

**1 Converging Philosophies:  
A Comparative look at the Juvenile Justice Systems in the United States and  
Singapore and the Effects of International Law**

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**INTRODUCTION**

How is it that the philosophies shaping the juvenile justice policy in the United States and Singapore, which were once at opposite ends of the philosophical spectrum, developed over time to resemble each other so closely? Juvenile crime and the most effective and appropriate methods for dealing with it has always sparked heated debates world wide. The numerous methods and philosophies have made it hard for countries to reach a consensus within their own policy and made it even harder for countries to come to a consensus at an international level. However, as international law continues to develop in this area, these different methods and goals have begun to converge into a philosophy called restorative justice.

This paper analyzes the historical philosophies of the United States and Singapore juvenile justice systems and how the changes in both systems are representative of an emerging world view of juvenile justice. First, the paper will explore the development of the United States juvenile justice system and the Singapore juvenile justice system. The next section compares and contrasts the two systems. The third section discusses the development of international law in juvenile justice. And finally, the paper analyzes the development of both systems in relation to international law.

The juvenile justice system in the United States began to develop in the nineteenth century. The industrial revolution, the breakdown of traditional communities and the emergence of the idea of childhood caused reformers to become concerned with the way children were being treated in the United States. In reaction to these concerns, the first juvenile justice systems

were premised on the idea that delinquent children could be reformed and developed with the goal of welfare in mind. Conversely, the juvenile justice system in Singapore reflected the goals of and values of Singapore's traditional penal system. Community welfare trumped individual welfare and policies in Singapore traditionally reflected the goal of general deterrence.

Over time the traditional goals of both countries' juvenile justice systems have changed. The United States adopted numerous policies and laws that reflect a focus on general and individual deterrence. And Singapore publicly adopted a restorative justice philosophy. Singapore's policies, while still maintaining elements of general deterrence, now also reflect a focus on welfare and rehabilitation.

This paper argues that although Singapore and the United States developed their juvenile justice systems with opposite goals and were premised on opposite philosophies, the current systems reflect very similar goals. Currently, juvenile justice policies in both countries reflect a restorative justice approach that is the result of international law and pressures.

Before defining restorative justice it is important to review the philosophies and goals that have traditionally ruled the discourse surrounding juvenile justice reform. Rehabilitation is a philosophy focused on the offender.<sup>1</sup> It is premised on the idea that an offender is somewhat affected by external pressures and therefore the offender can be turned from his or her deviant ways through changing the offender's thinking, goals and values.<sup>2</sup> Reintegration is similar to rehabilitation in that it seeks to change the offender's thinking, goals and values in order to turn the offender into a contributing member of society. Alternatively, the philosophies of deterrence and retribution focus on the offense.<sup>3</sup> Deterrence has two components: individual deterrence and general deterrence. Individual deterrence is the goal of preventing an individual from reoffending. General deterrence is the goal of preventing others from committing similar acts by

“the imposition of harsher penalties on an individual.”<sup>4</sup> Retribution is the idea that the offender owes the community or victim for their offense and that a crime deserves a proportionate punishment.<sup>5</sup>

Two other, sometimes conflicting philosophies are welfare and punishment. Policies that support welfare are generally concerned with the way an individual is treated within a justice system. Policies that support punishment are generally concerned not with the offender but with the offense and protecting the community.<sup>6</sup> Restorative justice seeks to harmonize these philosophies in a way that benefits an offender, the victim and the community.

## **DISCUSSION**

### **I. THE JUVENILE JUSTICE SYSTEM IN THE UNITED STATES**

#### **A. Setting the Stage**

Until the end of the nineteenth century, children accused of committing criminal acts in the United States were, for the most part, treated no different from accused adults.<sup>7</sup> Once it was determined that the accused child had the requisite mental capacity to commit the crime, the child was housed in an adult jail or prison and adjudicated in the adult system.<sup>8</sup> A determination of a child’s mental capacity was governed by the common law.<sup>9</sup> Under the common law, a child under seven was presumed to lack the mental capacity to commit a crime. For children between the age of seven and fourteen there was a rebuttable presumption of incapacity and for children fourteen and older, there was a presumption that the child possessed the requisite mental capacity to commit a crime.<sup>10</sup>

The industrialization of America and increased immigration during the nineteenth century produced “urban incidents such as overcrowding and disruption of traditional family patterns” leading juvenile reformers to criticize the legal and economic abuses of children that resulted.<sup>11</sup>

Reformers during the era, commonly referred to as the era of the Child Savers (1850-1890), focused on issues of juvenile justice and child welfare setting the stage for the development of juvenile justice systems.<sup>12</sup> Juvenile justice reformers

focused on social control using institutional ‘asylums’ that separated children from adults, removed them from urban environments and attempted to inculcate values and habits, especially about work. Child welfare [reformers], however, focused on family strategies such as home placement. This meant the removal of some children from urban poverty to rural homes, but settlement houses provided less disruptive and more integrative educational and community strategies.<sup>13</sup>

Towards the end of the nineteenth century these strategies began to morph into formal policy.

### **B. Beginnings of a System –Rehabilitation over Punishment**

Separate courts for juveniles or special procedures for dealing with youthful offenders did not exist under the common law. Nor does the Constitution recognize a right to be protected or treated differently as a juvenile. Accordingly, any right to be treated as a juvenile as separate from adult offenders is one provided by statute.<sup>14</sup> The first such statute was passed in Illinois in 1899. The statute, titled Juvenile Court Act, created a special court for neglected, dependent and delinquent children under the age of 16.<sup>15</sup> The Act was promulgated on the “conviction that rehabilitation, not punishment, would best serve the interests of the child, the family, and the state.”<sup>16</sup> The main objective of the Act was to minimize the stigma associated with criminality for youths tried in the juvenile court. Accordingly, some of the Act’s main provisions required the confidentiality of juvenile court records, physical separation of incarcerated juveniles and adults and the prohibition of detaining children under the age of twelve.<sup>17</sup>

The philosophy of promoting rehabilitation over punishment and protection against a criminal stigmatization was promoted in other parts of the country as well. In fact, the philosophy and “much of the intimate, protective and informal character of [juvenile court]

proceedings is due to the philosophy and approach of Judge Ben Lindsey, appointed to the Denver bench in 1901.”<sup>18</sup>

In Judge Lindsey's courtroom, formal rules of procedure and evidence were discarded. Lindsey sought to counsel the children before him, committed to his role as a therapeutic agent for these children. His philosophy was wholeheartedly endorsed by other juvenile court judges of the time, including Judge Julian Mack of Chicago, who declared that what must be determined by the juvenile court judge is not whether "this boy or girl committed a specific wrong . . . but what had best be done in his interest and in the interest of the state to save him from a downward career."<sup>19</sup>

The idea of juvenile courts quickly caught on and by 1925, all but two states had passed legislation to create a juvenile court.<sup>20</sup> While there was, and still remains, variation among the states regarding the defined age of a juvenile, the jurisdiction and structure of juvenile courts and the circumstances under which a juvenile may be tried as an adult, most, if not all United States courts adopted the philosophy of rehabilitation. The philosophy is reaffirmed in most purpose clauses of state's juvenile codes, in language which echoes that of the 1899 Illinois Act.<sup>21</sup> The Supreme Court reaffirmed this goal and the rationales behind it in the *McKeiver v. Pennsylvania* decision<sup>22</sup>:

Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by brandishing him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others.<sup>23</sup>

Reflecting the system's goals of rehabilitation, “[a]n entirely new set of definitions and labels . . . developed to signify the novelty of this approach.”<sup>24</sup> Rather than committing crimes, juveniles engaged in delinquent behavior.<sup>25</sup> Because of a child's status as a juvenile, they were not charged with committing crimes, they were charged with status offenses.<sup>26</sup> If found guilty of committing a status offense, juveniles were not convicted, they were adjudicated.<sup>27</sup> Sentencing in

a juvenile system was referred to as a dispositional hearing and rather than being sent to prison, juveniles were committed to youth camps or training schools.<sup>28</sup>

While separate courts and the rehabilitative philosophy improved the situation for young offenders, offenders in juvenile systems were not provided the same constitutional protections as offenders in adult systems. Consequently, juvenile courts came under scrutiny in the late 1960s.<sup>29</sup>

Lack of training on behalf of both lawyers and judges, the wide discretion given to most judges and in informal nature of the proceedings resulted in numerous Supreme Court decisions which defined juvenile's rights under the Due Process Clause of the Fourteenth Amendment.<sup>30</sup> These decisions include: "*Kent v. United States*, 383 U.S. 541 (1966) (holding that youth transferred to adult courts were entitled to a hearing, meaningful representation by counsel, and a statement of reasons for the transfer); *In re Gault*, 387 U.S. 1 (1967) (holding that a youth subject to delinquency proceedings has the right to notice and an opportunity to be heard, to counsel, to cross-examine witnesses, and the right against self-incrimination); *In re Winship*, 397 U.S. 358 (1970) (holding that a state must prove a youth guilty of charges beyond a reasonable doubt); and *Breed v. Jones*, 421 U.S. 519 (1975) (holding that the double jeopardy clause prohibits states from transferring a youth to adult court after finding him delinquent)<sup>31</sup>; *McKeiver v. Pennsylvania*, 403 U.S. 528 (holding that youth are not entitled to jury trials in juvenile court).

### **C. Current Trends – Changing Goals**

In the 1980s, in response to what the public perceived as an increase in serious juvenile crime, juvenile justice policy and legislation turned away from its rehabilitative roots and began

to focus more on punishment and deterrence.<sup>32</sup> The United States saw the passage of numerous “get tough laws,” designed to “impose harsher or more certain punishments on juveniles.”<sup>33</sup>

Between 1992 and 1997 45 states made amendments to their transfer provisions to make it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system. 31 states gave criminal and juvenile courts expanded sentencing power that generally increased the availability of adult custodial sentences, and 47 states removed traditional juvenile court confidentiality provisions making records and proceedings more open.<sup>34</sup>

As a balance to the punishment heavy policy of the 1980 and 1990s, another change in policy is beginning to occur. Researchers are beginning to examine alternative treatment for juvenile offenders that incorporates both punishment and rehabilitation by looking at prevention and reintegration.<sup>35</sup>

#### **D. Specifics of the Juvenile Delinquency Act and State Legislation**

Along with state juvenile systems, a federal juvenile justice system was also created. The federal system is governed by the Juvenile Delinquency Act<sup>36</sup> and was adopted under the same rationales and philosophies as the state systems; separation of juveniles and adults, minimization of stigmatization, and encouragement of treatment and rehabilitation.<sup>37</sup> While the federal and state systems are similar, the specifics of the legislation often differ. The following sections demonstrate a general overview of how juveniles are defined in the United States at both the federal and state level, how juvenile courts are set up, and how the current federal and state legislation provides for the transfer of juveniles to the adult system.

##### **1. Juvenile Defined**

Under the Juvenile Delinquency Act, a juvenile is a person under the age of eighteen. “A juvenile delinquent is a person under the age of eighteen who commits an act, if committed by an adult would be a crime.”<sup>38</sup> However, as long as the act was committed prior to the offender’s

eighteenth birthday, the juvenile court retains jurisdiction for the purpose of adjudicatory proceedings and dispositions until the offender is twenty-one.<sup>39</sup>

Under state laws, the definition of a juvenile differs from state to state but the general cutoff is seventeen.<sup>40</sup> Similar to federal legislation, state legislation usually provides that a juvenile delinquent is a person of the stated age that commits act, if committed by an adult would be a crime. Additionally, “[i]t is not unusual for any state to use numerous age cutoffs within its own juvenile code, depending upon the type of delinquent activity involved.”<sup>41</sup> For example, state code may provide that juvenile courts have jurisdiction over persons age seventeen and under. However, the state code may also provide that persons ages fourteen and older are excluded from juvenile court if they are accused of committing a particular offense (for example, murder).<sup>42</sup>

## **2. Juvenile Court Defined**

Under the Juvenile Delinquency Act, “any United States District Court may convene itself as a juvenile court.”<sup>43</sup> Under state law, the juvenile court is generally a branch of the state circuit court or district court. Depending on the system, one or more judge may be specifically designated as juvenile judges. In other systems a judge may take on juvenile cases along with other duties. Some systems provide for separate and permanent juvenile courts.<sup>44</sup>

Generally, along with a judge, a juvenile court will also consist of juvenile officers, attorneys who represent the interests of the court, and various support personnel.<sup>45</sup> “The majority of states now require that both juvenile court judges and all subordinate hearing officers be licensed attorneys, though some states have only recently halted the practice of using nonlawyer juvenile court judges.”<sup>46</sup>

### **3. Transfer of Juveniles to the Adult System**

Under the Juvenile Delinquency Act, a juvenile in the federal system will be tried in juvenile court unless transferred to the adult system.<sup>47</sup> Depending on the offense the juvenile is charged with committing and whether or not a firearm was used in the act, children as young as thirteen can be transferred to the adult system if it is found that the transfer would be in the interest of justice.<sup>48</sup> Some factors a court is required by statute to consider include, age, background, prior record, response to past treatment, maturity, role in the crime, and availability of programs to treat the behavior.<sup>49</sup>

Some state's have similar legislation requiring a hearing and affirmative determination that a juvenile be transferred in order for an adult court to gain jurisdiction. Other states however have statutes that provide for an automatic transfer if a juvenile is charged with a particular offense.<sup>50</sup>

## **II. THE JUVENILE JUSTICE SYSTEM IN SINGAPORE**

### **A. Historical Background**

“The republic of Singapore is a small island state . . . located about 85 miles north of the equator, at the southern tip of the Malay Peninsula in Southeast Asia.”<sup>51</sup> Singapore has a population of 3.9 million which is made up of mostly Chinese, Malays and Indians.<sup>52</sup> Singapore has four official languages, including English, and about half the population speaks two or more languages. Singapore is a secular state, the population is mainly Buddhist, Taoist, Muslim, Christian and Hindu.<sup>53</sup>

