

I. Introduction

To liberal minds, the mention of Singapore often connotes an economic vibrant but autocratic regime with scant respect for fundamental human rights. The flogging of American teenager *Michael Fay* for vandalism¹ and the hanging of Philippine worker *Flor Contemplacion* for murder² received widespread publicity through the international press and depict an authoritarian legal system where caning and the gallows are still employed. Singaporean spokesmen have justified those actions by referring to an "Asian view" of human rights that prioritises cultural difference and emphasises economic development.

This paper will analyse the Singaporean view of human rights and its tenability in the context of the city-state's ethnic background, culture and economic development. After a brief description of the dominant liberal-Western view of human rights and Singapore's attitude towards human rights treaties, it examines individual practices in Singapore that have been criticised for transgressing human rights. Next it will elaborate on the government arguments that allegedly justify those practises. These arguments are the need for "*cultural relativism*"³ and the "*Trade-Off-Hypothesis*"⁴. Although cultural relativism is generally acceptable, it will be contended that neither the government's reference to *Asian values* nor to *Confucianism* can justify its authoritarian rule. With respect to the "*Trade-Off-Hypothesis*", it will be shown that this theory lacks a sustainable economic basis.

Accordingly, this paper will conclude that the government's justifications for its approach towards human rights are insufficient.

¹ *Fay v. Public Prosecutor* 1994-2 SLR 145, 1994 SLR LEXIS 478; for examples of the (mainly American) international criticism see, 'A Flogging in Singapore' *The New York Times* (2 April 1994) 18; 'Condemn Singapore's Brutality' *The New York Times* (10 April 1994) 18; Rosenthal AM, 'On My Mind: Flog Asians Only' *The New York Times* (15 April 1994) A14, as referenced in Tay SSC, 'Human Rights, Culture and the Singapore Example', (1996) 41 *McGill L.J.* 743 at Fn 4.

² *Contemplacion v. Public Prosecutor* 1994-3 SLR 834, 1994 SLR LEXIS 617 (Contemplacion was found guilty of murdering another Filipino maid and a young Singaporean boy).

³ The concept of "*cultural relativism*" accepts that there are universal human rights, but that their form, priority and scope will vary according to cultural, national and regional practices.

⁴ This theory states that in order to maximise economic success, some rights and freedoms must be curtailed.

It will therefore be recommended that the Singaporean government relax its authoritarian rule and consider the selective incorporation of international human rights standards. Selective incorporation will allow the country to retain its national identity and cultural values while maintaining prosperous international relations.

II. The Dominant liberal-Western View of Human Rights

The first international document to use the term "*human rights*" was the *Universal Declaration of Human Rights (UDHR)*.⁵ It reflected a concept of human rights traceable to *Locke, Hobbes, Rousseau* and *Montesquieu*.⁶ According to this view, human rights are inalienable rights possessed by each single human individual simply because they are human.⁷ Two other significant human rights instruments are:

1. *The International Covenant on Economic, Social and Cultural Rights*⁸
2. *The International Covenant on Civil and Political Rights*⁹, including the *Optional Protocol to the Covenant on Civil and Political Rights*¹⁰

Together with the *UDHR*, those two documents constitute what is referred to as the *International Bill of Human Rights*.¹¹

III. Singapore and Human Rights Treaties

Singapore had not, prior to 1996, become a signatory to major human rights treaties, other than those relating to slavery.¹² In 1996, however, Singapore acceded to three human rights treaties:

1. *The Genocide Convention*¹³

⁵ Proclaimed by the UN General Assembly on 10. December 1948.

⁶ Sucharitkul S, 'A Multi-Dimensional Concept of Human Rights in International Law', (1987) 62 *Notre Dame L. Rev.* 305 at 308; Freeman M, 'Human Rights: Asia and the West', in: Tan JH (ed.), *Human Rights and International Reactions in the Asia-Pacific Region*, Cassell Publishers, London, 1995 at 17-19.

⁷ See. e.g., Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism', in: Bauer JR, Bell DA, *The East Asian Challenge for Human Rights*, Cambridge University Press, Cambridge, 1999 at 61.

⁸ December 16, 1966, G.A. Res. 2200, 21 UN GAOR Supp. (No. 16) 49, UN Doc. A6316 (1966).

⁹ December 16, 1966, G.A. Res. 2200, 21 UN GAOR Supp. (No. 16) 52, UN Doc. A6316 (1966).

¹⁰ UN Doc. DPI627.

¹¹ See Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism', op cit at 65. The *International Bill of Human Rights* recognises, among others, the rights to: -life; - liberty and security of person; - protection against slavery; protection against torture and inhuman punishment; - equal protection of the law, - protection against arbitrary arrest or detention; protection of privacy, family and home; - freedom of assembly and association; - education.

¹² See Tan KYL, op cit at 479.

2. The *Convention on the Rights of the Child*¹⁴

3. The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*¹⁵

Yet, in acceding to these treaties, Singapore has set out a number of reservations.¹⁶

With respect to the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*¹⁷, Singapore declared a reservation that requires the country to give its specific and express consent for any case before the *International Court of Justice* assumes jurisdiction.¹⁸

In acceding to the 1989 *UN Convention on the Rights of the Child*, Singapore made a reservation to limit the children's rights under the Convention in consideration of cultural values and existing policies.¹⁹

Similar reservations to except culture and existing policies were also made with respect to the *CEDAW* in the areas of employment rights²⁰, citizenship and other associated rights.²¹ These reservations have been classified as rather narrow and not amounting to Singapore's rejection of the obligations intended

¹³ 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, acceded to by Singapore on 4. August 1995.

¹⁴ 1989 *UN Convention on the Rights of the Child*, acceded to on 2. October 1995.

¹⁵ 1979 *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, acceded to by Singapore on 3. October 1997.

¹⁶ See Tay SSC, 'Singapore and International Law' (1997) SJICL 404.

¹⁷ Acceded to by Singapore on 4. August 1995.

¹⁸ Under Article XI of the Convention, see Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', in Tan KYL, *The Singapore Legal System*, 2nd edition, Singapore University Press, Singapore, 1999 at 492 (Fn 67).

¹⁹ Singapore holds the view that a child's right as defined in Articles 12 to 17 of the Convention shall (in accordance with Articles 3 and 5) be exercised with respect for the authority of parents, schools and other persons entrusted with the care of the child and in the best interests of the child. Further, the declaration entered states that Singapore considers that Articles 10 and 37 of the Convention do not prohibit: (a) the application of any prevailing measures prescribed by law for the maintenance of law and order; (b) measures and restrictions prescribed by law that are necessary for national security, public safety, public order, public health or the protection of the rights and freedoms of others; (c) the judicious application of corporal punishment in the best interest of the child; see Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 492 (Fn 70).

