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THE TEACHING OF COMPANY LAW—REFLECTIONS ON PAST AND FUTURE

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"*As the creeper that girdles the tree trunk, the law runneth forward and back.*"

Rudyard Kipling, The Jungle Book.

Like Baloo of The Jungle Book, I have been involved in the teaching of law (and more specifically, Company Law) for a long time. Company Law is considered to be an essential subject for all lawyers in Singapore. This is borne out by its inclusion as a compulsory paper in Part A of the Bar Examination conducted by the Singapore Institute of Legal Education ("SILE")[1] for graduates of foreign universities intending to be called to the Bar, even though it is not mandatory in many LLB courses abroad. This short piece is a distillation of my experiences not only as a teacher of law but also as a legal practitioner in both the public and private sector over a period of more than thirty years, as well as a member of the board of directors of several listed and non-listed companies. On the basis of that experience, may I proffer the following thoughts on the teaching of Company Law specifically and on legal teaching generally, in the hope of provoking some reflection and discussion.

I. WE MUST TEACH SINGAPORE LAW

This may seem obvious now, but it was not always so. Looking back to the end of the 'seventies, Singapore Company Law was considered as no more than an offshoot of English law. In researching the first article I wrote for publication[2] I discovered that the authorities cited by the courts in Company Law cases were almost exclusively English. The attitude then was that it was sufficient to teach English Company Law, pointing out the few areas where our statute differed from that of England. It was

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1 The Bar Examination is in two parts: Part B, which all graduates of local and foreign universities must sit for; and Part A, for graduates of the scheduled foreign universities whose degrees are recognised for the purpose of being called to the Bar. The five subjects covered in Part A are: Singapore Legal System, Land Law, Criminal Law, Evidence and Company Law. Candidates must pass Part A before attempting Part B.

2 Walter Woon, "Precedents That Bind—A Gordian Knot" (1982) 24 Mal L Rev 1.

a purely theoretical subject, with little relationship to the needs of the commercial world, Bench and Bar.

Company Law in the 'seventies was taught in the usual lecture-tutorial method consisting of two one-hour lectures and an hour-long tutorial per week. Tutorials involved the discussion of essay and problem questions, often inherited from past generations of Company Law teachers. For the most part the essays were theoretical and the problems unrealistic. The reading list gave little guidance. It was simply that—a list of cases, most of which were English, with the occasional Singapore case thrown in as garnish. There were no secondary materials beyond a sourcebook (basically a collection of cases with minimal commentary) and a short book in the Singapore Law Series.[3] The primary textbooks were Gower[4] (English) and Ford[5] (Australian).

The lack of a proper local textbook was keenly felt when I started lecturing at the beginning of the 'eighties. In fact, this was not a problem peculiar to Company Law. There were no local books covering any of the key subjects in the law curriculum. The most that one had were casebooks for some subjects; there were none for Company Law. Young academics were more fortunate in those days. Everywhere one looked there were virgin fields to be ploughed. Things have improved considerably since then as far as the availability of secondary materials is concerned. There are now several textbooks specifically on Singapore Company Law, as well as a volume of Halsbury's Laws[6] and an annotation of the *Companies Act* (mostly, but not exclusively, authored by members of the Faculty).

The existence of local textbooks and the willingness of judges to cite local academic writings has led to the creation of a Singaporean stream of law, especially Company Law. There is now a substantial body of local jurisprudence to rely upon in all major topics covered by the subject. In developing the Reading List for Company Law in Part A of the Bar Examination[7] (which graduates of scheduled foreign universities must pass in order to become qualified persons for the purpose of being called to the Bar) I have been able to use Singapore cases exclusively. The days when English and Australian textbooks and cases could be utilised to teach Singapore Company Law are long gone.

However, in the wider context of teaching law in general, there are still large areas of Singapore law where there are no proper textbooks. One might mention corruption for instance, despite the fact that this is a widespread problem nationally and internationally. The problem is that the definition of 'scholarship' nowadays tends to underrate the writing of textbooks.[8] This is often dismissed as not advancing legal 'scholarship', whatever that might mean. In places like England, which has

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3 Both authored by Philip Pillai.

