

# **Singapore: A 'Fine' City: British Colonial Criminal Sentencing Policies and its Lasting Effects on the Singaporean Corporal State**

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This article interrogates the rise of the corporal punishment policies in Singapore. It argues that such policies, although justified as a product of “Asian values,” Singapore’s drive to modernize, or the ruling party’s attempt to aggrandize and entrench its position, can be traced to British police state rule over Singapore. In order to understand the British police state, the jurisprudence of Conrad Oldham, magistrate judge from 1939-1941, will be examined in detail to demonstrate that many of the laws that Singapore is criticized for today can be traced back to the laws handed down by its former colonial rulers. Hopefully, this article will shed light on the complicated process of uprooting or internalizing a legal system foreign to the nation. It also aims to provide an alternative explanation that may enhance our understanding of the existing justifications behind, and criticisms of, Singapore’s corporal laws.

Singapore is one of the most developed countries on earth. By some estimates, it is the world’s fourth-leading financial center,<sup>1</sup> the world’s second busiest port,<sup>2</sup> and the nation with the world’s highest per capita income.<sup>3</sup> In 1904, British Admiral Sir John Fisher proclaimed Singapore, due to the nation’s strategic location and military, one of the “five keys” that “lock up the world.”<sup>4</sup> Today, Singapore aspires to be not a key military outpost, but a global city—an indispensable economic node in the international system. In pursuit of such status, the country has developed at an unprecedented pace, consistently performing well in a number of indexes, including livability,<sup>5</sup> places to be born,<sup>6</sup> transparency,<sup>7</sup> and intelligence quotients.<sup>8</sup> Singapore has also developed a reputation as being one of the cleanest, safest, and most orderly nations on earth.<sup>9</sup> Its

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1. MARK YEANDLE & CHIARA VON GUNTEN, LONG FINANCE, 13 GLOBAL FINANCIAL CENTRE INDEX 4 (Mar. 2013), available at [http://www.geneve-finance.ch/sites/default/files/pdf/2013\\_gfci\\_25march.pdf](http://www.geneve-finance.ch/sites/default/files/pdf/2013_gfci_25march.pdf).
  2. Marsha Salisbury, *The JOC Top 50 World Container Ports*, JOURNAL OF COMMERCE (Aug. 15, 2013), [http://www.joc.com/port-news/joc-top-50-world-container-ports\\_20130815.html](http://www.joc.com/port-news/joc-top-50-world-container-ports_20130815.html).
  3. KNIGHT FRANK & CITI PRIVATE BANK, THE WEALTH REPORT 2012: A GLOBAL PERSPECTIVE ON PRIME PROPERTY AND WEALTH 11 (2012), available at <http://thewealthreport.net/The-Wealth-Report-2012.pdf>; see also Joseph E. Stiglitz, Op-Ed., *Singapore’s Lessons for an Unequal America*, N.Y. TIMES, Mar. 18, 2013, available at <http://opinionator.blogs.nytimes.com/2013/03/18/singapores-lessons-for-an-unequal-america/>.
  4. Nicholas A. Lambert, *Strategic Command and Control for Maneuver Warfare: Creation of the Royal Navy’s “War Room” System, 1905-1915*, 69 J. MILITARY HIST. 361, 381, No. 2 (2005).
  5. Te-Ping Chen, *Singapore Tops Livability Index*, WALL ST. J., Apr. 18, 2012, available at <http://blogs.wsj.com/searealtime/2012/04/18/singapore-tops-livability-index/>.
  6. *Top Ten Places to be Born in 2013*, FORBES, <http://forbes.com/pictures/eglg45fheje/no-6-singapore-12/> (last visited Feb. 20, 2014).
  7. *Corruption Perception Index 2012*, TRANSPARENCY INT’L, <http://transparency.org/cpi2012/results> (mouse over Singapore on the map or click on “View Results Table”).
  8. Nicholas D. Kristof, Op-Ed., *It’s a Smart, Smart, Smart World*, N.Y. TIMES, Dec. 12, 2012, available at <http://www.nytimes.com/2012/12/13/opinion/kristof-its-a-smart-smart-smart-world.html>.
  9. Naomi Rovnick, *What the world can learn from Singapore’s safe and squeaky-clean high-rise housing projects*, QUARTZ, Nov. 22, 2012, available at <http://qz.com/30159/what-the-world-can-learn-from-singapores-safe-and-squeaky-clean-high-rise-housing-projects/>.

judicial system is no exception; it was recently ranked as amongst the most effective legal institutions in the world.<sup>10</sup>

Yet, for many, it is undeniable that such an astronomical rise has been accompanied by a corresponding deterioration in personal liberties, rights and freedoms. While the nation has developed the reputation as being clean, safe and orderly, it is also often depicted as an authoritarian state that uses draconian measures to suppress individual freedoms in order to achieve economic growth and social order. One observer noted that, “Singapore’s success has come with what many see as a terrible price—the loss of free speech, even free thought, and the endless intrusions of a government so obsessed with the daily life of Singaporeans that it is a crime even to fail to flush a public toilet.”<sup>11</sup> Furthermore, such criticisms have affected the manner in which the world views the Singaporean justice system. According to another observer, “Singapore has dispensed with jury trials, abridged the right to legal counsel and the right against self-incrimination and allows prolonged detention without trial or charges for suspected gangsters and drug traffickers.”<sup>12</sup> The observer added that, “[p]resumably juries and defense lawyers are just superfluous niceties that get in the way of clean streets and law-abiding citizens.”<sup>13</sup>

Such negative perceptions tarnish Singapore’s squeaky-clean image. After all, how can Singapore be considered a cosmopolitan and global city if it cannot adapt to a constantly changing world? Perhaps in response, recently, the parliament passed legislation that eased the death penalty policy that so many rights groups throughout the world used as evidence of Singapore’s inhumane and cruel corporal punishment.<sup>14</sup> Moreover, although still on the books, many of the “endless intrusions” by the Singapore government that perpetuate the idea that life in the nation is intolerably strict, have become less restrictive. Regulations concerning street performances, public protests, and restrictions on who can buy government subsidized homes have slackened, albeit under close watch and regulation by the government. The Supreme Court of Singapore is currently reviewing whether Section 377A of the Penal Code, the provision that prohibits “grossly indecent acts” between men, is constitutional and subject to being stricken out.<sup>15</sup> While the process of editing and relaxing some of Singapore’s laws is slow, and many

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10. *Top Ratings for Justice System Here*, STRAITS TIMES (Sing.), Oct. 19, 2007, at 50.  
11. Philip Shenon, *Singapore, The Tiger Whose Teeth Are Not Universally Scorned*, NY TIMES, April 10, 1994, section 4, at 5.  
12. *A Sentence from the Dark Ages*, LA TIMES, April 19, 1994, at B6.  
13. *Id.*  
14. Press Release, Attorney General’s Chambers, Revisions to the Mandatory Death Penalty Regime – Follow-Up Actions by the Attorney General’s Chambers (Nov. 14, 2012) (Sing.) available at <https://app.agc.gov.sg/DATA/0/Docs/NewsFiles/AGC%20Press%20Release%20%20%5B14%20Nov%202012%5D.pdf>.  
15. See George Radics, *Decolonizing Singapore’s Sex Law’s: Tracing Section 377A of Singapore’s Penal Code*, 45 COLUM. HUM. RTS. L. REV. REV. 57.

Singaporeans still feel the burden of a watchful and oppressive government, things are changing.

But is this the case of a nation struggling to maintain an ironclad fist over the population, or a nation struggling to resist the unstoppable effects of globalization? This article explores both questions by interrogating the rise of the corporal punishment policies in Singapore. It argues that such policies, although justified as a product of "Asian Values," Singapore's drive to modernize, or the ruling party's attempt to aggrandize and entrench its position, can be traced to the British's police state rule over Singapore when the nation was still a colony. In order to understand the British police state, the jurisprudence of magistrate judge, Conrad Oldham, will be examined in detail to demonstrate that many of the laws that Singapore is criticized for today can be traced back to the laws handed down by its former colonial rulers. This article intends to shed light on the complicated process of uprooting or internalizing a legal system foreign to the nation. It also aims to provide an alternative explanation that may enhance our understanding of the existing justifications behind, and criticisms of, Singapore's corporal laws.

## I. Criminal Punishment in the 'Fine' City-State of Singapore

It is reported that years ago, a taxi driver once told a visitor that "Singapore is a fine city...litter, fine; three children, fine; smoking, fine – do *anything* wrong, fine."<sup>16</sup> That taxi driver probably had no idea how much of an impact that statement would make. Over the past three decades, the statement spawned a series of cheesy souvenirs detailing the superfluous fines that apply to every aspect of Singaporean life, from the most mundane, to the most personal.<sup>17</sup> Although tongue-in-cheek, the reality is that such fines do exist, and part and parcel have become an accepted and tolerated aspect of Singaporean life. Some fines include jaywalking (\$500SGD),<sup>18</sup> chewing gum (\$1,000SGD),<sup>19</sup> eating or drinking on public transportation (\$500SGD)<sup>20</sup> smoking on

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16. Koh Tai Ann, *The Singapore Experience: Cultural Development in the Global Village*, SOUTHEAST ASIAN AFFAIRS 292, 297 (1980).
  17. Larry Loh, *6 Singapore Souvenirs That'll Fit in Your Carry-on*, CNN (Nov. 11, 2009), <http://travel.cnn.com/singapore/shop/singapore-souvenir-ideas-apec-924567>; John Aglionby, *Singapore's fine culture keeps people in line*, THE GUARDIAN, Nov. 2, 2002, available at <http://www.theguardian.com/uk/2002/nov/02/localgovernment.ukcrime>.
  18. *Preventing jaywalking: Lessons from the world*, DNA.COM (India) (Apr. 25, 2012, 13:14 IST), <http://www.dnaindia.com/bangalore/1680466/report-preventing-jaywalking-lessons-from-the-world>.
  19. Regulation Of Imports And Exports Act, Ch. 272a, § 39(2)(1996)(Sing.); Regulation Of Imports And Exports (Chewing Gum) Regulations Reg. 4 (1999)(Sing.); *Singapore to partly lift gum ban*, BBC NEWS (Mar. 15, 2004), [http://news.bbc.co.uk/2/hi/uk\\_news/3512498.stm](http://news.bbc.co.uk/2/hi/uk_news/3512498.stm).
  20. *See* Rapid Transit Systems Regulations, Reg. 52, The Schedule Penalties (1997) (Sing.); *Types of bad behaviour on MRT trains*, ASIAONE MOTORING (Apr. 2009), [http://www.asiaone.com/static/motoring/gallery/090427\\_mrt/](http://www.asiaone.com/static/motoring/gallery/090427_mrt/); *Fine for Eating Sweets: Too Strict?*

public transportation (\$1,000SGD),<sup>21</sup> stealing Wi-Fi (\$5,000SGD),<sup>22</sup> or feeding animals in a national park (\$500SGD).<sup>23</sup> In June of 2013, a British magazine editor was fined \$10,000SGD for spitting at a Singapore police officer after an alcohol-fuelled Christmas party in December 2012.<sup>24</sup>

Fines are not the only ways in which the government keeps Singaporeans in check. There are a total of 30 different forms of crime in Singapore which can incur caning, including drug abuse, possession of weapons, kidnapping, robbery, sexual abuse, rioting, overstaying a visa by more than 90 days, and vandalism.<sup>25</sup> Though the number of canings administered reached its zenith in 2007 with more than 6,400 sentences, it remains high as of 2011 (around 2,300).<sup>26</sup> One of the most famous caning incidents involved an 18-year old American by the name of Michael Fay who was sentenced to a fine of \$2,215USD and six-lashes of the cane for theft and vandalism.<sup>27</sup> The punishment compelled former U.S. President Bill Clinton to ask the Singapore government to waive the caning, which he called “excessive,” and sparked fierce debate concerning Singapore’s criminal punishment policies.<sup>28</sup>

Lastly, Singapore’s most controversial form of punishment is capital punishment. According to one Singaporean legal scholar, “Singapore achieved global fame (or if you like infamy), when Amnesty International reported that it had the highest per capita execution rate in the world, dwarfing the rates in rather more prominent death penalty practitioners such as Saudi Arabia, China and the United States.”<sup>29</sup> Singapore prescribes death for crimes such as drug trafficking, murder, terrorism, threatening the internal security of the state, using arms in the commission of certain crimes, and kidnapping.<sup>30</sup> But compared to most other nations that have retained the death penalty,

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VRF FORUM (July 27, 2009), <http://forums.vr-zone.com/chit-chatting/462308-news-too-strict.html>.