²⁰ Article 11, paragraph 1 was interpreted in the light of Article 4, paragraph 2, as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, on work done by them where considered necessary for health and safety. Legislation to effect Article 11 was also considered unnecessary for women not already covered by existing employment legislation, see Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 493 (Fn 73).

²¹ Laws were reserved concerning the right of entry, stay, employment and departure and the right to acquire, confer and lose citizenship by women who have acquired citizenship by marriage, and of children born outside of Singapore, see Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 493 (Fn 74).

by the treaties.²² However, the mere fact that the reservations were made shows Singapore's intention to trim international norms to its own circumstances and practices.²³

The decision on whether to make use of those reservations and thereby determine the degree to which the rights under the respective conventions are limited is made by the executive. That dominance of the executive undercuts the primacy of Parliament as lawmaker, and raises concerns on the Separation of Powers in Singapore.²⁴

Furthermore, up until today, Singapore has not acceded to major treaties such as the *UDHR*, the *International Covenant of Economic, Social and Political Rights*, the *International Covenant of Civil and Political Rights*, the 1966 *International Covenant to Eliminate Racial Discrimination* or the 1984 *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

IV. Individual Practices in Singapore that Transgress the Dominant View of Human Rights

The practice in Singapore deviates from the dominant view of human rights with respect to several individual rights protected by international law. Those transgressions have earned harsh criticism, mainly from the United States, Europe and international non-governmental human rights organisations such as *Amnesty International* and *Human Rights Watch*. The practices most frequently criticised are outlined below.

1. Prohibition Against Capital Punishment²⁵

The sole method of Capital Punishment in Singapore is hanging.²⁶ Capital offences are murder, treason and drug trafficking.²⁷

²² See Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 481.

²³ Id.

²⁴ See Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 481.

²⁵ See also Article 6 I.C.C.P.R., op cit ("*Prohibition Against Capital Punishment*").

²⁶ See Amnesty International at <http://www.amnestyusa.org/abolish/methww.html>.

²⁷ In Singapore, a mandatory death sentence is meted out to anyone over 18 guilty of trafficking more than 15 grams of heroin, 30 grams of morphine or 500 grams of cannabis, see 'Singapore Hangs Three Men For Drug Trafficking', Reports From The Economist and Reuters at www.gn.apc.org/sfd/Link%20Pages/Link%20Folders/Human%20Rights/hang.html (29. July 2000).

According to figures compiled by *Amnesty International*, Singapore leads the world in executions hanging an average of one person every nine days, or forty a year since 1994.²⁸ Most of them have been executed for drug-related offences.²⁹ While Singapore's president has discretionary powers to commute death sentences, he rarely exercises clemency.³⁰

2. Protection Against Torture and Inhuman Punishment³¹

The Penal Code³² mandates caning, in addition to imprisonment, as punishment for some 30 offences involving the use of violence or the threat of violence against a person, such as rape and robbery. The same applies to such nonviolent offences as vandalism, drug trafficking, and violation of immigration laws.³³ Caning is discretionary for convictions on other charges involving the use of criminal force, such as kidnapping, or voluntarily causing grievous hurt. However, women, men over the age of 50 or under the age of 16, and those determined unfit by a medical officer are exempted from caning.³⁴ To administer the punishment of caning, a trained officer uses a wet rattan rod to inflict blows which cut the skin, causing bleeding and intense pain, and leaving permanent scars.³⁵ In some cases, the subject goes into shock and faints; however, doctors are present to revive prisoners and to make certain they are fit to undergo the remainder of the punishment.³⁶

3. Prohibition Against Detentions without a Trial³⁷: The Internal Securities Act (ISA)

The *Internal Securities Act (ISA)* is a so-called "preventive detention law". That means it provides for the arrest of a person considered dangerous to national security without charge or trial. The Singapore

²⁸ See The Economist, 'Singapore, World Execution Capital', Issue 3-9 April, The Economist Online-Archive at <http://www.economist.com>.

²⁹ Amnesty International at http://www.amnesty.org.uk/press/singapore_mar15.html; see also 'Singapore, World Execution Capital', Reports from the Economist and Reuters, op cit.

³⁰ See Amnesty International, 'Amnesty International Report 1999 - Extract' at www.gn.apc.org/sfd/Link%20Pages/Link%20Folders/Human%20Rights/Aireport99.html (29. July 2000).

³¹ See Article 5 UDHR, Article 7 *International Covenant on Civil and Political Rights*.

³² See Section 53(2).

³³ See Amnesty International, 'Amnesty International Report 1999 - Extract', op cit.

³⁴ Ibid.

³⁵ See Bahrapour F, 'Note and Comment: The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law?', (1995) 10 *Am. U. J. Int'l L. & Pol'y* 1075 at 1086.

³⁶ Ibid.

³⁷ See Article 9 I.C.C.P.R., op cit.

ISA allows the *Minister of Home Affairs* to order the detention of any person deemed to be a threat to the security or economic life of the state for two year periods, without limitation on renewal.³⁸ Following release, individuals may be placed under two-year renewable restriction orders preventing them from making public statements, participating in political activity, travelling, and communicating or associating with individuals formerly detained under security legislation, without official permission. In a 1989 amendment to the *Constitution of Singapore* and the ISA, judicial review for the grounds of detention was disallowed.³⁹

The ISA is the mainstay of the *People's Action Party (PAP)* party-state apparatus and it is used, ostensibly, to quash any subversive activities adjudged to be detrimental to the interests of the nation. However, the Act has been criticised for being used as an instrument to silence critics of the government.⁴⁰

The longest serving political prisoner under the ISA was former Member of Parliament *Chia Thye Poh*.⁴¹ He was released in 1989 after 23 years of detention without a trial.⁴² After his release he was placed under restriction orders severely curtailing his freedom of movement, expression and association.⁴³ It was only nine years later, in 1998, that those restraints were lifted.⁴⁴

4. Freedom of Speech and the Press⁴⁵

Article 14(1)(a) of the *Constitution of Singapore* provides for freedom of speech and expression but permits Parliament to impose restrictions "*as it considers necessary or expedient*" in the interest of

³⁸ See Section 8 of the ISA.

³⁹ See U.S. Department of State, '1999 Country Reports on Human Rights Practice: Singapore' at http://www.state.gov/www/global/human_rights/1999_hrp_report/singapor.html (29. July 2000).

