3-2017

An empirical study on the Singapore Court of Appeal's citation of academic works: Reflections on the relationship between Singapore's judiciary and academia

Wui Ling CHEAH
National University of Singapore

Yihan GOH
Singapore Management University, yihangoh@smu.edu.sg

AN EMPIRICAL STUDY ON THE SINGAPORE COURT OF APPEAL'S CITATION OF ACADEMIC WORKS: REFLECTIONS ON THE RELATIONSHIP BETWEEN SINGAPORE'S JUDICIARY AND ACADEMIA

In the light of Singapore's aspiration to be a centre of legal ideas in the region, it is opportune to examine the Singapore courts' use of legal scholarship. This article provides a preliminary map of the Singapore Court of Appeal's citation practices. It provides an overview of the Singapore Court of Appeal's use or citation of legal scholarship in its decisions over the past 50 years. It identifies and evaluates trends in the Singapore Court of Appeal's citations of academic material and the types of academic material cited.

CHEAH W L*
LLB (Hons) (National University of Singapore),
LLM (Harvard), DPhil (Oxon);
Attorney and Counsellor at Law (New York State);
Assistant Professor, Faculty of Law, National University of Singapore.

GOH Yihan*
LLB (Hons) (National University of Singapore), LLM (Harvard);
Advocate and Solicitor (Singapore);
Associate Professor, School of Law, Singapore Management University.

I. Introduction

1 It is opportune, in the light of Singapore's aspiration to be a centre of legal ideas in the region, to examine the Singapore courts' use of legal academic works. By "legal academic works", the authors have in mind various types of scholarly works. Thus, this article is not concerned with non-legal academic works that are sometimes referred to by the courts, such as factual information relating to the psychology of witnesses. The Singapore courts routinely refer to such academic works in their decisions, but the details of such use as well as its impact

* The authors would like to express their gratitude to the Singapore Judicial College for a grant, without which this project would not have been possible. The authors would also like to thank the members of the Board of Governors of the Singapore Judicial College for their very helpful comments and suggestions. However, all errors remain the authors' alone.

is less understood.[1] In the first product of a larger project, this article provides an overview of the Singapore Court of Appeal's use or citation of legal scholarship in its decisions over the period from 1970 to 2015. This article seeks to answer two broad questions: first, what are the long-term trends in the Court of Appeal's citation of academic works, and secondly, what are the wider implications of the court's citation of academic material for the legal community, in particular the relationship between the Judiciary and academia in Singapore?

2 By way of background, it is clear, even anecdotally, that there has been an increase in the Court of Appeal's citation of academic material in its decisions. Although judicial citations of academic works do not accurately or fully reflect the extent to which such works influence judicial decisions and outcomes, such works play some role in the court's construction and justification of its decisions. In other words, judicial citation of academic works, at the very least, shows that the court found the cited academic work useful when constructing and explaining its decisions to the legal community and wider public. By serving then as a one of the building blocks of judicial decisions, academic works contribute to the development of reasoned and quality case law. This recognition of the role played by academic works in the Judiciary's construction of decisions impacts the Judiciary, academia, and broader legal community. To further understand these implications, there is a need to ascertain more details about the Singapore judiciary's citation practices when it comes to academic material.

3 This article provides a preliminary map of the Court of Appeal's citation practices. There are two reasons for choosing to focus on the Court of Appeal. First, in Singapore, the Court of Appeal's judicial leadership and its role in resolving difficult legal questions within the Singapore court system is well recognised. The court's use of academic material sends an important message about how the Singapore judiciary views academic research and its relevance to the formulation of judicial decisions. Second, as this is one of the first focused empirical studies on judicial use of academic material, it was necessary in the interest of time and resources, to focus on one court as opposed to a broader selection of courts within Singapore's judiciary.

4 To answer the two broad questions posed earlier, this article will be structured as follows. Part II[2] will briefly survey, from a comparative perspective, existing debates about the relationship between the

1 One excellent and recent study is Lee Zhe Xu *et al*, "The Use of Academic Scholarship in Singapore Supreme Court Judgments" (2015) 33 Sing L Rev 25. That study follows a more preliminary study in Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAcLJ 176.

2 See paras 5–38 below.

Judiciary and academia. Research and debate about this relationship is in its nascent stage in Singapore. Part III[3] sets out and evaluates empirical data about trends in the Court of Appeal's citation of academic material and the types of academic material cited. Finally, Part IV[4] draws out the implications of these findings and puts forward some suggestions on bringing the relationship between the Judiciary and academia forward in Singapore.

II. Developments and discussions in other jurisdictions

5 While judicial citation practices in Singapore will be shaped by socio-political, legal and cultural conditions in Singapore, it is useful to consider developments and debates occurring in other jurisdictions, particularly those with which Singapore's legal system maintains historical and contemporary ties. Indeed, Singapore is part of the wider common law world with which it shares similar judicial and legal education practices.

6 This part highlights developments and debates about the relationship between the Judiciary and academia in other jurisdictions that impact the judicial citation of academic work. It focuses on developments in the common law world due to Singapore's common law heritage but also refers to other jurisdictions. This part is structured around three questions. First, what do academics do and how has this changed? Secondly, what do judges do and what are some changes impacting the judicial decision-making process? Thirdly, in the light of these changes impacting what academics do and what judges do, how have judicial perceptions of academic work and judicial academic citations evolved over time?

A. What do academics do?

(1) Development of legal academia

7 Legal academia has evolved tremendously in recent years. Although a research culture did not emerge in English law schools until the 1960s and 1970s,[5] academics in the common law world have thoroughly reinterpreted their function not only as teachers but as primarily researchers. Indeed, in England today, full-time legal

3 See paras 39–64 below.
4 See paras 65–95 below.
5 G Wilson, "English Legal Scholarship" (1987) 50 MLR 818.

academics constitute only a small minority of those involved in teaching the law.[6]

8 The evolution of legal academia from one focused on teaching to one dominated by research has been said to be down to several reasons, the first of which is simply that universities have become larger.[7] In England, this happened with the post-Robbins expansion of universities in the 1960s, which Bridge believes to be the "true beginning of an English academic legal traditional".[8] This led to legal academics viewing themselves in a better light and believing that they can make a viable contribution to the legal profession. This is in contrast to Laski's view in 1929, when he stated that "the law teachers are a very inferior set of people who mainly teach because they cannot make a success of the bar".[9] Secondly, and in a related vein, academics came to see their contribution to the legal profession as going beyond the mere education of lawyers; instead, they saw that they could make an active contribution to the development of the law itself. Together, these reasons promoted a culture of research within legal academia.

9 While law academics are now more engaged in research than ever before, there are some nuanced developments that must be highlighted. First, in contrast to the situation in civilian countries like France, Italy and Germany, legal academics in the common law world still do not see themselves as a collective body that represents a source of law, albeit an informal one.[10] The practical implication of this is that whether academic works are in fact referred to by courts is, to a large extent,[11] dependent on whether practitioners, who function as the conduit between judges and academics, refer to such work in their arguments.

---

6 W Twining, "The Role of Academics in the Legal System" in *The Oxford Handbook of Legal Studies* (P Cane & M Tuhsnet eds) (Oxford University Press, 2003) at p 920.

7 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 528.

8 John Bridge, "The Academic Lawyer: Mere Working Mason or Architect? (1975) 91 LQR 488 at 493.

9 *Holmes-Laski Letters* <http://www.archive.org/stream/holmeslaskilette017767mbp/homleslaskilette017767mbp_djvu.txt> (accessed 18 October 2016).

10 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 249.

11 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 249.

10 Secondly, the social prestige and status of legal academics in common law jurisdictions is still not the same as in civilian countries.[12] In England and other similar jurisdictions, judges and practitioners still have a prestige that exceeds that of academics. For example, when *The Times* published a list of the UK's most influential lawyers in August 2008, none of those featured in the top ten was an academic, though there were judges featured alongside practitioners in this top ten. The remaining 90 featured only four academics. In 2009, the same list included merely five academics among 100 lawyers. Although it is rightly said that such lists should be viewed with caution,[13] they do reveal, at least tangentially, the status of academics *vis-à-vis* other actors in the legal profession. Of course, academics become academics for reasons other than monetary rewards or social status, but such lower social prestige has practical implications. For example, legal academics in common law jurisdictions are not as influential as their counterparts in civilian jurisdictions. Their exact contribution to the development of the law may therefore be downplayed or not recognised.

11 Thirdly, the direction of research undertaken by legal academics has changed. In more recent times, successive Research Assessment Exercises have demanded scholarship originality and pulled scholars away from the writing of textbooks to more critical work.[14] This is a theme which will be returned to below, but it is becoming increasingly clear that judges elsewhere are finding a widening gulf between academic works – which have increased in number – and the practical relevance of such work. The practical implication of this is that while legal academics may be producing more material than before, a lesser proportion of such works is perceived by judges and lawyers to be of direct relevance to their daily work. Indeed, this is not a problem particular to the legal sphere, but also permeates other disciplines as well. A recent study concluded that an average academic journal article is read in its entirety by about ten people.[15]

12 The bigger problem undoubtedly is the reward incentives that universities provide for academics. Thus, another point to be considered is whom academics are largely writing for, given this incentive structure.

---

12 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 251.

13 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 251.

14 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 209.

15 Asit K Biswas & Julian Kirchherr, "Prof, No One is Reading You" *The Straits Times* (11 April 2015).

From the perspective of impact, Ulen has observed that academics writing in a non-doctrinal social science manner were more likely writing for each other. In contrast, legal academics who write in traditional doctrinal scholarship, and who may desire to have an impact on judges and lawyers and ultimately play a role in the development of the law, write predominantly with judges and practitioners in mind.[16] The practical impact is that different categories of academic works will be of different utility to different groups within the legal profession.