21. Rapid Transit Systems Regulations, Regulation 52, The Schedule Penalties (1997) (Sing).
22. Computer Misuse and Cybersecurity Act, Ch. 50A(2007)(Sing.); see *Singapore Leads in Crackdown on Wi-Fi Moochers*, THE AUSTRALIAN, April 3, 2007 \*cannot locate source; John Leyden, *Singapore Teen Faces Jail for ‘Stealing’ Neighbour’s Wi-Fi*, THE REGISTER, (November 13, 2006), [http://www.theregister.co.uk/2006/11/13/singapore\\_teen\\_war\\_driving\\_charges/](http://www.theregister.co.uk/2006/11/13/singapore_teen_war_driving_charges/).
23. Parks And Trees Act, Ch. 216, § 9(1)(a)(2005)(Sing.).
24. *Singapore Fines UK Editor for Spitting at Policeman*, YAHOO NEWS (June 14, 2013), <http://sg.news.yahoo.com/singapore-fines-uk-editor-spitting-policeman-150855120.html>.
25. *Singapore: Judicial and Prison Caning*, WORLD CORPORAL PUNISHMENT RESEARCH (2011), <http://www.corpun.com/sgjur2.htm>.
26. *Safety, Law, and Crime in Singapore*, INTERNATIONS.ORG, <http://www.internations.org/singapore-expats/guide/16087-safety-security/safety-law-and-crime-in-singapore-16092> (last visited Feb. 26, 2014).
27. Vinay Lal, *The Flogging of Michael Fay: Culture of Authoritarianism*, 29, ECON. & POL. WKLY., no.23, 1994, at 1386.
28. Alejandro Reyes, *Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate About Crime And Punishment*, ASIaweek (1994), available at <http://www.corpun.com/awfay9405.htm>.
29. Michael Hor, *The Death Penalty In Singapore And International Law*, 8 SING. YEARBOOK INT’L L. 105 (2004); See also, *Singapore, the World Execution Capital*, ECONOMIST, (Apr. 3, 1999).
30. Penal Code Section, Ch. 224, § 302(1)(2)(2008)(Sing.); Misuse of Drugs Act, Ch. 185, Sched. 2

Singapore stands out in two respects: 1) certainty of punishment, and 2) celerity (speed of administration).<sup>31</sup> In Singapore, a death sentence is mandatory for murder, possession of drugs with intent to traffic, and other offenses.<sup>32</sup> As for celerity, homicide trials in Singapore seldom take more than a few months, and death sentence appeals are typically disposed of within 18 months of conviction.<sup>33</sup> In its 2011 Universal Periodic Review report to the U.N. Human Rights Council, the Singapore government defended its use of the death penalty, stating that it is used “only for the most serious crimes,” “sends a strong signal to would-be offenders,” and has a “detering” effect.<sup>34</sup>

Singapore’s harsh penalties for crimes have received attention throughout the world. In defense of the harsh penalty system and the total system of control, former Prime Minister Lee Kuan Yew once stated, “In criminal law legislation, our priority is the security and well being of law-abiding citizens rather than the rights of the criminal to be protected from incriminating evidence.”<sup>35</sup> Professor Li-Ann Thio raised the important question of whether such an approach signals a conflict with a “Western” emphasis on law as protecting the rights of the individual.<sup>36</sup> In discussing the issue, she cites to the Attorney General’s response to such criticism as “absurd thinking of libertarian academics and the Western liberal press that our criminal laws are harsh and the legal system so loaded against an accused that no accused can get a fair trial in Singapore.”<sup>37</sup> The discussion concerning why Singapore’s laws are strict can get intense. The following section will discuss these explanations in greater detail.

## II. Understanding Singapore’s Penal System

This article argues that many of the laws that Singapore is criticized for today can be traced back to the laws handed down by its former colonial rulers. In order to show the continuities between the British police state and contemporary Singapore though, contemporary explanations that have emerged to understand why such strict

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(2008)(Sing.); Internal Security Act, Ch. 143, §§ 58, 59, 70 (1985)(Sing.); Arms Offences Act, Ch. 14, § 4A (2008)(Sing.); Kidnapping Act, Ch. 151, § 3 (1999)(Sing.).

31. Franklin E. Zimring, Jeffrey Fagan, and David T. Johnson, *Executions, Deterrence, and Homicide: A Tale of Two Cities*, 7 J. EMPIRICAL LEGAL STUD. 1, 2 (2010).

32. See DAVID T. JOHNSON & FRANKLIN E. ZIMRING, *THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA* 411 (Oxford Univ. Press, 2009).

33. V. Anbalagan, *Allow Those on Death Row Early Appeals*, NEW STRAITS TIMES (Malaysia), Feb. 25, 2009, at 7.

34. Cheah Wui Ling, *An International Exploration Of Wrongful Conviction: Developing a People-Centered Justice in Singapore: In Support of Pro Bono and Innocence Work*, 80 U. CIN. L. REV. 1429, 1433 (2012).

35. Eugene Kheng-Boon Tan, *Law and Values in Governance: The Singapore Way*, 30 H.K.L.J. 91, 102 (2000).

36. Li-Ann Thio, *Lex Rex Or Rex Lex? Competing Conceptions Of The Rule Of Law In Singapore*, 20 UCLA PAC. BASIN L.J. 1, 66 (2002).

37. *Id.*

punishments exist in Singapore will first be discussed. Although many of the explanations tend to overlap, for simplicity's sake, this section will group approaches to studying criminal law in Singapore into four different discourses: 1) "Asian Values," 2) Rule of Law, 3) Social Control, and 4) Cultural Development and Modernization. These approaches will be discussed in turn.

### A "Asian Values"

"Asian values" was invoked as a form of developmentalism in Southeast Asia, with the claim that until prosperity is achieved, democracy remained an unaffordable luxury.<sup>38</sup> This Protestant-ethic like form of "Asian values" attributed high growth rates to hard work, frugality, discipline and teamwork that only a "disciplined" regime could provide during the early stages of development.<sup>39</sup> According to Professor Li-Ann Thio, government elites began to champion the "Asian values" school as an alternative development model to that of western liberal democracy that emphasizes social discipline rather than democracy as the precursor for economic growth.<sup>40</sup> "Asian values" also underscore the legitimacy of cultural particularism, which informs the understanding of human rights within a neo-communitarian context, where group interests trump individual rights and consensus and harmony are valorized over contention and potential destabilization.<sup>41</sup>

The "Asian values" discourse has also achieved much criticism, however, because of its conflict with human rights. On the one hand, the Singapore government maintains that "Asian values" and the trade-off between prosperity and civil-political liberties, as justification for its attitude towards political and civil liberties, which it maintains are western concepts. On the other hand, Amartya Sen stridently argues that, "the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense."<sup>42</sup> Former NUS Law professor Tey Tsun Hang argues that although Singapore's communitarian values helped facilitate Singapore's evolution into a modern, first-world nation, Singapore's judiciary's adherence to government-defined collective interests has hampered the development of individual rights.<sup>43</sup> Lastly, Professor Leong

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38. Mark Thompson, *Pacific Asia after "Asian Values": Authoritarianism, Democracy, and "Good Governance,"* 25 THIRD WORLD QUARTERLY 1085, no. 6 2004 at 1079, 1085.

39. *Id.*

40. Li-Ann Thio, *Beyond The "Four Walls" In An Age Of Transnational Judicial Conversations Civil Liberties, Rights Theories, And Constitutional Adjudication In Malaysia And Singapore,* 19 COLUM. J. ASIAN L. 428, 456 (2006).

41. *Id.*

42. See, e.g., Amartya Sen, *Human Rights and Asian Values: What Lee Kuan Yew and Le Peng Don't Understand About Asia,* THE NEW REPUBLIC, July 14, 1997, available at [http://www.hmb.utoronto.ca/HMB303H/weekly\\_supp/week-02/Sen\\_Asian\\_Values.pdf](http://www.hmb.utoronto.ca/HMB303H/weekly_supp/week-02/Sen_Asian_Values.pdf).

43. Tey Tsun Hang, *Judicial Internalising of Singapore's Supreme Political Ideology* 40 H. K. L. J. 293, 296 (2010).



Wai-Teng argues in reference to the “Asian values” discourse and Singapore’s “Exceptionalism” that, “[w]hen the imperatives of economic development and the will of a strong government prevail, human rights are at stake.”<sup>44</sup>

### **B. Rule of Law**

While the “Asian values” debate places deference to the state and the community over the individual and elevates the economy as paramount, the rule of law explanation addresses economic issues without discussion of race or culture. John Rawls posits that the rule of law is the fundamental principle that rational people need laws in order to create a predictable system. This breeds efficient economic decision-making, transparent outcomes and justice.<sup>45</sup> In Southeast Asia, this concept is particularly important since it is argued that the region is still grappling with balancing its commitment to the rule of law, with affording its citizens personal freedoms and liberties.<sup>46</sup> Singapore has done an excellent job in providing a stable legal environment to encourage investment. For instance, corruption has been widely cited in many ASEAN countries to be a major impediment to economic growth.<sup>47</sup> In Transparency International’s Corruption Perception Index, Singapore was ranked amongst the least corrupt countries in the region and the world.<sup>48</sup> Furthermore, Singapore’s former Chief Justice, Sek-keong Chen, was awarded the International Jurists Award in 2009 in recognition of his contributions to Asian jurists.<sup>49</sup>

With regards to economic development and rule of law, it is undeniable that Singapore has done phenomenally well. Singapore ranks in the top quartile of the World Bank’s rule of law index along with the East Asian countries of Japan, Hong Kong, Taiwan, and South Korea.<sup>50</sup> According to Prof. Randall Peerenboom, at a very high level of generalization, Singapore’s approach to development can be seen as part of the “East Asian Path,” which involves the sequencing of economic growth, legal reforms,

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44. Laurence Wai-Teng Leong, *From 'Asian Values' to Singapore Exceptionalism*, in HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE 135 (Leena Avonius & Damien Kingsbury eds., 2001).

45. JOHN RAWLS, A THEORY OF JUSTICE 207 (Rev. ed. 1999).

46. Joel Ng, *Issue Focus: Rule of Law as a Framework within the ASEAN Community*, 5 J. E. ASIA & INT’L LAW 327, 341 (2012).

47. See Jon S.T. Quah, *Corruption In Asia With Special Reference To Singapore: Patterns And Consequences*, 10 ASIAN J. OF PUB. ADMIN., no. 1, 1988 at 80; A. Cooper Drury, Jonathan Kriekhaus, Michael Lusztig, *Corruption, Democracy, and Economic Growth*, 20 INT’L POL. SCI. REV. 27, no. 2, 2006, at 121.

48. See Transparency International, “The Global Corruption Barometer is the Only Worldwide Public Opinion Survey on Corruption,” <http://gcb.transparency.org/gcb201011> (last visited Feb. 24, 2014).

49. ASEAN Law Association, The Honourable Chief Justice, Chan Sek Keong, *available at* <http://www.aseanlawassociation.org/pastvicepresidents-sing3.html> (last visited Feb. 24, 2014).

50. Randall Peerenboom, *Law and Development of Constitutional Democracy: Is China a Problem Case*, 603 ANNALS AM. ACADEMY POL. SOC. SCI. 192, 193 (2006).

democratization, and constitutionalism, with different rights being taken seriously at different times in the process.<sup>51</sup> In particular, the path involves an emphasis on economic growth in the initial stages of development before government investment in human capital and institution.<sup>52</sup> The rule of law approach, therefore, argues that Singapore's emphasis on economic development precedes a more open, and democratic society. Singapore's corporal laws can be seen as part of the initial stages of development.

