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Legal Education in Sri Lanka: Some Personal Reminiscences¹

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The diamond jubilee of any institution is a landmark event in its history. It is also an occasion to turn back the pages of history, to declare victories, reflect on experience, recognize disappointments and failures, and charter a new path. And of course, chartering that new path, as this Law Faculty will do, will be with the objective of leaving a trail that can impact the law and legal profession of this country. For that is surely an objective worth striving for.

The Faculty of Law of this University is somewhat unique in the Faculties of the University of Colombo. Its birth in one institution, the University of Ceylon, Peradeniya, its transfer and development in another, the University of Colombo, is not reflected in the history of other faculties like Medicine, Science, Arts and Education. All these Faculties were connected in their origins to the institution with a metropolitan location, that we now call the University of Colombo.

It is a special pleasure for me to speak in the Senate Room where I had the privilege to address Senate and Council as Vice Chancellor, when we met for the first time twenty years ago in this beautiful room. A Senate room has been a special place for me, bringing back memories of the many times in which we as academia, in that great tradition of intellectual freedom described in the familiar text of antiquity, the *Milinda Prassna*, debated, agreed, disagreed; always parting in friendship as colleagues in one University.

I hope I will be forgiven for indulging in the privilege of an elderly Emeritus Professor of the Faculty and the University, in engaging in some “anecdotalism”. I was in a group of 3 woman students in a predominantly male class of 25, that became students in the Department of Law, University of Ceylon, Peradeniya. We were of a privileged sixty’s generation. We had all received, irrespective of

¹ This is an edited version of the keynote address delivered at the inauguration of the Diamond Jubilee Celebrations of the Faculty of Law, University of Colombo, on 16 September 2022.

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our gender and social class, Minister CWW Kannangara's "pearl of great price". We were recipients of an excellent world class education from both private and national State schools, the Colleges called *Madya Maha Vidyalyayas*. We had gained admission without stress and competition, into an internationally and regionally recognised centre of excellence in university education. We lived as undergraduates in what still is a stunningly beautiful college campus in the hills of Peradeniya. We spent three glorious years with equal opportunities for joyous student fellowship, learning the law from erudite eminent scholars, and sometimes, gifted and inspiring law teachers. And that education created a path for not just those who had topped the honours list in our class. Each and every graduate with an LLB degree was able to pursue fulfilling and excellent careers in academia, law practice, public administration, the corporate sector, and both regional and international organizations. Our higher education reforms now focus on the national need to make university graduates "employable" with "soft skills" and "emotional intelligence", to satisfy quality assurance in higher education. The legal education we received decades ago, realised the promise of that Sinhala *kaviya*: "*ugatha mana shilpayamai mathu rekhina*". Perhaps we need to reflect more on those earlier goals and intellectual traditions in university teaching and learning, that brought with them a fluid connectivity between acquisition of technical skills, professional ethics and values and personal development.

We have seen in the programme presented this evening, how the Department of Law of the University of Ceylon, Peradeniya, became the Faculty of Law of the University of Colombo. Few in this room are, I think, privy to the dynamics of that significant change. Most of the staff of the Law Department, like me, were as they say, "Colpetty People", living in the vicinity of Thurstan Road and the Colombo Campus of the University. Our professor had decided on a transfer to metropolitan Colombo, as Principal of Law College. A wise Vice Chancellor (in our staffs' view) decided it was much better to transfer the Department of Law to Colombo, than lose his eminent colleague and Professor of Law. So, at an examiner's meeting, presided over by him, Vice Chancellor Attygalle suddenly said, "Nadaraja, how long will it take to shift your Department of Law to Colombo?" Professor Nadaraja, in a gesture typical of him, looked at us teachers. None of us could hide the delight in our faces. A Council and/or Senate decision, a short while later, saw us moving in one weekend to the Colombo Campus of the University. Some of my early students, who became friends and colleagues of later years, never quite forgave us for that decision. They said we had short-

changed them. We had thrown them out of the salubrious climes in the hills and a beautiful Peradeniya Campus, with its much celebrated and stimulating learning and cultural environment. We had thrust them into the “*takarang*” roofed Law Department in the concrete jungle that was then the Colombo Campus.