13 More pragmatically, it cannot be denied that academics' motivations are also driven by their perception, real or imagined, of the kind of scholarship preferred by universities. Ulen suggests that in the US, academic citations count more for faculty evaluations than judicial citations.[17] Burrows in turn observes that research councils and law schools in the UK prefer "expensive projects that involve empirical research and/or are multi-disciplinary rather than the highly cost-effective largely solitary research … that typifies research in private law".[18] And, although the assessors later disputed this, UK legal academics believed that doctrinal research was looked at less favourably in the 2015 Research Excellence Framework ("REF") exercise than empirical or highly theoretical work.[19] All of these have had an impact on the type of academic work that legal academics put out and, correspondingly, their practical usefulness to judges and practitioners.

B. What do judges do?

(1) Judicial power in present context

14 As French CJ has pointed out, some of the enormous amount of literature on the judicial function appear to over-complicate the judicial

16 Thomas S Ulen, "The Unexpected Guest: Law and Economics, Law and Other Cognate Disciplines and the Future of Legal Scholarship" (2009) 79 Chicago-Kent LR 403 at 414.

17 Thomas S Ulen, "The Unexpected Guest: Law and Economics, Law and Other Cognate Disciplines and the Future of Legal Scholarship" (2009) 79 Chicago-Kent LR 403 at 414.

18 Andrew Burrows, "Challenges for Private Law in the 21st Century", Oxford Legal Studies Research Paper No 3/2016 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710270> (accessed 18 October 2016) at p 4.

19 Andrew Burrows, "Challenges for Private Law in the 21st Century", Oxford Legal Studies Research Paper No 3/2016 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710270> (accessed 18 October 2016) at p 4.

function.[20] At its core, he identifies the judicial function as simply the determination of justiciable disputes in a process that involves:[21]

- The reception of evidence relevant to the issues in the dispute and findings of fact based on that evidence[.]
- [I]dentification of the rules of law whether they be common law, statutory or constitutional rules applicable to the facts as found[.]
- Application of the rules of law to the facts as found in order to determine rights and liabilities[.]
- The award or refusal of relief.

15 French CJ observes that an important characteristic of the judicial process is that it is focused on the resolution of the matter before the court. Thus, if a judge provides written reasons for a decision, those reasons are written "by way of explanation for the decision in the particular case".[22] To that extent, the explanation, in so far as it concerns the law, "may involve analysis of the history of a legal rule, its evolution, its underlying policy and its contemporary enunciation".[23] Similarly, where the case involves the novel application or development of an existing law, the law may have to be stated in such general terms that will aid future courts in its application.[24]

16 Beyond these general points, however, what are some of the recent developments in common law reasoning that may have affected the relevance of academic works?

---

20 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 14.

21 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 10.

22 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 11.

23 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 10.

24 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 10.

(2) Developments in common law judicial reasoning

(a) Judicial development of the common law

17 First, courts in common law jurisdictions have in recent times regarded the development of the common law as one of their important functions. How far they should do so in an instant case can be debated but it is not controversial that, when considered over an extended period of time, courts do develop the common law. There are several reasons for this recent development that cannot be fully discussed here, but one reason may be that judges now perceive themselves not as officers of the State but as "highly skilled specialists at the peak of the profession",[25] who may therefore feel the need to express their reasons more fully. Moreover, unlike common law judges in the past who may not have had formal university legal education, judges today are graduates from the law faculties of elite universities, which have in turn become more academic in the teaching of the law.[26] Finally, judges today have more ready access to academic works, made possible by the digitisation of such works as well as the introduction of judicial assistants.

(b) Relationship between judicial and legislative powers

18 The second development in judicial reasoning is precipitated by the increasing expanse of legislation. And this itself results from a clearer delineation of the relationship between the judicial and legislative powers. In England, the separation of these powers as expressed in legislation only came to be in the second half of the 14th century.[27] By the 15th century, not only had the House of Commons' control over the enactment process strengthened, it also began to put texts of bills into the exact wording of the statutes being proposed.[28] However, even though judges were no longer significantly involved in the drafting process, they still wanted a say over the validity of a statute.[29] This followed one version of the Aristotelian argument, which held that a statute that yielded an outcome contrary to justice should be disregarded.[30] However, such a view lost its validity in the

25 S Hedley, "Words, Words, Words: Making Sense of Legal Judgments, 1875–1940" in *Law Reporting in Britain: Proceedings of the Eleventh British Legal History Conference* (Chantal Stebbings ed) (London-Rio Grande, Hambledon, 1995) at p 182.

26 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 238.

27 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 22.

28 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 23.

29 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 27.

30 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 28.

17th century, particularly following the Revolution of 1688, which placed limitations on the power of the king and vested legislative authority in Parliament.[31] By 1765 Blackstone was able to observe that:[32]

> [A]cts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it … for to set the judicial power above that of the legislature … would be subversion of all government.

19 Judges, now no longer really involved in the enactment of legislation and faced with the prevailing thought that Parliament was representative of the people's will, considered themselves "less informed than Parliament" and "began to be reluctant to tread in political fields" and "to show a greater deference to Parliament than they had shown before".[33] It had become accepted in 19th century Britain that courts cannot overrule what Parliament enacts, and that the judicial power is subordinate to the legislative power in so far as common law must yield to legislation in areas of conflict.[34] This has remained the view in the English legal system in contemporary times; in the 1968 case of *Madzimbamuto v Lardner-Burke*,[35] Lord Reid held that if Parliament chooses to do any of those things that most people, for moral, political or other reasons, regard as improper, the courts could not hold the Act of Parliament invalid.[36]

20 However, this led to the judicial recognition that the common law remains the exclusive domain of the judicial expertise. The Judiciary's impetus to develop the common law was arguably further enhanced with this development.

(c) More citations to comparative case law

21 Thirdly, judgments around the common law world are becoming increasingly comparative. In the UK, after 1972, judges needed to be more familiar with continental jurists who were influential on matters of European Community Law. After 2000, familiarity with continental jurists' works on the Strasbourg Human Rights Court also

---

31 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 31.

32 1 Bl Comm 91, as cited in Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at pp 30–31.

33 P S Atiyah, *The Rise and Fall of Freedom of Contract* (Clarendon Press, 1979) at p 384, as cited in Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at pp 33–34.

34 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 34.

35 [1969] 1 AC 645.

36 Neil Duxbury, *Elements of Legislation* (Cambridge University Press, 2013) at p 37.

became necessary.[37] Concurrently with comparative law in the European sense, English judges also become more comparative in their approach. For example, in *Henderson v Merrett Syndicates Ltd*,[38] Lord Goff examined other jurisdictions' views of concurrent liability in tort and contract and decided that there was nothing undesirable about it in jurisdictions that adopted concurrence.[39] This means that legal academics' work about a different jurisdiction may well be relevant; certainly, more so than before.

22 Together, these three characteristics help inform judicial attitudes towards academia. For example, the fact that judges place greater emphasis on the development of the common law means that they are likely to not shy away from interpretative questions in new areas and turn to additional material to guide them or assist in their writing of decisions, including academic works, when these are practically relevant. Next, the fact that judges are today aware of the clear demarcation between the judicial and legislative powers means that they are less likely to develop the law when this might encroach upon the legislative power. But equally, it may mean that judges will pay more heed to the development of the common law. Finally, with a more comparative approach, judges may refer not only to academic works that are mainly "local" but more to comparative works. These points will be explored later when examining the Singapore context and the empirical data. For now, with some understanding of the nature of the judicial reasoning process, we turn to consider the judicial attitudes towards academia in other jurisdictions, and how judges cite academic works.

C. Judicial perceptions and citations of academic work

(1) From disinterest to engagement

23 Across the common law world, judicial attitudes to the usefulness of academic work have varied from disinterest to engagement. In terms of disinterest, there was originally the convention against the citing of works by living authors as authorities in judgments.[40] In the 20 years after the Second World War, judges and

37 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 531.

38 [1995] 2 AC 145.

39 *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 at 184.

40 Alexandra Braun, "Burying the Living? The Citation of Legal Writings in English Courts" (2010) 58 AJCL 27.

practitioners saw legal academics as parasitic on the work of judges.[41] Legal academics were not seen as contributors to the development of the common law, but rather as "the critic of the finer points of play".[42] Thus, academic writing was until the 1960s regarded by judges as "at best, a guide to the current state of the authorities, rather than a contribution to the development of the common law".[43] This dim view of legal academics and their work can be seen in quotes from the time. For example, Smyth referred to Sir Garfield Barwick's observation that citing academic opinion lessens the authority of a judgment.[44] Likewise, in 1950, Murray, a Scottish sheriff-substitute, a full-time judge of the lower courts, observed that "[t]he gradations of intellectual ability are infinite, and no one in his sober senses would say that a professor of law has the ability of a Master of the Rolls, or a Lord Chief Justice".[45]

24 However, with the realignment of academics as foremost researchers rather than teachers, and other concurrent developments, academic works have become increasingly utilised by judges. In his 1983 Maccabaean Lecture, Lord Goff stated that the work of judge and jurist is different but complementary and that "today it is the fusion of their work which begets the tough adaptable system which is called the common law".[46] Memorably, in the landmark case of *Spiliada Maritime Corp v Cansulex Ltd*,[47] Lord Goff described jurists as "pilgrims with [judges] on the endless road to unattainable perfection".[48] Similarly, in 1997, Birks was able to speak of the "rise of juristic literature to a law-making partnership with the judgments of the court". That partnership, according to Birks, can be seen from the fact that the law library "is nowadays not written only by its judges but also by its jurists".[49] However, even then, there remain occasions where judges have publicly doubted the utility of academic works, although not because of any perceived intellectual inferiority on the part of academics. For

---

41 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 529.