### *C. Social Control*

However, some believe that these laws are not temporary in Singapore's development process, but rather, are contingent on the whims of politicians. Another explanation behind the strict laws of Singapore is that such laws protect the interests of the ruling party. Dr. Jothie Rajah of the American Bar Foundation, in a penetrating critique of some of the policies of the People's Action Party (PAP), Singapore's ruling party since 1959, and in rejecting the "Rule of Law" analysis of Singaporean policies, argues that "Rule by Law" has a far deeper legal tradition in Singapore. "Rule by law," according to Rajah, is when law in content and institutional execution is susceptible to manipulation by the state so that citizens' rights, and institutional restraints on and scrutiny of state power, are undermined.<sup>53</sup> Through the example of the PAP's push for the Vandalism Act, Rajah concludes that the PAP used the "Act to demarcate certain expressions of opposition politics as criminal and anti-national—thus consolidating its power over the space of nation, in both material and discursive terms."<sup>54</sup> Another important law that Rajah uses to make her argument is the 1974 Newspaper and Printing Presses Act. She argues that the Press Act demonstrates the state's use of legal exceptionalism of the Emergency into the post-Emergency civic domain, combines colonial licensing technologies with corporatist technologies, and contains the public expression of critique and dissent through newspapers.<sup>55</sup>

Francis Seow, a former Solicitor-General of Singapore, was also explicit in his criticism of the PAP and its supposed collusion with the courts and the legal system. He argues, "as the PAP government entrenched itself deeper in power with each successive electoral victory, with none to call it to account, the judiciary, like so many other institutions in Singapore, began to lose its independence."<sup>56</sup> In a recent book, Seow

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51. *Id.* at 194.

52. *Id.*

53. JOTHIE RAJAH, *AUTHORITARIAN RULE OF LAW: LEGISLATION, DISCOURSE AND LEGITIMACY IN SINGAPORE* 4 (2012).

54. *Id.* at 65.

55. *Id.*

56. FRANCIS SEOW, *BEYOND SUSPICION? THE SINGAPORE JUDICIARY*, 3 (Yale University Southeast Asia Studies, 2007).

describes how in 1995, a candidate running against the PAP, Tang Liang Hong called attention to the Hotel Properties Limited (HPL) board of directors' private sales offer to former Prime Minister Lee Kuan Yew and other notable elites. Seow's book documents how Tan's act triggered questionable libel charges against him, and how Tan was persecuted with the clockwork efficiency of the entire politico-legal complex. Elsewhere, Seow cites to the use of the Internal Security Act and Singapore's libel laws as examples of how the PAP maintains an iron fist over Singaporean politics.<sup>57</sup>

#### ***D. Cultural Development and Modernization***

The last explanation regarding Singapore's strict laws concerns the development of Singaporean culture. Professor Koh Tai Ann in her article *The Singapore Experience: Cultural Development in the Global Village*, argues that Singapore's "commitment to rapid growth and hence to more technology necessitates far-reaching changes in Singapore's whole way of life" and that "cultural development' becomes the provision of a form of supporting and stabilizing, yet counteracting force."<sup>58</sup> Providing a contrary view to the earlier perspectives provided in this article, she cites to former Prime Minister Lee Kuan Yew's address to the principals of schools in Singapore in August 1966, on the subject, "New Bearings in our Education System."<sup>59</sup> Demonstrating his interest in developing the nation, Koh showed how Lee talked of "jacking up standards," and called for a "reshuffling of values" to produce "the ideal product."<sup>60</sup> Such an endeavor required strict rules and discipline. Citing former Prime Minister Lee, "to make the whole thing work," "the carrot and stick" will be used on teachers, principals and inspectors. He added, "It is cruel; it is harsh," but nonetheless necessary.<sup>61</sup>

Professor Lily Kong also talks about the cultural hegemony of the state and its role in social engineering. Kong argues that one of the aims of social engineering was depoliticization, and through depoliticization, social stability and economic growth.<sup>62</sup> In *Music and Cultural Politics: Ideology and Resistance in Singapore*, Kong described the Singaporean "national identity" that was developed to ensure the long-term viability of the country. The core values to this identity included, "community over self; upholding the family as the basic building block of society; resolving major issues through consensus instead of contention; and stressing racial and religious tolerance and harmony." Dr. Melanie Chew in discussing the "Singapore school" of thought that places

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57. Francis Seow, *The Tyranny of the Majority*, 19 INDEX ON CENSORSHIP 3 (1990).

58. Koh Tai Ann, *The Singapore Experience: Cultural Development in the Global Village*, in SOUTHEAST ASIAN AFFAIRS 292-307 (1980).

59. *Id.*

60. *Id.*

61. *Id.*

62. Lily Kong, *Music and Cultural Politics: Ideology and Resistance in Singapore*, 20 TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS, NEW SERIES, no.4, 1995, at 447, 450.

the interests of the majority over the rights of the individual must be understood within the context of Singapore's unique history "as a small state that struggled to develop a political system suitable to its immediate, difficult circumstances."<sup>63</sup> Chew adds, "Punishment in a community oriented system is not designed to punish the individual," and that, "it is designed to protect the community as a whole, to serve as a deterrent to potential mischief makers and future vandals."<sup>64</sup> These approaches, therefore, remind the outside observer that conditions in Singapore required drastic action that included the transformation of values. In the process, harsh, punitive reminders to citizens of their role in the nation building project was employed to ensure Singapore's development.

There are obvious intersections amongst the four discourses above. First, with regards to culture, development, and modernization, the same issues arise when we look at the "Asian values" discourse, which essentially served as the theoretical basis for many of the "social engineering" projects at the hands of the state. Furthermore, while many argue that adopting "Western" imports wholesale would not be advisable, and that some "Asian values" truly do serve the interests of Singaporean society well, this does not mean that the either discourse must be dogmatically accepted. Lastly, while many resent the PAP for what they consider chauvinistic and undemocratic practices, few can deny the PAP's role in creating one of the most robust and successful economies in the world.

What these four discourses lack, however, is an evaluation of the role and impact of British jurisprudence in contemporary Singaporean criminal policy. The next section aims to show that British colonial policy is not separate and apart from Singapore's strict and disciplined penal system. It aims to show that the British laid the foundation for what we see today, adding yet another critical approach to understanding Singapore's current criminal policies.

### III. The British Legacy

It is no secret that many of the Singaporean laws found today were left behind by the British. Rajah for instance argues, "[u]nder the colonial state, sanguinary punishment (by which I mean punishment targeted at the body, such as corporal and capital punishment) appears to have been regarded as a justifiable penal response to violent

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63. Melanie Chew, *Human Rights in Singapore: Perceptions and Problems*, 34 ASIAN SURV., no.11, 1994, at 933).

64. It should be important to note that even Chew believed that such a punitive approach was "appropriate and successful for a particular development and historical phase." She added that, "Looking toward the future, however, changes in the concepts of "rights" may enable Singapore to adjust and respond more effectively to an evolving economic and political environment." Chew, *supra* note 63 at 933.

crime,” reminding us that Singapore’s most notorious criminal sanctions were derivatives of British colonial laws.<sup>65</sup> While few deny such a legacy, the role of British legal influence is often discussed in juxtaposition to the current Singaporean legal system. Thio, for instance, has stated, “[a]s a ‘force for freedom,’ Western laws attributed the ‘highest value’ to individual rights to life, liberty and security,” but asks, “has the common law ‘shell’ been retained with ‘vicarious respectability’ [in Singapore]?”<sup>66</sup> Seow goes so far as to posit the British courts as a beacon of good governance, and depicting Singaporean courts as diametrically opposed and somewhat akin to courts in Nazi Germany, arguing that the PAP believed, “justice must not become the mistress of the state, but must be the servant of state policy.”<sup>67</sup> Such approaches, while acknowledging the role of the British in Singaporean jurisprudence, emphasize Singaporean jurisprudence as a point of departure from British law. This section of the article, however, will focus on the continuity between British and Singaporean jurisprudence to shed light on how laws under the British were enacted and enforced, and how such approaches to the law continues in modern Singapore.

In order to show the continuity between British and Singaporean approaches to the law, British jurisprudence under Judge Conrad Oldham will be explored. First, the section will provide a brief sketch of who Conrad Oldham was, how he engaged his surroundings, and how those around him may have lived in service to the colony. Though not meant to act as a definitive biography, it will hopefully demonstrate how Oldham, as an ordinary colonial officer, perpetuated a system that laid the foundation to the Singapore we see today. Next, this section will review jurisprudence under Oldham to demonstrate how many of the unique and “Asian” aspects to the Singaporean judicial system were present under the British.

### ***A. Contextualizing Oldham’s Appointment***

On June 22, 1938, the *Straits Times* announced that Conrad Oldham was to replace Mr. F. V. Duckworth, Singapore’s Second Magistrate.<sup>68</sup> While colonial correspondence

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65. Rajah, *supra* note 53; *see also*, Mark Brown, *Ethnology and colonial administration in nineteenth-century British India: the question of native crime and criminality*, 36 *BRITISH J. FOR THE HISTORY OF SCIENCE*, 201 (2003); Anand A. Yang, *Indian Convict Workers in Southeast Asia in the Late Eighteenth and Early Nineteenth Centuries*, 14 *J. OF WORLD HISTORY* 179 (2003); JÖRG FISCH, *CHEAP LIVES AND DEAR LIMBS: THE BRITISH TRANSFORMATION OF THE BENGAL CRIMINAL LAW 1769* (Wiesbaden, Franz Steiner Verlag, 1983).

66. Li-Ann Thio, *Rule of Law Within A Non-Liberal Communitarian Democracy*, in *ASIAN DISCOURSES OF RULE OF LAW* 183, 186 (Randall Preenboom ed., 2004); *see also*, Thio *supra* note 36, at 59.

67. Seow, *supra* note 57.

68. *Barrister’s Son Now Magistrate*, *SINGAPORE FREE PRESS AND MERCANTILE ADVERTISER*, June 22, 1938, at 3.

concerning judicial appointments leading up to 1938 are missing,<sup>69</sup> records in 1937 showed that the colonial government experienced some difficulty in finding good candidates for Duckworth's position.<sup>70</sup> Correspondence between the Governor of the Straits Settlements, Sir Shenton Thomas, and Secretary of the State for the Colonies, W. Ormsby Gore, described a situation in which the open positions in Malaya of Deputy Legal Adviser, Registrar of the Supreme Court, two Crown Counsels and one Magistrate Judge, needed to be filled by the "most experienced officers of the Colonial Legal Service on that side of the profession."<sup>71</sup> Part of the reason for requiring such credentials was the high salaries attached to the posts.<sup>72</sup> In November of the same year, in response to a letter from the Governor of the Straits Settlements in which the Governor seemed "a little peeved about the delay in filling vacancies," the Office of the Secretary of State for the Colonies sent him a "brief dispatch explaining the difficulties" in attempting to fill the positions.<sup>73</sup> In the response telegram, the Secretary of State for the Colonies office described how a number of qualified members of the Colonial Legal Service from the British colonies of Gambia, Cyprus, and Nigeria refused the positions when offered.<sup>74</sup> The telegram then discussed the two candidates that had been recommended for positions.<sup>75</sup> One of those recommended was in private practice in Uganda and the other served as Legal Adviser to the Siamese government.<sup>76</sup> While available sources do not show that offers were made to either candidate, even if both candidates had been extended offers, neither seemed to have taken them.<sup>77</sup> Furthermore, the notes regarding the telegram added that, "endeavors made to fill [the positions] from outside that Service have so far been unsuccessful, owing partly to the large number of vacancies which