Singapore was founded in 1819 by Sir Stamford Raffles of the British East India Company and remained under the Company's control until 1858, when it became a part of British India. During World War II it was governed by the Japanese and after the war, Singapore

became a British Colony. In 1963 Singapore joined Malaya forming the Federation of Malaysia and in 1965 Singapore became an independent and sovereign republic.<sup>54</sup>

“Singapore has a parliamentary system of government.”<sup>55</sup> Like the United States Constitution, the Singapore Constitution provides for three branches of government: the executive, legislative, and judiciary.<sup>56</sup> The judicial system has two tiers, the Supreme Court, or High Court and the subordinate courts. The subordinate courts include district courts, magistrate courts, the coroner’s court, small-claims tribunal and the juvenile court.<sup>57</sup>

“[I]n theory the Common Law was received by Singapore [in 1826], but the extent and degree of this reception is unclear.”<sup>58</sup> Generally, Singapore’s substantive law reflects British law and “as changes are made in England and Australia, these reforms and amendments find their way into Singapore’s legal system.”<sup>59</sup>

Singapore’s religious and cultural diversity have had a significant effect on Singapore’s laws and policies.<sup>60</sup> When the Country gained its independence in 1965,

the government began focusing on uniting its ethnically divided population. In order to maintain solidarity among various ethnic groups, government implemented the rigid paternalistic policies which remain in force today. 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.<sup>61</sup>

Accordingly, Singapore’s laws reflect a deep national regard for history and tradition and like many other Asian countries, policies reflect a reluctance to interfere in domestic affairs.<sup>62</sup>

### **B. Juvenile Justice in Singapore – Philosophy of General Deterrence**

Singapore law first reflected the recognition that children and adults should be treated differently within the penal system was in 1949 with the passage of the Children and Young Persons Ordinance.<sup>63</sup> The Ordinance read,

Every court in dealing with a child or young person who is brought before it . . . shall have regard to the welfare of the child or young person and shall in a proper case take

steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.<sup>64</sup>

This ordinance was subsequently reproduced in the Children and Young Persons Act of 1970.<sup>65</sup>

The Children and Young Persons Act, which is the main legislation providing for and regulating the juvenile justice system in Singapore, attempts to reconcile punishment and child welfare.<sup>66</sup>

The Act was “revised in 1993, incorporating enhanced penalties for child abuse. It was further amended in 2001 to widen the options for rehabilitating young offenders. The recent amendments provide greater protection and enhance the well-being of Children and Young Persons who are neglected, abused or destitute and those who are placed in residential institutions.”<sup>67</sup>

While the Children and Young Persons Act clearly establishes a basis for considering a juvenile’s welfare, “the overall dominance of general deterrence as a penal philosophy in the criminal justice system affected judicial attitudes toward young offenders” well into the 1990s.<sup>68</sup> One example of how general deterrence guided judicial philosophy can be seen in the 1994 case of Michael Fay. Fay was an American teenager convicted of vandalism and sentenced to two months imprisonment and six strokes of the cane. Although at eighteen, Fay was too old to come under the jurisdiction of the Children and Young Persons Act, he did fall under the Probation Offenders Act because he was under twenty-one.<sup>69</sup> The Act provided that persons under the age of twenty-one and who had no prior convictions could be given probation where the minimum sentence is otherwise, imprisonment, a fine or caning.

The High Court did not doubt that the legislative intent behind the [provision of the Probation Offenders Act] was to promote the rehabilitation of young first time offenders but stated that the provision also required the weighing in the balance wider concerns of society. It was satisfied on the facts of the case and taking into account the need to secure the interests of the general public, the sentence of imprisonment and caning was fully justified.<sup>70</sup>

While general deterrence continues to be one of the goals of the Singapore's juvenile justice system, Singapore formally adopted a restorative justice philosophy in 1995.<sup>71</sup> The philosophy behind restorative justice is to balance the competing interest of deterrence and child welfare with the goal of reintegrating delinquent youth back into society.<sup>72</sup> Deterrence, rehabilitation, and restoration all factor into Singapore's restorative justice philosophy which seeks to protect the accused as well as the victim.<sup>73</sup>

The Singapore government is concerned that juvenile delinquency (which has been on the rise in Singapore since 1980<sup>74</sup>) is systematic of "more serious family problems" and accordingly, the family and the community have an enhanced role in the juvenile justice system.<sup>75</sup>

Family and community involvement are essential components of the rehabilitation process and the reintegration of children into society. Parents participate in orientation programmes, counselling sessions, workshops, group sessions and parent-support groups, regardless of whether the juvenile is placed in a community-based or residential programme. The Government works closely with civic and grass-roots organizations, voluntary welfare organizations, individual volunteers, schools and employers to develop a network of services to supplement and support the rehabilitation process and to provide a continuum of services and programmes.<sup>76</sup>

Singapore's philosophy of the treatment of juveniles favors community based programs over institutionalization, which is considered a last resort.<sup>77</sup>

### **C. Juvenile Rights Under the Law**

Many if not most of the same rights and guarantees provided to adults in the penal system by Singapore's Constitution also apply to juveniles regardless of age.<sup>78</sup> The Constitution prohibits convictions based on retroactive laws and multiple trials for the same offense.<sup>79</sup> The Constitution provides the right of the accused to be informed of the charged against him.<sup>80</sup> In Singapore's criminal law system, the government has discretion over the decision to bring charges.<sup>81</sup> In all criminal trials there is a presumption of innocence and the government has the

burden of proof.<sup>82</sup> Additionally the accused (including an accused juvenile) is “free to engage any counsel of his/her choice to challenge the legality of the deprivation of liberty by a court.”<sup>83</sup>

In regards to juveniles specifically, the Children and Young Persons Act provides restrictions on media coverage of juvenile trials.<sup>84</sup> The identity of the accused juvenile is not to be revealed “unless the Juvenile Court or the Minister for Community Development and Sports is of the view that such restrictions should be lifted in the interest of justice.”<sup>85</sup> Additionally strict timelines are adhered to in regards to the investigation, prosecution and sentencing of youthful offenders.<sup>86</sup>

#### **D. The Children and Young Persons Act – Specifics**

The minimum age of criminal liability in Singapore is seven years old.<sup>87</sup> However, the criminal penal code provides that a child between the age of seven and twelve who “has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct” will not be held liable.<sup>88</sup> The Children and Young Persons Act defines a child as a person below the age of fourteen and a young person as a person between the ages of fourteen and sixteen.<sup>89</sup> A juvenile is defined as any person between the ages of seven and sixteen, however, Singapore common law provides that the age of majority is twenty-one.<sup>90</sup>

Under the Act, the words conviction and sentence are not to be used in relation to juveniles dealt with in the juvenile court.<sup>91</sup> Instead, the language to be used is “found guilty of an offense” or some variation thereof.<sup>92</sup> The Children and Young Persons Act provides that the juvenile court has jurisdiction over all juveniles charged with an offense with the exception of offenses triable by the High Court.<sup>93</sup> However, a juvenile charged with such offense could be transferred to the jurisdiction of the juvenile court if the prosecutor successfully applies to do so and the juvenile or the juvenile’s representative consents.<sup>94</sup>