4 LCB Gower, *Gower's Principles of Modern Company Law*, 4th ed (London, UK: Stevens, 1979).

5 HAJ Ford, *Principles of Company Law* (Sydney: Butterworths, 1974).

6 *Halsbury's Laws of Singapore: Companies, Limited Liability Partnership*, vol 6 (Singapore: LexisNexis, 2010).

7 I have been Dean of the Singapore Institute of Legal Education since its inception in 2010 and currently also am Co-ordinator for Company Law. The latter role involves setting and marking the examination as well as issuing the Reading List, recording the video mini-lectures and conducting a short course for candidates.

8 See Cheah W L & Goh Yihan, "An Empirical Study on the Singapore Court of Appeal's Citation of Academic Works: Reflections on the Relationship between Singapore's Judiciary and Academia" (2017) 29 Sing Ac LJ 75.

had for decades a plethora of textbooks covering practically every legal subject, that attitude may be understandable (though not necessarily justifiable). Books do not spontaneously appear, like Aphrodite from sea foam; they have to be written by someone. One of the primary functions of a university law faculty is to gather the primary material, organise it properly and expound the subject in a comprehensible manner: in short, produce a textbook. Singapore has not yet reached the stage where the market is saturated and textbook writers must scrabble for increasingly-smaller niche areas to fill. It would be tragic if young academics were discouraged by a lack of recognition on the part of the university from fulfilling the basic need for textbooks, commentaries and even casebooks.

A cautionary note: chasing international rankings puts pressure on young academics to publish in 'international' law journals. This can lead to a neglect of local writing. Lest I be misunderstood, let me make it clear that I am not for a moment advocating a retreat from internationalisation.[9] It must be realised however that so-called 'international' journals are often no more than the domestic journals of larger jurisdictions. The question is, who should be the target audience? Is it foreign academics or local practitioners? An academic article that a UK or US law journal would publish is very different from one that judges and lawyers in Singapore would find useful and actually rely upon.

In practice, judges and practitioners generally do not read law journal articles. It is an academic delusion that such articles have a professional impact.[10] In my interactions with judges and lawyers, it is clear that legal research starts with local textbooks, not 'international' law journals. In the comparatively infrequent cases where articles (as opposed to textbooks) are cited, they are almost invariably those published in local rather than foreign journals. In contrast to the judges of the 'seventies and 'eighties, judges nowadays do make an effort to cite the writings of academics in their judgments.[11]

Coming back specifically to Company Law, there are no universally-applicable principles except at the most general level. Corporate laws are shaped by the business environment of each jurisdiction. Though the laws of the various Commonwealth jurisdictions may bear a family resemblance (tracing their ancestry back to England), they are far from identical. Comparative studies may be useful, but ultimately the role of a National University is to prepare graduates to function in Singapore, whether they actually practice as lawyers or wade out into the wider sea of business; which leads to the next point.

II. Our Role is to Prepare Our Graduates to deal with The Real World, Not to Produce More Academics

The way law was taught to me, it was hard to discern how the theory actually related to practice. It is possible to teach some legal subjects as a purely theoretical exercise;

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9 It is possible for an academic to achieve an international profile without necessarily publishing internationally. This point is expanded upon below.

10 A simple test will confirm this hypothesis. Do a search on LawNet using the name of any academic and see how many hits involving law journal articles there are. The number of cases in which an academic is cited is an indication of his professional impact.

11 *Supra* note 8.

Company Law is not one of these subjects. Wonderful theoretical frameworks prescribing how corporate executives should behave and how companies should be managed have a tendency to come crashing down when they meet cold hard reality.