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69. Malayan Judiciary: Vacancies (1935), *in* Colonial Legal Service: Vacancies, CO273/607/3; Malayan Judiciary (1936), *in* Colonial Legal Service: Vacancies, CO273/615/2.
70. Letter from W. Ormsby Gore, Sec'y of the State for the Colonies, to Sir Shenton Thomas, Governor of the Straits Settlement (June 19, 1937), *in* COLONIAL LEGAL SERVICE: VACANCIES, CO 273/633/23.
71. Letter from W. Ormsby Gore, Sec'y of the State for the Colonies, to Sir Shenton Thomas, Governor of the Straits Settlement (June 19, 1937), *in* COLONIAL LEGAL SERVICE: VACANCIES, CO 273/633/23.
72. *See id.*
73. Telegram to Governor of Straits Settlements No. 114 (Nov. 23, 1937), *in* COLONIAL LEGAL SERVICE: VACANCIES, CO 273/633/23.
74. *See id.*
75. *See id.*
76. *See id.* It also appears that the appropriateness of the candidates tended to be an issue. *See id.* According to the telegram, there was some concern over the legal adviser to Siam's application since a "report from the British Legation in Bangkok dated 1935 made adverse comments on him socially and professionally." *Id.* The Governor's office, therefore, requested the Foreign Office for an up-to-date report, and his appointment was on hold until the report came in. *See* Telegram to Governor of Straits Settlements No. 114, *supra* note 73.
77. A preliminary search of the major newspapers and journals of that time shows that neither candidate took up positions in Colonial Malaya from 1937-1939.

recently Colonial Legal Service, but it is hoped that suitable candidates for them will be available in the near future.”<sup>78</sup>

At the same time, some of the difficulty in finding suitable candidates could be attributed to the fact that the Governor of the Straits Settlements decided against promoting those within the Colonial Legal Service of Malaya to certain positions. Although Adrian Clark, the Legal Adviser to the Federated States of Malaysia, suggested Raja Musa<sup>79</sup> to the Governor for Deputy Legal Counsel, and L.B. Gibson, who had served in the Colonial Legal Service in Malaya since 1926,<sup>80</sup> had come up for discussion, the

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78. Telegram to Governor of Straits Settlements No. 114, *supra* note 73.

79. At forty-years old, Musa was one of the first Malay members of the Colonial Legal Services, and among the early batches of individuals who received training at Malay College. See *Mainly About Malayans*, STRAITS TIMES (Sing.), Mar. 13, 1938, at 9, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19380313-1.1.9.aspx>; see also Kevin Tan, ESSAYS IN SINGAPORE: LEGAL HISTORY 206 (Marshall-Cavendish, 2005); see also Robert Heussler, BRITISH MALAYA: A BIBLIOGRAPHICAL AND BIOGRAPHICAL COMPENDIUM 160 (Garland Publ'g, 1981). Malay College was founded in 1905, and known as the “Eaton of the East.” Raja Petra Kamarudin, *RPK: What happened in those 100 years?*, MY NEWS HUB (June 29, 2012), <http://mynewshub.my/eng/2012/06/rpk-on-mckk-what-happened-in-those-100-years/>. It was vested with a mission of “...establishing at a suitable locality in the Federated Malay States, a special residential school for education, of Malays of good family and for the training of Malay boys for the branches of the government service ...”. *Id.* Musa was called to the bar of the Inner Temple in London, and served as a public prosecutor amongst his numerous other positions in government over the past 27 years. See *Mainly About Malayans*, *supra*. In spite of this, the governor stated, “I regret that I have been unable to agree with the opinion of the Legal Adviser, Federated Malay States that Raja Musa bin Raja Haji Bot should be appointed to be Deputy Legal Adviser . . . he has not sufficient experience, and it would be unfortunate to have as Deputy an officer of whom as acting Legal Adviser there might be doubts.” Letter from S.W. Thomas, Governor of the Straits Settlement, to W.G.A. Ornsby-Gore, Sec’y of the State for the Colonies (May 11, 1937), in COLONIAL LEGAL SERVICE: VACANCIES, CO 273/633/23.

80. Without much discussion, the Governor of the Straits Settlements stated, “I do not consider Mr. Gibson suitable as yet for the post of Deputy Legal Adviser.” Letter from S.W. Thomas, Governor of the Straits Settlement, to W.G.A. Ornsby-Gore, Sec’y of the State for the Colonies, *supra* note 79. However, Gibson had a long career in the Colonial Legal Services of Malaya at that point. Arriving in 1920 as a cadet in the Civil Service of the Colony, he worked in various positions before being appointed Police Magistrate in 1926. See *Advertisements*, SING. FREE PRESS AND MERCANTILE ADVERTISER (Sing.), Feb. 20, 1926, at 16, available at <http://newspapers.nl.sg/Digitised/Article/singfreepressb19260220-1.2.90.1.aspx>; see also, *Social and Personal*, STRAITS TIMES (Sing.), May 8, 1920, at 9, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19200508-1.1.8.aspx>. In 1930, Gibson occupied a slew of legal positions including, Assistant to the Attorney General, Deputy Public Prosecutor, and Acting Solicitor General. See STRAITS TIMES (Sing.), July 26, 1930, at 10, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19300726-1.1.10.aspx>; see also STRAITS TIMES (Sing.), Aug.30, 1930, at 10, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19300830-1.1.10.aspx>; see also STRAITS TIMES; (Sing.), Oct.11, 1930, at 10, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19301011-1.1.10.aspx>. He served as legal adviser in Kedah in 1932, and in 1934 served as a District Judge. See *Social and Personal*, STRAITS TIMES (Sing.), Aug. 13, 1932, at 10, available at <http://newspapers.nl.sg/Digitised/Article/straitstimes19320813-1.2.36.aspx>; see also *Sergeant Guilty of Assault*, SING. FREE PRESS AND MERCANTILE ADVERTISER (Sing.), Aug. 11, 1934 at 3,

Governor was dissatisfied with both candidates for the highest post.<sup>81</sup> The Attorney-General and the Malayan Establishment, therefore, agreed to seek candidates from outside the colony.<sup>82</sup> Ultimately, Gibson was appointed Crown Counsel and Raja Musa was appointed Registrar of the Supreme Court of Singapore.<sup>83</sup> Moreover, two outside candidates were brought in to fill the positions. Mr. R. M. Cleur, Resident Magistrate in Jamaica, was appointed Crown Counsel in December of 1937, and Conrad Oldham was brought in to serve as magistrate on June 22, 1938. Adrian Clark remained Legal Adviser to the Federated States of Malaysia, with R. M. Cleur acting as Deputy Legal Counsel in Clark's absence.<sup>84</sup>

### B. Judge Conrad Oldham

It was in the context above that Oldham was appointed. Oldham replaced F.V. Duckworth as the Second Police Court of Singapore in June 1938, nearly two and half years before the Japanese occupied Singapore.<sup>85</sup> Although a member of the Colonial Legal Service, it is unclear whether Oldham practiced outside of the U.K. before he came to Singapore.<sup>86</sup> After receiving his education at Dulwich College, an affluent and exclusive independent school in Southeast London, he was called to the bar at Gray's Inn in 1929, and began his practice immediately.<sup>87</sup> At this time, the Colonial Service was becoming more unified, with a centralized process of application, and the selection of candidates taking place in London, making it more difficult to apply to countries

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available at <http://newspapers.nl.sg/Digitised/Page/singfreepressb19340811-1.1.3.aspx>. In 1936, he was appointed Solicitor-General of the Colony. See *Solicitor-General In Colony*, STRAITS TIMES (Sing.), Nov. 19, 1936, at 13, available at <http://newspapers.nl.sg/Digitised/Page/straitstimes19361119-1.1.13.aspx>.

81. *Letter from S.W. Thomas to W.G.A. Ornsby-Gore, May 11, 1937*, COLONIAL LEGAL SERVICE: VACANCIES, CO 273/633/23. It should be noted that part of the discussion regarding who should be offered the Deputy Legal Adviser position concerned whether Musa should be promoted "over" Gibson. The enclosures to the letter stated, "the Attorney-General and the Malayan Establishment Officer are of the opinion that Raja Musa should not be promoted over the head of Gibson." This is not surprising since it was only in 1938 that "Asiatics" were allowed into the Colonial Legal Service. In fact, on August 29, 1938, Sir Percy McElwaine, Chief Justice of the Straits Settlements stated, "I am doubtful whether any Asiatic is suitable for the post of Registrar of the Supreme Court, whatever his professional qualifications be." He added, "Asiatics are apt to be overborne by European Counsel and this has particular bearing on taxation and costs." *Letter to Malcolm McDonald from Governor's Deputy*, COLONIAL LEGAL SERVICE: ADMISSION OF STRAITS-BORN ASIATICS (October 19, 1938), CO273/649/13.
82. *Id.*
83. *S.S. Appointments*, STRAITS TIMES, Oct. 2, 1937, at 10; *Mainly About Malayans*, STRAITS TIMES, Mar. 13, 1938, at 9; ESSAYS IN SINGAPORE LEGAL HIST. 206 (Kevin Tan, ed., Marshall Cavendish Acad. 2005); See *supra* note 80.
84. *M. C. S. Promotions And Transfers*, SINGAPORE FREE PRESS & MERCANTILE ADVERTISER, Dec. 15, 1937, at 8; *Legal Adviser's Appointment*, STRAITS TIMES, Feb. 24, 1939, at 13.
85. *Thio, supra* note 66.
86. *Id.*
87. *Id.*



directly.<sup>88</sup> As the son of a retired barrister who served as solicitor to the Governors of the Queen Anne's Bounty (a fund established in 1704 for the benefit of the poorer clergy of the Church of England), Oldham's father's public service may have influenced his decision to join the Colonial Service.<sup>89</sup> Given his father's public service, his youth, and his penchant for adventurous activities, Oldham took a position that many before him turned down, as the looming threat of war hovered over Colonial Malaya.<sup>90</sup>

In England, Oldham served as a private practitioner with local chambers in Bournemouth, Southampton, and London,<sup>91</sup> and it was reported that he appeared in a number of big criminal hearings.<sup>92</sup> In addition to his practice, Oldham also enjoyed auto-racing. He served as chairman of the Poole Speed Trial Committee for three years, often drafting the regulations under which its competitions were held.<sup>93</sup> Newspaper reports state that during his time with the Poole Speed Trail Committee, the Committee hosted one of the most successful sporting meetings held in England.<sup>94</sup> In addition to auto-racing, Oldham was also a thespian. In Bournemouth, Oldham did a good deal of acting at the Bournemouth Little Theatre.<sup>95</sup>

When Oldham arrived in Singapore, he continued many of these activities, and picked up additional activities that matched his lifestyle. Within three months of his arrival, Oldham had secured a position with the Automobile Association of Malaya (Singapore Branch).<sup>96</sup> One of Oldham's responsibilities was to organize Singapore's first Trophy Speed Trial as the Clerk of the Course.<sup>97</sup> Engaging his interest in the theatre, in November 1939, Oldham served as treasurer of a new amateur theatrical organization, known as the "The Island Committee."<sup>98</sup> He also participated in the committee's first production, entitled "The Island." The play concerned the private lives of a group of military officers and their wives on a garrison island near the British coast.<sup>99</sup>

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88. ANTHONY KIRK-GREEN, *ON CROWN SERVICE: A HISTORY OF HM COLONIAL AND OVERSEAS CIVIL SERVICES, 1837-1997* 33-38 (L.B. Tauris & Co. Ltd. 1999).
89. ANTHONY KIRK-GREEN, *ON CROWN SERVICE: A HISTORY OF HM COLONIAL AND OVERSEAS CIVIL SERVICES, 1837-1997* 33-38 (L.B. Tauris & Co. Ltd. 1999); *The Queen Anne's Bounty Act, 1703*, 2 & 3 Ann. c., 20; see ROBERT HEUSLLER, *BRITISH RULE IN MALAYA: THE MALAYAN CIVIL SERVICE AND ITS PREDECESSORS, 1867-1942* 120 (Greenwood Press 1981).
90. See ANTHONY KIRK-GREEN, *supra* note 88. Between 1938 and 1939, colonial service recruitment for legal officers declined by nearly 70%.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Many Motorists Enter For The Speed Trials*, STRAITS TIMES, Sept. 18, 1938, at 3.
95. *Mainly About Malaysians*, STRAITS TIMES, Dec. 17, 1939, at 7.
96. *Many Motorists Enter For The Speed Trials*, *supra* note 94.
97. *Id.*; *Key Milestones*, AUTOMOBILE ASS'N OF SINGAPORE, <http://www.aas.com.sg/?show=content&showview=6&val=76>.
98. *The Island*, STRAITS TIMES, Nov. 19, 1939, at 5; See *supra* note 95.
99. *Garrison Life on a "Horrible Island."* SINGAPORE FREE PRESS AND MERCANTILE ADVERTISER (Sing.) December 11, 1941, at 5.