But we were at least located near a beautiful “*Kottang tree*”, close to the current Auditorium. Even better, our law library was located within the Campus’ architectural jewel – the beautiful lobby and downstairs rooms of College House. Anyone who reads the stunningly beautiful and elegantly presented coffee table book on College House by this University’s Professor Sandagomi Coperahewa, will understand how privileged our law staff and students were to read and study law in this historic building of great value and beauty.

Soon after this, the Law Department gained a new birth in the separate University of Ceylon, Colombo. That was not a smooth transition, but a birth by a kind of caesarean section. The first “battle of the sites” occurred when Vice Chancellor Ivor Jennings successfully negotiated a settlement of a hotly contested policy decision, and located our first national university, the University of Ceylon, in the beautiful surroundings of Kandy and Peradeniya. The second “battle of the sites” occurred when staff and students of the Colombo Campus refused to be separated from the University of Ceylon with its acclaimed academic recognition. Students of the medical faculty, including many eminent professors and staff, led the opposition to the policy change. The whole Colombo Campus went on strike with strident student protests. That posed a problem for the Law Department, because our student union decided to support the policy change. However, no water cannons, police or tear gas. Just the very usual and accepted storming of university buildings – in this case, the Law Department. I had my first real life experience of student activism that was to replicate often in my career as a Dean of the Faculty and Vice Chancellor: negotiating a safe passage for myself and my students and colleagues in an aggressive student “*aragalaya*”.

Typical of the times, consensus and compromise with respect for passionately held and diverse views, settled the matter. Two new universities were established with a name that was linked to the University of Ceylon. The Law Department was reborn as the centre of university legal education in the country, in the University of Ceylon, Colombo. In time, the passion of an older generation, especially in the Medical Faculty, to link with the University of Ceylon was

replaced, quietly and without protest, by indifference. The umbilical cord to the parent University of Ceylon was severed. When the dust settled on that crisis, and partly due to the Law Department's support for the policy decision to create new universities, the Department of Law acquired the status of a Faculty of Law. It is of interest that when this happened we had 50 students, and a handful of permanent staff. All three of us, one professor and two lecturers, became members of the highest academic body, the University Senate. Membership of this body was considered at that time a privilege. And with good reason. As a young lecturer, I was privileged to be a member of a Senate that had many eminent and articulate Professors, an inspiring learning experience on academic ethics, interaction and traditions, in a respected seat of learning. Today, Departments have to prove themselves to be permitted by the UGC to acquire Faculty status. What a smooth transition we had when our modest law Department was given, (unasked for) Faculty status!

As we celebrate this Diamond Jubilee, it is also relevant to note the markers of the Faculty's contribution to legal education in the country. We now have, I believe, 80% female students, and a staff profile of two men to perhaps 10 women professors. Stunning statistics by world standards on legal education. Yet, when I received my appointment with a telegram from the Dean, I was the only woman lecturer in the Department. My fellow postgraduate students in a very prestigious law school across the oceans said, "How come Savitri? It would take us a decade at least to obtain a Faculty appointment in a law school." Professor Lani Guinier of Harvard has remarked how when she was one of two or three women sitting in the front row in a Harvard Law School classroom, every professor would begin the class with "Good morning gentlemen". Here was I, in my tiny Ceylon, obtaining a post in the Law Department, only on the basis that I had achieved higher honours (or a class) than the male graduate who was considered for the post. At that time, the word "honours" meant high academic achievement – not the length of a study programme!

So, what has worked for all my women colleagues through these 7 decades. The magic door of gender neutral and *de jure* formal equality, that prevented the University appointing only males had opened for us. But of course, unlike my colleagues, I had to prove myself, especially to be taken seriously. The refreshing and invigorating winds of the CWW Kannangara reforms on equal opportunity for women had not, it seemed, blown so easily through the Board Room and the

classroom. At my first examiners' meeting, I recall Vice Chancellor Attygalle looking at me with a steely stare as I entered the room, with the question: "Who, may I ask, are you"? My Head of Department, Professor T. Nadaraja said somewhat timidly and apologetically (perhaps even questioning the wisdom of his Department's decision) "this is our new Assistant Lecturer in law". The Vice Chancellor looked down at his paper in silence, and proceeded with the meeting.

And the classroom? My first lecture? Prof Nadaraja assigned me my first course in Commercial law, a subject I had avoided with determination in my undergraduate LLB programme. I walked in to my first lecture with butterflies in my stomach. An all-male small class of final year law students looked at me cheekily with a look of amusement that they did not bother to conceal. That look said it all; "Who may we ask are you"? That class, either because of or despite my teaching, became an eminent university academic, President's Counsel, and a judge of the Supreme Court.