In the 21st century, the old method of teaching Company Law without regard to the realities of practice is not acceptable. The NUS Law Faculty no longer has a monopoly of law teaching in Singapore. We are in competition not only with the Singapore Management University ("SMU") (and eventually with the Singapore University of Social Sciences ("SUSS")) but also with all the scheduled universities abroad (*ie*, those whose degrees are recognised for legal practice in Singapore). Nor can academics remain insulated from the real world. The teaching of a subject like Company Law has to reflect commercial reality, otherwise it is useless. Some may scoff and mutter about becoming a 'sausage factory' or trade school. But if NUS Law is to retain the respect of the Bench and Bar, academics have to demonstrate that they are more than just academically-inclined.[12] Academic reputations do not depend only on the approbation of other academics; in a professional discipline like law, the opinion of judges and lawyers counts.

Topics that may be academically interesting often are irrelevant in real life. To give examples: for years as a young lecturer I taught my students about the doctrine of *ultra vires*, pre-incorporation contracts and the fiduciary duties of promoters of companies. This was because the reading list covered these topics. In thirty years of practice as a director of several corporations and as an advocate and solicitor and Senior Counsel, I very rarely have had to deal with any of these issues. They seldom pose any problems in practice, attractive though they may be for academic discussion. These ghosts of the past have been exorcised from most of the current reading lists.

Lest it be thought that NUS is unique in this regard, in my interactions with foreign graduates sitting for the Part A Company Law examination an obsession with lifting the veil of incorporation is clearly discernible. In practice, this never happens except on the rarest of occasions. Yet so many candidates in the Part A examination appear to have reams of prepared notes on the topic, which they trot out in the vain hope that something in there will be relevant to the question at hand (usually it is not). Presumably this is because their teachers found the topic academically fascinating.

In contrast, most Company Law courses do not deal with corruption and criminal breach of trust (embezzlement, in other jurisdictions). Nor do they touch on the issue of accounting records and the consequences of falsification of accounts. These are matters of vital importance to any director or corporate executive.[13] These are areas in dire need of academic exploration in Singapore. The principles are difficult to

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[12] The problem of academics being divorced from reality is not a new one. The following is an extract from Jonathan Swift's *Gulliver's Travels*, Chapter V, describing the Grand Academy at Lagado:

> There was a man born blind, who had several apprentices in his own condition: their employment was to mix colours for painters, which their master taught them to distinguish by feeling and smelling. It was indeed my misfortune to find them at that time not very perfect in their lessons, and the professor himself happened to be generally mistaken. This artist is much encouraged and esteemed by the whole fraternity.

[13] At the time of writing there have been recent prosecutions of several senior executives of Singapore Technologies Marine Pte Ltd (ST Marine) for corruption and of directors and executives of City Harvest Church for criminal breach of trust. In both the ST Marine and City Harvest cases falsification of accounts was an issue.

formulate and the existing local jurisprudence is not coherent. The Reading List for Company Law in Part A of the Bar Examination deals with these topics, albeit only skimming the surface. It would be ironic if graduates of foreign universities are better equipped to handle the real life problems of the corporate world than graduates of our local universities.

Part of the problem lies in the pressure on academics to publish in refereed law journals.[14] The process referring articles to another academic to referee often militates against writing that contains too much practical law and not enough theory. The law journal of the past is headed for extinction. The present paradigm of paid subscriptions for journals that lawyers generally do not read cannot be sustained, especially in an age where people are used to getting information for free from the internet. If a law faculty wishes to make an impact, especially in an area like Company Law, the efforts of academics would better be focused on creating an online platform for exposition and discussion of the law. This should be accessible not only to legal practitioners but also to business people and other professionals like accountants. Company Law is a subject of interest to a wider audience than just lawyers.

The contributions of law practitioners should not be looked down upon. Intellectual snobbery often dismisses the writings of 'mere' practitioners. Company Law cannot be taught as a theoretical subject; the theory has to conform to the reality of the commercial world. The insights of practitioners are valuable, especially when it comes to identifying what issues are current and need academic exposition.