Interestingly, one reviewer stated “in view of the oft-repeated outbursts . . . against ‘this horrible island’ and a tendency among ‘exiles’ in this part of the world to descend to similar vituperations, the play can be regarded as somewhat an admonition to Singaporeans.”<sup>100</sup> These personal and social activities of Conrad Oldham provide a glimpse into the life of a very ordinary Colonial Officer. As a police magistrate, his position was not one that required the number of years of service that a district court judge required.<sup>101</sup> Oldham was not in a very prestigious, nor politically connected position. Yet in his very average position, he participated in activities with didactic messages to both local Singaporeans and British expats—highlighting the fact that many British officials became too enmeshed in their own personal dramas to develop a harsh view of locals. Lastly, unlike in other empires, Oldham, like many of those around him, came from wealth, a good family, and elite educational institutions. Whereas in the Philippines it has been argued that those of the “lower classes” and low educational background sought wealth and higher status in the colonies,<sup>102</sup> British officers needed no such thing. Many came with a set of ideals and expectations that they held their subjects to—and they did so with pride. Oldham, for instance, seemed to enjoy his time in Singapore immensely and looked back with great fondness.<sup>103</sup>

The next section will demonstrate how it was not just how Oldham lived his life in Singapore, but also what he left behind, that laid the foundations to what we see today. It will show how many of the ideals and expectations that Oldham brought with him from England closely mirror the ideals and expectations embodied in Singapore’s current laws.

### C. Oldham’s Jurisprudence

As mentioned above, Singapore’s harsh criminal laws have captured the attention of the world. Of all the explanations that have emerged to justify Singapore’s harsh

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100. *Id.*

101. To serve as a district court judge, you must be: 1) member of the bar and a member of the Colonial Service in the Federated Malay States for five years; or 2) a member of the Colonial Service for 10 years. Both paths require lengthy interactions with the bureaucracy. On the other hand, police magistrates (magistrates) just need to be appointed by the Governor. *Courts*, LAWS OF THE STRAITS SETTLEMENTS, Chap. 10, Sect. 51 (1938).

102. See TEODORO AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 86 (Quezon City, 1977) (“The Spanish social scientist, Tomas de Comyn, ascribed the lamentable political situation to the fact that many provincial governors were former hairdressers, lackeys, sailors, adventurers and deserters who had come to the Philippines with little or no background at all only to amass wealth and property.”); see also, Jose Rizal, *The Indolence of the Filipino*, in POLITICAL AND HISTORICAL WRITINGS 227, 231 (Manila, National Historical Institute, 2000) (“Who is the indolent one, the *Indio* coadjutor, poorly paid and badly treated, who has to visit all the sick living in the country, or the friar curate who gets fabulously wealthy, goes about in a carriage, and eats and drinks well, and does not trouble himself unless he can collect excessive fees?”).

103. *Singapore Committee Wants ‘Contacts’*, SINGAPORE FREE PRESS (Sing.), January 14, 1948, at 5.

criminal laws, the “Asian values” discourse received the most critical response. This section will show, however, that while these so-called “Asian values” do exist, they are not exclusively “Asian,” and that many of them have roots in British jurisprudence. It will also show that some of the tactics that many use to show how Singapore’s ruling party oppresses its citizens were developed and used by the British. The section will demonstrate how three explanations behind Singapore’s strict criminal law system, can be traced to British approaches to resolving the law as seen in Oldham’s jurisprudence.

### *1. Community over Self*

Many have argued that “communitarian-oriented” values in Singapore minimize individual autonomy while prioritizing government defined collective goals.<sup>104</sup> In this context, group interests trump individual rights, and many times, individuals are publicly disciplined or shamed to serve as examples to others.<sup>105</sup> Punishment, therefore, is not meant to admonish the individual, but to protect the community as a whole, and serve as a deterrent to potential mischief.<sup>106</sup> Examples of this can be seen today in the Singapore government’s decision to excessively fine people for trivial acts such as chewing gum or stealing Wi-Fi

The manner in which Conrad Oldham handled his cases demonstrates that the British also used such a tactic to encourage conformity. As the war drew near, the British clamped down on unlawful behavior in order to impress upon Singaporeans the dire situation the city-state was under, and the necessity for discipline and respect of the law. At 4:30 a.m. on December 8, 1941, the Japanese bombed Singapore, signaling to its population that the war had entered the region.<sup>107</sup> Despite air raid sirens being triggered, the streets of Singapore remained lighted as police and power station officials could not find the employee who had the key to switch off the lights.<sup>108</sup> Although obvious mistakes had been made by the state, individuals were harshly punished for their failure to comply with emergency procedures.

Over a week later, several headlines made the news with Singaporeans being fined to the fullest extent of the law for lighting offenses during an alert. On December 18, 1941, Nanlik Dass, for instance, was fined \$1,000 for using a flashlight near a military camp during an alert.<sup>109</sup> Reports indicated that while soldiers were patrolling a wire fence of a military camp, they saw lights flashing on and off.<sup>110</sup> Upon reaching the fence, the

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104. Thio, *supra* note 67, at 183.

105. Chew, *supra* note 64.

106. Chew, *supra* note 64.

107. See FRANK OWEN, *THE FALL OF SINGAPORE* 36 (Penguin Books 2001) (1962).

108. *Id.*

109. *\$1000 Fine For Flashing Torch*, SINGAPORE FREE PRESS AND MERCANTILE ADVERTISER (Sing.), Dec. 18, 1941, at 6.

110. *Id.*

soldiers saw a group of men and a flashing light.<sup>111</sup> When the patrol called to them, they ran off and were eventually apprehended.<sup>112</sup> After determining that Dass was the culprit, the court imposed the maximum sentence of \$1,000 on Dass.<sup>113</sup> That same day, three others were charged with blackout offenses. Claiming trial, they were allowed bail of \$250 each.<sup>114</sup> The next day, Peh Ah Hoi was arrested and fined \$500, or in default, five months simple imprisonment, for riding a bicycle with an un-shaded lamp.<sup>115</sup> Four others were convicted on a charge of failing to shade a light at a house on Jurong Road during an alert.<sup>116</sup> At this point, the fines were not as harsh, with the first three being fined \$25 and the fourth being fined \$10.<sup>117</sup> Although Singaporeans had endured several blackout practices in the past, and fines were imposed at that time,<sup>118</sup> Dass was used as an example. Although his excessive fine was not commensurate to his offense, it was especially instructional. His fine was meant to serve as a warning to all of the severity of discipline in light of the ongoing war efforts, as well as to compensate for the State's failure to comply with its own mandate just a few days earlier.

As noted above, Oldham, without much instruction, intended to make it a point that violating the State's laws was unacceptable. In certain instances, however, when Oldham advertently or inadvertently got the law wrong, the State ensured that its mandate and corresponding moral values were followed. Such was the case with homosexuality.<sup>119</sup> Although Oldham convicted Chinese and Malay defendants without much deliberation,<sup>120</sup> and also convicted a few Europeans for engaging in "grossly indecent" acts with the same sex as prohibited by the newly implemented Section 377A of the Penal Code,<sup>121</sup> many times, Europeans were acquitted without evidence in their

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111. *Id.*

112. *Id.*

113. *Id.* Upon review of Oldham's cases between 1938 to 1941, Dass' fine was amongst the highest fine Oldham ever imposed. On only three occasions were higher fines imposed. These cases involved drug trafficking and gambling; see *\$3,200 Fine for Woman with Chandu Round Waist*, STRAITS TIMES (Sing.), May 26, 1939; *\$2,959 Fine on Ricksha*, STRAITS TIMES (Sing.), Aug. 12, 1941; *\$2,000 Fine for Assisting in Public Lottery*, STRAITS TIMES (Sing.), Feb. 21, 1940.

114. *Offences Against Lighting Rules*, SINGAPORE FREE PRESS MERCANTILE ADVERTISER (Sing.), Dec. 19, 1941, at 6.

115. *Id.* It should be noted that this was penalty was imposed by Mr. C.H. Whitton of the Fifth Court.

116. *Id.*

117. *Id.*

118. See *Flying-Officer Fined \$50 For "Black-out" Offence*, SINGAPORE FREE PRESS AND MERCANTILE ADVERTISER (Sing.), July 14, 1939, at 9; *Taxi Driver Fined For Black-Out Offence*, STRAITS TIMES (Sing.), March 15, 1941, at 11; *Light During Black-Out: \$10*, STRAITS TIMES (Sing.), July 30, 1939, at 7.

119. See Radics, *supra* note 16.

120. *Well-Known Penang Men Sentenced*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Sept. 27, 1938, at 3; *Chinese Pleads Guilty to Indecency Charge*, STRAITS TIMES (Sing.), Apr. 2, 1941, at 10; *Whipping for Boy*, STRAITS TIMES (Sing.), Oct. 10, 1939, at 11.

121. *Prison Term for Gunner: Dangers Which His Action Courted*, STRAITS TIMES (Sing.), May 1, 1941, at 12.

defense ever being presented. However, in instances where the State believed Oldham got the law wrong, it intervened to ensure its moral code was enforced.

One such example took place on April 29, 1941, when former junior assistant immigration official Ronald Ivan McHarg was charged for illegally harboring a wanted man.<sup>122</sup> Incriminatory evidence at trial showed that McHarg told fellow junior assistant immigration officer he “let the poor devil through last night . . . .”<sup>123</sup> Additionally, the lascar<sup>124</sup> on duty under McHarg admitted on the stand that a big man fitting the wanted’s description went into the office to meet McHarg and that the same man passed through the gate.<sup>125</sup> In spite of such evidence, Judge Conrad Oldham acquitted McHarg without having McHarg being called to the stand. Judge Oldham held that McHarg’s alleged admission was not made under oath, and that by pleading not guilty, McHarg had retracted his admission.<sup>126</sup> On appeal, the Chief Justice of the Straits Settlements, Sir Percy Alexander McElwaine, reversed Oldham’s decision stating that “[t]he magistrate was entirely premature in dismissing this case,” and that McHarg, “should have been called upon for his defense.”<sup>127</sup> When the Chief Justice asked whether the Deputy Public Prosecutor wanted a re-trial ordered, the Prosecutor replied that he would not seek a re-trial since the Chief Justice had made the points of law clear.<sup>128</sup>

In another case, a detective found a ticket in the possession of a Malay youth named Sudin bin Daud who was known to be a “catamite.”<sup>129</sup> The ticket was taken to a pawnshop and was found to relate to a watch formerly in the possession of Captain Douglas Marr.<sup>130</sup> During a search of Marr’s room, a brown shirt made of Turkish toweling that was not large enough to be Marr’s was found under some clean clothes.<sup>131</sup> In his defense, Marr argued that to “get some idea of the homosexual type of vice . . .” he intended to, “question a catamite [in his bedroom] and . . . try and find out to what extent

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122. *European Charged: Allegedly Harboured Wanted Man*, STRAITS TIMES (Sing.), Mar. 19, 1941, at 10.

123. *Allegedly Harboured “Wanted” Man: Evidence In Case Against Former Immigration Official*, STRAITS TIMES (Sing.), Apr. 29, 1941, at 12. In a subsequent report, McHarg was quoted as saying, “He appeared to be quite a decent chap, poor fellow.” *Chief Justice Makes Point of Law Clear: No Re-Trial Ordered In Case Of Immigration Official*, STRAITS TIMES (Sing.), July 2, 1941, at 12.

124. A “lascar” is an army servant. MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/lascar> (last visited Nov. 12, 2013).