⁴⁰ See, for instance, Williams JB, 'Capitalist Development and Human Rights: Singapore Under Lee Kuan Yew', in (1992) 22 *Journal of Contemporary Asia* 360 at 369.

⁴¹ See Amnesty International, News Release - ASA 36/06/98, 27. November 1998, 'Restrictions on Singapore's Longest-serving Political Prisoner Lifted' at <http://www.amnesty.org/news/1998/33600698.htm> (26. July 2000); Chew M, 'Human Rights in Singapore: Perceptions and Problems', (1994) 34 *Asian Survey* 933 at 943.

⁴² During his arrest, the Singapore government had alleged that Chia Thye Poh was a member of the banned Communist party of Malaysia (CPM).

⁴³ See Amnesty International, 'Amnesty International Report 1999-Extract'. op cit.

⁴⁴ Ibid.

⁴⁵ See Article 9, *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47.

security (see Article 14(2)(a)). In practice, the government's authoritarian style has fostered an atmosphere inimical to free speech and the press.

a) Freedom of Speech

The most important law regulating freedom of speech is the *Public Entertainment Act (PEA)*. Under the *PEA*, a permit is required for any form of public speech or entertainment. In late 1998 and early 1999, *Chee Soon Juan*, the secretary general of the opposition *Singapore Democratic Party (SDP)* gave two public speeches without first obtaining a permit.⁴⁶ A fine was imposed upon him and he spent three weeks in prison before he agreed to pay that fine. *Chee* claimed that on several previous occasions, his party applied for speaking permits under the *PEA* that were denied or approved so late that the event had to be cancelled.⁴⁷ The party's Assistant Secretary-General *Wong Hong Toy* was also convicted of abetting *Chee* by carrying a speaker, adjusting the volume of the speaker during the speech, and adjusting a microphone.⁴⁸

Following the conviction of *Chee Soon Juan*, members of an independent political discussion group proposed the creation of free speech areas, similar to London's "Speaker's Corner".⁴⁹ Senior Minister *Lee Kuan Yew's* response was that, given regional and internal ethnic and religious sensitiveness, the country was not ready for such a development.⁵⁰

b) Freedom of the Press

With regards to the press, the government strongly influences both the print and the electronic media. *Singapore Press Holdings Ltd. (SPH)*, a private holding company with close ties to the government, owns all general circulation newspapers in the four official languages (English, Chinese, Malay and

⁴⁶ See Amnesty International, 'Amnesty International Report 1999-Extract'. op cit. In those speeches, he attacked the government for lack of accountability in its stewardship of public funds, and called for greater freedom of speech.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ See Kuzmanovic J, 'Singapore Has Yet to Shield Its Authoritarian Image', Associated Press, 20. December 1999 at <http://www.singapore-window.org/sw99/91220ap.htm> (29. July 2000).

⁵⁰ Ibid.

Tamil).⁵¹ Government leaders frequently criticise what they call the "Western model" of journalism, in which the media are free to report the news as they see it.⁵² Those officials argue that the domestic media have to respect and protect the integrity of the elected leadership in order to preserve social and religious harmony.⁵³ Although a wide range of international magazines and newspapers⁵⁴ may be purchased uncensored, the government may ban the circulation of domestic and foreign publications under provisions of the *ISA*.⁵⁵

An important means used by government leaders to discourage public criticism and criticism by the press are defamation suits.⁵⁶ Some recent case decisions involving the press include a 1995 defamation judgement against the *International Herald Tribune* in a case brought by Senior Minister *Lee Kuan Yew*, Prime Minister *Goh Chok Tong* and *Lee's* son, Deputy Prime Minister *Lee Hsien Loong*. The newspaper had published an article that allegedly suggested that the younger *Lee* was appointed to his post on account of his father.⁵⁷

The leader of the opposition *Worker's Party*, *J.B. Jeyaretnam* lost two suits for allegedly defaming Prime Minister *Goh Chok Tong* at an election rally in 1997⁵⁸ and for defaming nine members of the ethnic Tamil community in the Party's newsletter in 1995⁵⁹. He was convicted to pay a total of AUS \$460,000.00 in damages, which he was unable to do. International critics voiced their concern that the high level of damages appeared to be designed to bankrupt *Jeyaretnam*, thereby disqualifying him from

⁵¹ Chee S-J, 'Human Rights in Singapore', speech delivered at the Seminar 'Every Singaporean Matters' on 10. March 1999,, at Singapore Window, <http://www.singapore-window.org/sw00/000310sj.htm> (29. July 2000).

⁵² Ibid.

⁵³ See Kuzmanovic J, op cit.

⁵⁴ Except newspapers and magazines printed in Malaysia, see U.S. Department of State, op cit.

⁵⁵ Ibid.

⁵⁶ See the *Defamation Act* (Cap 75), see also Tan P-L, *Asian Legal Systems: Law, Society and Pluralism in East Asia*, Butterworths, Sydney et al. 1997 at 317.

⁵⁷ See Hoong CM, 'IHT Libel Case: PM's Lawyer Asks Court for \$ 500,000 Damages', *The Straits Times* (22 July 1995) 1, as referenced in Tay SSC, op cit at Fn 5.

⁵⁸ See *Goh Chok Tong v Jeyaretnam Joshua Benjamin*, Suit No 225 of 1997, High Court, 1998-1 SLR 547; 1997 SLR LEXIS 225, 29. September 1997.

⁵⁹ *Shunmugam Jayakumar & Anor v Jeyaretnam JB & Anor*, Suit No 198 of 1996 (Registrar's Appeal 114 of 1996), High Court, 1997-SLR 172; 1996 SLR LEXIS 429, 08. August 1996.

parliament and curtailing his participation in public life.⁶⁰ In July 1999, however, Prime Minister *Tong* withdrew a petition to make *Jeyaretnam* bankrupt.⁶¹

5. Freedom of Peaceful Assembly

Article 14(1)(b) of the *Constitution of Singapore* grants citizens the right of peaceful assembly but permits official restrictions on these rights (see Article 14(2)(b)). The government restricts this right in practice: assemblies of more than five persons in public, including political meetings and rallies, must have permission by the government. In addition, the government monitors political gatherings regardless of the number of persons present.⁶²

6. Freedom of Association

Article 14(1)(c) of the *Constitution of Singapore* provides for freedom of association. However, that freedom is also subject to restrictions that the government considers "*necessary or expedient*" (see Article 14(2)(c)). As a result of such government restrictions, most associations, religious groups and other organisations with more than ten members have to be registered with the government.⁶³ It is up to the discretion of the government to register or dissolve associations under the *Societies Act* without the possibility of judicial review.⁶⁴ An example of an organisation that has been curtailed in its activities is the Catholic Church. Its welfare associations have been accused of "exaggerating" class differences, exploiting the complaints of workers, and discrediting the government.⁶⁵

7. Freedom of Religion

Article 15(1) of the *Constitution of Singapore* stipulates freedom of religion. There is no state religion. According to the government, all citizens are free to practice their religion as long as the manner of

⁶⁰ See, e.g., Amnesty International, 'Amnesty International Report 1999 - Extract', op cit.