Nothing in that first year of teaching convinced me that I desired a future career as a university academic. Looking for a swift exit, I applied for a post at the Central Bank in Colombo. When I walked into the interview, my all-male co-applicants had with them large, elaborately framed photos of their degree certificates. I realised with some shock that mine was neatly folded in my slim handbag. But I got that job, minus the photo! I did not accept it because the late Dr Gamani Corea, who chaired the interview panel explained that I could not expect the higher university salary scales of that time. The irony of this struck me when, as Dean, I joined my colleagues in negotiating with the UGC for University salaries that would be linked to the much higher salary scales of the Central Bank.

So, equity of access has come to us women despite some negative gender biased and stereotypical values in academia and university legal education. The challenge now it seems is to establish schemes of recruitment and work norms that encourage male participation as students and teachers, to ensure gender balance in the Faculty. The perception that academia is a soft option for women who want a work life balance linked to their family responsibilities discourages commitment to the objectives of teaching and research in a law school. Work life balance and career advancement and fulfilment are important for both women and men and must be addressed in university policy and planning. Similarly, the

importance of linking university, legal education with the professional training of lawyers, is a trend seen in Commonwealth countries and other regions.

The Sri Lankan medical profession commenced university teaching of their disciplines about the same time as the legal profession. While the University of Colombo's Medical Faculty has closely linked academic and professional training, university legal education in the Law Faculty has developed in a clear parallel track with the Sri Lanka Law College. This issue has not been addressed in all these decades, and may also account for the distortions in gender balance in university legal education. Schemes of recruitment at the entry level and later must be rigorous enough to demand professional excellence, and scholarship at all levels. I am not sure whether the current schemes of recruitment of the UGC, with convoluted and poorly drafted provisions, should be sustained, without serious review. I was a member of the UGC when it drafted the first scheme of promotion to the post of Professor. The distortions that emerged later were captured by a Vice Chancellor who told me of a Professor who obtained full marks for research on abstracts. He was known as the "abstract Professor"! Flawed schemes for recruitment and professorships debilitate universities and discourage the best applicants. One successful applicant described the process as a "nightmare that they would not wish for their worst enemy". Such a situation is counterproductive, given the ambitious objectives of the UGC on quality assurance in higher education. It is surely time to recognise, as law schools across the world do, that academic law and practice should connect in a smooth flow as in other fields like architecture, engineering and medicine, in scholarship as well as legal practice. Many of our best law graduates now practising law, are also acquiring a reputation as legal scholars. They have a role model in an earlier generation of law graduates who were appellate justices and frontline lawyers, specialising particularly in public law and constitutional law.

Permitting law teachers to appear in the Appeal Courts in selectively chosen important litigation with defined time to be spent on such assignments, and with Council approval, is a change in university legal education that should have come decades ago. New norms of political correctness in Councils and UGC such as "how can we allow our law teachers in State universities to appear in cases against the government" (as will often happen in fundamental rights litigation) must be challenged. Such attitudes contradict foundational values on intellectual independence, freedom of thought and expression in scholarship, research and

teaching, that I think universities have tried to nurture for decades. We must recall that Professor Sarathchandra, the famous scholar, led the opposition to the legal reforms in Minister Iriyagolla's time that undermined university autonomy. I myself received permission from the Council to appear with my husband and a team of lawyers in a celebrated case that challenged a government Bill.

My colleagues in the Department of Public law in particular must also contribute their scholarship and engagement and impact to promote the idea of accountable university administration, grounded in both the rule of law and the constitutional imperatives on administrative justice. Arguments based on an antiquated Establishments Code have, as we know, been rejected in the *Pelaketiya* case. This case clarifies a university's or educational authority's responsibilities in the exercise of power and limitations on those powers. The Supreme Court in this landmark decision reminded that regulations like the Establishments Code cannot limit fundamental rights under our Constitution to freedom of speech and expression. The Code should not be misinterpreted by inexperienced university administrators, sometimes employed as legal officers, who give incorrect advice.

