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ATENEO LAW JOURNAL

THE MOOTS AS AN INTEGRAL PART OF THE LAW COURSE: THE SINGAPORE EXPERIENCE*

*U HLA AUNG***

I. INTRODUCTION

'Defects' of University Legal Education

One of the criticisms that has very often been made against university legal education is that very little is done by the institutions concerned to prepare the law student for the practice of the profession. This criticism is directed mainly at the British and Commonwealth universities, for the law schools in the United States have succeeded to a considerable extent in closing the gap between 'academic' and 'professional' legal education.

In England where the tradition of apprenticeship is still very strong, a university law degree is looked upon as a purely academic qualification.[1] Thus, a university graduate in law, who wants to enter the profession as a lawyer or judge, has to undergo a 'professional' training at one of the Inns of Court in order to get 'called to the Bar'. The anomaly, however, is that even the so-called professional training has been essentially academic in its scope and methods. According to Professor Gower, "all that is needed to be called to the bar is to keep terms at an Inn of Court"[2] and, of course, pass the examinations, which no student of average

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[1] See Gower and Price, *The Profession and Practice of the Law in England and the United States*, 10 MOD. L.R. 317, 322 (1957).

[2] *Ibid.*

intelligence and diligence will fail to do. After a student has been 'called to the Bar' he still has to do what is known as chamber work for one year before he becomes fully qualified to practise. This 'chamber reading' is also required of a law graduate in Malaysia, India and Burma before he can be admitted as an Advocate of the High Court. Experience has, however, shown that this so-called practical training in chambers is nothing more than a formality.

In Burma, for example, where this writer comes from, the so-called chamber reading consists mainly in sitting in the chambers (if he is lucky enough to be allotted a small space for his desk and chair) of a practising Advocate.[3] The Advocate generally is either too busy or too lazy to give the chamber student anything in the form of a practical training. All that the student is required to do is to keep a small diary in which he is expected to make entries of the cases he is supposed to have listened to. This again is a formality, because these diaries are seldom, if ever, examined by those having authority to admit the student to the Bar. And as long as he can produce a certificate from his chamber master that he has read in chambers for one year, and as long as he can afford to pay the prescribed fees, the certificate of admission is issued as a matter of course. In India and Pakistan, with whom Burma shares the same system, the situation is perhaps more or less the same although there may be some variations from State to State.[4]

It is, therefore, obvious that unless something is done for the law student by way of a practical training in forensic skills, the neophyte lawyer is bound to be thrown into the professional sea to sink or swim by himself. Dean Griswold of the Harvard Law School has expressed concern over the state of legal education in the universities, especially in England, where it "is too theoretical, and too much had been left for the practitioner to undertake in providing practical instruction."[5]

[3] For a brief account of legal education in Burma, see U Hla Aung, *Legal Education in Burma*, 10 FAR EASTERN L. REV., 458-466 (1963). U Hla Aung, *A Brief Note on Legal Education*, 1 BURMA LAW INSTITUTE J. 83-91 (1958).

[4] For a glance at the state of legal education in India and Pakistan, see William G. Rice, *A Quick Look at Legal Education in Pakistan and India*, 11 JL. LEG. ED. 364-366 (1959).

[5] See Erwin N. Griswold, *Legal Education: Extent to Which Know-How in Practice Should Be Taught in Law Schools*, 6 JL. LEG. ED. 324-329 (1954).