Preparing students for real life does not require academic standards to be compromised. Students can be given realistic scenarios to deal with rather than contrived problems dreamed up to prod discussion of specific issues. Indeed, in the third and fourth year elective, "Crime and Companies", my students were tasked to deal with real cases, both past and current.[15] This allowed them to better appreciate the complexity of the law and the difficulty of even discovering and proving the facts. A made-up problem can never be as detailed as a real case. Putting students in the position of junior associates in a law firm or Deputy Public Prosecutors ("DPPs") forces them not only to analyse the law but also to apply it, a skill that is often not sufficiently emphasised in traditional law teaching. In my experience, there are students who even in their first year produce work that would not shame a young associate or a junior DPP.[16]

The distance between academia and practice is nowhere plainer than when one examines the way examinations are set.[17] Examinations are a series of hoops through which students are expected to jump. If the hoops are in the wrong place, the assessment of ability that an examination result purportedly represents will be way off.

Traditionally, examinations have been closed-book.[18] A closed-book examination is only a test of memory. In practice, writing an opinion from memory is a recipe for

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[14] This is not a problem unique to Company Law, but bedevils legal writing in many other fields.

[15] These included the accusations against the Asia Pulp and Paper Group for creating the transboundary haze problem, the Volkswagen emissions scandal and the Keppel Corporation corruption case.

[16] I also teach first-year Criminal Law and an elective course on "Crime and Companies", which deals *inter alia* with criminal breach of trust, corruption and money laundering. The quality of students' work is generally high, with some students producing work that would be entirely acceptable in practice.

[17] Again, this is a general point and not one confined only to Company Law.

[18] Thankfully, this is no longer the case in NUS for the most part. But in many other universities in the world (including some higher on the infamous tables of rankings) such examinations are the norm.

being sued for negligence. One always checks and double-checks. This is something that is drilled into associates when they produce work for clients.

In most cases, students are given a choice of questions, a mix of problems and essays. This permits the hallowed practice of 'spotting', *ie*, preparing only for certain topics and skimming the rest of the syllabus. In practice, one never gets a choice. There is no question of 'spotting' in real life. The senior partner hands over a file and one has to get on with the job. It is not an excuse to plead that the topic was not covered in law school. An understanding of basic principles is therefore essential; too often a law school syllabus is weighed down with numerous cases on peripheral issues, to the point where the essential principles are obscured. It is not necessary in practice to know every case ever decided; a lawyer with a good grounding in the principles of the law will have an instinct for the right solution to the problem posed, which can be fleshed out with proper research.

Essay questions in particular are often of such generality that they do not test any useful skill beyond the ability to reproduce other people's ideas. Students generally do not have the exposure and breadth of experience necessary to write anything original within the confines of an examination hall. An associate in a law firm is practically never called upon to write an essay on the law or short notes on cases. Open-book examinations make the traditional essay question meaningless as a test of professional competence. Students have been known to pre-fabricate answers. 'Mugger's notes' circulate freely; like the mariners of yore, those who have gone before prepare a rutter for their juniors, in the expectation that examiners have limited imagination and will repeat essay topics. A take-home examination is not the answer, since the examiner never knows exactly whose work he is assessing. All-pervasive access to the internet makes plagiarism too easy.

The solution is to set questions that better reflect what students will face in real life. Instead of contrived fact situations and a general brief to 'advise', examination questions can be based on real cases (reported or otherwise) and students required to give advice as if to a real client. Instead of a generalised essay question, students can be instructed to prepare an outline brief as *amicus curiae*. Realism in examinations does not entail a sacrifice of intellectual rigour.

For the Company Law papers I have set both for the LLB programme as well as for Part A of the Bar Examination there is only one question. The candidate has the full two to three hours to produce a first draft of advice to a client. This reflects what a young associate may be called upon to do in practice. It is not expected that the first-draft advice will be comprehensive. What matters is that the candidate has identified the crucial issues and suggested solutions.[19] The results are validated by the external examiners, who are senior practitioners. It is not impossible to set realistic questions and get realistic answers in an examination.

