LEGAL EDUCATION AND DEVELOPMENT
SOME THOUGHTS ON LEGAL EDUCATION IN SINGAPORE

It is with considerable diffidence that I hazard a few random thoughts on the subject of legal education in Singapore. After all, two years – the length of my stay – is but a short period, and I myself would be disposed to regard with a certain amount of suspicion anyone using so short a period of observation as a basis for comment. Nevertheless, a few thoughts lie restless in my mind, clamouring for escape: so let me, without more ado, permit them to be released from the prison wherein they lie.

Such views as I have formed on this subject are the result of experience of teaching first and second year students for two years and some third and fourth year students for a year; of lengthy discussions with students and colleagues far more knowledgeable in the subject than myself; and of occasional mediation, as I walked round what is surely one of the most beautiful of university campuses, that of the University on Bukit Timah Road, Singapore. What follow are, however, my own views: views not as yet tempered in the fire of debate. And let me add that nothing here is offered in criticism of those who have been so extraordinarily kind and helpful to me in Singapore. The island Republic is a good place in which to work, and for the academic lawyer, the Law Library there is the best of its kind in Asia.

First, then, before I embark upon the subject of legal education proper, let me comment upon the calibre of the Singapore student. This may seem to be putting the cart before the horse: but I think not. I find it impossible to come to any sort of intelligent (well, hopefully intelligent) assessment of the matter, until I have considered what we have in the way of – if I dare use the term – raw material. What sort of person is the prospective Singapore law student?

Well, he or she – I stress the "she", since women law students seem to dominate the Law Faculty, in numbers as well as charm – will be a product of the Singapore educational system. That system is, like the Republic itself, perhaps, in search of a realistic, appropriate policy suited to the circumstances of its time and situation. In the technical, constitutional sense, Malay remains the national language, but concentration upon the use of English has recently become more pronounced. This year all tuition in Nanyang University is, I believe, in English, although students can write their answer papers in examinations in English or Chinese. At the tertiary level of education in Singapore, then, English, is the chosen instrument of instruction.

In the past few years there has been some concern over a decline in the standard of the English taught and used in Singapore. That concern is also shared by the English themselves, as an article in the *Sunday Times* of 27 June indicated[1]: so Singapore is not alone in worrying about whether speakers and writers competent in the language are being produced by the schools. The concern is healthy: and although I think one should not worry *too* much about it, it does seem to me essential that any student embarking upon a study of the common law should possess an adequate knowledge of the English language. We are all well aware of the fact that law is a semantic discipline, and that the finer shades of judicial reasoning cannot be appreciated without an intimate understanding of the exact significance of the words used in communicating thought. Even I, as an Englishman passionately fond of his native language, can't move without a copy of Chambers' *Twentieth Century Dictionary*.

Yet I have remarked, with some surprise, that the standard of written English of many law undergraduates is poor. Sometimes this is due to carelessness, sometimes to past habits, more often than not to the styles and thought patterns of another tongue being transferred into the idiom of Singapore English. Even so, I do not consider the position as bad as might be supposed. A study of the examination papers of first year law students suggests (to me) that their errors fall into a pattern, can readily be identified and, with a bit of effort, cured. An expert in linguistics should be able to remedy the difficulty.

For our students are bright, diligent and able. Let there be no mistake about that. The major criticism I would make of them is that it is difficult to provoke them into any kind of critical activity in tutorials. You all know, here, that Singapore is, say, Sparta to the Athens of Hong Kong, and that we tend to take our pleasures sadly. There is a large and possibly necessary measure of conformity, such as to require the extraction of the *right answer* to any given problem: and this can and does inhibit some law students. Let it not be assumed, however, that their critical powers are dead. They aren't. Nevertheless, until they know you, and know you so well that you are not likely to misunderstand them, they are likely to be reluctant to speak up in a public debate. How to remedy this situation, I know not: nor, it seems, do my colleagues. Yet, as I have stressed, one must not be misled by an absence of response. The thoughtful student always remains thoughtful: all of us know that student who, having spoken not a word during term, dazzles us with the pyrotechnics of a brilliant examination paper.