125. *Id.* \*Sr. Assoc. notes that there is probably a missing cite. The assertion in the body of the paper does not seem to be supported by Merriam-Webster dictionary.

126. *Former Immigration Official Acquitted*, STRAITS TIMES (Sing.), Apr. 29, 1941, at 10.

127. *Chief Justice Makes Point of Law Clear*, *supra* note 123.

128. *Id.*

129. *Staff Officer on Trial in Police Court*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Apr. 16, 1941, at 9. A “catamite” is a boy kept by a pederast. MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/catamite> (last visited Nov. 12, 2013).

130. *Staff Officer on Trial in Police Court*, *supra* note 129, at 9.

131. *Id.*

soldiers in different regiments were involved.”<sup>132</sup> At the end of trial, Judge Conrad Oldham went on to state, “I have no doubt whatever of Capt. Marr’s innocence, and he is therefore acquitted,” basing his acquittal on the unreliability of the testimony of the catamite.<sup>133</sup> On appeal, Justice Newnham Arthur Worly of the High Court of the Straits Settlements reversed the trial court’s acquittal. Justice Worly stated, “I am of the opinion, that the Magistrate so misdirected and confused himself on the material evidence in the case that his conclusions on the evidence of Sudin and the corroborative evidence cannot stand.”<sup>134</sup> On remand, however, the prosecution withdrew its case and entered a *nolle prosequi* against Marr.<sup>135</sup>

As noted above, although Oldham may have applied the law unfairly and convicted Chinese and Malay defendants more often than he convicted European defendants, in such instances, the State was ready and willing to intervene to ensure that nobody be let off the hook, and that even if a reversed acquittal was not ultimately retried on remand, the lengthy and shameful appeal would surely deter one from engaging in such activities. Therefore, the idea that punishment in a communitarian society is not meant to punish the individual, but to protect the community as a whole and to serve as a deterrent to potential mischief,<sup>136</sup> cannot purely and exclusively be an “Asian value.” The act of castigating citizens harshly to make a point was used by the British to emphasize the “rule of law,” as well as to promote British values. Certainly Oldham, by his own judgment, or as instructed by the state, reinforced the power of the State, its values and beliefs, at the derogation of individual rights.

Another example of the blurring between “Asian values” and the West in jurisprudence can be found in British values being passed down through Oldham’s approaches to resolving family law cases. This next section will describe Oldham’s emphasis of filial piety, respect for authority and patriarchy—values some Singaporeans claim as “Asian.”

## 2. *Family as the Basic Building Block of Society*

During Judge Oldham’s tenure as magistrate judge, one of the areas of the law that Oldham presided over quite frequently was family law. Maintenance issues, i.e. child

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132. *Id.*

133. *No Doubt Whatever of Staff Officer’s Innocence*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Apr. 17, 1941, at 9.

134. *Rex v. Captain Douglass Marr*, [1946] 1 MLJ 77 ¶ 25 (H.C.)(Sing.). \*Sr. Assoc. could not find the source.

135. *Officer Acquitted*, STRAITS TIMES (Sing.), July 29, 1941, at 10. *Nolle prosequi* describes when the prosecutor decides to voluntarily discontinue criminal charges either before trial or before a verdict is rendered. MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/nolle%20prosequi> (last visited Nov. 12, 2013).

136. Chew, *supra* note 63, at 934.

support and alimony, in fact, served as the fourth most common type of case that Oldham handled.<sup>137</sup> In addition to maintenance issues, Oldham handled a number of other family law related cases concerning infidelity, adoption and family violence. This section will review some of these cases.

Former Prime Minister Lee Kuan Yew once stated, "Eastern societies believe that the individual exists in the context of his family. He is not pristine and separate."<sup>138</sup> Lee added, "[t]he ruler or the government does not try to provide for a person what the family best provides."<sup>139</sup> In discussing the role of the family, Lee makes reference to Confucian values and filial piety.<sup>140</sup> Accordingly, in the context of Confucianism, "filial piety foster[s] habits of disciplined subordination and acceptance of authority . . ."<sup>141</sup> Subordination and acceptance of authority under Confucianism is necessary since society is stratified and unequal, as seen in the relationship between the father and the son, or the husband and the wife.<sup>142</sup>

Values of patriarchy and acceptance of authority, however, are not exclusively Asian. British history and jurisprudence reflects similar values. Women's personal property, for instance, historically, became their husband's upon marriage, and it was only at the end of the nineteenth century that the United Kingdom experienced massive changes to the manner in which women were able to own property.<sup>143</sup> These changes allowed women to own, buy and sell their separate property.<sup>144</sup> Yet, although women were now able to own property, thereby allowing for an "absolute" divorce from marriage, courts still granted "maintenance," requiring the husband to support the wife upon separation.<sup>145</sup> The need for maintenance was reinforced by changes in the law that held both parents liable for the needs of the child. Moreover, the ongoing support can be seen as part of the patriarchal bias that assumed that it was the father's role to provide for his children and wife.<sup>146</sup> These developments, therefore, reflect a similar understanding of filial piety, and the obligations attached to the concept.

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137. This is based on a tabulation of the 348 cases reported as presided over by Oldham in Singaporean press between 1938 and 1941.
138. Fareed Zakaria, *Culture is Destiny: A conversation with Lee Kuan Yew*, 73 FOREIGN AFFAIRS 109, 113 (1994).
139. *Id.*
140. *Id.* at 114-15.
141. Chua Beng Huat, COMMUNITARIAN IDEOLOGY AND DEMOCRACY IN SINGAPORE 151 (2002).
142. *Id.*
143. See Married Women's Property Act 1870, 33 & 34 Vict., c. 93 (U.K.); Married Women's Property Act 1882, 45 & 46 Vict., c. 75 (U.K.).
144. *Id.*
145. Jennifer L. McCoy, *Spousal Support Disorder: An Overview of Problems in Current Alimony Law*, 33 FLA. ST. U. L. REV. 501, 506 (2005). See generally Chester G. Vernier and John B. Hurlbut, *The Historical Background of Alimony Law and Its Present Statutory Structure*, 6 LAW AND CONTEMP. PROBS. 197 (1939), and Danielle Morone, *A Short History of Alimony in England and the United States*, 20 J. CONTEMP. LEGAL ISSUES 3 (2011).
146. Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in*

Oldham certainly promoted filial piety and respect of authority in his jurisprudence. Although it is unclear whether Oldham was married at the time he ruled on many maintenance cases, and whether his personal experiences in life factored into his rulings, what was clear was that he encouraged young couples to make their marriages work, many times refusing to intervene in personal matters until the couple worked out their differences. In one case regarding an Indian couple, Oldham refused to rule, or even make a statement on what role the wife was to play in the home. In this case, the wife stated that her husband said that she could “earn money on the streets” and that she could do as she liked since he “had plenty of other women.”<sup>147</sup> She alleged that in addition to being verbally abusive, he “beat [her] up unmercifully, and flung things at [her] when he came home at night.”<sup>148</sup> In response, the husband argued that she had never been a good wife and that she used “shocking language” which he did not want his children to learn.<sup>149</sup> The husband argued that he did his best to keep her in good temper, but that she was “most unreasonable.”<sup>150</sup> When the husband pleaded with the court to explain to the wife what her duties were, Oldham instead advised that the wife be sent away for five months as she was “not in good health,” and that she was to return to her husband when she was better. He ordered the husband to pay \$60 for five months to support her on the interim. The husband here agreed, tacitly accepting Oldham’s suggestion that it was the husband’s responsibility to be patient and care for his wife, since in the end, she was tantamount to his property, destined to return to him.

Similarly, in another case, a Chinese couple that had been married for 15 months approached the court to resolve the issue of maintenance. The husband argued that he had been “treated like a dog” by the mother-in-law, and that she did not treat him like a husband, but as a paying guest.<sup>151</sup> In response, the wife argued that the husband was never ill-treated and that the quarrelling was between themselves, and not the mother-in-law and the husband.<sup>152</sup> The wife admitted that the bickering concerned the husband’s salary and the manner in which it was distributed. Initially, Judge Oldham adjourned the case for one week, advising the parties to come to a settlement on their

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*American Jurisprudence*, 10 J. L. & FAM. STUD. 337, 346 (2007) (“Patriarchal rules prevailed in courts of equity in England in their *parens patriae* role ‘to protect the best interests of the child. . . . More accurately, the patriarchal rule subsided from a rule to a presumption (that it would be in the best interests of the child to be raised by father).’”) (quoting Lynn D. Wardle and Laurence C. Nolan, *Fundamental Principles of Family Law* 858 (2002)).

147. *Court Suggests Holiday For Indian Wife*, STRAITS TIMES (Sing.), Feb. 24, 1940, at 11.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Counsel Alleges Husband Was “Treated Like Dog”*, STRAITS TIMES (May 11, 1940), at 11; *Married 15 Months, Wife Claims Maintenance*, SING. FREE PRESS AND MERCANTILE ADVERTISER, May 1, 1940, at 7.

152. *Married 15 Months, Wife Claims Maintenance*, *supra* note 151, at 7.



own.<sup>153</sup> Upon return, he issued a “No Order,” refusing to award the wife maintenance since the husband had arranged for the wife to move out of her parents’ place, to move in with the husband’s family, and she refused.<sup>154</sup> He added, “the law considers it only right . . . that the husband should decide where they should live.”<sup>155</sup> Oldham continued, “it was perfectly clear . . . that the husband was to say where the wife should live and that there was no reason for her to claim maintenance if she failed to go and live with him in the place he chose.”<sup>156</sup>

In addition to respecting the institution of the family and marriage, Oldham, as noted in the previous two cases, reinforced authority within the home, many times using the court as a platform to educate men on their duty to provide. In one case concerning a European couple, on May 22, 1940, a wife asked the court to force her husband to pay maintenance.<sup>157</sup> After the court heard witnesses from both parties, the court postponed the case to allow the husband to seek employment in order to pay his wife.<sup>158</sup> Two months later, after it was discovered that the husband was unable to find employment, and over the objections of his former wife, Oldham ordered that the husband pay \$126 for arrears or undergo six weeks’ simple imprisonment.<sup>159</sup> In response to the wife’s plea that her husband not be sent to prison, Oldham responded, “I am sorry, Mrs. Wheatley . . . but when you asked the court to enforce the maintenance orders against him, you set criminal proceedings in order.”<sup>160</sup> Furthermore, he added, “I postponed this case to give Wheatley an opportunity of paying his wife something. If he had given her a few cents, I would have accepted this as a sign that he was trying to do his best for her.”<sup>161</sup> Ultimately, Oldham expressed his sympathy for Wheatley’s unfortunate position, but stated that Wheatley should have tried to make some provision for his wife.

While Oldham many times used the court as a platform to inform men of their duty to provide, he also reminded women that they were to remain loyal to their husbands. On August 31, 1940, Oldham presided over a case in which the wife was demanding maintenance for herself and her three children. In this case, both parties admitted that they were unable to get along.<sup>162</sup> Evidence also came out at trial that the husband assaulted the wife. The husband’s counsel argued that “his client was not contesting the

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153. *Id.*

154. *Magistrate’s ‘No Order’ in Maintenance Case*, SING. FREE PRESS AND MERCANTILE ADVERTISER, May 18, 1940, at 5.

155. *Id.*

156. *Id.*

157. *Wife Applies for Enforced Order*, SING. FREE PRESS AND MERCANTILE ADVERTISER, May 22, 1940, at 2.