⁶¹ Ibid.

⁶² See U.S. Department of State, op cit.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Chew M, op cit at 944.

carrying out religious activities does not violate laws relating to public order, public health or morality.⁶⁶ However, some religious groups are banned in Singapore.

The *Holy Spirit Association for the Unification of World Christianity*, also known as the *Unification Church*, was dissolved in 1982 by the Minister for Home Affairs.⁶⁷ In 1972, the government deregistered and banned *Jehovah's Witnesses* on the grounds that its members refused to perform military service (which is compulsory for all male citizens), salute the flag, or swear oaths of allegiance to the State.⁶⁸

8. Right to Privacy

The Singapore government has sometimes used its wide discretionary powers to infringe on the citizens' right to privacy.⁶⁹

Usually, the police must have a warrant issued by a magistrate's court to conduct a search. However, they may search a person, home or property without a warrant if they decide that such a search is necessary to preserve evidence.⁷⁰ The government has the discretion under the ISA to conduct searches without a warrant if it determines that national security, public safety or order, or the public interest are at issue. Defendants may request judicial review of those searches.⁷¹

A second threat to the right to privacy is the monitoring of the use of modern communication and information technology.

Divisions of the government's law enforcement agencies⁷² have wide networks for gathering information and highly sophisticated capabilities to monitor both telephone conversations and the use

⁶⁶ See U.S. Department of State, op cit.

⁶⁷ Ibid.

⁶⁸ See Amnesty International, 'Amnesty International Report 1999 - Extract', op cit.

⁶⁹ See U.S. Department of State, op cit.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Including the Internal Security Department and the Corrupt Practices Investigation Board.

of the Internet.⁷³ Government monitoring of Internet use first became widely known in 1996 when Singapore authorities aided *Interpol* in a case that led to the arrest and conviction of a citizen for downloading child pornography.⁷⁴

This, as well as other incidents, aroused the strong suspicion that the authorities might routinely monitor telephone conversations and the use of the Internet, or at least have the ability to do so.

V. Reasons for Transgression of Dominant View of Human Rights in Singapore

With respect to some of the above-mentioned practices, various countries have frequently accused Singapore of transgressing human rights. The Singaporean government's response has rested on two main justifications: (1) that Singapore's practices are in accordance with a distinctive "*Asian view*" of human rights, which justifies their deviations from the dominant view, (2) that certain political freedoms must be traded-off for the sake of economic growth ("*Trade-Off-Theory*"). Those justifications and their tenability will be elaborated on below.

1. The Alleged Primacy of Asian Values

The Asian view of human rights in Singapore was first championed by former Prime Minister *Lee Kuan Yew*.⁷⁵ He explained Singapore's deviation from the Western view as springing from Singapore's traditional Asian values system, which placed the interest of the community over and above that of the individual.⁷⁶ As such, the Singapore government argued, Western notions of human rights are not entirely applicable to Singapore.⁷⁷ This communitarian-based understanding of rights has become so popular that has been named the "*Singapore School*".⁷⁸ In its approach to human rights, the *Singapore*

⁷³ See U.S. Department of State, op cit.

⁷⁴ Ibid.

⁷⁵ Lee Kuan Yew was Prime Minister from 1959 to 1990.

⁷⁶ See address by Lee Kuan Yew at the Opening of the Singapore Academy of law, (1990) 2 *Singapore Academy of Law Journal* 155, see also Kausikan B, 'Asia's Different Standard', (1993) 92 *Foreign Policy* 24 at 35.

⁷⁷ See Kausikan, op cit at 37.

⁷⁸ See Mauzy DK, 'The Human Rights and "Asian Values" Debate in Southeast Asia: Trying to Clarify the Key Issues' (1997) *The Pacific Review* 210; Kwong YC, 'Leninism, Asian Culture and Singapore' (1999) 27 *Asian Profile* 217.

School has adopted what has been described as "weak cultural relativism"⁷⁹ as manifest in the *Bangkok Declaration on Human Rights*.⁸⁰

a) Is Cultural Relativism as Such Generally Acceptable?

Cultural relativism accepts that there are universal human rights but that their form, priority and scope will vary according to cultural, national and regional peculiarities.⁸¹

The relativist view is controversial. Some writers suggest that the argument serves to mask and excuse clear transgression of universal human rights.⁸² Of those critics, *Neier* especially, argues that the *Singapore School* spokesmen seek to delegitimise international efforts to address the abuses that particularly characterise their own government and its regional allies.⁸³

However, it is contestable whether such harsh criticism is justified in Singapore's case. There are no gross transgressions of human rights in the city-state. Since independence, the country has known no period of emergency, no mass killings, no widespread disappearances and no curtailment of the right to vote.⁸⁴ A number of cross-country comparisons on human rights compliance have given Singapore a "medium freedom ranking" worldwide as well as among Asian countries.⁸⁵

⁷⁹ This term was initially coined by Donnelly J, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca/New York, 1989 at 109-10.

⁸⁰ The *Bangkok Declaration on Human Rights* was issued at a 1993 regional meeting of Asian governments in Bangkok. It has been published (1993) 14 H.R.L.J. 370. Among others, the Declaration includes the claim that states' and societies' rights always prevail over that of the individual. With regards to the concept of "cultural relativism", the relevant phrase of the Bangkok Declaration is: "...while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional peculiarities and various historical, social, economic and cultural conditions of various nations, and involves a process of historical development. Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights.", see Ghai Y, 'Human Rights and Governance: The Asia Debate', in: (1994) 15 *Australian Yearbook of International Law* 1 at 8.

⁸¹ Howard RE, 'Cultural Absolutism and the Nostalgia for Community' (1993) 15 *Hum. Rts. Q.* 315 at 315; see also Kausikan B, 'Asia's Different Standard' (1993) 92 *Foreign Policy* 24 at 37; Zakaria F, 'Culture is Destiny: A Conversation with Lee Kuan Yes' (1994) 73 *Foreign Affairs* 109.