II. MOOTS IN SINGAPORE

Moots Introduced in 1957

If this is still true of the universities in England, it is certainly not true of the University of Singapore. For, the pioneers of university legal education in this country were fully aware of the limitations and drawbacks of the British system of legal education having themselves been trained and brought up in that tradition.[6] They recognized from the outset that the undergraduate training in law at the University must be so framed that the LL.B. degree "will be acceptable as a professional qualification without further formal instruction in substantive law."[7] It was with this end in view that moots were introduced from the very beginning as an integral part of the course for the degree of LL.B. and the first hearing of the Moot Court took place in December, 1957. The moot programme was administered by a full-time member of the teaching staff acting as moot Secretary under the supervision of the Departmental Moot Committee. In due course, however, the moot programme became more and more elaborate and time-consuming and it became necessary to appoint a full-time member of the staff to direct the programme. Thus, a Director of Moots with the rank of Senior Lecturer was appointed for the first time in 1963.[8]

Nature of the Moot Programme

Beginning with the second year, every student in this Faculty is required to participate in at least one Moot each year either as Counsel, Judge or Court Reporter. The reason why the first year students are not required to participate in the moots seems to be that most of the subjects prescribed for them are not strictly legal in their nature and scope and are, therefore, not suitable for mooting. Another reason perhaps lies in the fact that unlike the law students of most of the universities in the United States,

[6] See L.A. Sheridan, *Legal Education in Malaya*, 4 J.S.P.T.L. (N.S.) 19 (1957); Sheridan, *Legal Education*, 27 MLJ. (1961).

[7] See L.A. Sheridan, *Legal Education in Malaya*, 4 J.S.P.T.L. (N.S.) 19 *laya*, J.S.P.T.L. (N.S.) 155 (1960).

[8] This was Mr. David Jackson, who, however, resigned last April after serving one academic year to join the Law Faculty in Monash University, Australia. The University advertised the post, but due to lack of sufficiently qualified persons among the applicants the vacancy remains unfilled and this writer was asked by the Head of the Department to act as Director of Moots for one Term. In addition to his moot work, the Director has also to do some teaching about four or five hours a week.

India, Pakistan and Burma, the first year students here are merely high school graduates with no university training before they joined the Law Faculty so that it has been found desirable to wait until they reach the second year when they will have acquired the hang of things and are, therefore, in a better position to benefit from the moots. Furthermore, the number of first year students, which usually exceeds 100 each year, will render it impossible to observe the rule that every student must participate in at least one moot a year. On the other hand, subjects such as Contract, Tort, Criminal Law and Property, which the second year students have to take, are legal subjects in their proper sense and are, therefore, suitable for mooting.

Generally speaking, moots are held in the University Court Room on Tuesday afternoons and Saturday mornings. At those times there are no regular classes. In practice, however, it has been possible to hold the moots more on Saturdays than on Tuesdays, because meetings of the Law Faculty are held only on Tuesdays.[9] Furthermore, the Public Lectures sponsored by the Faculty and delivered usually by its members, are also held on Tuesdays. On those days also no moots are held. It is submitted in this connection that there is no overriding reason why there should be no moot on Public Lecture days since the moots begin at 2 p.m. and conclude at about 4:30 p.m. or sometimes even earlier, whereas the public lecture does not begin until 5 p.m. Therefore, subject to the availability of the Court Room, moots could and should be held on those days.

Attendance at the Moots

Theoretically, attendance at the Moots is compulsory and every student is expected to attend the moots in the subjects they are reading. In practice, however, there is always a mixed crowd of students reading different subjects. From the point of view of attendance, the moots stand on the same footing as lectures where, since no roll calls are made, attendance depends on who the Lecturer is and what he is talking about. Similarly, in moots, attendance varies considerably according to the subject-matter of the moot and the personalities participating therein. Generally speaking, however, attendance is poor on Tuesdays and good on Saturdays. It is usually much better when second-year subjects are mooted, because there are more students reading them. Final year moots generally attract the smallest audience except when the moot is held on a Saturday and some distinguished visitor is sitting as a Judge.

[9] Meetings of the Law Faculty are held twice each Term on the first Tuesday of the month. Thus, there are six regular Faculty meetings in an academic year.

