹³⁸

131. See Zuraidah Ibrahim and Chiang Yin Pheng, *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).

132. See Michael Stutchbury, *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. *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. *Id.* Hence, the only apparent reason for United States opposition to Singapore's bid to host the meeting is the recent Michael Fay episode. *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. 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. *Editorial—Singapore's Version of Crime and Punishment*, *supra* note 103.

133. See *supra* note 132 and accompanying text (assessing United States retaliatory actions against Singapore).

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

135. See *id.* (emphasizing the importance of maintaining friendly relations with the United States); see also *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).

136. 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." *Id.*

137. *Id.*

138. See Ibrahim and Chiang, *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 East¹³⁹ and West.¹⁴⁰ Whereas relations with the West will weaken,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.¹⁴² Singapore confirmed their suspicions when it made an unprecedented¹⁴³ reduction in Michael Fay's sentence. Historically, such leniency was routinely denied to citizens of other Eastern countries.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.

neighbors are wary of its relationship with the United States).

139. See Ferris, *supra* note 21, at 173 (recognizing that Singapore's small size renders it susceptible to the influence of its Eastern neighbors).

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.*

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 an 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.*

142. See Ibrahim and Chiang, *supra* note 131, at 32 (reporting that Singapore's neighbors resent its closeness to the United States).

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. *Id.* His appeal for clemency was rejected. *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).

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).

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.¹⁴⁵ By refusing to accept current international human rights standards, Singapore will set a precedent for other nations to do the same.¹⁴⁶ The only way to uphold international law is to ensure that states adhere to its provisions.¹⁴⁷ Consequently, Singapore's failure to adhere will weaken international human rights law by discouraging other nations from complying with it.¹⁴⁸

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.¹⁴⁹ The advantages of such a relationship outweigh the benefits of sovereignty.¹⁵⁰ 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 *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 government¹⁵¹ and private American companies.¹⁵² With Western support, Singapore will retain its prominent economic and political position as a leader in the Asia-Pacific Region.¹⁵³

2. Domestic Ramifications

Although espousing Western standards will benefit Singapore's international standing, it will significantly undermine the nation's domestic control.¹⁵⁴ By succumbing to Western demands, Singapore's government will lose credibility with its people.¹⁵⁵ Singaporean citizens will view their government's acquiescence as a loss of power and control.¹⁵⁶ 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,¹⁶⁴ 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.¹⁶⁵ Singapore's acquiescence will eventually lead to similar conformity by other countries.¹⁶⁶ Southeast Asian nations will follow first, since they previously joined Singapore in handling economic issues through the Association of South-East Asian Nations (ASEAN).¹⁶⁷ Eventually, enough countries will follow Singapore's example to create the first Asian-Pacific human rights charter.¹⁶⁸ 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

164. See Pierson, *supra* note 145, at 1164-65 (describing Singapore's economic influence in Southeast Asia). Singapore is a major supporter of the ASEAN Free Trade Area and is also promoting the Singapore-Johor-Riau growth triangle to attract foreign investment. *Id.* at 1167. As a result of its economic dominance in the region, Singapore is an influential political voice in Southeast Asia. *Id.*

165. Jon M. Van Dyke, *Emerging Legal Regimes in the Pacific*, 82 AM. SOC'Y INT'L L. PROC. 351, 362 (1988). The Asia-Pacific has no human rights charter due partially to the expansive size of the region. *Id.* The area can, however, be divided into subregions: the Middle East, the Pacific island area, South Asia, Northeast Asia, and Southeast Asia. *Id.* Southeast Asia encompasses Singapore, Malaysia, Indonesia, Thailand, Brunei, and the Philippines. *Id.*

166. See Weissbrodt, *supra* note 59, at 1-2 (discussing the coercive nature of international human rights law). Countries that refuse to conform to international standards are pressured economically and politically until they acquiesce. *Id.* This process takes time, however, and is not always a success. *Id.* at 2-3.

167. See Van Dyke, *supra* note 165, at 362 (referring to the nations of Southeast Asia as a unified group).

168. See *id.* (discussing the cohesiveness of the subregions of the Asia-Pacific). The Pacific island area and Southeast Asia are cohesive and, therefore, most likely to unite to develop a human rights charter. *Id.* The Middle East, Northeast Asia and South Asia are much less unified and, therefore, less likely to consider human rights charters. *Id.* at 363.

Michael Fay incident.¹⁶⁹ 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.¹⁷⁰ Although Singapore is a strong political and economic power in Southeast Asia,¹⁷¹ it relies on its allies, including the United States, for both economic and military support.¹⁷² Without Western backing, Singapore's financial and political prosperity will diminish.¹⁷³

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,¹⁷⁴ while retaining a form of punishment with firm historical roots.¹⁷⁵

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,¹⁷⁶ as will international trade.¹⁷⁷ The United States, Singapore's largest export market,¹⁷⁸ will overlook the Michael Fay affair and continue to trade with Singapore.¹⁷⁹ As a result, Singapore will retain its influence as an economic leader¹⁸⁰ 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.¹⁸¹ Singaporeans, however, need time to adapt to the initial changes before they can accept more radical future transformations.¹⁸² Singapore's swift economic growth, coupled with the Michael Fay affair, have already created a foundation for change.¹⁸³ 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.¹⁸⁴ 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.*

184. See *Singapore Opposition Seeks Human Rights Commission*, Reuters Info. Services, July 27, 1994, available in LEXIS, World Library, Allwld File (noting the opposition Singapore Democratic Party's desire to create a human rights commission).

such a commission,¹⁸⁵ 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.¹⁸⁶ Despite their distrust of Singapore's relationship with the West,¹⁸⁷ Singapore's neighbors also rely on Western economic and strategic support.¹⁸⁸ Selective incorporation will slowly gain greater acceptance if the West continues to indirectly punish nations like Singapore for failure to conform with international law.¹⁸⁹ 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.¹⁹⁰ On the other

185. See *supra* note 157 (emphasizing that Singaporeans generally support their government's adherence to strict laws).

186. See *supra* note 164 and accompanying text (acknowledging Singapore's influential political role in Southeast Asia).