⁸² Neier A, 'Asia's Unacceptable Standard' (1993) 92 *Foreign Policy* 42 at 51, see also Ghai Y, 'Asian Perspectives on Human rights' (1993) *Hong Kong Law Journal* 342.

⁸³ See Neier A, op cit at 51.

⁸⁴ See Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 771.

⁸⁵ See Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit in his Fn 151, Tay evaluates those comparisons: The 1992 annual *Freedom House Survey* on civil and political rights ranked Singapore as "partly free". On its scale of 1 to 7, Singapore scored 4. On top of the list was Sweden. Among Asian countries, only South Korea and Japan received the attribute "free". The Philippines and India, two other countries ranked as "partly free", were rated above Singapore. At the bottom of the list was Iraq. (see Chan HC, 'Democracy: Evolution and Implementation - An Asian Perspective', in: Bartley R et al. (eds), *Democracy and Capitalism: Asian and American Perspectives*, Institute of Southeast Asian Studies, Singapore, 1993, at 3.) Another survey for the year 1991 allocated 13.39 to the "top human rights performer" (the United States), and 36.18 to the bottom of the list (Myanmar). The mean score was 22.57, and Singapore was rated at 23.09, above

Against this background, one should consider the view expressed in a statement by *Lee Kuan Yew*:

"[...] *but as a total system [he is referring to the American System], I find parts of it totally unacceptable: guns, drugs, violent crime, vagrancy, unbecoming behaviour in public - in sum, the total breakdown of civil society. The expansion of the rights of the individual to behave or misbehave as he pleases has come at the expense of orderly society. In the East the main object is to have a well-ordered society so that everyone can have maximum enjoyment of his freedoms.*"⁸⁶

This view is difficult to counter, especially as tolerance for different tenable viewpoints is a basic virtue championed by the most liberal countries.

Asian societies should not be required to follow excessive Western individualism and hedonism blindly. International human rights norms are usually sufficiently broad to accommodate most Asian desires for more communitarian practices.⁸⁷ However, the rights' "*core concepts*"⁸⁸ must be respected by all nations, and legitimate variations are limited to the relatively narrow range specified by the core concept of the right in question.⁸⁹

Accordingly, cultural relativism as such is generally acceptable and often desirable with respect to a nation's cultural identity and values. Differences in implementing international human rights within the above mentioned framework are to be expected and need not be condemned.

other Asian countries such as India, South Korea, Sri Lanka, Indonesia and China (see Gupta DK, Jongman AJ, Schmid AP, 'Creating a Composite Index for Assessing Country Performance in the Field of Human Rights: Proposal for New Methodology' (1994) 16 *Hum. Rts. Q.* 131).

⁸⁶ See Zakaria F, 'Culture is Destiny: Interview with Lee Kuan Yew' (1994) 73(2) *Foreign Affairs* 109 at 111.

⁸⁷ Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism', op cit at 83.

⁸⁸ See op cit.

⁸⁹ Donnelly has given an example of legitimate differing interpretations⁸⁹: Article 5 of the *UDHR* provides that "*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*" Yet, it is a matter of legitimate disagreement and variation whether, for example, caning or killing convicted criminals falls under this prohibition, see Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism', op cit at 84.

However, this co-existence of Asian values and human rights without transgression of the latter also requires that it is the people, not the rulers, who decide what they value.⁹⁰ Although both *Lee Kuan Yew*⁹¹ and the Permanent Representative to the United Nations *Kausikan*⁹² have officially agreed with that notion, reality and governmental practices in Singapore suggest the contrary. This is the basic flaw of the Singapore government's justification of their approach to human rights.

Along these lines, in the following paragraph, it will be contended that the Asian values and culture used by the Singapore government to justify their transgressions of the Western concept of human rights are not part of an original Singaporean culture. Rather, they are nothing but a smokescreen - illegitimately moulded by politics, in order to justify the authoritarian rule in Singapore. The government's justification of their actions by reference to Asian values will be criticised on two levels:

- (1) One cannot define distinctive Asian values rooted in Singaporean society, but rather a mixture of various different Asian and colonial influences.
- (2) Even if one substitutes the term "Asian values" with Confucianism, the government's approach cannot be justified: Contrary to the governments suppressive practices towards critics of the government, Confucius argued against law and coercion and advocated a government of limited functions.

b) The Notion of Traditional Asian Values in Singapore

Firstly, it is questionable as to what extent the Asian view put forward by the Singaporean government truly reflects the culture and aspirations of the people.⁹³ It is difficult to determine distinctive "Asian values" rooted in Singaporean society. Singapore has since colonial times been very much

⁹⁰ Ghai Y, 'Human Rights and Governance: The Asia Debate', op cit at 16-21.

⁹¹ See Kwang SHF, Fernandez W, Tan S, *Lee Kuan Yew: The Man and His Ideas*, Times Editions and The Straits Times Press, Singapore, 1998 at 380.

⁹² See Kausikan B, 'Symposium: East Asian Approaches to Human Rights', op cit at 272.

⁹³ See Tay SSC, 'The Singapore Legal System and International Law: Influence or Interference', op cit at 479, Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 768.

interconnected with the Western world through industry, trade and the movement of people.⁹⁴ The culture of Singapore is a hybrid of various Asian and colonial influences. The same is true for its people. The population of Singapore is a mix of Chinese, Malays, Indians and Europeans.⁹⁵ In addition, these groups are not even homogeneous themselves. There are considerable differences between, for instance, Indians who are Hindus, Christians or Muslims, or Chinese belonging to Christianity, Buddhism or Taoism.⁹⁶

Against this background, to speak of distinct pure and original "Asian values" inherent in Singapore appears somewhat over-generalised and over-simplified.

c) Confucianism

Lee Kuan Yew, however, stated recently that he had in his speeches all along referred to "*Confucianist values*" rather than "*Asian values*".⁹⁷ With respect to the overwhelming 80% majority of people of Chinese descent among the population of Singapore, it can probably be assumed that most Singaporeans can identify with Confucianism.⁹⁸

However, after a brief examination of the basic teachings of Confucianism and their relation to the concept of human rights, it will be concluded that the government's reference to Confucianism does not suffice to justify their authoritarian rule.