Form and Content of the Moots

Most of the moots are in the form of appeals on points of law. The facts given in the moot paper are to be taken as either admitted or proved. Sometimes the problem may take the form of an original action with the trial judge's decision to be given at the pre-hearing conference. If there are doubtful issues of fact or of law, they are threshed out at this conference, which is generally held about a week before the hearing on appeal. One good thing about this procedure is that the students appearing as counsel get an opportunity to draft their pleadings both as a plaint and as a memorandum of appeal.

Sometimes the moot is framed in the form of an original trial where witnesses are examined and cross-examined and issues of fact as well as of law are argued. Such original actions, however, call for considerable preparation and generally requires the co-operation not only on the part of the students but the members of the teaching and clerical staffs as well. It has, therefore, not been possible to have more than one such original trial each year. Experience has, however, shown that such original actions arouse more interest among the students, perhaps partly because examination and cross-examination of 'witnesses' usually present an amusing spectacle. There is, therefore, the danger that students might tend to treat such moots as shows for amusement, the sort of thing one sees on television these days, rather than as a forum where they can learn the art of examination-in-chief, cross-examination and oral argument before the jury.

One criticism that has been made against trial practice moots is that they are unrealistic.[10] One possible answer to such criticism is that since they are not real trials, they can never be as realistic as the real ones. Perhaps what should be done to achieve the neareast approach to reality is to make the preparation as thorough as possible and to manipulate presentation of facts by the 'parties' and 'witnesses' in such a way that there are gaps and

[10] See Edward H. Levi, 4 Talks on Legal Education, Chicago (1952). See also Milton D. Green, *Realism in Practice Court*, 1 JL. LEG. ED. 421 (1949); Lyman P. Wilson, *More About Realism in Practice Court*, *Id.* at 569.

inconsistencies in the evidence led before the Court. Cross-examination at trial moots may not be as effective as they are in real actions, however skillful the cross-examiner may be, because the 'witness' is likely to adhere stubbornly to the facts already given him or her through thick and thin. Despite these drawbacks, trial moots are well worth the effort required to direct them. It should be possible to have at least one such moot in an academic year, preferably in the second or third term.[11]

Setting Problems

Setting problems for the moots is one of the problems that any person responsible for the direction of moots will have to overcome. Under the present system adopted in this Faculty, every member of the teaching staff, whole-time as well as part-time, is supposed to supply the Director of Moots or whoever is acting in this position, with at least one problem each Term. And as problems are generally set on the subject or subjects one is teaching, the moots cover a variety of subjects ranging from Criminal Law to International Law. In practice, however, the Director of Moots finds himself without a sufficient number of 'good' moots each term with the result that he has to keep chasing his colleagues for moot problems.

All the members of the teaching staff are busy people, having their own commitments, and seldom find time to prepare a problem for the moots. And although some teachers have been quite prompt in their response, there are some who either do not supply any problem at all or supply them too late to be included in the Term concerned. This problem is going to be a perennial one unless the Director of Moots is able and willing to set problems himself on a wide variety of subjects, making special requests for problems only in a limited number of narrow and technical areas. Thus, he should be able to set arguable moot problems in such basic subjects as Criminal Law, Contract, Tort, Evidence, Civil Procedure, Constitutional Law and even Commercial Law, leaving the rest to specialist teachers. If this can be done, the problem of problem-chasing will be eased considerably.

The question which subject is most suitable for moots is one that is not easy to answer. The general impression seems to be that public law moots are more interesting than private law moots. It is submitted that that impression is not in accordance with this writer's own experience, for it has been found that moots on such 'academic' subjects as Administrative Law and International Law are as interesting as those dealing with such 'bread-and-butter' subjects as contract, tort, evidence and civil procedure depending on whether the problem has been set in such a way that the issues involved are arguable from both points of view. Thus, setting good moots calls for a certain amount of thoughtful preparation.