187. See Ibrahim and Chiang, *supra* note 131, at 32 (stating that Singapore's neighbors question its close friendship with the United States).

188. See Pierson, *supra* note 145, at 1165 (discussing various attempts by Southeast Asian nations to promote increased foreign investment and trade in the region).

189. See *supra* note 132 and accompanying text (concluding that the United States retaliated against Singapore by rejecting its bid to host the first meeting of the World Trade Organization).

190. See *Dutch Queen Joins Clemency Plea For Drug Smuggler*, Reuters Info. Services, Aug. 30, 1994, available in LEXIS, World Library, Allwld File (discussing Dutch government reaction to a Dutchman's death sentence). In addition to Michael Fay, another foreign national was recently the subject of controversy in Singapore. *Id.* Johannes van Damme of the Netherlands was convicted under Singapore's anti-drug laws and sentenced to death for possession of 4.32 kilograms of heroin. *Id.* Despite appeals for clemency by the Queen and Dutch Foreign Minister, Singapore carried out the sentence of death by hanging on September 23, 1994. Jane Howard, *Dutch Heroin*

hand, Singapore cannot simply ignore its own cultural and political policies in order to completely conform to customary international law.¹⁹¹ Selective incorporation strikes a balance between these opposing concerns of sovereignty and foreign diplomacy.¹⁹²

Although international law prohibits torture and cruel, inhuman, or degrading punishment,¹⁹³ caning is no more cruel and inhuman than capital punishment¹⁹⁴ which is regularly practiced by the United States.¹⁹⁵ 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 1689.¹⁹⁶ The Eighth Amendment of the United States Constitution employs proportionality language similar to that found in the English Bill of Rights.¹⁹⁷ In interpreting the Eighth Amendment, American courts have construed the term "cru-

Smuggler Hanged, Reuters Info. Services, Sept. 23, 1994, available in WESTLAW, Int-News Database. Van Damme was the first Westerner hanged in Singapore for violating anti-drug laws. *Id.*

191. See Weissbrodt, *supra* note 59, at 3 (explaining that countries only abide by international law when it is to their benefit to do so). It is not, however, to Singapore's benefit to relinquish the punishment of caning. See *Singapore and the Culture of Caning*, *supra* note 100 (stressing the government's claim of the effectiveness of caning as a deterrent in Singapore); *Editorial—Singapore's Version of Crime and Punishment*, *supra* note 103 (stating that Singapore has successfully implemented caning for many years).

192. See Ibrahim and Chiang, *supra* note 131, at 32 (characterizing Singapore's decisionmaking process with regard to Michael Fay as a balancing of interests). In determining whether to reduce Michael Fay's sentence, Singapore had to choose between the "integrity" of its system and friendly relations with the United States. *Id.*

193. See, e.g., 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) (providing specific guidelines on torture and punishment within all these instruments).

194. Compare *U.S. Trade Unaffected by Singapore Caning Incident*, *supra* note 64 (explaining that caning causes bleeding, intense pain, and permanent scarring) with Pak, *supra* note 66, at 256-57 (comparing death by the electric chair to burning at the stake).

195. See Thorn, *supra* note 68, at 199 (emphasizing that 35 states continue to allow capital punishment).

196. See Lisa M. Hartman, *State v. Gehrke: South Dakota Supreme Court Attempts to Clarify the Appropriate Proportionality Analysis to be Made in Noncapital Sentence Challenges*, 38 S.D. L. REV. 739, 746-47 (1993) (discussing the origins of the proportionality principle).

197. See *id.* at 747 (stating that the Eighth Amendment adopted the proportionality principle).

el" to consist of two factors: "the cruelty of pain," and disproportionality.¹⁹⁸ 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.¹⁹⁹ Capital punishment is proportionate for such crimes as first degree murder and treason;²⁰⁰ however, caning is disproportionate punishment for property crimes.²⁰¹

Disproportionality of punishment is the true flaw in Singapore's criminal justice system. Caning is not inherently cruel and inhuman.²⁰² If properly regulated and proportionately imposed, caning is equally as valid as paddling or capital punishment.²⁰³ Singapore can conform with international human rights standards without abolishing caning.²⁰⁴ Although caning is disproportionate penance for property crimes such as vandalism and drug possession,²⁰⁵ it is proportionate for crimes against the person, including assault, rape, and domestic violence.²⁰⁶ Singapore

198. *Weems v. United States*, 217 U.S. 349, 371-72 (1988).

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 1966,²⁰⁷ 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 1966,²⁰⁸ this amendment is appropriate in 1995. Just as American courts interpret the Eighth Amendment not to prohibit the death penalty,²⁰⁹ Singaporean courts will interpret this amendment not to prohibit caning for crimes against the person. American courts claim that the Eighth Amendment requires proportionality;²¹⁰ 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.²¹¹ 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.²¹²

Singapore's brief history as an independent country²¹³ is one factor that significantly distinguishes it from the more established nations that created customary international law.²¹⁴ The Republic of Singapore is only thirty years old.²¹⁵ 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.²¹⁶ 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.²¹⁷ 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.

disproportionate punishment for vandalism).