Confucianism is collectivist and consensus seeking, with an emphasis on duties, rather than on rights of the individual.⁹⁹ It stresses a set of ethical rules and approved behaviour patterns ("*li*") , so as to bring

⁹⁴ The Singaporean Constitution and Legal System, as well as its concepts of justice and human rights, were born of British, i.e. Western sources and influences. The *Constitution of Singapore* was drafted by the British. It sets out the Westminster style of government and promises liberties that parallel Western civil and political rights, such as the rights of freedom of free speech, assembly and association. Appeals to the Privy Council were upheld until 1994, see Chua B-H, *Communitarian Ideology and Democracy in Singapore*, Routledge, London, 1995 at 154.

⁹⁵ See Thorpe DJ, 'Some Practical Points About Starting a Business in Singapore: Give Me Liberty Or Give Me Wealth', (1994) 27 *Creighton L.Rev.* 1039 at 1040.

⁹⁶ See also Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 762.

⁹⁷ See 'Looking to the Future', *Asiaweek*, 21 May 1999 at 34.

⁹⁸ See Smith BC, 'Singapore: A Model of Urban Environmentalism in Southeast Asia', (1993) 16 *Hastings Int'l & Comp. L.Rev.* 123 at 126.

⁹⁹ See Ghai Y, 'Human Rights and Governance: The Asia Debate', op cit at 19.

consensus and serve the pursuit of harmony ("he").¹⁰⁰ Law and legal rules ("fa") are only seen as a last resort if "li" does not work and are accordingly associated with failure.

i) Confucianism and Human Rights

The idea of human rights cannot be found in Confucianism. Some writers have even stated that the Confucian view of human nature, ethics and society is incompatible with the concept of human rights.¹⁰¹ They have most commonly argued that in Confucianism, rights are only earned if one's duties are fulfilled. Those duties arise solely from "lun", the five basic social relationships.¹⁰² Accordingly, it is argued, Confucianism leaves no room for any duties and rights arising outside those five relationships.¹⁰³

However, Chan¹⁰⁴ has pointed out that there are duties that arise independent of special relationships, but rather from respect and "love towards all men"¹⁰⁵. He has given some examples from the writings of Mencius¹⁰⁶ in support of that notion.¹⁰⁷ These examples contradict the contention that Confucianism is incompatible with the concept of universal human rights that belong to human beings simply because of the fact that they are human, not because of their respective social role. Yet, they do not show that

¹⁰⁰ See Chen AH, *An Introduction to the Legal System of the People's Republic of China*, Butterworths Asia, Singapore, 1992 at 9; Peerenboom RP, 'What's Wrong with Chinese Right?: Toward a Theory of Rights with Chinese Characteristics' (1993) 6 *Harv. Hum. Rts. J.* 29; Rosemont H, 'Why Take Rights Seriously? A Confucian Critique', in: Rouser LS (ed.), *Human Rights and the World's Religions*, University of Notre Dame Press, Notre Dame/Indiana, 1988 at 167.

¹⁰¹ Ames RT, 'Rites as Rights: The Confucian Alternative', in: Rouser L (ed.), *Human Rights and the World's Religions*, Notre Dame University Press, Notre Dame/Indiana at 205; Peerenboom RP, 'What's Wrong with Chinese Rights? Toward a Theory of Rights with Chinese Characteristics', (1993) 6 *Harvard Human Rights Journal* 40; Rosemont H, Jr., 'Why Take Rights Seriously? A Confucian Critique', in: Rouser L (ed.), *Human Rights and the World's Religions*, Notre Dame University Press, Notre Dame/Indiana, 1988 at 167.

¹⁰² Those are: 1. Father - Son; 2. Husband - Wife; 3. Elder Brother - Younger Brother; 4. Ruler - Ruled; 5. Friend - Friend.

¹⁰³ See the references, op cit.

¹⁰⁴ Chan J, 'A Confucian Perspective on Human Rights for Contemporary China', in: Bauer JR, Bell DA (eds.), *The East Asian Challenge for Human Rights*, Cambridge University Press, Cambridge, 1999 at 217-219.

¹⁰⁵ See translation of "Confucian Analects" in Legge J, *The Chinese Classics*, Vol. 1, Hong Kong University Press, Hong Kong, 1960 at 269.

¹⁰⁶ Mencius was an ancient Chinese philosopher expounding the principles of Confucius.

¹⁰⁷ See Chan J, op cit at 218: He is referring to some of Mencius' notions that he adopted from Confucius. Firstly, Chan draws upon Mencius' example of a child on the verge of falling into a well (see Lau DC, trans., *Mencius*, Penguin Books, Harmondsworth, 1979, Book II, Part A, Chapter 6, hereinafter "Mencius"). For Mencius, a man with *ren* would be moved by compassion to save the child, not because he had personal acquaintance with the child's parents, nor because he wanted to win the praise of his fellow villagers or friends, but simply because of his concern for the suffering of a human being.

Confucianism clearly recognises universal human rights either. They simply demonstrate that both are not irreconcilable.¹⁰⁸

However, in the Confucian perspective, human rights would be considered a fallback auxiliary apparatus ("*fa*") that would serve to protect basic human interests in case virtues do not obtain or human relationships clearly break down.¹⁰⁹

Having stated the general compatibility of Confucian values and human rights in Singapore, the question remains whether Confucianism can truly explain and justify the government's different approach towards human rights.

ii) Can Confucianism Justify the Singapore Government's Approach Towards Human

Rights?

The Singapore government justifies its authoritarian rule primarily by referring to the Confucian emphasis on duties, rather than on rights of the individual.¹¹⁰

Yet, some writers have argued that the tight regulation of society in Singapore is not particularly Confucian.¹¹¹ Of those critics, *Ghai* especially, criticises the Singapore government for falsely equating itself with "the community" in a Confucian sense.¹¹² He emphasises that community and state are different institutions and to some extent in a contrary juxtaposition.¹¹³ The *community* is a much smaller unit that relies on "*li*" and mediation and persuasion to restore social harmony.¹¹⁴ The state, on the other hand, relies on "*fa*" in the form of law, edicts, the military, coercion and sanctions. Confucius,

¹⁰⁸ See also Chan J, op cit at 227.

¹⁰⁹ Chan J, op cit at 228.

¹¹⁰ See Ghai Y, 'Asian Perspectives on Human Rights', in: Tang JTH (ed.), *Human Rights in the Asia-Pacific Region*, Cassell Publishers, London, 1995 at 60.

¹¹¹ Ghai Y, 'Human Rights and Governance: The Asia Debate', op cit at 19-20, Amartya S, 'Human Rights and Asian Values: What Lee Kuan Yew and Le Peng Do Not Understand About Asia', in: *Essays on Politics* at <http://www.sintercom.org/polinfor/polessay/Amartya/html> (26. July 2000); Zan M, 'Positions of Power and Notions of Empowerment: Comparing the Views of Lee Kuan Yew and Aung San Suu Kyi on Human Rights and Democratic Governance', (1997) 2 *Newcastle Law Review* 49 at 65.