42 Patrick Devlin, "Statutory Offences" (1958) 4 *Journal of the Society of Public Teachers of Law* 206.

43 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 530.

44 Russell Smyth, "Academic Writing and the Courts: A Quantitative Study of the Influence of Legal and Non-legal Periodicals in the High Court" (1998) 17 *University of Tasmania Law Review* 164.

45 C de B Murray 1950 SLT 1 at 2.

46 The Child & Co Oxford Lecture (May 1986), reprinted as Lord Goff, "Judge, Jurist and Legislature" (1987) 2 Denning LJ 79 at 171.

47 [1987] AC 460.

48 *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 at 488.

49 P Birks, "The Academic and the Practitioner" (1998) 18 LS 397 at 399.

example, in entirely apt remarks, Justice Heydon, himself a former academic, has said:[50]

> It may be the case that some modern academic lawyers are not well positioned to complain of incoherence and obscurity in case law. That is because in many of their activities they are not concerned with attempting to expound the law as a coherent and clear system – even though that is a valuable endeavour which many academic lawyers have traditionally carried out and still do. Rather they are concerned to fillet the law, to deride the attempts of judges to expound it, and even try to explode it.

25 Several reasons have been postulated for this change in the judicial attitude towards academic works.[51] In the English context, the first is that more in the legal profession were trained in university. This exposed many potential judges and practitioners to academic writing, at a time when academics themselves saw that their role was primarily in research rather than teaching.[52]

26 Moreover, many of the reasons against the citation of academic works in judgments also came to be discredited. The most prominent of these reasons was that academic opinions of the law were not formed "on the anvil of adversarial argument"[53] and hence not, in the words of Megarry J, put through a "purifying ordeal".[54] However, as Beatson LJ has explained, this reason is no longer persuasive because, first, it is based on the misconception that judges cannot test the validity of the academic view by questioning the lawyers, and second, it is no longer true that academics write in isolation, with no knowledge of the practical aspects of the law.[55]

27 Yet another discredited reason is that citing living academics is liable to the danger that the academic concerned can change his or her

---

50 Justice Dyson Heydon, "Threats to Judicial Independence: The Enemy Within" (2013) 129 LQR 205 at 211.

51 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 531.

52 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 531.

53 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 531.

54 *Cordell v Second Clanfield Properties Ltd* [1969] 2 Ch 9 at 16.

55 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 532.

mind subsequently.[56] Indeed, this reason ignores the fact that it is well accepted that courts can, and do, change their views. At the point of decision, judges should be entrusted with being able to evaluate the academic opinion substantively, and if the assessment is that the opinion is helpful, it is immaterial that the academic subsequently departs from that view.

28 Finally, it has now been described as "hopeless" by no less a figure than Lord Neuberger the reason that courts should not cite academics because they may write to influence the outcome of a case.[57] Indeed, most academic doctrinal scholarship is aimed at ensuring the development of the law is rational and principled. To that extent, it may be said that academics are interested in "influencing" the court, but that surely cannot be understood in a sense that is undesirable. Indeed, Sir John Smith attributed great importance to his role as the commentary writer in the *Criminal Law Review* because "the Review's message gets through" to the profession and the judges.[58] The same has likewise been demonstrated with the notes section of the *Law Quarterly Review*, which has been highly influential in developing the common law.[59] Stanton in particular suggests that the modern law of private nuisance had developed out of Newark's seminal 1949 article[60] in the *Law Quarterly Review*.[61] It would be hard put to say that Newark did not write the article without the hope it would "influence" the courts; yet, this is surely the kind of "influence" that should be encouraged and not outlawed.[62]

---

56 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 532.

57 Lord Neuberger, "Judges and Professors – Ships Passing in the Night?" (Max Planck Institute, Hamburg, 9 July 2012) <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-hamburg-lecture-09072012> (accessed 18 October 2016).

58 John Smith, "An Academic Lawyer and Reform" (1981) 1 LS 119 at 120–121.

59 Neil Duxbury, "When We Were Young: Notes in the Law Quarterly Review" (2000) 116 LQR 474.

60 F H Newark, "The Boundaries of Nuisance" (1949) 65 LQR 480.

61 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 216.

62 Of course, academics may write with a more particular interest in influencing the development of the law. Beatson LJ cites the example of academics belonging to groups of personal injury lawyers who write with a view to influence the law in a financially-driven manner; this is of course not the kind of "pure" and "dispassionate" interest in influencing the law that ought to be encouraged: see Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 535.

(2) Types of academic material cited by courts

29 Judge Richard Posner has helpfully proposed that academic works fall into three categories.[63] These categories are useful as a convenient way to understand the work produced by legal academics, but the truth is that there are no absolute barriers between the different categories. Indeed, as Stanton points out, even abstract, theoretical work can contain some elements of descriptive writing.[64] With that caveat in mind, Judge Posner's three categories of legal scholarship are as follows:

> (a) *Traditional doctrinal scholarship*: These works are usually treatises and, in the American context, restatements. In the Commonwealth context, these works would also include law textbooks and journal articles "concerned with the description, critical analysis, synthesis and extrapolation of developments in particular areas of law".[65] The primary purpose of these works is descriptive, *ie*, to synthesise a body of law into coherent and workable rules of law.[66] However, even then, such work may become creative when scholars critically evaluate the current state of law and propose the correct approach.[67]
>
> (b) *Non-doctrinal scholarship*, which includes work that draws on social sciences: These works are principally represented by the economic analysis of law movement.
>
> (c) *Legal theory*: These works deal with issues that are abstract, such as the exact nature of the law and justice.

30 To these three categories, French CJ has added a fourth, namely empirical research by academics that are, due to their very nature, more concerned with the practical operation of the law and the legal system.[68]

---

63 Richard Posner, "The Judiciary and the Academy: A Fraught Relationship" (2010) 29 UQLJ 13 at 14–15.

64 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 208.

65 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 8.

66 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 208.

67 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 208.

68 Robert French CJ, "Judges and Academics – Dialogue of the Hard of Hearing", Inaugural Patron's Lecture, Australian Academy of Law (30 October 2012, Sydney) at p 9.

31 The evolution of legal academia has implications on judicial citation practices. There are two points to be made about the four categories of academic works as outlined above. The first is the degree of enthusiasm that legal academics have for each category. In the American context, Judge Posner suggests that traditional doctrinal scholarship no longer engages the interest of many academics, especially at "elite" law schools.[69] Judge Henry Edwards, writing in the *Michigan Law Review*, complained of the growing disconnection between legal education and the legal profession. In particular, he said that the law schools should be "producing scholarship that judges, legislators and practitioners can use … but many law schools – especially the so called 'elite' ones have abandoned their proper place by emphasising abstract theory at the expense of practical scholarship and pedagogy".[70]

32 In England, judges and academics alike have observed a similar shifting away from traditional doctrinal work. Lord Rodger warned that a decreasing proportion of top academics are actively involved in writing about doctrinal law.[71] Burrows, an eminent academic in private law, has observed the same development. Writing in the context of private law, Burrows observes that doctrinal research is not being carried out at all or, if it is, "often derided as being old-fashioned and nothing more than doctrinal practitioner-oriented black-letter law".[72] He further observes as follows:[73]

> [O]btaining a true understanding of the law and guiding practitioners and judges in relation to the development of case law or the best interpretation of statutes seems to be viewed as a less worthy pursuit than, for example, standing outside the legal system and applying to it some grandiose theory or feeding ideas and information and statistics in to those who may be in a position to influence policy choices.

---

69 Richard Posner, "The Judiciary and the Academy: A Fraught Relationship" (2010) 29 UQLJ 13 at 14.

70 Harry Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession" (1992) 91 *Michigan Law Review* 34.

71 Lord Rodger, "Judges and Academics in the United Kingdom" (2010) 29 UQLJ 29 at 29.

72 Andrew Burrows, "Challenges for Private Law in the 21st Century", Oxford Legal Studies Research Paper No 3/2016 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710270> (accessed 18 October 2016) at p 4.

73 Andrew Burrows, "Challenges for Private Law in the 21st Century", Oxford Legal Studies Research Paper No 3/2016 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710270> (accessed 18 October 2016) at p 4.

Similarly, Reid has said of the Scottish context that:[74]

> In English universities there has been a sharp move away from doctrinal scholarship, following a trend which was already all too apparent in the United States; and in some of the universities of Scotland too, there is an evident decline in the number of scholars working in the field of private law.

33 Although decried, some have celebrated this shifting away from doctrinal scholarship. For example, Bradney observes that doctrinal research "has very little relation to reality" and advances made by legal scholarship have really come about by academics distancing themselves from it.[75] However put, it is clear that Bradney is in the minority on this matter. Indeed, it is probably wrong to say that doctrinal research bears little resemblance to reality when judges themselves have routinely used and indeed acknowledged the contribution of academic works. The better view is that the shift away from traditional doctrinal scholarship will have a negative impact on the contribution that academic works make to judicial decisions and the legal profession at large.

34 More broadly, and in contrast to the diminishing writing in traditional doctrinal scholarship, there is a concurrent movement to other forms of scholarship, such as non-doctrinal, theoretical or empirical; as Lord Rodger had put it:[76]

> There seems to be a perception in academic circles [in the UK] that the real action is no longer in the area of private law but it is to be found elsewhere, in the new 'cool', subjects of public law or European or environmental or international law.

While such research has value – even if, as we shall see below, Commonwealth courts have yet to take to them wholeheartedly – a movement towards such research cannot be a reason for devaluing doctrinal scholarship. As Beatson LJ put it so appropriately in an extrajudicial piece, if the effect of the Research Assessment Exercise in

---

74 Ken Reid, "Smoothing the Rugged Parts of the Passage: Scots Law and Its Edinburgh Chair" (2014) Edinburgh LR 315 at 339–340. A contrasting view is offered by Braun, who writes that, "on the whole legal academics [in the UK] are still engaged in publishing a type of legal literature that can ultimately have an impact on the development of the law": Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 240.