As the Law Faculty celebrates its 75th anniversary, it is useful to recall its contribution to the justice system of our country through its alumni from the time a Law Department began to teach law in universities. The decision to teach law in the University of Ceylon was made in 1947, and the grant for the first chair came from the Council of Legal Education consisting of judges and lawyers. The person selected to hold this post was Justice Soertz, a distinguished retired and senior judge of the Supreme Court. Thus began a connection to legal practice and the administration of justice in the courtroom, that should be sustained through future decades. The staff-student ratio for the first batch of law students was 4 to 3 law teachers. It must have been daunting to begin an undergraduate LLB with no preparation. Perhaps it was the jurist and scholar Sir Ivor Jennings, a known workaholic, who could have achieved that feat. The first students were a batch of 4, beginning their law programme with less than minimum facilities in Colombo in 1947, and moving to Peradeniya in 1948, to the new Department of Law, in the Faculty of Arts of that campus. The Faculty's Golden Jubilee was celebrated in 1998, followed by ten-year anniversaries in later decades. This year's 75th Anniversary is marking the date as 1947.

The first batch of four law students received their degrees in 1950, from the Governor General of the Country, who signed their degree certificates. This batch produced a “*magister magistorum*”, (a teacher of teachers), who inspired generations of lawyers and judges, and became himself an eminent human rights and constitutional law practitioner. Others became an Attorney General and an Inspector General of Police. Alumni have contributed at the highest levels of the judiciary, academia, law practice, public administration and administration of justice in our courts. All the new Law Departments in public universities in this country, in the Open University in the 1980s and the University of Peradeniya, and the University of Jaffna more recently, have been initiated by honours graduates of the Law Department and Law Faculty, each in their own way striving to create centres of excellence, linking the best past traditions with new thought and ideas. Many of our alumni have obtained what we once called chairs – the highest post of Professors in academia in universities in Sri Lanka and overseas.

Despite the silo approach to academic and professional legal education referred to earlier, this institution counts as alumni two Chief Justices, two Attorneys General, many President’s Counsel and Queen’s Counsel, and eminent judges of the Supreme Court. Justices Mark Fernando and ARB Amerasinghe, both of them recipients of the University of Colombo LLD, and Justice Prasanna Jayawardena, contributed to jurisprudence in public law that any country can be proud of, especially in the impact on the lives of citizens. Late Justice Prasanna Jayawardena’s contribution is especially striking given the short span of his judicial career in our apex court.

Perhaps because of the very nature of our discipline, law, this Faculty has somewhat uniquely, many alumni who have become politicians and public figures. We can count as alumni one elected Prime Minister and unelected President, and two Ministers of Foreign Affairs. Professor GL Pieris, an alumnus with a stellar academic record, and lawyer and distinguished jurist, Dr Neelan Tiruchelvam PC, collaborated and worked together in the 1990s to draft a new Constitution for this country. Much consultation, debate, discussion and thought went into that draft Constitution of 2000. It had forward looking provisions that addressed many of our current concerns. It provided for the abolition of the Executive Presidency. It had provisions strengthening fundamental rights, the independence of the Judiciary, including impartial procedures for impeachment. It also had important provisions on power sharing between the central

government and the provinces. We were then in the midst of the harrowing 30-year armed conflict that touched all our lives and destroyed many of them, including Neelan Tiruchelvam.

Yet, sadly for our university system and the citizens of our country, this initiative on Constitutional reform to find solutions to urgent public concerns was not completed. Our current President, an alumnus of this Faculty and University, could not give the important and necessary leadership to achieve compromise and consensus and help pass the Constitution of 2000 in Parliament. Two decades later, we are trapped in institutions of governance that desperately need fundamental change.

If the 2000 Constitution had been adopted, we would not be still speaking of abolishing the debilitating institution of an Executive Presidency. We might have begun to walk a path towards accountable governance to a sovereign people. We may have avoided national bankruptcy, and the dishonour of having three different Chief Justices in three days after seriously flawed impeachment proceedings. Most importantly, we may have developed a system of power sharing that closed the spaces for the toxic identity politics of the last two decades, and resolved our “national question” with justices for our minority communities.

What of the future in the complex realities of today? The Faculty has begun an extensive curriculum review after 27 years that will provide an opportunity to respond to current and new challenges of resources, and the tradition of “in person” learning with “talk and chalk and a microphone”. This has provided the foundation for legal education in our country. New thinking is necessary but we must also link to the best of past traditions in scholarship and learning, contextualising change in current realities of our times, for they will surely impact plans and visions.