¹¹² See Ghai Y, 'Asian Perspectives on Human Rights', op cit at 61.

¹¹³ Ibid.

¹¹⁴ Ibid.

however, argued against reliance on "*fa*" - except as a last resort - and advocated a government of limited functions.¹¹⁵

Other writers have especially criticised the limitations of the right to free speech in Singapore as being "unconfucian".¹¹⁶ They stress that Confucius did not recommend blind allegiance to the state and does not forgo the recommendation to oppose a bad government.¹¹⁷

An example is the traditional Chinese Mandate of Heaven. This concept viewed political power as a heavenly grant to assure harmony, order and prosperity.¹¹⁸ If the ruler failed to carry out his duties, Confucian civil servants, as the representatives of society, were obliged to remonstrate. If the ruler proved recalcitrant, popular resistance was authorised.¹¹⁹

The Singaporean government, however, obviously takes a very different view and does not give its opponents much opportunity to voice their criticism, no matter whether that criticism is justified or not.

The restrictions on free speech and draconian legislation like the *ISA* belie any claims to promote a dialogue and seek Confucian consensus.¹²⁰

This supports the suspicion that the Singapore government interprets Confucianism the way it wants it to be by selectively emphasising those aspects that can be used to justify an authoritarian rule¹²¹, while at the same time ignoring those aspects that might threaten it.¹²²

¹¹⁵ See Ghai Y, op cit at 19-20; Zan M, op cit at 65.

In a second example, Chan cites Mencius saying that "a gentleman retains his heart by means of benevolence ("*ren*") and the rites ("*li*"). The benevolent man loves others, and the courteous man respects others." (see *Mencius* IVB:28) Chan points out that in this passage, "the others" are unspecified. He goes on stating that the same notion of loving others can also be found in Book VII of *Mencius*, where Mencius says that "a benevolent man loves everyone, but he devotes himself to close association with good and wise men." (*Mencius* VIIA:46).

¹¹⁶ Amartya S, 'Human Rights and Asian Values: What Lee Kuan Yew and Le Peng Do Not Understand About Asia', op cit; Zan M, op cit at 65.

¹¹⁷ Amartya S, 'Human Rights and Asian Values: What Lee Kuan Yew and Le Peng Do Not Understand About Asia', op cit, gives the following example: "When Zilu asks Confucius *how to serve a prince*, Confucius replies: *Tell him the truth even if it offends him. When the (good) way prevails in the state, speak boldly and act boldly. When the state has lost the way, act boldly and speak softly.*" Indeed, Confucius clearly points out to the fact that the two pillars of the imagined edifice of Asian values, loyalty to the family and obedience to the state, can be severely in conflict with each other. The Governor of She told Confucius: '*Among my people, there is a man of unbending integrity: when his father stole a sheep, he denounced him.*' To this, Confucius replied: '*Among my people, men of integrity do things differently: a father covers up for his son, a son covers up for his father - and there is integrity in what they do.*'

¹¹⁸ Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism', op cit at 66.

¹¹⁹ Donnelly J, 'Human Rights and Asian Values: A Defense of "Western" Universalism' op cit at 67.

¹²⁰ See Ghai Y, 'Asian Perspectives on Human Rights', op cit at 62.

¹²¹ That is, primarily, the emphasis on the duties of the citizens.

¹²² Such as the right to address the ruler's mistakes and the disapproval of law and coercion ("*fa*").

Along those lines, *Tay* even argues that the Singaporean government deliberately moulds its own "Asian culture" to ensure the obedience of the people.¹²³

Firstly, he points out the way in that Confucianism was taught or - rather indoctrinated - in Singaporean schools. This, *Tay* concludes, shows that the Confucian values were not "*imbibed with one's mother milk*"¹²⁴ in Singapore.¹²⁵ Instead, *Tay* classifies it as an attempt by the government to create its own Asian culture and transmit it to the youth.¹²⁶

Secondly, and most importantly, he mentions the stipulation of so-called "*shared values*" or "*national values*" in a parliamentary white paper.¹²⁷ Those values were (1) nation before community and society above self; (2) family as the basic unit of society; (3) community support and respect for the individual; (4) consensus, not conflict; and (5) racial and religious harmony.¹²⁸

The choice of the word "*national values*" demonstrates that they were in a way prescribed by the government, with the implication that not to share these values is to be less "Singaporean".¹²⁹ That definition also carries the inherent danger of being (mis)used to "quasi-legitimise" governmental action that curtails the citizens' freedoms.

All this adds to the overall impression that the Singapore government uses culture - no matter whether it is called "*Asian values*", "*Confucianism*" or "*National Values*" - as an excuse for transgressions of the dominant view of human rights.

A recent example to sustain that conclusion the caning of U.S. citizen *Michael Fay* for vandalism.¹³⁰

The Singapore government justified the flogging by stating that caning was a part of Asian culture.¹³¹

¹²³ Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 764.

¹²⁴ As asserted by the Singapore government, see Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 764-765.

¹²⁵ Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 764.

¹²⁶ Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 765.

¹²⁷ See Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 763.

¹²⁸ White Paper on *Shared Values* (Cmnd 1 of 1991), as referenced in Tan EK-B, 'Law and Values in Governance: The Singapore Way', (2000) *Hong Kong L.J.* 91 at 100.

¹²⁹ Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 764.

¹³⁰ See above.

¹³¹ See Bahrapour F, op cit at 1085, Seymour D, 'The Extension of the European Convention on Human Rights to Central and Eastern Europe: Prospects and Risks', (1993) 18 *Conn. J. Int'l L.* 243 at 245.

However, caning in Singapore has its origins in British colonial practice.¹³² Accordingly, the "Asian culture" invoked by the government is just a smokescreen to justify the government's authoritarian rule.

Let us now turn to the second alleged justification put forward by Singapore authorities, that is the "*Trade-Off Hypothesis*" or "*Lee Hypothesis*".

2. "*Trade-Off Hypothesis*" or "*Lee-Hypothesis*"

The second main justification for Singapore's approach towards human rights is what is sometimes called the "*Trade-Of Hypothesis*" or "*Lee-Hypothesis*" of rights and development.