75 Andrew Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart Publishing, 2003).

76 Lord Rodger, "Judges and Academics in the United Kingdom" (2010) 29 UQLJ 29 at 34.

England is to do this, then that is "deplorable as distancing top medical academics from the work of the hospitals and the treatment of the sick".[77]

(3) Ongoing discussions on judicial academic citations: Some key points

35 Generally speaking, discussions in other jurisdictions about greater interaction and engagement between the Judiciary and academia have centred around several key characteristics. First of all, as Braun points out, partnerships between judges and academics in the common law world largely take place between individuals rather than institutions.[78] Unlike the French,[79] German[80] and Italian[81] legal scholars who define themselves as a group, academics in the common law world do not consider themselves as a collective body.[82] This is not to say that the French, German and Italian scholars are completely represented by a homogenous body, but the more individualistic viewpoint taken in the common law world impacts the exact nature of the judge-academic relationship in several ways. Apart from being driven by individuals, academic works in the common law world are assessed based on the author's own reputation and the strength of the arguments, rather than because the work is regarded as part of a collective (and informal) source of law.[83] This more individualistic viewpoint also means that informal channels such as personal relationships or *ad hoc* talks, in addition to more formal ones like conferences, law journals and law

---

77 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 540.

78 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 228.

79 The French legal scholars define themselves as "la doctrine": see P Jestaz & C Jamin, *La Doctrine* (Paris, Dalloz, 2004).

80 The German legal scholars define themselves as "die Rechtslehre": see S Vogenauer, "An Empire of Light? II: Learning and Lawmaking in Germany Today" (2006) 26 OJLS 627.

81 The Italian legal scholars define themselves as "la dottrina".

82 As Braun points out, it is probably not a coincidence that the English language does not contain an equivalent expression to the terms describing a collective body of scholars and their opinions, as in French, German and Italian: see Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 229.

83 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 229.

commissions, are more effective avenues for exchange of views between academics and the Judiciary.[84]

36 Another discussed feature of the interaction between the Judiciary and academia is the degree of its "transparency", in the sense of the extent to which judges are predisposed to openly acknowledging the contribution that a particular piece of academic work has made.[85] Such acknowledgment can go as far as setting out in detail how the academic work has influenced the judicial reasoning in a case. For example, in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd*,[86] Lord Mustill acknowledged the contributions that academics have made to the development of the law of marine insurance. One example raised by Braun[87] concerns Lord Walker's disagreement in *Thorner v Major*[88] with a case note by McFarlane and Robertson,[89] which had argued that proprietary estoppel no longer applied. This transparency is in stark contrast to the practice in France and Italy, where courts do not openly cite academic works in their judgments.[90] Although German courts do cite academic works, the references tend to be short citations to the work without elaboration of the precise contribution the work made to the judgment.[91] Therefore, unlike the case in the common law world, it is more difficult to determine the precise contributions made by academic works on an individual basis.

37 The third characteristic is that even though judges and academics are in constant dialogue in the common law world, the prevailing view is that judges are the dominant party in that

---

84 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 231.

85 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 232.

86 [1995] 1 AC 501 at 551.

87 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 234.

88 [2009] 1 WLR 776; [2009] UKHL 18 at [31].

89 Ben McFarlane & Andrew Robertson, "The Death of Proprietary Estoppel (*Yeoman's Row v Cobbe*)" [2008] LMCLQ 449.

90 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 237.

91 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 237.

relationship.[92] One reason for this is that academics do not have a "reserved road" to judges on two levels.[93] The first is that because academics in the common law world do not constitute an informal body of law, they depend on practitioners as a conduit to bring their works to the attention of judges. Of course, some judges do their own research but the adversarial system of litigation does mean that some judges will have reservations about citing material not raised by counsel. Secondly, the number of academics appointed as judges remains relatively low. In July 2003, the Lords of Appeal in Ordinary in the UK were asked to consider whether there should be a reserved route for distinguished academics to be appointed to the Judiciary. To this, the Law Lords said that there ought not to be such an arrangement and that appointments should be based on merit.[94] This is in contrast to France, Italy and Germany, where the dominant or equal partner is the academic body.[95] Thus, in France, judges are especially influenced by the *doctrine*, even if they do not cite academic works. This is the case as well in Italy, where academics have greater prestige compared to judges. The relationship is more equal in Germany, and this appears to be because the prestige of the Judiciary has increased.[96]

38 Another reason for this inequality is that judges themselves feel that the judicial function should be exercised in a dominant fashion over academic opinion. For example, Lord Goff has observed that the dominant power in a real case should be that of the judge exercising a professional reaction to a particular fact pattern.[97] This can be explained by the fact that academic theories, which may be concerned with grand coherence rather than practical considerations, may be perceived as not being sufficiently flexible to accommodate real issues in practice. Lord Rodger too pointed out that academic work that focused on abstract formulations might not materially assist judges and practitioners who have to decide and advise on individual cases.[98] One

---

92 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 248.

93 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 249.

94 See <http://webarchive.nationalarchives.gov.uk/+/http:/www.dca.gov.uk/consult/supremecourt/supreme.pdf> (accessed 18 October 2016).

95 Alexandra Braun, "Judges and Academics: Features of a Partnership" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 251.

96 S Vogenauer, "An Empire of Light? II: Learning and Lawmaking in Germany Today" (2006) 26 OJLS 627 at 661–662.

97 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at p 526.

98 Lord Rodger, "Savigny in the Strand" (1993–95) 28–30 *Irish Jurist* 1 at 15–16.

example which Lord Rodger provided was Lord Wilberforce's broadly phrased two-stage test in *Anns v Merton London Borough Council*,[99] that was eventually departed from under English law some 13 years later in *Murphy v Brentwood District Council*.[100] However, it should be noted that there are some judges who feel that the dichotomy between judge and jurist should not be too stark. As Andrew Phang Boon Leong J (as he then was) said:[101]

> The dichotomy drawn above between judge and jurist is perhaps a little too stark. Whilst the learned author does allude briefly to the fact that the work of judge and jurist is complementary, the element of *interaction* is, with respect, not emphasised *sufficiently*. It is precisely the conceptual as well as logical analysis contained in the synthesis of academic writings that provides the necessary material for judges to apply to the facts at hand and, on occasion and in appropriate cases, to advance the law (albeit, in the nature of things, incrementally, at least for the most part). It is through the crystallisation of these broader and more general principles that the law gains coherence in its application to discrete situations. Moreover, certain academic writings (in particular, comments and notes on particular cases) will contain much more specific analysis of legal issues that might not 'qualify' as synthesis as such but would nevertheless be extremely helpful to a court faced with the same (or similar) issues. However, there is also a need for academic writings to have regard to issues that are – or are likely to be – faced by courts in actual cases; academic scholars should not go off on fanciful 'academic frolics' of their own. These would, for example, include esoteric theories tailored for hypothetical situations which are wholly divorced from any sort of reality whatsoever. This is not to state that such hypothetical situations might not be invoked very occasionally to emphasise a point. However, a moderate – let alone excessive – indulgence in such an approach is both undesirable and tends to undermine the utility as well as credibility of the academic writing concerned. [emphasis in original]

III. The Judiciary and legal academia in Singapore

39 Due to the relatively small size of Singapore's legal sector, and the fact that most judges and lawyers are graduates of law schools from Singapore universities, there is generally a close working relationship and much informal interaction among the majority of judges and academics in Singapore. It is particularly timely to revisit this relationship in the light of several changes to the nature of Singapore's judiciary and legal education as further described below.

---

99 [1978] AC 728.

100 [1991] 1 AC 398.

101 *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 1 SLR(R) 853 at [44].

A. Legal academia in Singapore: Growth and internationalisation

(1) Singapore's law schools and universities: From teaching to research

40 Singapore is home to three law schools. The Faculty of Law at the National University of Singapore ("NUS") traces its origins to 1956, while the School of Law of the Singapore Management University ("SMU") was established in 2007.[102] The third and newest law school at SIM University starts in 2017 and targets more mature students and community law.[103]

41 These law schools are inevitably shaped by the evolving nature of Singapore's universities. NUS was established in 1980, as the result of the merging of the University of Singapore and Nanyang University.[104] SMU is much younger, having been established in 2000.[105]

42 Today, both NUS and SMU position themselves as research-intensive universities. This is largely due to "the university's need to find its place among the best universities internationally". This was not always the case. For example, Andy Hor, who is a NUS professor, recalls that when he joined NUS in the 1980s, the university "was in large part a teaching institution".[106] Since then, the "system and culture at NUS have changed profoundly" in line with the university's projection of itself as a research-intensive university:[107]

> The dominant perception, particularly among younger faculty, has been that the system rewards research, perhaps in a smaller way teaching, but very rarely service. There is enough anecdotal evidence to show that this is not entirely untrue.

---

102 "Prologue: Early Legal Education in Singapore" in *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 8; Kevin Tan, *Daringly Different: The Making of the Singapore Management University* (Singapore: Singapore Management University, 2015) at p 186.

103 "UniSIM's School of Law to Commence Classes in January 2017" (16 February 2016 <http://www.unisim.edu.sg/Happenings/Latest-Highlights/Pages/H2016_16Feb.aspx> (accessed 18 October 2016).

104 National University of Singapore website <http://www.lib.nus.edu.sg/nusbiodata/history.htm> (accessed 18 October 2016).

105 Singapore Management University website <http://www.smu.edu.sg/smu/about/university-information/history> (accessed 18 October 2016).