Capital punishment or life imprisonment without release is a prohibited sentence for people under the age of eighteen.<sup>95</sup> Corporal punishment, however, is allowed. The criminal penal code provides that people between the age of seven and sixteen “can only be caned with a lighter rod.”<sup>96</sup> Solitary confinement is also an available punishment for children over twelve who are “very unruly and difficult residents [of juvenile institutions].”<sup>97</sup>

### **III. COMPARING JUVENILE JUSTICE SYSTEMS**

While both the United States legal system and the Singapore legal system are based on British common law, the underlying goals of each respective system are clearly different and the difference in philosophy can be attributed to cultural differences. Traditionally, the United States juvenile justice philosophy was based on rehabilitation while Singapore’s was based on general deterrence. These philosophies are in line with cultural values. Freedom of the individual was a founding principle of the United States and individuality continues to be an important American value. Conversely, like many Asian countries, Singapore values collective welfare above individual freedom. The common American perception “that it would be better for a guilty person to go free than to convict an innocent person is testimony to the importance of the individual. But an Asian perspective may well be that it is better that an innocent person be convicted if the common welfare is protected than for a guilty person to be free to inflict further harm on the community.”<sup>98</sup> While the United States and Singapore approach justice from two very different perspectives, over the past few decades, the philosophies have been becoming a lot more alike.

#### **A. From the Same Seed**

As both juvenile justice systems are based on the same common law system, it does not come as a surprise that both the United States and Singapore share ideas of culpability in relation

to age. American common law and Singapore's Children and Young Persons Act both provide that children under seven and children older than seven, if found to lack the required maturity and mental capacity to commit a crime cannot be held liable. The common roots of both systems also account for need to create a separate juvenile justice system by statute since under British common law children were treated no different from adults in the penal system. As both countries began to modernize, they both saw a clear need to separate children and adults within the criminal justice system for the welfare of the child.

As both juvenile justice systems were created by statute after the creation of a general criminal law system, there is a lot of interplay between the two systems. In both countries, the statutes that create the juvenile system provide for the separation of juveniles from the general penal system and provide for the punishments (or rehabilitation) of juveniles, but are silent regarding offenses. Both juvenile justice systems rely on the general penal code to determine illegal acts and the requisite elements to be found guilty of those acts. Accordingly, juveniles in both countries are held responsible for the same offenses as adults, they are just prosecuted and punished differently.

As both countries statutes define the procedures by which juveniles are prosecuted and punished, both countries saw fit to change the language governing juveniles in the criminal system. Clearly the changes in language provided for in the United States are more extensive than the changes called for in Singapore. Most likely that reflects the stated goals and philosophies of both countries' respective juvenile systems. The change in language in the United States is definitely reflective of the rehabilitative goals of the system. While Singapore also strives to rehabilitate young offenders, there is clearly a deterrent aspect to its philosophy

and the language used surrounding the prosecution of juveniles still, to a certain extent, reflects that.

While the change in language surely helps create the semblance of a rehabilitative system, it does not seem to actually influence how the system operates. While the stated goal of most American juvenile justice systems is rehabilitation, a desire for the system to promote punishment and deterrence is also reflected in federal and state law regardless of terminology used. Singapore's system, which does not have an entirely different vocabulary for juveniles, on its face promotes a balance of rehabilitation and punishment similar to that of the United States.

### **B. Evolution of a Country**

Many of the same factors present in nineteenth century America that prompted states to create separate juvenile justice systems were plaguing Singapore in the 1980s and 1990s. The nineteenth century saw the industrialization of America. During this period of urbanization much of America's population relocated from small communities to big cities. America saw a disruption in traditional family and community life which, if Singapore can be viewed as a modern example, probably led to more juvenile delinquency. Also during this time the idea of childhood emerged. Americans began to recognize a difference between juveniles and adults and stopped thinking about children just as small adults. The increase in juvenile offenders highlighted the abuses of children within the criminal justice system leading reformers to take notice and implement change.

Singapore, although it already had a juvenile justice system in place, has seen a similar phenomenon over the past few decades. As the country continues to modernize, and some might argue, westernize, traditional family and community ties are being broken. The same over

crowding and disruption of family patterns that occurred in America in the 18 and 1900s has been occurring in Singapore over the past few decades and juvenile crime has been on the rise.<sup>99</sup>

Fearing that increase in juvenile delinquency “was systematic of more serious family problems,” the government set up an Inter-Ministry Committee on Dysfunctional Families, Juvenile Delinquency and Drug Abuse.<sup>100</sup> The Committee was charged with looking into and making recommendations to address the concerns about juvenile delinquency and the family. Some of the preventative strategies employed by Singapore resemble those in the United States. For example, education and talks about gangs and the consequences of joining gangs as well as counseling for at risk youth are measures used in both the United States and Singapore as an attempt to curb youth crime.<sup>101</sup>

One notable and major difference in the two countries reactions to juvenile crime is the amount of community and family involvement in the rehabilitation of the juvenile. While parents are involved at a statutory level in American juvenile justice systems the idea of *in loco parentis* is very prevalent in American juvenile law. *In loco parentis* is the idea that the state takes on the legal responsibility of the parents for a child within its system.<sup>102</sup>

By contrast, Singapore law emphasizes community based programs and parent responsibility. The importance of community and family in the juvenile justice system definitely reflects the cultural traditions of Singapore. The population of Singapore like the population of many Asian countries, has a “deeply-rooted distrust of courts and law. They prefer to do things on a personal level, trusting personalities rather than institutions.”<sup>103</sup> Additionally, given the multiple cultures and religions that are prevalent in Singapore, there are numerous accepted views of how to appropriately handle children and crime in the community. All these factors

attribute the emphasis that is placed on family and community involvement in Singapore's juvenile justice system.

Given that juvenile crime is seen, in both countries, as a repercussion of dysfunctional families and communities Singapore's policies of community involvement seem to make a lot of sense. Unlike the United States, where rehabilitation is generally left up to the state, by requiring the input of the community and family, Singapore's statutes focus more on the heart of the problem as opposed to the symptoms. However, there is no indication Singapore's system fares any better than that of the United States.

### **C. Court Systems**

Another interesting comparison between the two juvenile justice systems is the position of the juvenile courts within the rest of the judicial system. Singapore law creates a separate and distinct juvenile court. United States law generally does not. At the federal level, "any district court can convene as a juvenile court." Thus, a single court can concurrently try an adult under the general criminal justice system and a juvenile under the juvenile system. Although some localities provide for separate judges and courts that deal specifically with juveniles, many state and local systems mirror the federal system.

While using the same judges and courts to try adult and juvenile cases is definitely an efficient way to deal with limited judicial resources, it could also put juveniles at a disadvantage. Singapore's juvenile courts have an expertise in trying juvenile cases and applying the Children and Young Persons Act. Multifunctional courts in the United States on the other hand, are not likely to develop such an expertise.