This theory states that in order to maximise economic success some rights and freedoms must be curtailed.¹³³ *Lee Kuan Yew* has frequently pointed to Singapore's enormous economic growth since independence in order to sustain his theory. This economic success, *Lee* argues, has only been possible because the authoritarian rule of the government ensured the necessary discipline to achieve that growth.¹³⁴

The idea of a necessary trade-off between human rights and economic prosperity has gained considerable support in Singapore.¹³⁵

However, the "*Trade-Off Hypothesis*" has also been questioned on various levels.

Some writers suggest that it is not credible to maintain that the quest for economic development and public order justifies the severe security measures applied by the Singaporean government.¹³⁶ Of those critics, *Amartya* especially criticises the "*Trade-Off Hypothesis*" as being based on very selective statistics, rather than on a general test over the wide-ranging information that is available.¹³⁷ He

¹³² Tay SSC, 'Human Rights, Culture and the Singapore Example', op cit at 765.

¹³³ See Kausikan B, op cit at 38.

¹³⁴ See Ibid.

¹³⁵ Amartya S, *Human Rights and Economic Achievements*, op cit at 89.

¹³⁶ Neher CD, 'Asian Style Democracy', (1994) 34 *Asian Survey* 11, 949 at 959; Amartya S, *Human Rights and Economic Achievements*, op cit at 88 ff.

¹³⁷ Amartya S, *Human rights and Economic Achievements*, op cit at 91.

complains that statistical studies give no real support to the claim that political rights must be traded for economic prosperity .¹³⁸

He points out that broadly democratic countries such as Botswana have enjoyed enormous economic growth , while other countries with authoritarian governments such as Burma suffer from stagnation.¹³⁹

Amartya also criticises the *Trade-Off Hypothesis'* definition of economic success as insufficient, for it only relies on the average rates of growth of national product or real income.¹⁴⁰

He emphasises that economic progress also involves other factors, such as the promotion of greater economic security.

With regards to economic security, *Amartya* points out that political rights - in contrast to authoritarianism - can help prevent major social disasters. This is because those rights give people the opportunity to draw attention forcefully to general needs and to demand appropriate public attention. In this context, *Amartya* notes that, for instance, no substantial famine has ever occurred in any country with a democratic form of government.¹⁴¹

There are some more examples that contradict the validity of the *Trade-Off Hypothesis*. Japan's economic success during and after the *Meiji-Period* has been possible without the curtailment of any fundamental rights and freedoms.

The same is true for the so-called "*Wirtschaftswunder*" ("*Economic Miracle*") of post-World-War II Germany. After the traumatic experiences under the *Nazi-Regime*, Germans have been extremely sensitive to human rights issues. This view is also reflected in the 1949 Constitution (The "*Basic Law*") which has often been referred to as one of the most "human-rights-protective" constitutions in the world. However, at the same time Germany achieved a great economic progress during the 1950s which turned the destroyed country into the third largest economy after the United States and Japan.

¹³⁸ Ibid.

¹³⁹ Ibid; see also Neier A, op cit at 44.

¹⁴⁰ See Amartya S, *Essays on Politics*, op cit.

¹⁴¹ Ibid, see also Donnelly J, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca/New York, 1989 at 109-10.

These examples illustrate that there is no sustainable economic basis for the *Trade-Off Hypothesis*. Human Rights do not have to be curtailed in order to maximise economic growth.

This leaves no tenable justification for the Singapore government's approach towards human rights. Therefore, the next paragraph sets out to suggest that it is timely for Singapore, at this juncture of its history and development, to reconsider its conception of human rights.

VI. Singapore and Human Rights - Recommendations for the Future

Singapore did not accede to many fundamental human rights treaties and transgresses the dominant view of human rights with respect to various individual rights granted in the *International Bill of Human Rights*.

Singapore's approach towards human rights has been under almost constant attack by various governments and international non-governmental human rights organisations. Although Singapore is a strong economic power, it relies on many liberal allies¹⁴² for both economic and military support.¹⁴³ Without their backing, Singapore's prosperity might diminish. By modifying its laws to comply with international human rights standards, Singapore will remedy the concerns and improve its international relations.

However, although this will benefit Singapore's standing in the international community, the Singapore government runs the risk of "losing face" by succumbing to foreign demands, which is a significant inhibition in Asian¹⁴⁴ societies. Therefore, *Bahrapour* convincingly suggest the strategy of selective incorporation of international human rights standards. This will help the Singapore government to save face when it can freely choose which laws to modify and how to modify them. Selective incorporation can also ensure that the nation's cultural identity and values are preserved.

Due to its role as economic leader in Southeast Asia, Singapore might even become an ideological champion for other Asian nations and pave the way for its neighbours to adopt international human

¹⁴² Primarily the United States.

rights standards. Selective incorporation allows those states to retain their national identities while maintaining prosperous international relations.¹⁴⁵

Given the lack of tenable justifications of Singapore's current approach towards human rights, selective incorporation appears a rewarding future way to go for the country.

VII. CONCLUSION

It has been shown that neither the Singapore government's reference to *Asian values* nor to *Confucianism* can justify its approach towards human rights. Although Asian societies should not be forced to adopt an extremely liberal view, *cultural relativism* is only a valid argument if it is the people, not the ruling elite, who decide what they value.

In Singapore, however, it is the government that attempts to impose its own definitions of a Singaporean culture in order to support its authoritarianism. The broad concept of *Asian values* invoked by the government is devoid of any meaning in the context of the mixture of Chinese, Malay, Indian and colonial influences that make up the Singaporean society. The reference to *Confucianism* does not provide a valid explanation either, for Confucius disapproved of law and coercion and advocated a government of limited functions. Against this background, the stipulation of *shared* or *national values* shows that the Singaporean government is deliberately creating its own smokescreen culture in order to justify its tight regulation of society.

With respect to the *Trade-Off-Hypothesis*, it has been shown that the notion that human rights must be traded for economic success lacks a sustainable economic basis. Countries such as Botswana or post-war Germany prove the contrary.

Therefore, this paper concludes that the Singapore government has failed to provide a tenable justification for its authoritarian rule and transgression of human rights. Given the country's economic dependence on its international trading partners, it is recommended that the government should aim to selectively incorporate international protections of human rights. However, this should only be done

¹⁴³ See Bennet MS, 'Securities Regulation in Singapore: The City-State as an International Financial Center', (1994) 12 *UCLA Pac. Basin L.J.* 1.

with respect to the cultural and social values of the people, and should not lead to a Westernisation of the "tiger state".

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¹⁴⁴ This is true for Asia in the broad sense, i.e. Confucian, Islamic and Hindu-based societies.

¹⁴⁵ See Bahrapour F, op cit at 1100.

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