158. *Woman Pleads For Husband In Maintenance Case*, SING. FREE PRESS AND MERCANTILE ADVERTISER, July 6, 1940, at 5.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Wives Who Live Apart Must Curtail Expenditure*, STRAITS TIMES (Sing.), Aug. 31, 1940, at 10.

assault—of which . . . two very different stories could be told.”<sup>163</sup> The husband’s counsel added, “but both sides have agreed on one thing, and that it is impossible for them to go on living together because of temperamental and other differences.”<sup>164</sup> In denying the wife’s request for \$146.50 a month in maintenance, Oldham ordered the husband pay his wife \$91 a month instead.<sup>165</sup> At the conclusion of trial, Oldham added, “I always have to bring home to wives in this sort of case the fact that if they decide to live apart from their husbands, they cannot expect to go on living in the same luxury that their husbands formerly provided them.”<sup>166</sup> He added, “they may have to go without the fine clothes, their children may have to be sent to a less expensive school, and they may even have to learn to do without servants.”<sup>167</sup>

This section is not meant to depict Oldham as a misogynist, however. As stated earlier, Oldham was not only interested in preserving the patriarchal structure of the family, but also to encourage harmony within it. In many cases in which the parties seemed to bicker and engage in unreasonable behavior, Oldham reminded the party at fault that his or her responsibility was to treat the other partner with respect—and this plea for respect was not unilateral. Many times Oldham would remind husbands to treat their wives decently. In one case regarding another Chinese couple, the wife applied for maintenance from her husband after he had assaulted her, but then stated in court that she would return to her husband if he stopped abusing her.<sup>168</sup> When the court asked for the husband’s response, the husband stated, “I am willing to take her back.”<sup>169</sup> Oldham declared, “well, it would be wiser if you persuaded her to go back to you and then treat her properly and not assault her.”<sup>170</sup> He then added, “the court has a very low opinion of a man who cannot keep his wife happy and content when she says she wants to live with him.”<sup>171</sup>

From the cases above, the argument can be made that Oldham promoted filial piety and respect of authority in his jurisprudence. While “Asian values” encouraged harmony and respect for authority, these values were certainly reflected in Oldham’s jurisprudence. However, while filial piety and respect for authority are commonly cited as “Asian values” that justify Singapore’s strict laws, one particular value that the Singaporean state is notorious for is discipline. The next section will argue that this value and its manifestation in the law, too, were not uniquely “Asian.”

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163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. “*Treat her properly, Advice to Husband*, STRAITS TIMES (Sing.), Feb. 24, 1940, at 11.

169. *Id.*

170. *Id.*

171. *Id.*

### 3. Discipline

The lynchpin to Singaporean justifications for its corporal punishment scheme is discipline. Confucianism espouses discipline, “Asian values” entail discipline, and the “Rule of Law” requires discipline. While Lee Kuan Yew argued that strict rules and discipline were necessary to build a great society,<sup>172</sup> others have stated that the discipline and teamwork found in Singapore’s “Asian values” can be seen as the reason for the nation’s high growth during the early stages of its development.<sup>173</sup>

Yet to argue that discipline in governance or society is a uniquely “Asian” approach to development ignores the fact that discipline and pragmatism were both Victorian values.<sup>174</sup> Under the British, “[c]riminal behaviour was seen as proceeding from uncivilised, savage human nature; but through the announcement of a clear set of norms and threats, and through the intervention of the modern prison, proper habits of self-governance could be instilled into a deviant but potentially malleable population.”<sup>175</sup> Furthermore, even though the British perceived the role of the Victorian state as one that protected private property and individual rights, and not as a state that intervened in people’s personal lives, as a colony, administrators and arbiters of justice such as Oldham may have intended to educate and inform their subjects of proper social conduct. According to Ann Stoler in writing about colonial subjects in India, “[colonial subjects] invariably have been compared and equated with children, a representation that conveniently provided a moral justification for imperial policies of tutelage, discipline and specific paternalistic strategies of custodial control.”<sup>176</sup>

The need to impress upon the colonial the supremacy of order and discipline was very important to Oldham, and many of his cases reflect this. An excellent example of Oldham’s imposition of order and discipline can be seen in the rickshaw strikes in October of 1938. This critical event occurred as the culmination of decades of deteriorating conditions for rickshaw pullers. As an important part of the Singapore landscape, many rickshaw pullers were migrants who had come to Singapore for a better life. Yet this better life did not come easily. The life of rickshaw pullers was on many levels very trying, and their living and working conditions poor. They worked long hours, usually from dawn to dark, for \$1.50 to \$2.00 a day.<sup>177</sup> Though fares were regulated and had been revised upwards over time, some have argued that this daily gross income had

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172. Zakaria, *supra* note 138.

173. Thompson, *supra* note 38.

174. Chua, *supra* note 141.

175. Nicola Lacey, *In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory*, 64 MOD. L. REV. 350, 364 (2001).

176. ANN LAURA STOLER, RACE AND THE EDUCATION OF DESIRE: FOUCAULT’S HISTORY OF SEXUALITY AND THE COLONIAL ORDER OF THINGS 150 (1995).

177. JAMES WARREN, RICKSHAW COOLIE: A PEOPLE’S HISTORY OF SINGAPORE 1880-1940, 119 (NUS Press 2003)(1986).

remained almost unchanged for fifty years.<sup>178</sup> In addition to their meager incomes, many rickshaw pullers were addicted to opium and indulged in gambling and whoring.<sup>179</sup> Lastly, at that time, the material setting of Singapore could be characterized by its “inadequate housing in the form of decrepit, Dickensian buildings, the interdependence of water supply and sewerage disposal problems, [and] too few hospitals and cemeteries . . . .”<sup>180</sup> It was in this material setting that rickshaw pullers labored.

On October 5, 1938, in response to unconfirmed reports that rickshaw owners planned on raising rental rates,<sup>181</sup> rickshaw pullers demanded that rickshaw owners reduce the rates by 10 cents.<sup>182</sup> To emphasize their seriousness, in addition to threatening rickshaw pullers who continued to work while negotiations took place, the pullers also threatened to return to China and “fight for their fatherland” against the Japanese.<sup>183</sup> As negotiations continued, violence broke out across the city, and rickshaw pullers were implicated in a number of crimes, including criminal intimidation, theft and extortion.<sup>184</sup> On October 11, Singapore Chinese associations attempted to intervene as arbitrators, bringing both the pullers and the rickshaw owners to the table.<sup>185</sup> The negotiations were successful in bringing the rental rates from 40 cents to 35 cents a day, but pullers demanded 30 cents since much of the money they were making was being sent back to China to support the war.<sup>186</sup> The strike ended on November 12, with the final rental rate remaining at 35 cents a day, which included a contribution to the war efforts in China.<sup>187</sup> At the end of the strike, one rickshaw puller was dead, and 1,600 were repatriated to China.<sup>188</sup>

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178. Cheng Lim Keak, *The Xinghua Community in Singapore: A Study of the Socio-Economic Adjustment of a Minority Group*, in CHINESE ADAPTATION AND DIVERSITY: ESSAYS ON SOCIETY AND LITERATURE IN INDONESIA, MALAYSIA & SINGAPORE 39 (Leo Suryadinata ed., 1993).

179. *Id.*

180. WARREN, *supra* note 177, at xii.

181. *Id.* at 123. Many rickshaw pullers did not own the rickshaws they operated and were required to pay the daily rate of 40 cents to rent the rickshaws from owners.

182. *Threats To Singapore Ricksha Pullers: Some Forced Off The Streets*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 5, 1938, at 3.

183. *Singapore Ricksha Strike: Puller's Threat*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 7, 1938, at 1.

184. *Did Not Stick to Truth: Evidence "Spoils" Case*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 18, 1938, at 3; *Maximum Penalty for Chinese Rioters: Story of Arab Street Clash Over Rickshas*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 19, 1938, at 7; *\$250 in Fine for Rickshaw Pullers: Charges of Extortion*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Feb. 7, 1939, at 3.

185. *Arbitration in Rickshaw Strike?*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 11, 1938, at 2.

186. *Ricksha Pullers Ready to End Strike If—*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 15, 1938, at 2.

187. WARREN, *supra* note 177, at 129.

188. *Rickshas Need Repairs After Long Strike*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Nov. 16, 1938, at 7.

Prolific scholar and historian James Warren stated, “[t]he 1938 rickshaw strike, which began on 4 October and lasted till 14 November, was the longest of its kind.”<sup>189</sup> He added, “the Europeans on the whole did not have any sympathy or respect whatsoever for the pullers and their cause,” and that, “[t]hey were just coolies, disobedient coolies, who had defied Crown law and, once again, disturbed the city’s overall peace and prosperity.”<sup>190</sup> To Oldham’s defense, he had only arrived in the city months earlier, and although he was preoccupied with activities that were not part of the rickshaw pullers’ world, Oldham did his best to uphold the basic principles of the law, ensuring that these rickshaw coolies received a fair trial, regardless of how he felt the outcome of the case should have gone.<sup>191</sup> Overall, however, Oldham did treat the rickshaw pullers as “disobedient coolies” who “defied Crown law.” Reiterating the need for order, Oldham commended the police for the way in which they handled the riots, and imposed the maximum penalty possible for many of the rioters.<sup>192</sup> His colleagues on the bench followed suit, imposing hundreds of dollars in fines, and sending several pullers to the gaol.<sup>193</sup> One magistrate made sure to remind the rickshaw pullers, “[although] there is a tendency to take the law in your own hands, as was done in some parts of China . . . [w]hen you are in this country you must respect the law.”<sup>194</sup> Many of these sentences were affirmed by the High Court, with the harsh penalties deemed adequate. Furthermore, the High Court dismissed these cases expeditiously, focusing on the damage to property done and remarking that, “rioting was a serious offense.”<sup>195</sup>

While Oldham arrived in Singapore just in time to witness the culmination of a series of events that led to one of the longest riots in Singaporean history, he also presided over important issues that plagued Singaporean society since the arrival of the British. Secret societies, for instance, had always been a thorn in the side of the British crown colony. Because Singapore relied on a number of “coolies,” such as the rickshaw pullers, secret societies emerged to organize and exploit the mass body of Chinese laborers.<sup>196</sup> By

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189. WARREN, *supra* note 177, at 130.

190. *Id.*

191. Although Oldham acquitted four rickshaw pullers on charges of stealing fourteen sacks of flour from the husband of a rickshaw owner, he lamented the fact that “by not sticking to the truth, [the prosecution’s witnesses] have spoiled what [could] have been a good case.” *Did Not Stick to Truth: Evidence “Spoils” Case*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 18, 1938, at 3.

192. *Maximum Penalty for Chinese Rioters*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Oct. 19, 1938, at 7.

193. *Gaol for Rickshaman Who Stole From Owner: Must Respect Law In This Country, Warns Magistrate*, STRAITS TIMES (Sing.), Jan. 27, 1939, at 15; *\$250 In Fines For Ricksha Pullers: Charges of Extortion*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Feb. 7, 1939, at 3. A “gaol” is the British equivalent of a jail. MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/gaol> (last visited Nov. 12, 2013).

194. *Gaol for Rickshaman Who Stole From Owner*, *supra* note 193, at 15.

195. *Three Men Gaoled for Rioting: High Court Dismisses Appeals*, STRAITS TIMES (Sing.), Feb. 9, 1939, at 12.

196. Yen Ching-hwang, A SOCIAL HISTORY OF THE CHINESE IN SINGAPORE AND MALAYA 1800-1911 6

the 1860s, these secret societies had attained so much power that it was common for British police officers to accept bribes to turn a blind eye to secret society activities, such as gambling.<sup>197</sup> The British, therefore, attempted to regulate these societies first with the Dangerous Societies Suppression Ordinance of 1869, which was then repealed and replaced with the Societies Ordinance Act of 1889.<sup>198</sup> The Act provided for the registration and regulation of societies, ultimately creating more problems for the British since this drove many secret societies that could not be registered further underground.

While Oldham saw his fair share of cases dealing with criminal intimidation, stabbings, prostitution, and extortion, and dealt with them swiftly and harshly, none of these cases was dealt with as severely as secret society activities that were anti-British or political. While a vast number of his caseload included petty crimes and a good number of heavy crimes, secret society cases easily fell into these categories of problems that were dealt with most harshly. Cases concerning secret societies that were anti-establishment or anti-British, though, were a special breed of cases. Some of Oldham's harshest penalties and words came out of such cases. In one such case, on July 7, 1939, a young Chinese boy was caught pasting a poster with a caricature of a Japanese soldier leading a dog with a prominent Chinese politician head on it. The poster stated, "Overthrow the greatest traitor, Wang Ching-wei, who sells the Chinese race." On the basis of this, the boy was immediately charged and convicted with being a member of the illegal "Chinese National Emancipation Vanguard" society.<sup>199</sup> The boy pleaded with the court and claimed he was innocent. He said that he was paid 13 cents to paste the poster, and that he did not understand the contents because he could not read. Oldham dismissed the boy's excuse and stated, "people who paste posters should know the contents. Ignorance is no excuse." Similarly, when a 15-year-old boy was caught pasting the same type of poster, and claimed that he was threatened by a man who claimed he would cut the boy's ears if he did not paste the poster, Oldham ignored the boy's alibi and immediately convicted him of being a member of the illegal society.<sup>200</sup> Additionally, he fined the boy \$15.<sup>201</sup>

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(1986).