Trying juveniles in an entirely separate court gives the officials within the court a familiarity with trying children and with the laws that apply only to children. It is easy to see

how such a separation would be advantageous. Officials would most likely be more understanding of and sensitive to the needs of the juveniles coming before the court. Furthermore, officials would most likely be able to apply the laws in a way that truly reflected the best interest of the child.

#### **D. Meeting in the Middle**

The most major and notable observation that can be made when comparing the juvenile justice systems of the United States and Singapore is how closely the policy and discourse surrounding the systems resembles each other. This is especially notable because the policy behind the two systems started at such opposite ends of the spectrum. At the inception of the United States juvenile justice system there was a clear emphasis on the welfare of the child. The prevailing view was that children could not be as accountable for their actions as adults, because children's behavior is largely dictated by environmental pressures. Accordingly, children could be rehabilitated and reintegrated back into general society. Punishment and deterrence were merely after thoughts. However, the days of Judge Lindsey and Judge Mack are long gone. The "Get tough" of the 1980s and 1990s changed the landscape of juvenile justice in America bringing punishment and deterrence to the forefront of juvenile justice policy and discourse and affecting legislation. Beginning in the early 2000s, the pendulum began to swing back. American discourse and policies have again been emphasizing welfare.

Arguably, the goals of the juvenile justice systems in America have changed. The current statutory scheme guiding the prosecution and sentencing of juveniles is now more reflective of a restorative justice system. Statues no longer reflect purely rehabilitative goals and have expanded to include procedures and punishments aimed at deterrence. This balancing of welfare and punishment, rehabilitation and deterrence is the definition of restorative justice and reflects the

current nature of American juvenile justice systems even if the purpose clauses of those systems have not caught up.

Singapore, on the other hand started with a penal system established, almost solely, for purposes of general deterrence. Rehabilitation of the offender was not considered nor was the welfare of an offender within the penal system. However, with the passage of the Children and Young Persons Ordinance in 1949 and the Children and Young Persons Act of 1970, that changed. Welfare and rehabilitation became part of the discourse as Singapore struggled to balance competing goals. Consequently, in 1995 Singapore adopted a restorative justice philosophy for its juvenile justice system.

Clearly there exists a tension in defining the proper balance between rehabilitation and punishment. While this tension is very apparent in the history of the juvenile justice system in the United States, it is somewhat new to Singapore. However, it is not unique to these two justice systems. Tension between dual goals of justice “has been experienced on a . . . broad[ ] geographical as well as historical scale.”<sup>104</sup> The movement of both the United States and Singapore juvenile justice philosophies towards the adoption of the restorative justice model is not a coincidence. This movement is reflective of a world view of juvenile justice which will be the focus of the remainder of this paper.

#### **IV. THE INTERNATIONAL COMMUNITY AND JUVENILE JUSTICE**

The United Nations has recognized a need to “extend particular care to the child” as early as 1924 with the Geneva Convention.<sup>105</sup> The United Nation began studying juvenile delinquency in the 1940s.<sup>106</sup> Similar to the on-going debates that occur in individual countries between punishment and child welfare, records of the first meetings of the U.N. indicate the same debate occurred at the international level in regards to juvenile justice models.<sup>107</sup> The first major step

towards the development of an international juvenile justice policy occurred at the Second Congress of the U.N. where the general assembly began to define the term juvenile delinquency. While the U.N. did not formally adopt a definition it did restrict the meaning of the term to “juvenile violations of criminal law.”<sup>108</sup>

The next major development occurred during the Seventh Congress. At the Seventh Congress in 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules.<sup>109</sup> The Beijing Rules demonstrate an emphasis on child welfare. The commentary to the Rules states that they were designed to “promot[e] juvenile welfare to the greatest extent possible and to minimize the necessity of intervention by the juvenile justice system.”<sup>110</sup> The aim of the Beijing Rules was to have the “established criminal systems around the world apply the minimum standards.”<sup>111</sup> These minimum standards include guidelines for determining the age of criminal liability, emphasizing proportionality with sentencing, provides for broad discretion with accountability within an individual state’s juvenile justice system, and generally provides means to safeguard a juvenile’s welfare.<sup>112</sup>

The most current development of an international juvenile justice policy occurred in 1990 during the Eighth U.N. Congress with the Convention on the Rights of the Child. The Convention defines child as any person under the age of eighteen and provides that “in all [state] actions concerning children . . . the best interest of the child shall be a primary concern.”<sup>113</sup> The Convention is considered to “articulate a wider variety of rights than has been covered in any pervious human rights treaty.”<sup>114</sup> “Among the basic rights that the U.N. Convention guarantees to children are the rights to survival, participation in decision making, protection, and development.”<sup>115</sup>

The majority of the Conventions Articles “extend civil, political, economic, cultural, and humanitarian rights to children.”<sup>116</sup> In addition, however, the Convention also includes procedure and implementation policies (Articles 42-54).<sup>117</sup> For this paper, one particular Article to note is Article 37 which states that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offenses committed by persons below eighteen years of age.”<sup>118</sup>

Singapore acceded to the Convention on October 2, 1995 and the Convention came into force on November 4, 1995.<sup>119</sup> Singapore signed the Convention with two declarations and four reservations.<sup>120</sup> The first declaration emphasizes the importance of the community and family and states that the best interests of the child will be defined in accordance with the “the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.”<sup>121</sup> The second declaration addresses Article 37 and states that the Article does not prohibit:

“(a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore;

(b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedoms of others; or

(c) the judicious application of corporal punishment in the best interest of the child.”

The United States is one of two nation states that have not ratified the Convention.<sup>122</sup>

## **V. IMPACT OF INTERNATIONAL LAW ON BOTH SYSTEMS**

The international community has had an impact on the domestic juvenile justice systems of both Singapore and the United States. The Beijing Rules and the Convention on the Rights of

the Child demonstrate the international community's preference of welfare as a juvenile justice goal and philosophy. Through pressure from the international community, both countries have changed their domestic policies in ways that reflect a welfare philosophy. Though the impact international law has had on Singapore's juvenile justice system is more obvious, the impact international law has had on the United States cannot be ignored.

Both countries' juvenile justice systems now employ various philosophies and seek to harmonize those philosophies in a way that serves the best interest of a child within the system and the best interest of the community. This broad philosophy, called restorative justice, fits well with the traditional policies of both countries. And this flexibility makes restorative justice appealing to the international community as well as to individual states. Consequently restorative justice has become a world wide phenomenon.

This section will first discuss the impact international law has had on Singapore. Then it will discuss the effect of international law on the United States. Finally it will discuss restorative justice as a philosophy and international policy.

### **A. Impact on Singapore Domestic Law**

The international community has had a clear impact on the juvenile justice system in Singapore. While traditionally, Singapore's justice systems emphasized punishment and deterrence, international law has traditionally emphasized welfare. Overtime, Singapore's justice philosophy has shifted taking into account welfare and other more offender-friendly goals. Arguably, this shift is reflective of the impact the international community has had on Singapore's domestic justice system. Evidence of this can be seen through the adoption of some of the Convention's language into Singapore's Children and Young Persons Act as well as in the history of Singapore's juvenile justice system.