Some old issues that have been stubbornly resistant to change must also be considered carefully by the Faculty and the Senate of the University. What is to be a forward-looking language policy, providing equality of access while sustaining the quality of legal education? Professor of Law, T. Nadaraja, argued for a restricted intake of 50 law students for the LLB programme for years, on the argument that “the library is the laboratory for law teaching and learning”. In

this IT world, focusing on “knowledge based” and “brand” education, can professional education reject, as it seems to have, the importance of providing access to comparative scholarship, thought, ideas and a law library? In my time, as students and teachers, everyone had to know some Latin and translate a paragraph of a Roman Dutch law text. That paragraph was like Greek to those of us who had minimal knowledge of Latin. A student who has minimal knowledge of English will look at a book in a law library today and close its pages.

We in our time sat in the library, perusing long judgements of the South African Courts that analysed the Roman Dutch law, oblivious to the fact that this jurisprudence was from racist and apartheid South Africa. Those judgments were the source of legal knowledge on Roman Dutch law. But today, students can access a wealth of knowledge, wisdom and comparative jurisprudence in English. Should the Faculty, now be moving away from mono-lingual to bilingual legal education?

Official legal materials and administration of justice give prominence to Sinhala and Tamil. However, access to vibrant scholarship and ideas on law and connected disciplines can be obtained only through a knowledge of an international language like English. Sri Lankan lawyers need a knowledge of at least one national language, and English as the important “link language” of scholarship and learning. This is what our Constitution now envisages as a language policy.

Sharing resources and facilities between Law programmes in universities in a collegiate environment seems urgently needed at this time. This is not a context for adversarial competition, but for developing collegial consensus and inter university support in strengthening legal education. My classmate and colleague, Dr Wickrema Weerasooriya, initiated the idea of a UGC Standing Committee on Legal Education where all Law Departments would be represented. The objective of this UGC Standing Committee is to provide a forum for discussion and raise critical issues relevant to developing norms and standards in legal education. Leadership by the UGC seems now to be considered that of a “supra authority”, in complete contradiction to the Universities Act. Competition between the Law Departments for UGC recognition can prevent collegial interaction. Perhaps the time is right for the Bar Association to give leadership and create a committee

of all legal education institutions, rather like the Committee on Legal Education that functioned some time ago in the regional organization, LAWASIA.

As we conclude this event on the Diamond Jubilee Celebration today, let us reflect on why we study and teach law in a university. It is because the discipline of law encourages debate and discussion, in a vibrant intellectual tradition, in order to make that abiding link between law and justice for which societies have strived through decades and generations. We are living in difficult and disturbing times today, in our beloved country. We also see the living reality of the place of law in delivering justice, to ensure political stability with democratic, corruption free governance, responsible use of national resources, economic growth and sustainable development. It is perhaps because we as lawyers have not contributed enough to these realities that our citizens may be inclined to agree with that disturbing bard, Shakespeare, and say, “kill all the lawyers” – and argue that we must forget the Constitution.

Democracy as a form of government has been integrated into our national psyche for 75 years. We must treat this as a heritage to cherish and develop, especially as law teachers and students. A Law Faculty must be the place that “walks the talk” and motivates everyone in the University in particular to understand that the law must not be bent as an instrument of personal advancement; that it provides the foundation for limiting abuse of power and authority, whether in the family, the community, or by the State. When there is a written Constitution that is in the best tradition of constitutionalism, it is, I think, the duty and responsibility of a Law Faculty to stand firmly committed to the abiding values of university autonomy, non-deference to political pressure, intellectual rigour and debate with respect for viewpoint difference. All of these values are embedded in the central and core legal norms in a democracy. Lawyers in particular and Law Faculties must safeguard freedom of thought, speech, expression and dissent.

When SWRD Bandaranaike addressed the nation at the Independence Day celebrations of 1948, he said “No people can live on memories alone ... But it is only against the background of the past, that the present and the future can be viewed in their correct perspectives”. Great institutions value their traditions and ethics in scholarship, learning and law practice, and gain from them, even as they seek to transform and change and respond to contemporary challenges. I hope

that the Faculty of Law and those who give leadership for change will be guided by those words of wisdom, as they chart a new path in this Diamond Jubilee year.