[1] "The English are Loosing Their English", by Tony Maiden (Sunday Times, Singapore, 27 June 1976).

There is a tendency, alas, for law students from Malaysia to be a vanishing breed in Singapore. Last year, among the first year students, there was not one: but in other years we had in all a total of sixty. For my part, I have found the Malaysian law student to be lively, free and uninhibited. Whether it is the balmy air of our democratic secular republic, or whether it is simply being that much further from home, I know not: but the Malaysian student overseas tends to be a stimulus and inspiration to his or her contemporaries.

Further, out of a total of 439 law students in all, 301 last year were females: so that out of 5 law students, 3 are likely to be women. Last May, at the Law Faculty of the University of Tokyo, I enquired of a lecturer how many women law students there were. He paused, to consider so novel a question. "About three out of a hundred," he said, at last. Well, we are more enlightened: and I hope to see more and more women law graduates in the higher echelons of government and the civil service. Thailand has set a good example in this respect, and I hope others in the region will follow.

Another point to be noted is that an increasing number of our Singapore students enter upon their studies after two and a half years' national service. In our first and second year law courses we now have perhaps as many as 2 out of 5 (I am not sure of the exact figure, but I think it is something of that order) of such entrants. I have found them excellent students; they have, inevitably a more mature approach to study, and they tend (this is all very subjective, I fear, but I believe it to be true) to be more practical and realistic in their approach to the study of law – seeing law as the useful social discipline it is. I am surprised to find myself saying good things of national service, but there it is. Thrown into a disciplined service in the company of all sorts and conditions of men, one learns more about human nature in a far shorter time than ever is possible in civilian life: and that knowledge is the stuff of which the good lawyer is made. What these students may lack in cleverness, they more than make up for with wisdom.

Now what are the objectives of our law students? What are they going to do when, weighed down (or is it buoyed up?) with a degree, they move on to better things? Most will seek to polish off their law course with three months' post-graduate instruction, six months' pupillage and entry into the legal profession, others will seek a civil service post, others private practice. The mixture is much, I suspect, as elsewhere: which brings me to the structure of the course that carries them to this end. In Singapore the law course lasts for four years, and is an honours course. After one year's teaching, I came to the view that law should be a second degree, and that law studies should only be open to those who have already obtained a degree in, say, the arts or social sciences. In this way, I thought, the student would enter the Faculty of Law with a fine endowment of skill in some of these basic subjects – literature, philosophy, economics, history,

political science— out of which the law has grown.

Another year's teaching has persuaded me that this is too Utopian a concept to appeal to our pragmatic society. "Is this subject going to come up in the exam or not," is the grimly utilitarian query students have frequently put to me: and, since I tend to bring into my lectures Lewis Carroll, E.E. Cummings and Joseph Heller, they have a point. Looking at the practice in Hong Kong, with a three-year law course, one year of practical post-graduate work, and then pupillage in office or chambers, impressed me very much: mainly, perhaps, by reason of its practical emphasis. After all, a three-year course followed by a year of instruction in, say, the formation of companies, the purchase and mortgage of property, the raising money on ships, drafting partnership deeds and so on still seems to me designed to produce a better lawyer than our four-year honours course with, it seems, everyone obtaining honours.

Again, a visit to the Law Faculty at the University of Tokyo enlightened me further. There, the hopeful law student must (after passing a special University entrance exam.) spend two years in general studies: and only then will he move on to a final two years in the study of law.

All food for thought. The Tokyo system ensures that every undergraduate is equipped with the basic information that is expected of the intelligent undergraduate. Life today is (even in the legal profession) becoming specialised enough, and we tend to know more and more about less and less: but there is really no excuse for any student of the common law being utterly ignorant of Plato (who "told the great lie of ideals", if I remember my D.H. Lawrence aright) or Aristotle. After all, ideas give life to our experience: and experience is the life of the law.