Moot Procedure

The procedure adopted for the Moot Court is very similar to the procedure prescribed for and followed in the Court of law in Malaysia and most other countries of the Commonwealth. If it is a proceeding before the District Court or the Magistrate's Court or the High Court,[12] the Moot Court is presided over by a single Judge generally a member of the teaching staff or a distinguished visitor. However, for moots which take the form of appeals to the Federal Court[13] or the Judicial Committee of the Privy Council, there are usually three Judges on the Bench two of whom are students. In practice, the teacher, who sets the problem for that particular moot, presides over it as well. It is only when the teacher concerned cannot preside that the Director of Moots has to preside or finds somebody else to preside if he feels himself incompetent in relation to the subject-matter of the moot.

The procedure is for either party to be represented by a Senior Counsel and a Junior Counsel. Prior to 1963 there were solicitors in addition but their role has since been replaced by a Court Reporter who, in fact, makes little or no preparation for the moot, because his task is mainly to prepare a summary of the proceedings. Thus, a student, who has only been a Court Reporter in any academic year, can hardly be considered to have fulfilled the requirement of participation in a moot.

As in the case of regular classes, a time limit has to be set for arguments and delivery of judgments. When the moot programme was in its initial stage of development, the Senior Counsel

[11] It was suggested by Mr. Jackson that this type of moot be the only moot held in the Third Term this year.

[12] Section 18 of the Courts of Judicature Act, 1964 (Malaysia Act No. 7 of 1964) provides: "Every proceeding in every High Court and all business arising thereout shall, save as provided by any written law, be heard and disposed of before a single Judge."

[13] Section 38 of the Courts of Judicature Act, 1964 provides, *inter alia:* "Subject as hereinafter provided, every proceeding in the Federal Court shall be heard and disposed of by three Judges or such greater uneven number of Judges as the Lord President may in any particular case order."

for the Appellant was allowed 15 minutes and the Junior Counsel 10 minutes, while the two Counsel for the Respondent were allowed 20 minutes. Another 10 minutes were reserved for the reply. Each Judge was allowed 10 minutes in which to deliver his judgment. These time limits might appear somewhat arbitrary, but they were in fact never enforced strictly. A certain latitude has always to be given depending upon the nature of the moot, the necessity for better clarification of the issues involved and other circumstances. But, nevertheless, time limits have still to be set and at present Senior Counsel are permitted 20 minutes each and Junior Counsel ten minutes. No time limit is imposed on the Judges, because student Judges usually do not take more than ten or fifteen minutes each. On the whole, the average duration of the entire proceedings is approximately two hours.

The atmosphere of the Moot Court is almost as formal as it is in a real court. Both Counsel and Judges have to be properly dressed and robed although they are not required to wear wigs and bands. Judges don the distinctive blue robes of the Moot Court while Counsel wear black gowns, which are supplied by the Director of Moots. When Judges enter the Court Room, all those present rise in token of courtesy. Counsel and Judges then bow down before each other and as soon as the latter have taken their places on the Bench all those standing resume their seats.

Generally speaking, Counsel for the Appellant stand first, the Senior Counsel arguing the main issues followed by his Junior who deals with the subsidiary ones. There is, however, no strict rule as to this division of work. This is left to be worked out between the two themselves. Counsel, who stands first, has the right of reply, which has to be brief. After all the Counsel have concluded their arguments there may be a brief adjournment for about five minutes to allow sometime to the Judges to think over the judgments they are about to deliver. But this adjournment is purely discretionary and if the presiding Judge feels otherwise, judgments are delivered immediately after the conclusion of arguments. Sometimes a student Judge would come with a prepared judgment ready for delivery at any time. This undesirable practice has been depreciated and no longer resorted to by most students. If there are more than one Judge, the most junior Judge delivers his judgment first followed finally by the presiding Judge.

Post-Moot Critique

At the close of the proceedings, the Director of Moots or the presiding Judge himself, as the case may be, makes some comments and observations as to the quality of the performance put up by student Counsel and Judges. These comments are made in the presence of other students attending the moot and are designed to improve the quality of the student's moot work and to maintain a reasonably high standing of mooting. Such critiques have been found to be very useful and even appreciated by the students.