The Michael Fay case, discussed in section II.B, occurred in 1994 and sparked an international debate about justice.<sup>123</sup> Though Fay was eighteen at the time, it was his youth that really caught the world's attention. Punishing a teenager for vandalism with corporal punishment seemed excessive to many countries that had long ago stricken corporal punishment from their own domestic statutes.<sup>124</sup>

Interestingly, many people in the United States, where rising juvenile crime was at the forefront of public discourse, supported the punishment.<sup>125</sup> Many Americans felt that the United States' penal system was too lenient on juvenile offenders and supported "strict laws and harsh punishments" that defined Singapore's legal system. Fay's caning represented an example of these harsh laws that would provide a deterrent effect culminating in "clean streets and peaceful neighborhoods."<sup>126</sup>

President Clinton, on the other hand, represented the view that Fay's sentence was excessive and asked the Singapore government to waive the caning.<sup>127</sup> Arguably, President Clinton's view of the sentence was more representative of the majority of the international community. Indeed, the Convention on the Rights of the Child had just happened four years prior emphasizing the international community's preference of welfare as a justice philosophy and the importance of children's rights.

It is therefore no coincidence that the following year, after the Michael Fay case, Singapore acceded to the Convention and publically adopted restorative justice as a philosophy for its juvenile justice system. This public change in philosophy was a reaction to the negative attention Singapore received from the majority of the international community for Fay's harsh sentence. Although Singapore did not dismiss caning as a punishment for juvenile offenders, it

did redefine its juvenile justice system to incorporate welfare – a major goal of both the Beijing Rules and the Convention on the Rights of the Child.

In 2001 Singapore passed Amendments to the Children and Young Persons Act incorporating some language from the Convention on the Rights of the Child. This reflected an even greater acceptance of the international community's juvenile justice goals. In 2000, at a Youth Justice Conference, the Chief Justice of the Subordinate Courts commented on the influence of international law on Singapore's justice system.

The values and philosophy expressed in [the U.N.] conventions have already transformed practice and procedures in some parts of the world. Their promotion of diversion and restorative measures, as well as their insistence on rights and safeguards, signals a new approach to the treatment of young people that has been increasingly influential. We have kept faith with these international standards.<sup>128</sup>

Restorative Justice was and continues to be a good philosophical fit for Singapore. As discussed above, Singapore law emphasizes common welfare and tradition. As community involvement is a large component of restorative justice, the model was easily adapted into Singapore law and was most likely seen by Singapore's population as a welcome change. Additionally, while restorative justice does incorporate ideas about welfare and rehabilitation, punishment and restitution are not left out. Restorative justice seeks to harmonize these competing values by rehabilitating the offender as well as the community. Accordingly, Singapore's traditional goals of deterrence and punishment continue to influence legal decisions under the restorative philosophy.

## **B. Impact on United States Domestic Law**

While the impact of the international community on the United States' juvenile justice system is not as dramatic as the impact the international community has had on Singapore, it is

still undeniable. One clear example of this impact can be seen in the landmark *Roper v. Simmons* decision where the Supreme Court set new precedent by finding that the execution of individuals under the age of eighteen was violative of the Eighth and Fourteenth Amendments.<sup>129</sup> In overruling a previous decision finding in favor of allowing the use of the death penalty for some juvenile offenders, the Supreme Court reflected a changing direction for the United States' juvenile justice philosophy. After years of discourse advocating stronger penalties for juveniles, the *Roper* decision demonstrated an ideological preference for welfare and children's rights. Again, this is not an accident, this ideological shift proves that the international community has also had an impact on philosophies and consequently policies in the United States.

The defendant in *Roper*, Christopher Simmons, although eighteen when he was convicted, he was seventeen when he committed first-degree murder.<sup>130</sup> Under Missouri law, Simmons was too old to be tried under the jurisdiction of the juvenile court and was tried as an adult.<sup>131</sup> At the conclusion of the trial the jury found Simmons guilty and Simmons was sentenced to death. After numerous court proceedings and a number of years, the Supreme Court granted certiorari.<sup>132</sup>

Basing its finding on the philosophies that had guided the establishment of the first American juvenile justice systems, the Court found that "juvenile offenders cannot with reliability be classified among the worst offenders."<sup>133</sup> The decision demonstrated a change in United States policy away from punishment and deterrence and back to rehabilitation and welfare. Referring to rehabilitative principles the court ruled "the differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."<sup>134</sup>

While the Court points to a changing “national consensus” regarding the death penalty and juveniles to support its change in philosophy, Justice Kennedy, in his opinion written for the majority, is not shy in seeking confirmation from the international community.<sup>135</sup> While Justice Kennedy makes clear that “[t]he opinion of the world community [did] not control[ the] outcome,” the reference to the international community and international law is significant.<sup>136</sup> The Court emphasized Article 37’s prohibition against capital punishment for crimes committed by juveniles and the fact that the United States was only one of two countries not to ratify the Convention.<sup>137</sup> The Court also highlights the fact that the United States is only one of eight countries to have executed juveniles since 1990.<sup>138</sup> Since the Convention, each of those countries (Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of the Congo, and China) “has either abolished capital punishment for juveniles or made public disavowal of the practice . . . [leaving] the United States [to] stand[ ] alone in a world that has turned its face against the juvenile death penalty.”<sup>139</sup>

While the Court was able to establish a basis for its decision in domestic law and policy, it is clear from the opinion that international law had a major impact as well. Though the Court did not say it outright, the opinion suggested that it was embarrassing for the United States, as a democratic nation and world leader, to be in the company of non democratic and developing countries when it came to juvenile justice policy. It was hypocritical for the United States to chastise other countries for the way those countries treated their citizens while the United States was committing what the rest of the world saw as a human rights violation by executing juveniles. Arguably, the Court did more than just “acknowledge the overwhelming weight of international opinion against the juvenile death penalty . . . .”<sup>140</sup> It appears that international opinion was a major consideration in the Court’s decision. Though the United States, unlike

Singapore, has still not ratified the convention or adopted a new juvenile justice philosophy, the *Roper* decision is clear indication that international law is affecting United States policy in this area.

### **C. Restorative Justice – the International Model**

Restorative justice is not a new concept. Principles of restorative justice - encouraging community, family and victim involvement - are “grounded in religious and indigenous traditions” from all over the world. Though there are numerous definitions of restorative justice, the philosophy is generally defined to

include[ ] the following fundamental elements: ‘first, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offenders themselves; second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the disputes; third, the criminal justice process should facilitate active participation by the victims, offenders, and their communities in order to find solutions to conflict.<sup>141</sup>

Singapore has publically adopted restorative justice as a model for its juvenile justice policy and as discussed in section VI.A, it was clearly a good fit. Restorative justice’s emphasis on the community and maintenance of punishment as a goal jived well with Singapore’s policies and traditions.