106 Kenneth Paul Tan, "Osmosis and Balance in the Professorial Vocation: A Profile of Professor Andy Hor" (2011) 1 *Academic Journeys* at p 8.

107 Kenneth Paul Tan, "Osmosis and Balance in the Professorial Vocation: A Profile of Professor Andy Hor" (2011) 1 *Academic Journeys* at p 17.

43 Apart from being research-intensive universities, both law schools at NUS and SMU are committed to becoming leading research institutions on a global level. Again, this was not always the case in the early years of legal academia in Singapore. Writing about her NUS Law deanship from 1968 to 1971, Thio Su Mien describes this period of the law school as "marked by the utter dearth of legal writings on the laws of Singapore and the region".[108] Indeed, she notes that the NUS press was established to promote local scholarship.[109]

44 Today, academic leaders in Singapore recognise that "the hallmark of an excellent faculty is its research output and the quality of its research scholars, both staff and students".[110] Teaching is still considered an important part of an academic's job. The NUS Law website states that academics "are not only expected to be good teachers but also good researchers with good publication track records".[111] Nevertheless, based on informal feedback, promotion within NUS Law and SMU Law is primarily premised on research, even as teaching remains an important focus. The third law school at SIM University, as currently designed, is to focus on teaching community law.

(2) Internationalisation and developing global universities

45 NUS and SMU's focus on research must be understood against the broader branding and positioning of Singapore universities. Both NUS and SMU have embraced internationalisation as a developmental strategy. Such internationalisation is part of these universities' drive to be recognised as world-class institutions. This motivation has shaped the universities' branding efforts through the years. In 2009, NUS rebranded itself from being "Singapore's Global University" to being "a leading global university centred in Asia".[112] This rebranding initiative reflected NUS's ambitions to move from being a local university to being a regional and international university. As recognised by Xavier and Alsagoff, one of the strategies adopted by NUS in its drive to being

---

108 *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 72.

109 *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 72.

110 *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 72.

111 National University of Singapore website <http://law.nus.edu.sg/research_publications/index.html (accessed 18 October 2016).

112 Christine Anita Xavier & Lubna Alsagoff, "Constructing "World-class" As "Global": A Case Study of the National University of Singapore" (2013) 12 Educ Res Policy Prac 225 at 230.

world-class is the institution's emphasis and promotion of its research "achievements" in comparative and competitive terms.[113]

46 Both NUS and SMU have achieved forms of international recognition as a result of their developmental strategies. While national leaders have noted the need to "look beyond" rankings and have recognised that these rankings "only capture some dimensions of a university's overall achievement", both universities widely publicise their achievements in international rankings.[114] For example, in 2016, NUS proudly announced its position as "Asia's best university" in the *Times Higher Education* ("THE") magazine rankings and the QS World University Rankings, depicting this as a "Double First for NUS".[115] NUS President Professor Tan Chorh Chuan declared that the university was "delighted" to be awarded this recognition and that "these results affirm NUS' strong reputation as a leading global university". Despite its relative youth, SMU also puts much effort into publicising its international rankings.[116]

47 The world-class aspirations of Singapore universities have been encouraged by the Singapore government, in line with the Government's aim and efforts for Singapore to become a regional hub of higher education. In 1996, former Singapore Prime Minister Goh Chok Tong urged NUS and the National Technological University, the latter the second university to be established in Singapore, to strive to become "the Harvard and MIT of Asia".[117] He called on these universities to "acquire a reputation for excellence" and make Singapore "the Boston of the East".[118]

---

113 Christine Anita Xavier & Lubna Alsagoff, "Constructing "World-class" As "Global": A Case Study of the National University of Singapore" (2013) 12 Educ Res Policy Prac 225 at 233.

114 Tan Chorh Chuan, "State of the University Address 2015: Another 110 (%)" (27 October 2015) <president.nus.edu.sg/pdf/soua_2015.pdf> (accessed 19 October 2016). See also Ong Ye Kung, "Keynote Address by Mr Ong Ye Kung, Acting Minister for Education (Higher Education and Skills), at the Straits Times Education Forum at Singapore Management University" (25 June 2016) <https://www.moe.gov.sg/news/speeches/keynote-address-by-mr-ong-ye-kung--acting-minister-for-education-higher-education-and-skills--at-the-straits-times-education-forum-at-singapore-management-university> (accessed 19 October 2016).

115 "Double First for NUS" (21 June 2016) <http://news.nus.edu.sg/highlights/10530-double-first-for-nus?highlight=WyJnbG9iYWwiLCInZ2xvYmFsIiwyMDE2LCIyMDE2J3MiXQ> (accessed 18 October 2016)

116 Singapore Management University website <http://www.topuniversities.com/universities/singapore-management-university> (accessed 18 October 2016).

117 Chua Mui Hoong, "PM Goh to NUS and NTU – Aim to Become World-Class" *The Straits Times* (22 September 1996).

118 Chua Mui Hoong, "PM Goh to NUS and NTU – Aim to Become World-Class" *The Straits Times* (22 September 1996).

48 The universities' quest for world recognition and excellence has influenced changes to the law school curriculum, as law schools adjust to the need to produce globally conscious students, and also compete globally for student talent. It is presently unclear how precisely and to what extent such internationalisation has shaped academic research. As universities employ international benchmarks and ranking systems to assess research achievements, academics may face pressure to choose their research topics and publication venues with this in mind. It is noteworthy that as early as 1993, there was already such consciousness and differentiation between the international and the domestic among Singapore academics. After many years of persuasion and lobbying by the NUS Law dean and academics, NUS agreed to classify the Law Faculty's flagship journal, the *Singapore Journal of Legal Studies*, as an "internationally-refereed journal".[119]

49 Due to Singapore universities' push for internationalisation, law academics and researchers at these universities may not be immune to the research trends of well-regarded universities overseas, such as the preference for inter-disciplinary and theoretical scholarship over more traditional doctrinal scholarship. It is not the authors' intention to prefer one type of scholarship over another but to highlight that broader institutional preferences and incentive structures may skew the type of research undertaken by individual academics. It is unclear whether legal scholarship in Singapore has shifted away from traditional doctrinal scholarship in favour of other types of scholarship preferred in Anglo-American law schools. A quick perusal of the list of law journal articles produced by Singapore-based academics in 2015[120] does not reveal this to be the case. However, it may well be said that there are at least subtle and growing pressures on Singapore-based academics to angle or reposition their research to meet the expectations and incentives of Singapore universities.

50 Another factor to consider is the international ranking systems that Singapore universities consciously employ to promote and advance their internationalisation. Textbooks, chapter contributions, or articles in lower ranked journals are not perceived as favourably at these universities as these publications do not contribute as much to these universities' improved rankings in global university ranking systems. For example, the *Times Higher Education* World University Rankings system, in calculating research productivity, only considers "papers in

119 Kevin Y L Tan, "The Journey of a Journal: 50 Years of the *Singapore Journal of Legal Studies*" [2009] Sing JLS 1 at 22.

120 As recorded in the *Singapore Academy of Law Annual Review of Singapore Cases 2015* (Academy Publishing, 2016).

the academic journals indexed by Elsevier's Scopus database".[121] If an academic institution wishes to climb in these rankings, it would encourage its academics to publish articles in English language internationally-ranked journals. SMU's website states that its faculty "regularly publish in top peer-reviewed journals and their research achievements are recognised through international rankings".[122] The NUS Law website similarly states that the faculty's work "appears in the most prestigious journals as well as books published by leading university presses around the world".[123] Practically, these developments push legal academics away from publishing the kind of works that may be more relevant to Singapore judges and practitioners. Coupled with a university incentive system that both awards and recognises non-doctrinal works, or at least, non-practitioner oriented books, there may be a change in the type of works that Singapore-based legal academics produce in the future.[124]

B. The Singapore judiciary: Recent developments

(1) A more robust judicial development of Singapore law

51 The Singapore judiciary's approach to adjudication has evolved over the past few years. Judges have taken on a more active role in developing case law. In his 2008 Opening of the Legal Year Speech, former Chief Justice Chan Sek Keong outlined the Judiciary's role in developing quality jurisprudence:[125]

> Judicial outcomes are expressed in the decisions, rulings and orders of the courts, and their legitimacy and validity are measured by the quality of their fact finding and legal reasoning … Consequently, we are also taking more time to examine legal issues in greater depth, and this has resulted in longer and more comprehensive judgments. We also wish to raise the stature of our decisions in the common law world, and hope that this will be a positive factor in promoting Singapore as a legal services hub.

---

121 *Times Higher Education* website <https://www.timeshighereducation.com/news/ranking-methodology-2016> (accessed 18 October 2016).

122 Singapore Management University website <http://www.topuniversities.com/universities/singapore-management-university> (accessed 18 October 2016).

123 National University of Singapore Law website <http://law.nus.edu.sg/about_us/index.html> (accessed 18 October 2016).

124 See also Goh Yihan, *Singapore Chronicles: Law* (Straits Times Press, 2015) at pp 53–57.

125 Chan Sek Keong, "Opening of the Legal Year 2008 Speech by The Chief Justice" (2008).

52 In their empirical study of Singapore courts, Goh and Tan highlight a number of post-2005 developments.[126] Specifically, after 2005, the length of court judgments and the number of foreign cases cited by courts have both increased. Their empirical study also shows that post-2005, Singapore courts have increased their citation of academic materials. Their study also shows that the Court of Appeal's academic citation practices significantly exceeds the average judicial citation rate "by a remarkable margin", making the Court of Appeal particularly suitable as a case study of the Singapore judiciary's citation practices.[127]

53 These empirical developments, including the Singapore judiciary's increased use of academic citations, coincide with and reflect the more expository judicial role outlined by former Chief Justice Chan Sek Keong in his 2008 Opening of the Legal Year Speech, as cited above.[128] An expository judicial approach requires courts to not only decide the legal question at hand or resolve the dispute in question, but also focus on explaining judicial decisions and ensuring quality decisions.