[19] In order to avoid any misguided criticism that Part A candidates are held to a different standard, in the initial run of the Company Law examinations after SILE took them over from NUS in 2016, I set a scenario that had been used for the LLB exam. In theory, Part A candidates are held to the same standard as NUS undergraduates. In reality, the standard has had to be compromised because of the abysmal performance of candidates generally. In the latest run of Part A the pass rate for Company Law was 64%. Many of those who passed would not be employable on the evidence presented in their scripts. The main problem is that while candidates often can parrot the law (since it is an open-book examination) many are totally unable to identify the key issues and apply the principles to a given factual situation.

The problem (apart from institutional inertia) is that many law teachers do not feel qualified to inject more realism into their courses and examinations. This brings us to the next point.

III. Law Teachers Should also be Practitioners[20]

Speaking generally, there has been a traditional disdain on the part of law academics for practitioners. I have had experience of academics rejecting applications by senior lawyers to join the Faculty on the basis that the applicant is a mere practitioner looking for a retirement berth and has not written anything worthwhile from an academic perspective. To my surprise, in my interactions with the Bench I have found that even judges of impeccable academic credentials feel that academics look down on them.[21]

Why this should be so is a puzzle. The highest accolade that can be bestowed on an academic is to be taken seriously. It is a compliment to the person and to his institution if governments (local and foreign) ask for his advice and participation in the preparation of legislation or when he is invited to speak to business people, lawyers, prosecutors and judges. When an academic's writings are cited by judges, this is an indication that he has had an impact. When practitioners use his books, this is evidence that he has influence in the profession. All of this reflects well on the institution to which he belongs. A law academic whose works are read only by other law academics may lead a nice life in a self-contained world, but his contribution to the profession is minimal.

As a National University, we cannot afford to exist in a bubble insulated from the world. Until very recently NUS had the monopoly on law graduates. The development of Singapore law depended on the output of the faculty. This is no longer the case with the advent of SMU, SUSS and the scheduled universities. NUS graduates will be compared with those of other universities. The comparison will be made by the law firms and judges. If our graduates are found wanting, it will reflect badly on the Law Faculty as an institution.

The Law Faculty is a professional one. Research does not exclusively mean conceptualising theoretical legal principles. It is often necessary to do hands-on work by getting involved in real cases, much as a social scientist might do. Law as an academic discipline is a blend of social science and philosophy. Commercial subjects tend more towards the social sciences. To teach about society one has to understand how society really works, rather than sit around visualising a Utopia that bears no resemblance to the world. This especially so in a subject like Company Law. The problems inherent in derivative actions, for instance, come into much clearer focus

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[20] It should be said that the NUS Law Faculty is fortunate in having a Company Law team who do have experience of practice. This is not true of every law school, nor should it be taken for granted that NUS will always be able to keep this up.

[21] The disdain cuts both ways. In the 'nineties I commented that the existing law on insider trading was a driftnet—it stretched out too far and caught too many fish which were not the targets. The response of the then-Deputy Managing Director of the Monetary Authority of Singapore (with the input of the Attorney-General's Chambers) was that these were merely academic concerns. They did not appreciate that a lawyer must advise conservatively. One cannot tell a client to do something which may amount to an offence, in the expectation that the authorities will be sensible and not prosecute. Driftnet laws inhibit the conscientious without obstructing the unscrupulous.

when one has actually been involved in such a case. Theory and practice in this area cannot be divorced. The disconnect between theoretical legal principles and reality for executive and non-executive directors becomes starkly apparent when one sits on a board of directors. This is not something one can easily pick up from reading cases and academic writings. Experience is the best education a teacher of Company Law can have.

The professional credibility that comes with experience as a practitioner-academic can translate into direct influence over the way laws are made. Taking Company Law as an example, in the past amendments to the *Companies Act* were drafted by the legislative draughtsman in the Attorney-General's Chambers without external consultation. Occasionally, a Select Committee of Parliament was formed to receive public feedback. Academics could make submissions. Sometimes their suggestions were accepted and incorporated into the legislation; most of the time they were ignored. The present approach to revision of the *Companies Act*[22] is much more consultative.