While the United States has not made such a public adoption of the restorative justice model, restorative justice methods and language are prevalent in the national discourse surrounding juvenile justice policy. Since the early 2000s a number of articles have been published advocating the incorporation of restorative justice approaches in America.<sup>142</sup> Additionally numerous localities across the country have adopted the model or use its methodology in the juvenile justice arena. For example, Victim Offender Mediation programs (VOM), which is essentially mediation between an offender and a victim, often incorporating

other family or community members into the discussion, is used in over half the states in the United States.<sup>143</sup> Some states, such as Colorado, have proposed legislation “dealing with restorative justice in the juvenile justice system.”<sup>144</sup> Clearly, the restorative justice model as a philosophy for juvenile justice is gaining acceptance in the United States.

While restorative justice is a good fit for countries, like Singapore, that emphasize community welfare, restorative justice, is also a good fit for the United States. In an article advocating “a broader view of ‘justice for children’” in the United States the author proposes, “that the hard edges of formal legal process can be softened, through restorative justice, mediation and family conferencing . . . without losing the essential protections of personal liberty.”<sup>145</sup> Restorative justice, because of its flexibility and incorporation of multiple and often competing goals, accommodates American idealism, emphasis on the individual, and the welfare of children within the system. The rights, needs, and welfare of the offender continue to have an important role in a restorative justice system helping the model fit with traditional American justice philosophies.

With restorative justice being such a good fit for two countries that operated their respective juvenile justice systems with such opposite goals and traditions, it is easy to see how restorative justice is becoming popular all over the world. Regardless of whether a country’s traditional juvenile justice goals emphasized welfare and rehabilitation, like the United States or punishment and deterrence, like Singapore, because restorative justice is so flexible in seeking to incorporate all justice goals, and cultural values, the model is easy adapted into most countries’ policies. Additionally, because restorative justice emphasizes juvenile welfare and dignity it fits well with the current trends in international juvenile justice policies and goals to appeal to multiple cultural values. Currently examples of restorative justice systems, policies, and

programs can be found on every continent proving that the justice model is a “world wide phenomenon.”<sup>146</sup>

### **CONCLUSION**

Singapore and the United States juvenile justice philosophies started at very opposite ends of the philosophical spectrum. Over time, however, both countries’ philosophies changed as each respective country’s national consensus vacillated between welfare and punishment. The international community faced the same struggle but was eventually able to develop law and policy that emphasized welfare and children’s rights while at the same time demonstrated a respect for multicultural traditions and values. With an internationally agreed upon philosophy, the international community has successfully influenced domestic policy. Both Singapore and the United States are examples of this influence and both countries’ juvenile justice systems now reflect a wider international philosophy to harmonize competing justice goals.

This broadened philosophy, that Singapore has formally adopted and that is gaining acceptance throughout the United States, is called restorative justice. Restorative justice appeals to countries world-wide because it allows countries to maintain some traditionalism while appeasing the international community. Restorative justice, consequently, is on its way to becoming the world-wide juvenile justice philosophy. However questions still remain. Because restorative justice is relatively new as a formal national policy, it is unclear whether the model will be successful in harmonizing competing justice goals. Additionally, it is still unclear what having an international justice policy exactly means or the extent to which such a policy might influence domestic laws. What is clear, however, is that juvenile justice is one area which the international community has been successful in influencing policy world wide.

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<sup>14</sup> See Kramer at 364.

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<sup>15</sup> Building Blocks for Youth, *The Juvenile Court: One Hundred Years in the Making*, available at [http://www.buildingblocksforyouth.org/juvenile\\_court.htm](http://www.buildingblocksforyouth.org/juvenile_court.htm).

<sup>16</sup> Kramer at 364.

<sup>17</sup> Building Blocks for Youth.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Creekmore at 78.

<sup>21</sup> See Kramer at 367.

<sup>22</sup> *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

<sup>23</sup> 403 U.S. at 551-52

<sup>24</sup> Kramer at 365.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See Building Blocks of Youth.

<sup>30</sup> See *id.*

<sup>31</sup> *Id.* (case citations added).

<sup>32</sup> Luck at 349.

<sup>33</sup> Sheffer at 491.

<sup>34</sup> Luck at 349.

<sup>35</sup> See Stephen A. Campbell, *Alternatives in the Treatment of Juvenile Offenders: Current Options and Trends*, 19 J. Juv. L. 333 (1998); see also Sheffer.

<sup>36</sup> 18 U.S.C. §§ 5031-5042.

<sup>37</sup> See Kramer at 367.

<sup>38</sup> *Id.* at 370; see 18 U.S.C. § 5031.

<sup>39</sup> See *id.*

<sup>40</sup> Kramer at 369

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> *Id.* at 374; see 18 U.S.C. § 5032.

<sup>44</sup> See Kramer at 373.

<sup>45</sup> See *id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 374; see 18 U.S.C. § 5032.

<sup>48</sup> See 18 U.S.C. § 5032.

<sup>49</sup> *Id.*

<sup>50</sup> Kramer at 375.

<sup>51</sup> Waleed Haider Malik, *Judiciary-Led Reforms in Singapore: Framework, Strategies, and Lessons 5* (The International Bank for Reconstruction and Development/The World Bank 2007).

<sup>52</sup> See *id.*

<sup>53</sup> See *id.* at 6.

<sup>54</sup> See *id.*

<sup>55</sup> *Id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *id.* at 11-12.

- <sup>58</sup> Foreign Law Guide, Singapore, Legislation and the Judicial System (accessed through Washington College of Law - Pence Law Library - Information Resources, A-Z)
- <sup>59</sup> *Id.*
- <sup>60</sup> Firouzeh Bahrapour, *The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law*, 10 Am. U. J. Int'l L. & Pol'y 1075, 1077-80 (1995).
- <sup>61</sup> *Id.* at 1078-79.
- <sup>62</sup> See generally Paula C. Littlewood, *Domestic Child Abuse Under the u.N. Convention on the Rights of the Child: Implications for Children's Rights in Four Asian Countries*, 6 Pac. Rim L. & pol'y J. 411, 437 (1997).
- <sup>63</sup> See Luck at 350
- <sup>64</sup> *Id.* at 350 n. 22
- <sup>65</sup> See *Id.*
- <sup>66</sup> See The Subordinate Courts of Singapore – Philosophy, available at <http://app.subcourts.gov.sg/juvenile/page.aspx?pageid=3854>.
- <sup>67</sup> Report of States parties to the Convention on the Rights of the Child, ¶ 46, submitted to the Committee on the Rights of the Child (Mar. 17, 2003), available at <http://www.hri.ca/fortherecord2003/documentation/tbodies/crc-c-51-add8.htm>.
- <sup>68</sup> *Id.* at 350-51.
- <sup>69</sup> *Id.* at 351 n.24
- <sup>70</sup> *Id.*
- <sup>71</sup> Chomil Kamal, *Directions of Juvenile Justice Reforms in Singapore*, Resource Material Series No. 59 118<sup>th</sup> International Training Course Visiting Expert's Papers, 113, 113.
- <sup>72</sup> The Subordinate Courts of Singapore – Philosophy.
- <sup>73</sup> Prison Fellowship International, Restorative Justice Online, available at <http://www.restorativejustice.org/intro/tutorial/definition>.
- <sup>74</sup> Luck at 345.
- <sup>75</sup> Singapore's Initial Report at ¶ 473.
- <sup>76</sup> *Id.* at ¶ 487
- <sup>77</sup> *Id.* at ¶ 94
- <sup>78</sup> See *id.* at ¶ 476.
- <sup>79</sup> Bahrapour at 1079.
- <sup>80</sup> Singapore's Initial Report at ¶ 477.
- <sup>81</sup> *Id.* at ¶ 96.
- <sup>82</sup> *Id.* at ¶ 475.
- <sup>83</sup> *Id.* at ¶ 477.
- <sup>84</sup> *Id.* at ¶ 479.
- <sup>85</sup> *Id.*
- <sup>86</sup> *Id.* at ¶ 480.
- <sup>87</sup> *Id.* at ¶ 475.
- <sup>88</sup> *Id.* at ¶ 92.
- <sup>89</sup> *Id.* at ¶ 82.
- <sup>90</sup> *Id.* at ¶ 81-82.
- <sup>91</sup> Singapore Children and Young Personss Act 2001 Ed (Cap 38) § 41.
- <sup>92</sup> *Id.*
- <sup>93</sup> *Id.* § 33.
- <sup>94</sup> *Id.*