Looking around, therefore, there is much to be said for a particular University entrance exam. founded in English and general knowledge. It need not be a lengthy paper: but if correctly framed, it would enable one to assess whether the candidate is equiped with that linguistic skill and basic information without which his law studies are likely to prove useless. We cannot afford to carry passengers, still less those who will never (however intelligent they may be) have the stuff of the lawyer. Once admitted, the course must be so designed as to give the student a basic knowledge of fundamental legal principles.

This is something that requires stressing. The first year student should not, in my view, be overburdened. On occasion I have seen lists of cases to be read by young students: Cases that have descended on the wretched student as thick as the autumn leaves of Vallambrosa. What is the student to do? Not all reside on the campus, many have to travel by complex public transport in order to attend classes. Faced with a need to read cases, they fling themselves at the Law Library; and although we have several sets of law reports, they may have to spend late hours in the Library, searching for a case that adds little to their knowledge. Like historical dates, the

number of cases the average lawyer remembers is small enough. To encourage students to grasp fundamental principles and then to apply these intelligently, that is, or should be, I submit, a primary objective. Booklearning, memorisation of detail that is readily accessible, a Pavlovian regurgitation of information once a key word in a question triggers the brain: this is not the way to produce the intelligent lawyer or, indeed, the thoughtful citizen.

Sometimes, too, a course may acquire a technicality that it did not possess at its inception. For example, I believe that a second year course on the law of associations (in Singapore) originally dealt with the rudiments of company law, partnership law, the law on societies and trade unions, and so on: simple, basic material. In the course of time, however, the course became concentrated upon the complex detail of company law: an almost indigestible meal for a second year student. We need to ensure that the nature of the subject taught is appropriate to the level of development of the student. It is easy enough to say this, of course: the difficulty is to achieve it.

Our law course in Singapore is aimed, inevitably, at basic subjects: legal method, contract, tort, crime in the first year; family law, land law, public law, and the law of associations in the second year: after which (apart from study of the law of trusts, evidence, civil procedure and the administration of criminal justice) there is a generous freedom of choice, extending even into the realms of philosophy, history, economics and political science. The student has a certain freedom of manoeuvre, here, although I fear that few exercise the privilege to go outside legal discipline.

As for basic law, I must say that I would like to see an emphasis placed increasingly on Asean Law. On the *Malaya Law Review*, we endeavour in each issue (not, alas, in every issue) to publish an article under the general title of "*Aspects of Asean Law*". So much is going on in the Asean area, that I would like to seen an interchange of law lecturers within selected law schools in the region. In most cases, I appreciate that the medium of instruction would be English: but I do not think this need necessarily inhibit such exchange. Thus, we in Singapore could send a lecturer as, say, a visiting fellow to a university in Indonesia, and they in turn send one of their staff to us. Comparative law could – or perhaps, should – be a final year subject, optional at least. And such an addition to the staff would not only fortify the Faculty, but do much in the way of bringing the countries of the region closer together. No country, no man, can afford the hazards of isolation in a world in such violent transition as ours. It has always seemed odd to me that when, say, Thailand works out a legislative answer to an economic problem also facing, for example, Malaysia, Singapore or Indonesia, there is no machinery for bringing that solution to due notice. The Asean Secretariat will no doubt deal with the matter: but we really must work more closely together, in an Asian and Asean sense, if we are to

hold our own against outside competition and interest.

As I indicated, we could perhaps do more in the way of working to a practical emphasis on legal studies. I remember the shock of a Scots captain, on being asked by a third or fourth year student of shipping law, visiting a ship in Singapore harbour, what was the flag flying at the ships masthead. That,"my dear girl," he said severely, "is the Singapore flag. I am astonished you don't recognise it."