The 2014 Amendments to the *Companies Act* were the most far-reaching since the original enactment of the legislation in 1967.[23] A Steering Committee was formed, comprising public sector officials, private sector lawyers, businessmen and accountants, with two practitioner-academics.[24] Sub-groups dealt with various topics. These sub-groups also included academics. The openness of the legislators to academic input is encouraging. Academics can also contribute to the development of legislation through law firms. In the *Companies (Amendment) Act 2017*,[25] the portion on re-domiciliation of companies (Part XA) was drafted by RHTLaw Taylor Wessing LLP (of which I am non-executive Chairman). Generally, those with practical experience are much more likely to be consulted than 'pure' academics.

Law firms are also increasingly open to having academics as consultants. This was not the case thirty years ago. I was fortunate in having an understanding Dean who did not object when I took out a practising certificate to appear in court at the end of the 'eighties.[26] It was not necessary then to join a law firm. NUS has also been very liberal in its attitude to consultancy work, which includes taking on directorships of companies. There is thus no real excuse for a teacher of law generally, and of Company Law in particular, not to at least try to get some practical experience.

The reputation of the Faculty is enhanced when members are consulted for their expertise by other law practitioners and (in the case of Company Law) by business people and professionals in other disciplines like accountancy. Company law is not the exclusive province of lawyers. It underpins the whole superstructure of

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22 *Companies Act* (Cap 50, 2006 Rev Ed Sing).

23 *Companies (Amendment) Act 2014* (No 36 of 2014, Sing).

24 The members of the Steering Committee included Mr Lucien Wong (Allen & Gledhill LLP), Mr Dilhan Pillay Sandrasegara (WongPartnership LLP and later Temasek Holdings), Dr Philip Pillai (Shook Lin & Bok LLP), Mr Gautam Banerjee (PricewaterhouseCoopers LLP), Mr John Lim (Singapore Institute of Directors), Professor Tan Cheng Han SC (Law Faculty, NUS), Mr Ng Heng Fatt (Monetary Authority of Singapore), Ms Juthika Ramanathan (Accounting and Corporate Regulatory Authority of Singapore) and several officials of the Ministry of Finance. I served as Chairman.

25 *Companies (Amendment) Act 2017* (No 15 of 2017, Sing).

26 The Dean was Professor Tan Lee Meng, who became the first Faculty member to be elevated to the Bench. The Vice-Dean, on the other hand, told me it could not be done. The process was actually a lot easier then than it is today. It was possible for an academic to hold a practising certificate in his own name. Now, one has to be affiliated to the law firm in order to take out a practising certificate.

commerce. It is taught not only in law schools but also to business students and accountants. One of the key ways to raise the profile of a law faculty is to have its members engage the wider business community. Obviously, a demanding audience such as this will not take an academic seriously unless he has had some practical experience.

Law is not just for a domestic audience. Increasingly, the law is a discipline that allows Singaporean professionals to expand abroad. The economic success of the Singapore model (such as it is) creates an interest in the software that supports the economics. This interest is palpable in ASEAN and beyond in Asia. Corporate governance and corruption are areas where other developing countries may find the Singapore experience instructive. There is a niche here for the academic, but only if he has some real experience. Other countries have theoreticians enough; they do not need a Singaporean academic to propound theories that are not grounded in reality.

As adverted to above, it is possible for the practitioner-academic to have an international profile without publishing internationally. When the review of the Taiwan Company Law was contemplated, the Taiwanese found the Singapore 'all-talents' approach interesting and invited myself and Ms Juthika Ramanathan (the former Chief Executive of the Accounting and Corporate Regulatory Authority) to share our experiences.[27] An academic with professional credibility has a reach beyond that which merely publishing in academic journals can provide, since the audience for English-language legal articles is confined to English-speaking common law jurisdictions.

One would have thought that a professional faculty would welcome the idea that academics should also have experience in the practice of law, whether as advocate, solicitor or company director. No one would blink at the idea that a lecturer in medicine should ideally have dealt with real patients. This, however, is not universally the case for law. Some academics appear to feel that the practical side of law is beneath them and that they should only be concerned with the pure Forms, an attitude that goes right back to Plato. This kind of thinking may be barely acceptable in a country like England with over a hundred institutions that hand out law degrees and thousands of lecturers; for a small country and a National University, it is a conceit we cannot afford. A National University has a responsibility to contribute to the development of Singapore law, and not just to some generalised universal jurisprudence.

