Law Academics and Law Practitioners – A Comparison

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There are a number of reasons why a comparison between law academics and law practitioners in the context of the work of the Stockholm Centre for Commercial Law is highly relevant in today's tumultuous world.

The first reason is that our laws are codes of conduct for survival. They are the largest and most comprehensive codes of conduct that we have. They are ideologies built up over centuries which are the essential foundation of our societies. Humanity and individuals could not now survive without them. Civilised laws are commonly drenched and saturated with a sense of morality, justice and efficiency, or should be. These mighty codes are necessary to stop the fighting, to civilise us, and to keep the peace.

Every sentence above is a platitude. Yet these simple platitudes have not got through to everybody. Indeed, they have hardly got through to anyone, except a vanishing minority.

How would you have a democracy without laws? How would you have taxation to maintain our countries? How would societies survive if there were no police, no courts, no regulatory codes, no contract law, no company law, no criminal law, when anybody and everybody could do just what they liked. We would end up with gangs roaming the streets, with feuds and vendettas fought openly while the population huddled out of the way in terror.

Law academics and law practitioners are essential to service the law, to analyse it, to teach it, to use it, to explain it. In those tasks, the Centre excelled.

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The second reason is that the law in about 95 per cent of the 320 jurisdictions of the world is based on models worked up in Western Europe. They were spread, mainly during and after the industrial revolution, by imperialism, by emulation, and by borrowings. About half of the jurisdictions of the world received the laws by imperialism and the other half by deliberate borrowings. For example, virtually all the jurisdictions in central and South America adopted versions of the Napoleonic codes via Spain. Kemal Ataturk in modernising Turkey in the 1920s borrowed the Swiss commercial codes. Japan borrowed from Germany at the end of the 19th century. Both Russia and China based their new laws on Western models after transition to market economies in the last part of the 20th century. These borrowings still continue apace, including now extensive borrowings from the United States, notably insolvency laws and laws on security interests.

Law academics and law practitioners in Europe are necessary to explain the several traditions emanating from Western Europe and what they sought to do. The reasons for the historical development of sophisticated laws in this region of the world are complicated but in reality, it doesn't matter who thought it all out, so long as the job was done by somebody. Also, that exercise proved that justice is not just tribal. Justice belongs to everyone, even though we may differ on this or that aspect.

In both of these cases the concept of the Stockholm Centre for Commercial Law was a symbol and an example to the rest of the world as to how we should bridge the gap between academics and practitioners.

I have been both a law academic and a law practitioner. I worked for 50 years in a large City of London law firm and I have taught courses at many universities around the world. I saw things from the inside. It is worth briefly mentioning some of the differences between the two roles so far as I personally was concerned.

In the first place, to me teaching students was a delight. I never got bored, even though I was saying the same things over and over again. It was a delight particularly because of the enthusiasm of students. The teacher always had to be improving – to make it clear, to make it memorable, to explain why the rules are what they are.

Secondly as an academic you have relative freedom to control your life. You do not have to meet constant deadlines from clients and you do not have to work until late every night. During most my working career, there were very few weekends where I did not have to work. Marking examinations was

an ordeal, particularly the strain of achieving fairness between students. But that was part of the task.

Thirdly, being an academic was relatively peaceful. A practitioner's life in the commercial world involves ferocious negotiations. Insolvencies, takeovers and litigation can be dramatic battles.

There are some downsides of being an academic. For example, it can be depressing to see students going off and getting jobs in top firms paying a multiple of the average professorial remuneration. Of course, academics can augment their remuneration by giving opinions on difficult legal questions to practitioners or acting as expert witnesses or as arbitrators in business arbitrations. Overall, my impression was that academics accepted the pay differentials as part of the deal in return for doing what they really wanted to do.

The second downside experienced by some academics is that they sometimes felt excluded from the knowledge about advanced legal transactions, such as international bank syndicated credits, bond issues, derivatives, project finance, private equity, and corporate takeovers. It was a major aspect of the Stockholm Centre from the very beginning that it was explicitly intended to close that gap, firstly by developing their own expertise and secondly by bringing in practitioners for lectures to the students.

When I was young having just completed two universities majoring in English literature and history, my father asked me whether I had considered a career. I responded immediately that I wanted to teach Shakespeare. He asked what the career master at my school had recommended and I replied that they thought that I would be a good priest. "Not much money in it," he said sagely. "Have you thought about the law. It is a similar sort of job."

He himself was a lawyer and also his father was a lawyer. He gave me a case to read about four sailors sailing a racing yacht from Falmouth in England to Sydney in Australia to deliver the yacht to a buyer, a distance of about 12,000 miles. The boat broke up in a storm in the South Atlantic and the sailors only had a few minutes to climb into a dinghy. They floated around for around three weeks with virtually nothing to eat or drink and then they killed the cabin boy lying in the bottom of the boat. He was an orphan aged 17. After they had eaten most of him, they were picked up by a German ship bound for Hamburg which dropped them off in Falmouth. They explained to the local constable there that what they had done was the custom of the sea. The constable pedantically did not agree that it was a custom of the sea. Two of the sailors were tried and convicted to be hanged for murder. Subsequently they were pardoned by Queen Victoria. The trial was in 1884.

That case had a dramatic effect on me, a bit like Paul on the road to Damascus. This was not like reading about Prince Hamlet whining around in the castle at Elsinore, moaning that his mum had married the man who had killed his father and what he was to do about it (nothing) for the next 5000 lines. The case of the men in the boat and the cabin boy was electrifying. The plaque which the orphan's relatives placed over his empty grave in Falmouth was beyond belief both melancholy and stirring. It read, "Lord, lay not this sin to their charge."

So, after all, I ended up as being a teacher, but not of Shakespeare, and also as a priest, but of a different ideology – the law.

My mind lies in being a practitioner, but my heart lies in academia.

I pay tribute to the achievements of the Stockholm Centre for Commercial Law over the last 25 years. I pay a special personal tribute to Professor Jan Kleineman and to Maria, to Professor Lars Gorton and Tina, to Andre Andersson, Professor Göran Millqvist, and to the many other academics and others at the University or involved in its work, who extended such hospitality, friendship and generosity to my wife and myself when we were in Sweden.

I am most honoured to be able to contribute to this Jubilee Book.