54 Nevertheless, while Singapore courts have taken on a more active role in developing the common law, the Judiciary has underscored the need to respect the distinction between judicial and legislative power. This distinction has been recognised historically. In the context of Singapore, at the time of its founding by the British in 1819, the idea of "statutes" as a distinct source of law from the common law had already become established in the English legal system. English judges shied away from legislating, only interpreting and applying legislation. Singapore judges largely regarded their domain as interpreting, not making, legislation. Thus, in recent years, the Singapore judiciary has taken steps to explain in its decisions that the judicial power of interpretation does not extend to legislating especially when this results in conflict between case law and statutory law. Courts have occasionally maintained that they should not act like "mini-legislatures". For example, in *Lim Meng Suang v Attorney-General*,[129] the Court of Appeal said that "the courts are *separate and distinct from* the Legislature" [emphasis in original].[130]

---

126 Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAcLJ 176.

127 Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAcLJ 176 at 224.

128 Chan Sek Keong, "Opening of the Legal Year 2008 Speech by The Chief Justice" (2008).

129 [2015] 1 SLR 26.

130 *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [77].

(2) A more comparative and outward-looking jurisprudence

55 Another interesting feature of the change in the Singapore judiciary's adjudicative approach is its increased citation of comparative case law. This may be contrasted with the Singapore judiciary's past approach, where there was perhaps a more insular attitude, although this changed as Singapore grew as a nation.[131] As Singapore's founding Prime Minister Lee Kuan Yew stated in his 1990 speech at the opening of the Singapore Academy of Law, in the 1950s, the Singapore Bar was parochial because that was the nature of Singapore's business. Lee noted that things had changed since then.

56 In his 1990 speech, Lee said that the Bar must be international in outlook because that has become the nature of Singapore's business.[132] In that time period, many foreign firms came to Singapore, some using it as a base to expand into the Asia-Pacific region,[133] with the authorities believing that Singapore has what it takes to be a key legal services hub in the region.[134] In fact, in 2002, the Economic Review Committee recommended that the Singapore brand of legal services should be promoted abroad.[135] A series of measures were taken in the 2000s to promote Singapore as a legal hub for various services,[136] but most particularly in the area of arbitration, which was then valued at an estimated $54m in 2003.[137]

57 This trend has continued to present times, with the growing influx of foreign law firms and counsel. Arbitration continues to be

---

131 See, *eg*, "Foreign Law Firms May Tie Up With Local Ones" *The Business Times* (18 January 2000) at p 8; "Foreign Law Firms Invited to Form Joint Ventures" *The Business Times* (5 May 2000) at p 17 and "Foreign Tie-ups Approved for 7 Law Firms" *The Business Times* (11 August 2000) at p 9.

132 "Use Technology to Tap Legal expertise Worldwide" *The Straits Times* (1 September 1990).

133 See, *eg*, "Lawyers Using S'pore As Base to Go Regional" *The Business Times* (6 April 1995) at p 14; "S'pore Attracts More Foreign Law Firms" *The Straits Times* (23 March 1996) at p 48; "Govt May Allow Foreign Lawyers to Practise Here" *The Straits Times* (12 September 1997) at p 1 and "Wanted – Legal Disputes from Abroad" *The Straits Times* (23 October 1997) at p 39.

134 "Legal Hub? S'pore Has What It Takes" *The Straits Times* (11 April 2002) at p 10. Not all the joint law ventures formed have succeeded though: see "Joint Law Ventures Here to Stay Despite Hiccups" *The Straits Times* (21 October 2002) at p 8.

135 "Market S'pore Brand of Legal Service" *The Straits Times* (19 September 2002) at p 4; "Blueprint to Market S'pore Law Inc" *The Straits Times* (19 September 2002) at p 4.

136 "Making S'pore a Legal Services Hub" *The Business Times* (22 September 2005) at p 11; "Moves to Boost S'pore As Legal Service Hub" *The Business Times* (18 August 2006) at p 1.

137 "Lawyers Seen Reaping $54m from Int'l Arbitration" *The Business Times* (11 April 2003) at p 7.

important.[138] There was also a call for law firms to "think global".[139] Foreign firms continue to come into Singapore as they see it as a gateway to the Asian boom.[140] More recently, Singapore has established the Singapore International Commercial Court to provide a court-based dispute settlement mechanism.[141] What is significant about this development is that this court is composed of judges from other jurisdictions, and that the court's jurisdiction extends to disputes governed by Singapore law.[142] Apart from positioning Singapore as a legal hub, these developments also mean that foreign lawyers working in Singapore will be exposed to Singapore law and will in turn bring this knowledge of Singapore law back to their home countries. These foreign lawyers will also, for present purposes, facilitate the steady influx of comparative materials being cited to the Singapore courts.

C. Perceptions of law-related academic work in Singapore

58 The Singapore judiciary has increasingly been supportive of legal academic works on Singapore law. In 2007, former Chief Justice Chan Sek Keong called on Singapore academics to conduct more research on Singapore law. Given the importance of context in developing the common law, he observed that it was inevitable that Singapore's common law "may take on a territorial colour that academics must not be blind to".[143]

59 Leaders in Singapore's legal community have from time to time recognised the need to encourage more research on Singapore law and taken steps to address this. In the early days of legal education in Singapore, when Singapore was part of Malaya, Lee Sheridan, then Head of the newly established Law Department in the University of Malaya set up in Singapore, observed that Malayan law was "starving for lack of

---

138 "Outgoing A-G Sees Place For Singapore in Arbitration's Evolution" *The Business Times* (12 June 2012).

139 "Law Firms Urged to Think Global" *The Straits Times* (22 September 2010).

140 "Foreign Law Firms See S'pore As Gateway" *The Straits Times* (23 July 2011); "Number of Foreign Lawyers to Increase" *The Straits Times* (11 October 2011); "Door is Open For More Foreign Law Firms Here" *The Business Times* (30 May 2012).

141 See similar aspirations some 25 years ago: "Singapore May Be Arbitration Centre" *The Straits Times* (30 April 1987) at p 11.

142 See the reaction to a different but broadly similar idea in 1980: "Lawyers: Why Look Abroad For Supreme Court Judges?" *The Straits Times* (2 December 1980) at p 11. See also "Lee: Foreign Judges If I Can't Get Quality Later" *The Straits Times* (18 March 1981) at p 1.

143 Chan Sek Keong, speech at the National University of Singapore Faculty of Law 50th Anniversary Gala Dinner, 1 September 2007, reproduced in *The Law in His Hands: A Tribute to Chief Justice Chan Sek Keong* (Singapore: Academy Publishing, 2012) at p 746.

publications".[144] He called for the establishment of a local law journal to "foster scholarly and practical discussion of the laws of Singapore, the Federation of Malaya and its constituent states and the Commonwealth Borneo territories".[145]

60 Steps have been taken within legal academia and the legal community to encourage the publication of research on Singapore laws. In 1964, the *Malaya Law Review* (now the *Singapore Journal of Legal Studies*) instituted a policy that the journal would strive to ensure that a certain number of articles in each issue addressed local law.[146] In 2007, the Singapore Academy of Law, a statutory body established to promote and develop Singapore's legal industry, decided to establish a publishing arm called Academy Publishing.[147] This publishing arm is dedicated, *inter alia*, to providing "an alternative avenue to the academics in our law schools to publish their writings and thereby to encourage them to produce more works".[148]

61 Despite internationalisation and the many changes over the years, there is still a firm belief among leaders of Singapore's legal community that Singapore law schools play an important role in the development of Singapore law. In his 2007 speech referred to above, former Chief Justice Chan Sek Keong recognised the "current tensions" academics must face "between the need to write on Singapore law for local consumption and the need to write for international recognition".[149] He called on Singapore law academics to pay more attention to conducting research on Singapore law. Referring to articles published in the *Malaya Law Review* and the *Singapore Journal of Legal Studies*, he highlighted that for the first 20 years the proportion of articles on local law had exceeded foreign law but from 1980 to 1999 this trend had reversed.[150]

---

144 L A Sheridan, "Legal Education in Malaya" (1957–1958) JSPTL (NS) 19 at 22. Relevant portion reproduced in Kevin Y L Tan, "The Journey of a Journal: 50 Years of the *Singapore Journal of Legal Studies*" [2009] Sing JLS 1 at 3.

145 L A Sheridan, "Legal Education in Malaya" (1957–1958) JSPTL (NS) 19 at 22. Relevant portion reproduced in Kevin Y L Tan, "The Journey of a Journal: 50 Years of the *Singapore Journal of Legal Studies*" [2009] Sing JLS 1 at 4.

146 Kevin Y L Tan, "The Journey of a Journal: 50 Years of the *Singapore Journal of Legal Studies*" [2009] Sing JLS 1 at 12.

147 Singapore Academy of Law website <http://www.sal.org.sg/content/LPK_academy_publishing.aspx> (accessed 18 October 2016).

148 Singapore Academy of Law website. <http://www.sal.org.sg/content/LPK_academy_publishing.aspx> (accessed 18 October 2016).

149 Chan Sek Keong, speech at the National University of Singapore Faculty of Law 50th Anniversary Gala Dinner, 1 September 2007, reproduced in *The Law in His Hands: A Tribute to Chief Justice Chan Sek Keong* (Singapore: Academy Publishing, 2012) at p 746.