Grading of Moot Work and Award of Moot Prize

Marks are given on student's moot work. In grading a student's performance as Counsel at each Moot consideration is given to such factors as thoroughness of preparation, lucidity of presentation, cogency of argument, ability to correlate issues of law with the facts of the case, citation of relevant authorities and compliance with the procedural rules of the Court. On the other hand, the work of student Judges are graded on the basis of relevancy of questions asked and ability to deliver *ex tempore* a reasoned judgment.

Toward the close of each academic year, a cash prize known as B.A. Mallal Moot Prize is awarded to the student who, in the opinion of the Faculty, is adjudged to have performed best at moots in that academic year. The decision is taken by the Faculty at its last meeting in the third term.[14]

It may be relevant here to point out that although participation in moots is made compulsory, a student's moot work does not affect his results in the final examination. Thus it is perfectly possible for a student to fail in the final examination although his moot work may have been excellent. But if the marks in his regular course work are on the border-line, his moot work may become a relevant factor in considering whether or not he should be given a pass. Generally speaking, however, a student who is really good at mooting seldom fails in the final examination. Des-

[14] "The B.A. Mallal Moot Prize is an annual prize endowed to the University of Singapore by Professor L.A. Sheridan, former Professor of Law and Dean of the Faculty, for the promotion and encouragement of legal education and to commemorate the first award of the honorary degree of LL.D. in the University of Singapore made at the behest of members of the Faculty of Law to Mr. B.A. Mallal." See the University of Singapore Calendar, 1964-65 at 312. Dr. Mallal is the Editor of the Malayan Law Journal and doyen of the legal profession in Malaysia. He is also the author of many books on practice and procedure.

pite the relatively inferior position of moot work, students always take an active interest in the moots and, when assigned with one, work most conscientiously, sometimes even at the expense of his or her regular course work. It has, therefore, been necessary, in making moot assignments, to give the students at least two weeks so that they have sufficient time to prepare their cases.

Visiting Judges

It has been the tradition in this Faculty since the inception of Moots in 1957 to invite distinguished members of the local Bench and Bar to come and preside over the moots from time to time. These visits have now become a regular feature of the moot programme. This year, for example, three of the Moots held in the first term were presided over by, in chronological order, a practising Barrister, a Judge of the High Court and a Judge of the Federal Court.[15] Such visits afford the students concerned an excellent opportunity of arguing before a real Judge or an experienced lawyer. Thus, when they become members of the Bar after leaving the University, they will have acquired a certain degree of experience and self-confidence. Apart from this, the visits are a means by which a better understanding and closer co-operation between the Law Faculty and members of the profession could be promoted. Some persons have expressed concern over the apparent lack of interest on the part of members of the local Bar in the affairs of the Law Faculty. It is submitted that the position in Singapore is certainly not worse than that obtaining in such other countries of the Commonwealth as India, Pakistan or Ceylon. If the situation is still unsatisfactory, it is perhaps because, in the first place, this Faculty is still a very young Faculty, the Department itself having been born in 1956—and certainly eight years is not a very long life for a Law Faculty—and, in the second place, most of the practising lawyers in Singapore are barristers who received their entire legal training in England. It is, therefore, not very surprising that some of them do not take much interest in the affairs of the Faculty. On the other hand, there is a significant number of leading lawyers and Judges, who are already taking an active interest in this Faculty. Thus, in the course of time, there is bound to be more and more understanding and co-operation between the profession and the Faculty of Law.[16]

[15] They are: Mr. Po Gwan Hock, Chariman of the Singapore Bar Committee; Hon. Mr. Justice A.V. Winslow of the High Court in Singapore and Hon. Mr. Justice Tan Ah Tab of the Federal Court of Malaysia.