- <sup>95</sup> Singapore's Initial Report at ¶ 217.
- <sup>96</sup> *Id.* at ¶ 488.
- <sup>97</sup> *Id.* at ¶ 500.
- <sup>98</sup> Alejandro Reyes, *Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate About Crime and punishment*, Asiaweek, May 25 1994, available at <http://www.corpun.com/awfay9405.htm>.
- <sup>99</sup> Luck at 373.
- <sup>100</sup> Singapore's initial Report at ¶ 473.
- <sup>101</sup> *Id.* at 474.
- <sup>102</sup> Black's Law Dictionary (8th ed. 2004), in loco parentis.
- <sup>103</sup> Poh-Ling Tan ed., *Asian Legal Systems* 8.8.3 (Butterworths 1997).
- <sup>104</sup> Luck at 346.
- <sup>105</sup> United Nations Convention on the rights of the Child, Preamble, Nov. 20, 1989, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.
- <sup>106</sup> Stephanie J. Millet, *The Age of Criminal Responsibility in an Era of Violence: Has Great Britain Set a New International Standard?*, 28 Vand. J. transnat'l L. 295, 334 (1995).
- <sup>107</sup> *See id.* at 334-35.
- <sup>108</sup> *Id.* at 335.
- <sup>109</sup> *See id.* at 336.
- <sup>110</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Nov. 29, 1985, available at <http://www.un.org/documents/ga/res/40/a40r033.htm>.
- <sup>111</sup> Millet at 336.
- <sup>112</sup> *See* Beijing Rules; Millet at 337-38.
- <sup>113</sup> Convention on the Rights of the Child, Pt. I, art. 1, art. 3.
- <sup>114</sup> Nancy E. Walker, Catherine M. Brooks, Lawrence S. Wrightsman, *Children's Rights in the United States: In Search of a National Policy* 28 (Sage Publications 1999).
- <sup>115</sup> *Id.*
- <sup>116</sup> *Id.* at 30.
- <sup>117</sup> *See id.*
- <sup>118</sup> Convention on the Rights of the Child, Pt. 1, art. 37.
- <sup>119</sup> Singapore's Initial Report at ¶ 1.
- <sup>120</sup> Convention on the Rights of the Child, Reservations and Declarations, available at <http://www2.ohchr.org/english/law/crc-reserve.htm> (scroll down to 'Singapore').
- <sup>121</sup> *Id.*
- <sup>122</sup> The other country that has not ratified the convention is Somalia. *See* Walker at 34.
- <sup>123</sup> *See* Reyes, *Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate About Crime and punishment*, Asiaweek, May 25 1994.
- <sup>124</sup> *See* Paulo Sergio Pinheiro, *Ending Legalised Violence Against Children, Progress Report to the General Assembly* (2007) available at [http://www.crin.org/docs/GI\\_report\\_07.pdf](http://www.crin.org/docs/GI_report_07.pdf).
- <sup>125</sup> *See* Reyes, *Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate About Crime and punishment*, Asiaweek, May 25 1994.
- <sup>126</sup> *See id.*
- <sup>127</sup> *See id.*
- <sup>128</sup> Kamal at 114.
- <sup>129</sup> 543 U.S. 551 (2005).
- <sup>130</sup> *See Roper*, 543 U.S. at 557.

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<sup>131</sup> *See id.*

<sup>132</sup> *See id.* at 560.

<sup>133</sup> *See id.* at 569.

<sup>134</sup> *See id.* at 572-73.

<sup>135</sup> *See id.* at 564, 575.

<sup>136</sup> *Id.* at 578.

<sup>137</sup> *See id.* at 576.

<sup>138</sup> *See id.* at 577.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 578.

<sup>141</sup> Prison Fellowship International, Restorative Justice Online, available at <http://www.restorativejustice.org/intro/tutorial/definition>.

<sup>142</sup> *See e.g.* Donald N. Duquette, *Children's Justice: A View from Ameruca*, in Youth Justice and Child Protection 232 (Malcolm Hill, Andrew Lockyer and Fred Stone eds. 2007); Nancy Lucas, *Restitution, Rehabilitation, Prevention, and Transformation: Victim Offender Mediation for First-Time Non-Violent Youthful Offenders*, 29 Hofstra L. Rev. 1365(2001).

<sup>143</sup> *See* Victim Offender Mediation Association, *Restorative Justice FAQ*, available at <http://www.voma.org/rjfaq.shtml>.

<sup>144</sup> Prison Fellowship International, Restorative Justice Online, available at [http://www.restorativejustice.org/resources/policy/legislation/index\\_html/usa](http://www.restorativejustice.org/resources/policy/legislation/index_html/usa).

<sup>145</sup> Duquette at 233.

<sup>146</sup> Prison Fellowship International, Restorative Justice Online, available at <http://www.restorativejustice.org/resources/world/>.

<sup>1</sup> See Julianne P. Sheffer, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation within the Juvenile Justice System*, 48 Vand. L. Rev. 479, 482.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 484-88

<sup>4</sup> Kwek Mean Luck, *The Prevention of Juvenile Delinquency in Singapore: The 1990s and Beyond*, 12 S.Ac.L.J. 345, 350 n. 23 (2000).

<sup>5</sup> See Sheffer at 487

<sup>6</sup> See *Id.* at 484-85

<sup>7</sup> See 2 Donald T. Kramer, J.D., *Legal Rights of Children* 363 (Thomson/West 2005) (1984).

<sup>8</sup> See *id.*; see also Luck at 349.

<sup>9</sup> See Kramer at 363.

<sup>10</sup> See *id.*

<sup>11</sup> *Id.* at 363-64.

<sup>12</sup> See Mark Creekmore, *Child Welfare and Juvenile Justice in the USA: A Practice Perspective*, in *Youth Justice and Child Protection* 78 (Malcolm Hill, Andrew Lockyer and Fred Stone eds. 2007).

<sup>13</sup> *Id.*