The problem with practitioner-academics is to get the balance right. It is obviously unacceptable for a teacher to be absent from class regularly because he is in court, or to give tutorials on a train headed to town. The university has a framework to limit the number of directorships an academic can hold and the hours he can spend doing consultancy work. There is also a 10% levy on fees. These are sensible boundaries, but in reality it can be difficult to compartmentalise consultancy and teaching.

It should not be misunderstood that practice for an academic involves mainly litigation. Cases at first instance take too long and require a commitment of time that a dedicated teacher cannot usually afford; the interests of the students must always come first. Realistically, consultancy will involve mainly writing opinions, with the occasional appearance in court in appellate cases. The value of an academic to a law

[27] I was appointed Special Counsel to the Steering Committee for the Re-writing of the *Taiwan Company Act* in April 2016.

firm lies in his ability to give detailed advice in the field of his expertise. If he has a reputation in the commercial world, he is also an asset in attracting clients.

Allowing law academics to practise law would also have a beneficial effect on retention of talent. We recruit excellent raw material from among the best graduates of local and foreign universities. The problem is how to keep them. Money is not the only issue; no one becomes an academic expecting to be paid at the top range of the legal profession. In any case NUS pays very well indeed by any reasonable yardstick. Professional respect probably plays a more significant role. The Chief Justice now regularly encourages young lawyers to appear as *amici curiae.*[28] It would greatly enhance a young academic's standing in the profession if he were to act for real clients, possibly on a pro bono basis as part of the Faculty's pro bono programme.

Ultimately, it is a matter of where the person's priorities lie. Is he a practitioner who sees the university as a stable source of income on the side? Or is he an academic for whom the practice of law is a supplement to his teaching? With this we proceed to my final point.

IV. The Primary Role of The Law Academic is to Teach; The Students are our *Raison d'Être*

Education is the systematised acquisition of experience, and a legal education more so than most. Traditionally, a barrister learnt his profession on the job, following his pupil-master. A solicitor worked as an articled clerk to gain experience. In England one does not require a law degree to practice law. A conversion course and a modicum of on-the-job training are all it takes. In Singapore, we insist on a law degree as a pre-requisite for the practice of law. However, if the law degree consists only of theoretical knowledge, it is of minimal use.

Thirty years ago when I started teaching we were influenced by a film called 'The Paper Chase', starring the incomparable John Houseman as Harvard Professor Charles Kingsfield. Professor Kingsfield was the stereotype of the lofty, unengaged academic sailing above his students without deigning to touch them. In this ecosystem students are a lower form of life, to be generally viewed with indifference bordering on contempt.[29] Over the years, however, I have come to revise my opinion of what a university professor should be.

Students invest a lot of effort (not to mention money) in their pursuit of a law degree. Some do this from conviction; others because their parents want them to;

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[28] The Young Amicus Curiae Scheme is run by the Supreme Court. SMU's new Dean of Law, Associate Professor Goh Yihan, is one of those academics who has appeared as *amicus*. It is possible to be respected both as an academic and a practitioner at the same time.

[29] A wonderful parody of this attitude (in the style of Lewis Carroll's *The Walrus and the Carpenter*) is to be found in Arthur Clement Hilton's *The Vulture and the Husbandman.* A little taste:

> The papers they had finished lay
> In piles of blue and white.
> They answered everything they could,
> And wrote with all their might,
> But, though they wrote it all by rote,
> They did not write it right.

still others read law because they cannot think what else to do in university. Whatever their motives may be, it would be unethical to take their money and time and not give them a good education.