150 Chan Sek Keong, speech at the National University of Singapore Faculty of Law 50th Anniversary Gala Dinner, 1 September 2007, reproduced in *The Law in His*

62 More importantly, former Chief Justice Chan observed that if law academics were to influence the Singapore judiciary in its development of Singapore law, academics "must generate the arguments and the ideas for us" and "must write critically on Singapore law".[151] He further alluded in his speech to the fact that Singapore Supreme Court judges have "for some time now" "referred to and adopted academic writings in their judgments, especially on difficult points of law".[152]

63 This support for academic works is also evident in judgments emanating from the Singapore courts, as we shall see below. But above all, academics might bear in mind the following words of Andrew Phang Boon Leong J (as he then was) in the High Court decision of *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric*:[153]

> Indeed, the strict dichotomy occasionally drawn between academic work on the one hand and court judgments on the other is, in the medium and longer terms, a recipe for disaster. This is because theory cannot be divorced from practice. Each interacts with – and needs – the other. Shorn of their theoretical roots, the relevant rules and principles will become ossified. On the other hand, if one stays only in the rarefied atmosphere of 'high theory', the danger of collapsing for want of the 'oxygen' of practical reality is not only possible; it would be imminent. But extreme positions have always had this effect and should therefore be assiduously eschewed. More to the point, they do not reflect reality and, if they should become reality, the legal system would be much the poorer for it. However, the conflict between theory and practice just referred to is, in my view, a false one. As I have already emphasised, the process is, instead, an *interactive* one. Whilst one must, in the main, have one's legal feet firmly planted on the *terra firma* of practical reality (and this means, *inter alia*, paying close attention to the facts of the case at hand), one must (occasionally, at least) adopt a 'helicopter view' which the theoretical roots afford in order to survey the legal terrain in perspective, lest the wood be lost for the trees. However, the process is, in the final analysis, an interactive one inasmuch as there is no dogmatic rule that the court can only do one to the exclusion of the other, or that one or the other can only be done at designated times only. Much depends on the

---

Hands: A Tribute to Chief Justice Chan Sek Keong (Singapore: Academy Publishing, 2012) at p 746.

151 Chan Sek Keong, speech at the National University of Singapore Faculty of Law 50th Anniversary Gala Dinner, 1 September 2007, reproduced in *The Law in His Hands: A Tribute to Chief Justice Chan Sek Keong* (Singapore: Academy Publishing, 2012) at p 746.

152 Chan Sek Keong, speech at the National University of Singapore Faculty of Law 50th Anniversary Gala Dinner, 1 September 2007, reproduced in *The Law in His Hands: A Tribute to Chief Justice Chan Sek Keong* (Singapore: Academy Publishing, 2012) at p 746.

153 [2007] 1 SLR(R) 853 at [41]–[42].

> applicable rules and principles, as well as the precise factual matrix concerned.
>
> Put simply, academics must not indulge in impractical 'hobby horses', but must write for that wider legal audience (comprising not merely students and fellow academics but also practitioners and judges) which is willing to consider their arguments and ideas, and even put them into practice. On the other hand, courts ought, in my view, to incorporate such arguments and ideas whenever to do so would not only aid in resolving the case at hand in a just and fair manner but would also aid in the development of the law in that particular area.

Based on these judicial observations, academics must produce works that can be of assistance to the legal profession at large if their work is to be referred and cited by the Singapore judiciary. Bearing this context in mind, along with the evolution of Singapore's legal academia and judiciary, the next part turns to a closer examination of the Court of Appeal's academic citation patterns.

IV. Singapore Court of Appeal's citation of academic material

64 This part gives a descriptive and analytical overview of the Singapore Court of Appeal reference to academic work when formulating its judicial decisions. It evaluates empirical data on the court's citation of academic material over the years against the contextual factors and debates set out above. It is clear from the empirical data that there has been an increase in the Court of Appeal's citation of academic material. By analysing this data against the contextual developments outlined in the previous part, this part aims to ascertain the Court of Appeal's approach to, and its perception of, academic work.[154] This speaks to this article's broader interest in exploring the relationship between the Judiciary and academia.

65 When examining the empirical data presented below, it is important to evaluate this data against other contextual developments in Singapore. As outlined in the previous part of this article, to better understand the Court of Appeal's approach to academic citations, important contextual developments to bear in mind include the Singapore judiciary's adoption of a more expository and outward-looking approach to judicial decisions. Also, to understand what the Court of Appeal's academic citation practices mean for the relationship between the Judiciary and academia, one needs to consider the

154 At this stage, the focus is on analysing quantitative data that shows long-term developments. For future research, so as to understand how courts are using academic references in cases, the plan is to conduct more fine-grained analysis of a qualitative nature.

contextual factors shaping Singapore academia, such as the internationalisation of Singapore's academic institutions and the research benchmarks used to evaluate academic output.

A. Methodology and qualifications

66 The methodology employed in this study is as follows. First of all, the scope of the empirical study was limited to all Court of Appeal decisions decided between 1970 and 2015, both years inclusive. The reason for this time period is that it roughly coincides with the 50th anniversary of Singapore as an independent nation. As for the choice of court, the study is restricted to the Court of Appeal because it is the final appellate court in Singapore and thus it is expected that it would be more involved in judicial law-making and hence cite more academic materials. Historically, however, the Court of Appeal was not the highest appellate court for some years. This required some qualifications to be made. First, while the highest appellate court in Singapore remained the Federal Court of Malaysia for a few years after 1965, it was decided not to include decisions of that court for the purposes of this study. This explains why the decisions considered here start only in 1970. In any event, there were not many of such decisions. Secondly, decisions from the Privy Council on appeal from Singapore were included because, unlike the Federal Court cases, there were a sizable number of such decisions. More substantively, it was felt that the Privy Council, having been the final appellate court of Singapore for nearly 30 years post-independence, would have affected the course of jurisprudential development in Singapore. It would therefore have been unwise to ignore its decisions.

67 For the purposes of tracking trends, by far the most important categorisation was that of the academic works. The academic material concerned was divided into several categories, namely, textbooks, essays, monographs, journal articles, biographies and others. This study was only concerned with *legal* materials and so non-legal textbooks, such as psychology textbooks, were ignored. Although the categories may overlap, the working definition for data collection was as follows:

> (a) *Textbooks* are works that set out to describe the present state of the law. They may cater to students or practitioners, but their distinguishing characteristic is that they aim at informing what the law *is*, rather than what the law *ought to be*.
>
> (b) *Monographs* are works that discuss what the law should be. They are usually based on a prior thesis for a doctoral degree, although this is by no means conclusive. Unlike textbooks, most monographs are shorter and are aimed almost exclusively at fellow academics or specialised practitioners,

though certain portions may still be useful to the practice at large.

(c) *Essays* are chapters in edited collections, based on a particular theme. They are similar to journal articles but appear in a book collection rather than law journals.

(d) *Journal articles* are articles in law journals. This study does not distinguish between full-length articles and case notes because this was often difficult to discern from the titles as they appeared in the judgments. However, the data-collection process was such that this can be picked up in the future.

(e) *Biographies* are biographies written about legal figures.

(f) *Others* is a catch-all category that may capture professional publications, such as blog entries, law society newsletters, *etc*.

68 In tracking the miscellaneous details, such as page count and references, the printed version of the Singapore Law Reports (Reissue) up to about 2010, around which the Singapore Law Reports became the exclusive law report in Singapore, was used. The study was concerned with the date of the decision, as opposed to the year the case was reported. This is important to state because in some cases, there was a large discrepancy between the date of decision and the date of reporting.

69 As for the subject areas, 28 subject areas based on the Singapore Academy of Law subject tree utilised for the Singapore Law Reports were tracked.[155] To avoid double counting, it was decided that each case could only belong in one subject area. Practically, it was found that a clear majority of the cases could be easily categorised into just one subject matter, although there were some hard decisions to be made.

70 In relation to the biographical details of judges and lawyers, such as whether the judge concerned possessed a post-graduate degree, or if the lawyer was a Senior Counsel, that information was obtained from publicly available sources. The primary concern is the qualification as at the time of decision.

---

155 Administrative and Constitutional Law; Admiralty, Shipping and Aviation Law; Agency and Partnership Law; Arbitration; Banking Law; Biomedic Law and Ethics, Building and Construction Law; Civil Procedure; Company Law; Competition Law; Conflict of Laws; Contract Law; Criminal Law; Criminal Sentencing; Credit and Security; Evidence; Equity and Trusts; Family Law; Insolvency Law; Insurance Law; Intellectual Property Law; Land Law; Legal Profession; Muslim Law; Restitution; Revenue and Tax Law; Tort Law; Others.

71 A few qualifications on the conclusions that can be drawn from this study of judicial citations of academic material are also necessary. First, courts may not cite all academic works relied on in their decision-making process. It is hard to pinpoint exact instances of this. However, there has been evidence of this in England. Beatson LJ, writing extrajudicially,[156] cites three examples, one of which was Millett J using substantially the same language in *Re Charge Card Services Ltd (No 2)*[157] as Sir Roy Goode when discussing whether it was conceptually impossible for a bank to take a charge over its own customer's credit balance.[158] The apparent reason why Millett J did not cite Sir Roy Goode was because counsel had represented the academic work as the state of the law without attribution, which in turn demonstrates one consequence of academics having to rely on practitioners as the conduit to access judges. Stanton puts the matter rather colourfully as follows:[159]

> There is also no convention, equivalent to those which operate in the academic world, requiring a judge to attribute views drawn from another person's work. As a result, attributing the source of an idea is a matter of judicial taste. The task facing counsel of convincing a judge to accept an argument is designed to ensure that the judge owns the idea. If a student cuts and pastes a portion of a law journal article into an essay without proper attribution the conduct counts as plagiarism; if counsel find that a judge accepts arguments and cuts and pastes them into a judgment it is a job well done. The source of the ideas … doesn't matter in a process in which the outcome of a piece of litigation is the primary consideration.