197. C.M. Turnbull, *THE STRAITS SETTLEMENTS 1826-1867: INDIAN PRESIDENCY TO CROWN COLONY* 93-94 (1972).

198. See *The Societies Bill*, STRAITS TIMES (Sing.), Feb. 22, 1889, at 5.

199. While the British respected Straits-born Chinese who were invariably English educated, they treated with great suspicion those who continued to look to China for inspiration and aspiration. Therefore, although the Chinese National Emancipation Vanguard society was not explicitly anti-British, it was composed of those the British resented and hoped to oppress. See Yong Ching-Fatt, *Nanyang Chinese Patriotism towards China knows no political Boundaries: The Case of Tan Kah Kee (1874-1961)*, 32 ARCHIPEL 163, 164 (1986).

200. *Story of Ear-Cutting Threat*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Aug. 10, 1939, at 7.

201. *Posted "Slogan" Leaflets: 15-Year-Old Boy Is Fined \$15*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Aug. 11, 1939, at 3.

In these societies, students tended to be recruited heavily, and when caught, they were treated swiftly and harshly by Oldham. In one case, a 17-year-old boy, Tan Tai Tiau, pled guilty to a charge of assisting in the management of an unlawful society. After a raid of his room in a house in Bukit Timah, the police found a minute book, as well as materials that discussed the “expulsion of British Imperialists from Malaya.”<sup>202</sup> In his defense, Tan’s counsel claimed that the boy was attracted to the excitement of being part of something, and that he initially did not know that the organization was anti-British.<sup>203</sup> He added that Tan was told that the organization was meant to promote patriotism among students, and that it would not be immediately apparent that the organization was seditious since both China and Britain were fighting the Japanese.<sup>204</sup> Lastly, the boy’s counsel pleaded with the court, stating that the boy came from a good family, and that “many clubs in Singapore are aware of the dangers that the youths are liable to, and that it has even been suggested of these clubs by the police that a boy’s club be formed . . . in order to take them away from the possibility of falling under bad influences.”<sup>205</sup> Unconvinced, Oldham stated, “this is a case in which it has been proved that Tan set out to spread discord and unhappiness.”<sup>206</sup> He added that, “in this case, you have proved to be a traitor to the Colony in which you have been living and an enemy of China.”<sup>207</sup> After sentencing Tan to thirteen months of rigorous imprisonment, Oldham concluded, “in this modern world youths of 18 years of age may be used to carry out the most destructive operations possible.”<sup>208</sup>

Though rioting and secret societies with an anti-establishment or anti-British bias may have justified quick and harsh convictions, strictly enforcing discipline took place as individuals went about their mundane, day-to-day activities as well. Overall, a majority of the cases that Oldham presided over concerned petty theft, crime and gambling. However, it is not only the manner in which these crimes were dealt with in court, but also the manner in which they were brought to court that shows how Singapore as a police state enforced discipline within its population. Many times swift convictions were only possible due to the questionable evidence being deemed admissible in court. In one such case, an inspector, “upon peeping through a crack in a door saw [a defendant] writing something.”<sup>209</sup> The inspector justified his acts by calling the court’s attention to a

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202. *Organization Danger to Local Youths: Schoolboy Leader of Society Called “Traitor” By Judge*, STRAITS TIMES (Sing.), Aug. 14, 1940, at 11.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Organization Danger to Local Youths*, *supra* note 202.

209. *Seen Writing Out Lottery Schedule*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Apr. 10, 1941, at 7.

raid of a room in a house on the same road over a month earlier.<sup>210</sup> On the basis of this, and the inspector's act of peeping, the police "burst open the door and found Ng writing out a chap-jee-kee schedule."<sup>211</sup> Without really interrogating whether the evidence was gathered fairly and with respect to the defendant's right to privacy, Oldham admitted the evidence and convicted the man, sentencing him to eight months of imprisonment.<sup>212</sup>

There were several instances, in fact, where evidence was admitted against defendants on questionable grounds. In one case, on the basis of a fight that took place a month earlier, and "expected resultant gang activities," the police stopped two men taking a stroll along Mardassah Road one evening.<sup>213</sup> "Being suspicious," the police stopped the two men, searched them, and found a dagger in the pocket of one of the men.<sup>214</sup> Taking into account that the man was not using the weapon, Oldham still sentenced him to three months of rigorous imprisonment.<sup>215</sup> In another case, a Malay youth was riding his bicycle along Paya Lebar Road one afternoon.<sup>216</sup> Here, without really explaining why the Malay youth seemed suspicious, a police officer barred the youth from passing, causing the youth to fall off his bike.<sup>217</sup> As the youth was picking himself up, a metal tin fell out of his pocket.<sup>218</sup> The police then proceeded to open the tin, inspected it, and found gambling records.<sup>219</sup> At trial, the police made the argument that such records were usually passed from banker to banker, and that the youth was probably a messenger.<sup>220</sup> The youth was sentenced to six months of rigorous imprisonment.<sup>221</sup>

Lastly, a number of fines were issued against those who forgot to carry appropriate identification,<sup>222</sup> or who accidentally picked fruit on Crown land.<sup>223</sup> In one case, a young boy was stopped for lifting a kerosene tin that had been stuck to the wall of a military post.<sup>224</sup> The tin was filled with dirt, and the youth tipped it over to empty it out.<sup>225</sup> Upon seeing this, a sergeant of the Royal Engineers drove up, arrested the boy, and handed

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210. *Id.*

211. *Id.* Chap-Jee-Kee was an illegal form of gambling.

212. *Id.*

213. *Dagger Found In Pocket*, SING. FREE PRESS AND MERCANTILE ADVERTISER, May 11, 1939, at 3.

214. *Id.*

215. *Id.*

216. *Malay Youth As Aide In Running Chinese Lottery*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Mar. 29, 1941, at 7.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Fined for Trespass at Changi*, SING. FREE PRESS AND MERCANTILE ADVERTISER, May 16, 1939, at 7.

223. *Alleged Theft of Coconuts at Changi*, STRAITS TIMES (Sing.), July 28, 1939, at 13.

224. *Stole Tin from Military Post*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Dec. 19, 1940, at 9.

225. *Id.*



him to the police.<sup>226</sup> In his defense, the boy stated that, “he wanted to wash his feet, and took the tin so that he could fill it with water.”<sup>227</sup> Oldham sentenced the boy to six strokes of the rattan, and three months in the Salvation Army.<sup>228</sup> He added, “Let this be a warning to other boys not to steal tins from a military post in [the] future.”<sup>229</sup> While taking tins or coconuts or failing to carry identification may marginally seem like crimes, they also seem quite minor, and only subject to punishment in a very strict and disciplined environment. Such an environment, however, existed not just on military bases, or even a Singaporean street; these strict laws started at Singapore’s borders. In one case, upon arrival in Singapore, a Chinese national was found carrying envelopes with letters written in Chinese.<sup>230</sup> Not knowing that this was a crime, the letters were confiscated and read to ensure no seditious information was found within.<sup>231</sup> The Chinese national was fined \$50 or two months’ simple imprisonment.<sup>232</sup>

Causing a disturbance in the act of protest, participating in an anti-government society, and smuggling were all crimes subject to harsh fines and punishment. In a state where the police had the right to peer into cracks in doors, and obstruct the passing of youths on bikes, one is bound to conform to a highly disciplined form of conduct. While this situation is largely blamed on the Singaporean government today, hopefully, these cases have demonstrated that this type of disciplined society was one that was produced under the British—and not as a monolithic, totalitarian entity, but at the hands of very ordinary civil servants like Conrad Oldham.

## VI. Conclusion

In 2008, Singapore became the first country in Asia to host a Formula One World Championship Street-Race.<sup>233</sup> In 2011, in response to a female PhD student’s question regarding social cohesiveness, Lee Kuan Yew asked the woman whether she had a boyfriend, and after she responded that she didn’t, stated, “[m]y advice, please don’t waste time. I hope you get your PhD and your boyfriend.” In 2012, for the first time in over twenty-five years, Chinese bus drivers went on strike to protest how they were paid lower than Malaysian bus drivers.<sup>234</sup> In response, 4 drivers were jailed, 29 were deported

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226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Smuggled Letters Into Colony*, SING. FREE PRESS AND MERCANTILE ADVERTISER, Aug. 16, 1941, at 9.

231. *Id.*

232. *Id.*

233. *SingTel to Sponsor First Singapore Grand Prix*, FORMULA ONE (NOV. 16, 2007), <http://www.formula1.com/news/headlines/2007/11/7101.html>.

234. Haroon Siddique, *Singapore’s first strike in 25 years shines spotlight on racial tensions*, THE GUARDIAN (Nov. 28, 2012, 8:00 AM), <http://www.theguardian.com/world/2012/nov/28/chinese-bus->

and a further 150 were issued police warnings for their involvement.<sup>235</sup> Although these incidences may seem far removed from a man who served as a low-level magistrate in Singapore from 1938 to 1941, the similarities are uncanny. Moreover, when we look at the manner in which the Singaporean government handled the Chinese bus driver strike in 2012, the deportation of 29 seems small in contrast to the 1,600 that were deported in 1938.

While it has been argued that Singapore, in contrast to the West, can be characterized as a communitarian and illiberal democracy,<sup>236</sup> this argument fails to acknowledge that British rule in Singapore was illiberal by definition because Singapore was a colony—it would be hard to imagine two non-descript men being searched on the streets of London for weapons, or that youths would be caned in Brighton for wanting to wash their feet. Furthermore, while Singaporeans tolerate and accept their nation’s strict laws through the indoctrination of “community over self” in their secondary school classes, it is unlikely that they are taught that such communitarian values were also used by the British to encourage conformity to the new beliefs and values imported from the “West.”

Leong Wai-Teng has famously described Singapore as “The poor little rich girl . . . one rich in financial and infrastructural resources, but poor in civil society, voice, accountability, and human rights in general.”<sup>237</sup> He adds, “Singapore has become ‘the rich little place that the others love to hate.’”<sup>238</sup> At times it seems unfortunate that Singapore’s monumental accomplishments can sometimes be overshadowed by harsh criticisms of the manner in which Singapore handles its affairs. After all, upon review of the jurisprudence of Conrad Oldham, the argument can be made that many of the questionable criminal laws in Singapore trace back to the nation’s colonial roots. The intent of this article, therefore, is to explore the post-colonial situation of internalizing or uprooting laws foreign to a nation. Its purpose is not to criticize preceding works that highlight Singapore’s supposed lack of civil rights, but rather to call attention to the fact that Singapore has always lacked such rights, and that the attainment of civil liberties has been a slow and arduous process. As slow and arduous as this process has been, however, Confucius reminds us that, “It does not matter how slowly you go as long as you do not stop.” Ultimately, criminal law is not meant to simply protect one’s property, and a country does not thrive on economy alone.

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drivers-strike-singapore.

235. Jeanette Tan, *Former SMRT bus driver: Why we went on strike*, YAHOO NEWS (Apr. 5, 2013), <http://sg.news.yahoo.com/former-smrt-bus-driver--why-we-went-on-strike--part-1--135100687.html>.

236. Thio, *supra* note 66, at 184. **\*There are two Thio references in note 66. Which one is the author referring to?**

237. Leong, *supra* note 44, at 129.

238. *Let's All Bash Singapore*, STRAITS TIMES (Sing.), Feb. 10, 2007.

*Singapore: A 'Fine' City*