This, of course, is a frivolous story: but the point behind it is a serious one. Law students should remember that the best way to learn how the courts work is to go and watch them: and the best way to learn law in general is to see it in action, picking up as much general knowledge as possible in the process. Many Government departments are the agents of application of statute law, and I would like to see final year students engaged (as they are in Hong Kong, in ther post-graduate year) in practical activity and research. This requires the cooperation of often hard-pressed civil servants: but in the long run, the arrangement would work to the public benefit. Similarly, I would like to see students involved, in their final year, in legal aid: while there is still some active idealism left – even after three years of law studies – let it be used, to the general advantage.

All this is not to imply that the initial thrust of legal training should not be towards legal theory. "A fairly well-kept secret of the profession," wrote Irving F. Reichert, Jr., "is that most law schools teach a student practically nothing about how to practise law."[2] The reason for this is surely not far to seek. The law school is concerned with the principels *behind* the law, with inculcating an interest in the very nature of law itself. This involves a survey of some kind, however superficial, of the elements of other disciplines. Law is somewhere between philosophy, ethics and sociology on the one hand, and political science, history and government on the other. To teach all the tedious details of a mass of law that is forever changing, altering its nature in accordance with the needs of society, is a sterile, useless pursuit. The undergraduate must learn as much as possible of the concepts out of which the law grows; if he goes into practice, it is unlikely he will ever have time to reflect upon these profound truths at any later stage in his career.

During those first few years, therefore, the student should be taught the essentials of legal theory, of the province of jurisprudence. Yet – such is the pressure of life – we cannot (even if we wished) divorce law from its practice: so that the art of the law teacher is so to balance the theory of law with its practice, that the student becomes, as it were, a whole man as well as a whole lawyer; a man equipped with as much wisdom as can ever

[2] In "The Future of Continuing Legal Education" (*Law in a Changing America*, ed. by Geoffrey C. Hazard, Jr. (The American Assembly, Columbia University.)

be imparted, otherwise than by experience. In our legal records we have the distilled wisdom of the greatest judges of one branch of western civilisation: and that wisdom did not grow in isolation, but was born of religious freedom, great poetry and drama, of revolution, of decay, of despair, of hope, of all that is our history. To set the necessities of the future against the lessons of the past and to determine the function of law within that process: that is, it seems to me, our task.

It is a pity that ability has still to be measured by examination: but no more satisfactory method of ascertaining ability seems yet to have been devised, at least in relation to such difficult subjects as law. Examinations serve to impose a certain discipline, to sharpen the mind, and to concentrate the faculties upon the essential elements of a problem. Even so, I think it hard that our law undergraduates in Singapore have to pass in every subject. To that extent they are hostages to fortune, often dependent upon pleasing one examiner in one area of law for which they may perhaps harbour a profound dislike. There is a Board of Examiners of course, and a Faculty meeting to confirm its findings: but yet, . . . I was myself schooled in the stern school of the Law Society's examinations in England, where all questions were compulsory: on the principle that you cannot choose your client, and must accept whatever problem he may pose. But, in spite of this, I believe that a candidate who passes well in three out of four subjects, and does not fail badly in the fourth, should quality for a pass, or, say a lower grade than the one the three passes themselves would, if supported by a fourth bare pass, appear to merit. This is, clearly, not an easy matter to settle; the justice must always be rough; but I hope the question can be reviewed, in the light of practice in other universities. Often I have felt that my colleagues were fettered by rules which they themselves would cheerfully change, if they could: but as lawyers themselves, they must accept the regulations as they are. For this reason, no doubt, we admire the character of Socrates, and swallow the poison in the hope that the public weal will benefit.

One thing I have noticed within the University, and that is the extraordinary disparity in the workload of academic staff. In some departments, lecturers seem to do but a few hours' work a week: a couple of lectures, say, and a tutorial or two, while in others (I am thinking of course of the Faculty of Law, although the postion in, say, Accounting, may be comparable or, indeed, more intense) staff fling themselves from one lecture and tutorial to another, with an almost desperate frenzy.