If NUS were to award a BA (Law) instead of a LLB it might be justifiable to treat the course as a general degree providing a broadly-based education without reference to the mundane reality of practice. But graduates do not get a BA; we award a professional degree, the LLB. This degree allows the holder to sit for the Bar Examination and in due course be admitted to the Singapore Bar to practise as an advocate and solicitor. The law is a small profession. Traditionally, the legal profession has always taken care of its own when it comes to education and training. The Law Faculty plays a key role in this. If our graduates are incompetent, the public will pay the price. Therefore, it is incumbent on members of the Faculty to ensure as far as possible that our graduates are competent in law. It is our responsibility to both students and public.

It is a myth that if students are given a reading list and thrown off a cliff they will learn to swim faster. The best ones will; most will splash around barely keeping their heads above water; the weakest will drown. In NUS over the years we have had the full spectrum from the excellent students who can hold their own against the best in the world to those who only got through by the grace of God and the charity of the Board of Examiners.

The quality of students has improved markedly over the thirty years I have been in the Faculty. Some of the students in law school could barely speak English back in the 'seventies and early 'eighties. One of the reasons for introducing an admission test and interview was to weed out the inarticulate science students with excellent grades but little ability to express themselves. Nowadays, it is hard to find failures. This is not because of any ukase directing that all should pass, but a genuine reflection of the quality of the students. Good students demand good teaching. It is not possible to fool all of the people all of the time; sooner or later the bad teachers will be exposed.

There are of course academics who claim to be indifferent to student opinions. Student feedback, it is claimed, is nothing more than a popularity contest. To some extent this is true, but popularity is usually based on the teacher's perceived competence and ability to communicate. Students are not stupid. They can tell the good from the bad. It is possible to demand high intellectual standards and push students to perform, yet get good teaching scores. Feedback indicates that students generally react positively when teaching is infused not only with theory but also practical experience.

The excuse for bad teaching is often that one's research takes priority. This begs the question: who reads this research? In my experience overseeing the drafting of legislation I have noticed that policy-makers do not peruse academic legal journals. If an academic's writings are not cited by judges, not referred to by lawyers and only read by other academics in a small incestuous circle, is this really worthwhile scholarship? If, on top of that, his student feedback score is below average, one may ask why he is being paid by the university at all.

Singapore is a small place. The legal profession is a closely-knit one. The reputation of a law teacher depends not on the approbation of foreign academics but more upon the good opinion of the Bar, the Bench and above all the alumni of the Faculty. Anyone who desires to build an academic career in Singapore cannot be

indifferent to his professional reputation in the marketplace. That reputation depends to a significant degree on the assessment of former students. Students go on to higher things—they become ministers, judges, senior counsel, leaders in business and the arts. The Faculty benefits both in terms of reputation as well as materially when alumni think well of their teachers. They are unlikely to think well of a teacher who is unrealistic, uninterested and uninteresting.

It is a myth that a good academic cannot be a good teacher. Impenetrable legalese is not an indicator of deep thinking. The person who can boil down complex concepts into easily digestible portions without pre-mastication is the ideal. He will be esteemed not only as a teacher but also as an advocate. Essentially, the skill set demanded of top advocates is the same as that for excellent teachers: mastery of principle, clarity of thought, ability to communicate and plain common sense in the application of the law to real life issues.

V. Coda

A diamond jubilee is a cause for celebration, but it is also an occasion to pause and contemplate the future. For a law faculty, sixty years is a short time. The NUS Law Faculty is still a stripling in the hoary world of academia. Legal practice has changed considerably since the Faculty was born, more so perhaps than in the preceding century. The way we teach and what we teach has not changed that much.

Law has always been a backward-looking discipline. For ages, common law judges pretended not to make law, but only to discover previously-hidden principles that had existed from a time whereof the memory of man runneth not to the contrary. The Confucian ideal of reverence for what has gone before still unconsciously pervades some educational institutions. Intellectual inertia is a danger that all academics face as they grow older. A progressive law faculty that has ambitions to be a thought-leader cannot afford any of this.

Progress does not come from contemplation of the past. 'The law runneth forward and back'; the teachers of law must also run forward, breaking the tendrils that bind them to past attitudes and approaches that have outlived their usefulness.