III. Conclusion

For one, who has for some time been responsible for the direction of the moots in this Faculty, the tendency to stress their importance is quite strong. However, it can hardly be gainsaid that the moots are a useful method of training the law student in the skills of the profession. In fact, in most of the law schools in the United States, the moots have long been recognized and accepted as an established institution. This is one effective answer to the charge that the present system of university legal education does not equip the law graduate with the knowledge and skill necessary for the practice of the profession. To be sure, one does not pretend that by the time a student graduates from this Faculty, he is at once in a position to compete with those who have been in the profession long before him. He will have to devote some more years to learning the tricks of the trade mainly through trial and error. In fact, as we have seen above, our law graduates have to spend at least twelve months in the chambers of a senior practitioner before he can be admitted as an Advocate and Solicitor. However, this requirement for chamber reading, which, as pointed out above, is more concerned with form rather than substance, has been waived by the High Court in the case of some of our own graduates.[17] It is, therefore, clear that the training given in this Faculty is of such a nature that our graduates are able to engage in private practice of the law without much further training.

This is not to say that our LL.B. degree is a purely professional degree. Professor Sheridan, the founder of this Faculty, has himself admitted that it is essentially academic in nature[18] and that the general aims of legal education are "to indoctrinate the student with a respect for truth, to develop the students' powers of reasoning until his actual performance coincides with his potential capa-

[16] One might add that in order to help the students get a better understanding of the actual working of the Courts and to acquaint him with the procedure followed therein, occasional visits by small groups of students to the Courts are organized under the supervision of the Director of Moots. These visits are not compulsory, but they are arranged whenever there is a sufficient number of students, who desire to make such trips.

[17] See Note in 29 M.L.J. xxv (1963).

[18] See L.A. Sheridan, *Legal Education in Malaya*, 10 Far Eastern L.R. 489, 490 (1963).

city, to help him to work on his own, to direct his mental development through study in a limited field, and to provide a general approach and environment tending to enhance the culture and civilization of everyone coming into contact with him."[19] These are some of the objectives that could be achieved through a systematic and well-organized programme of moots. In moots the student learns to draft pleadings and prepare his own brief and to search for authorities. In moots the student learns that he must be prepared to work independently and to think on his own legs. He also learns that Counsel appearing for the other side is not an enemy to be shunned and despised but a colleague whose friendship must be cultivated. In moots the student also learns that it is not the 'winning' of the case that matters, but that he is an officer of the Court whose primary duty is to assist the Court in arriving at a fair and just decision.

In fine, training given in the moots instill into the minds of the student a spirit of camaraderie, a desire for truth and justice and a sense of responsibility—qualities that are essential on the part of those who are going to play an important part in the building of this new nation.

[19] *Id.* at 491.

THE ROLE OF LAW SCHOOLS IN PRESERVING, STRENGTHENING AND PROMOTING DEMOCRATIC INSTITUTIONS*

*L. R. Sivasubramanian***

I deem it a special honor extended to me to be called upon to place my thoughts before you on the very important subject of the Role of Law Schools in Preserving, Strengthening and Promoting Democratic Institutions. By anticipation of the concurrence of the Chairman, Organizing Committee of the Conference, I have added the word 'promoting' to the other functions of the law schools, — an addition which I deemed as essential. As a Law Professor for over thirty-six years, and as the Dean of the Law Faculty, for over eight years at one university, and nearly sixteen years in another, I had been constantly thinking of what the functions of a proper law school should be in relation to society, and I endeavoured to build and develop the law schools of which I was in charge, with what success it is not for me to say. The opportunity, therefore, to speak to you on this subject, and to get benefited by your views, is most welcome to me.

To many it may seem that what is going to be presented in this paper is the most obvious, and that a discussion of it is like holding a torch to the midday-sun. One fervently wishes it were so; alas, it is not. No student of history can fail to have noted how, throughout the ages, democratic institutions had to be cultivated and strengthened in the most adverse conditions against successive and many terrible onslaughts against them; how throughout the centuries, in all parts of the world, among all people, there has been

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