Now I appreciate that different disciplines demand different speeds, and that workloads must vary. Nevertheless, it seems to me that the disparity is such, that there is a case for some ruthless characters well briefed in the organisation and methods of large institutions to do a survey of the situation, bring all the relevant facts to light, and come up with a few practical suggestions. It is inequitable, to say the least, that X is paid as much for five hours of teaching as Y for ten and Z for fifteen. Law

lecturers – an endangered species – tend to be so exhausted by teaching, that they have no time for research.

And without research, the law teacher is useless. Law is not a static, but a dynamic discipline. We cannot deliver a lecture on any branch of the law this year, and suppose that we can safely deliver the same lecture next year. To read the cases, the relevant law journals, the latest editions of textbooks, to capture the changing approaches to the interpretation and application of statute law: all this requires time – I was going to say, leisure time, but obviously it isn't – in which to read, absorb and meditate upon the changing mass of material the law teacher must use. The philosopher or mathematician, say, can probably get by with the same revelation of truth last year, this year and next year: the law teacher cannot do so, and must keep himself informed of the current state and direction of the law he teaches. This is a heavy responsibility, and one seldom appreciated by those outside the legal profession.

But I have wandered far afield. Legal education itself must be adapted to, and fit into the pattern of social and economic development within the State. In consequence, it needs frequent and careful review, with the thought constantly in mind, that there must be a better way than the one we are following now. Legal education is not, everything considered, as cheap as all that. If we can produce better graduates in three years than we can in four; if we can produce better lawyers after five years under one system of instruction rather than another, if we can structure our law courses to produce graduates with more finely developed social conscrences, with greater ability, with greater understanding of the region and its problems, then let us strive to that end. The world of tomorrow is likely to be a hard, complex and difficult one, and we who have known times when life was simpler must strive to assist those commited to our care, to the utmost of our ability and experience, so that they will be equipped to meet the trials, challenges and tribulations of the future.

Indeed, that is the least we can do.

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LEGAL EDUCATION AND DEVELOPMENT
RECRUITMENT OF LAW STUDENTS IN INDIA

I

It is not possible to look at the question of recruitment of law students in isolation from the question of quality and content of legal education in a country. The quality of law students and the complexion of legal education are intimately inter-related. One has its impact on the other. If legal education is purposive and of high quality, it is bound to attract intelligent and motivated students. On the other hand, if intelligent and motivated students join the law course, its quality is bound to improve further. Such students will pose a challenge to the law teacher who will thus be compelled to rise to the occasion. But, ultimately, all these questions are related to the status of the legal profession in the society. The expression 'legal profession' is being used here not in the narrow sense of an advocate or a legal practitioner in a court, but in a broad sense, i.e., any profession or vocation in life where knowledge of law is applicable, relevant and useful. The crucial question is what role is a lawyer expected to play in society? If lawyers have opportunities to play a significant role in a society, it is bound to have an abiding impact on the character of legal education as well as on the quality of students who join law courses.

To put the question of recruitment of law students in India in the right perspective, it appears to be necessary to say a few words about the developments which have taken place in the area of legal education in India generally over time, particularly since Independence.

II

Before India gained its independence in 1947, the study of law was not taken as a very serious exercise. Although it is true that there were many outstanding lawyers in the country, and that lawyers were in the vanguard of the Independence movement, yet, by and large, this was not because of the quality of the legal education imparted, but in spite of it. Some of the top-notch lawyers were barristers who had received their legal education in England. There were some home-grown products also, but they could be counted on fingers. The condition of the law schools were none-too-happy. No University desired to run a law school on a deficit basis. It had to be a self-financing institution, and, if possible, a money-making concern, so that it could feed the teaching of other disciplines in the university. There were no adequate law libraries, barring one or two exceptions. Most of the law teaching was conducted by part-time law teachers. Lawyers who were busy during the day in the courts, took off some time to deliver a few lectures in the evening without much preparation or