72 What we face therefore is a problem of causal attribution.[160] There will inevitably be under-inclusion of citation of academic works, given that not all judges will, for a variety of reasons, cite academic works that may have influenced their decision. Other times, while judges may cite an academic work, it may not be immediately apparent how that work in fact influenced the judge's decision. This occurs frequently when judges cite academic works as mere references without explaining their impact. Ultimately, it has to be acknowledged that judges will inevitably base their work on knowledge accumulated over

---

156 Jack Beatson, "Legal Academics: Forgotten Players or Interlopers?" in *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Andrew Burrows *et al* eds) (Oxford University Press, 2013) at pp 524–525.

157 [1986] 3 All ER 289 at 308.

158 Roy Goode, *Legal Problems of Credit and Security* (1st Ed) at p 86.

159 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 206.

160 See Neil Duxbury, *Jurists and Judges* (Oxford: Hart Publishing, 2001).

years of experience and learning.[161] Academic works may also be read "as part of [judges'] ordinary judicial activity"[162] and thus serve only as "an essential and much appreciated part of the background reading"[163] rather than an important step in the reasoning process in a judgment. In these circumstances, it is only to be expected that academic works read will not be cited explicitly.

73 The practical impact of this on this empirical study is that the counting of citations is but an approximation of the true impact that academic works have on the construction of judicial decisions and judicial reasoning. It is not possible to improve on this by reading each and every case and ascertaining the true impact of the academic work cited for two reasons, quite apart from the impracticability of such an exercise. First of all, not all judgments will explicitly explain the contribution made by a cited academic work. Secondly, reading individual judgments does not solve the problem that some judges may not, for a variety of reasons, cite an academic work that may have tangentially impacted his or her reasoning. Therefore, the citation count is but an imperfect way of measuring the impact that academic works have on judicial reasoning in Singapore.

74 Judicial citations of academic material are good indicators of judicial perceptions of academic work in another important way. Citations help legitimise judicial reasoning and judicial decisions. By citing academic work, courts show that they consider such work as building blocks of their decisions. In this way, judicial citations of academic material can thus be an indicator of the value courts place on academic work and academia. A complete absence or decreasing reference to academic work could indicate that the Judiciary does not consider academic work as sufficiently important to be cited when rationalising and presenting its decisions. In contrast, an increasing reference to academic work could indicate the Judiciary's opinion on the role played by academic work in developing case law.

75 With these qualifications in mind, we move on now to consider some brief aspects of the Court of Appeal's citation of legal academic works.

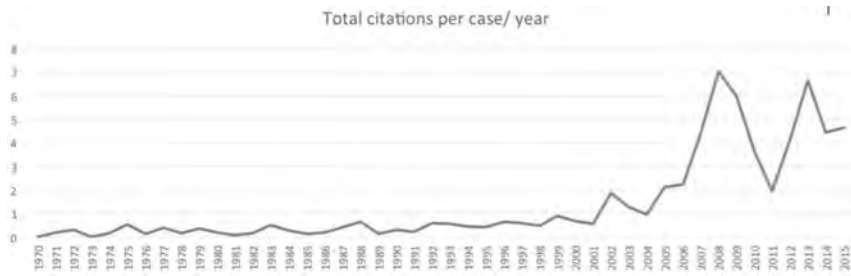
---

161 Keith Stanton, "Use of Scholarship by the House of Lords in Tort Cases" in *From House of Lords to Supreme Court: Judges, Jurists and the Process of Judging* (James Lee ed) (Hart Publishing, 2011) at p 205.

162 *Re OT Computers Ltd* [2004] Ch 317 at [43].

163 Lord Rodger, "Judges and Academics in the United Kingdom" (2010) 29 UQLJ 29 at 31.

B. Long-term increase in Court of Appeal's academic citations



76 The graph above shows the average number of academic materials per case, per year. In this regard, there has been a general increase in the average number per year in the academic references cited by the Court of Appeal. The highest average number of academic works cited by the court in a year is approximately seven academic references in 2008, followed by approximately 6.6 in 2013. The empirical data shows that there has been a gradual increase in the Court of Appeal's citation of academic material since 2001. From 1970 to 2001, the rate of citations remained low and relatively constant. In 1970 and 1973, the average number of academic citations made by the court was zero. During the period of 1970 to 2001, there was no year in which the average number of academic citations went above one.

77 The rate of this increase in the court's academic citations picked up sharply in 2006 and continued to rise. This increase coincided with the 2006 appointment of former Chief Justice Chan Sek Keong. It will be recalled that as mentioned above, former Chief Justice Chan's position was that the Singapore judiciary should aim to develop high quality jurisprudence, examining "legal issues in greater depth", raising "the stature of our decisions in the common law world", and contributing to "promoting Singapore as a legal services hub".[164] While it is possible to attribute the increase in academic citations to former Chief Justice Chan's efforts in promoting the quality of judicial reasoning, it would be remiss not to mention the contributions of other Chief Justices and other leaders in the judicial sphere. For example, independent Singapore's first Chief Justice, Wee Chong Jin, laid the very fundamental foundations of the rule of law in a newly independent country. Without the rule of law, there would be no need to talk about a proper legal system, let alone the luxury of measuring academic citations. The second Chief Justice, Yong Pung How, resolved a backlog that affected the effective administration of justice, again, without which, there would be no basis to even think about academic citations. Thus, Chief Justice

164 Chan Sek Keong, "Opening of the Legal Year 2008 Speech by The Chief Justice" (2008).

Chan's exhortation to increase the quality of judicial reasoning, which may be said to lead to an increase in academic citations, must equally be recognised to have been possible only through the efforts of the former Chief Justices and other leaders in the judicial sphere. Looking further ahead, the current Chief Justice, Sundaresh Menon, is poised to bring Singapore law and its influence onto the international stage, a most important endeavour, which will in turn also affect academic citations in the future. Ultimately, as Attorney-General V K Rajah and Andrew Phang Boon Leong JA have put it:[165]

> At the risk of some oversimplification, we have witnessed the Singapore legal system grow in an organic and steady fashion since independence under the able leadership of four Chief Justices. The initial need for a pragmatic approach was understandable, especially in light of the sudden birth of the nation. This slowly evolved into an organic legal growth which witnessed the gradual cutting of our legal apron strings. Indigenous development of Singapore law followed by this was made possible only by the clearing of backlogs – a reminder that one cannot grow legal crops until the hard work of ploughing the ground is completed in the first place. There is the all too human tendency to ignore the foundation because it is not readily visible. Yet, a building is only as good and secure as its foundation.

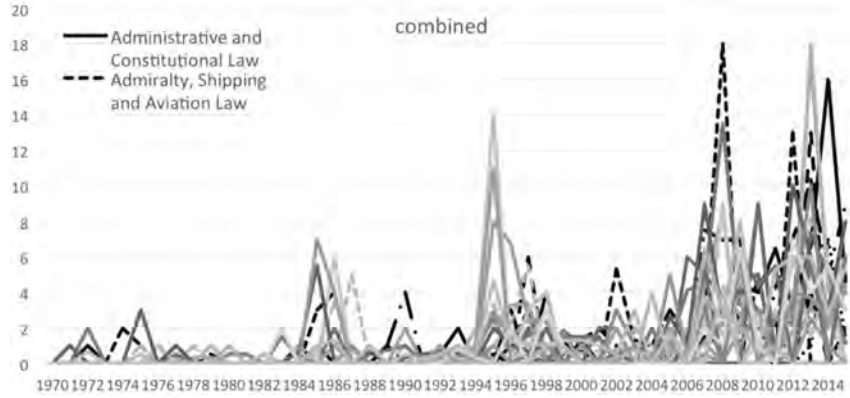
78 These empirical developments, including the Singapore judiciary's increased use of academic citations, coincide with and reflect a more expository judicial role assumed by Singapore judges in general. An expository judicial approach requires courts to not only decide the legal question at hand or resolve the dispute in question, but also focus on explaining judicial decisions and ensuring quality decisions.

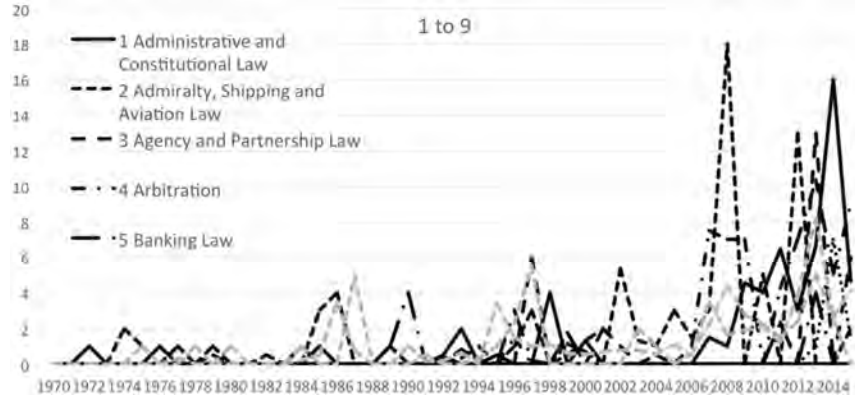
79 As mentioned earlier, though the Singapore judiciary has taken on this expository role of developing and interpreting the law, Singapore courts remain wary of overstepping their judicial role and taking on legislative functions. The bread and butter of judicial law-making are well-established common law interpretive theories and techniques, which include the proper and persuasive use of judicial reasoning elements such as case law and academic material. It should be noted that traditionally, case law is seen as the primary component of common law judicial decisions. This is not so much the case for academic material. Case law, due to its incremental nature, will be less likely to depart from existing positions. The Singapore Court of Appeal's reference to academic material, in addition to case law, could be argued to reflect the court's more robust view of its judicial law-making function, even as it takes steps to avoid legislating and stepping into Parliament's domain.

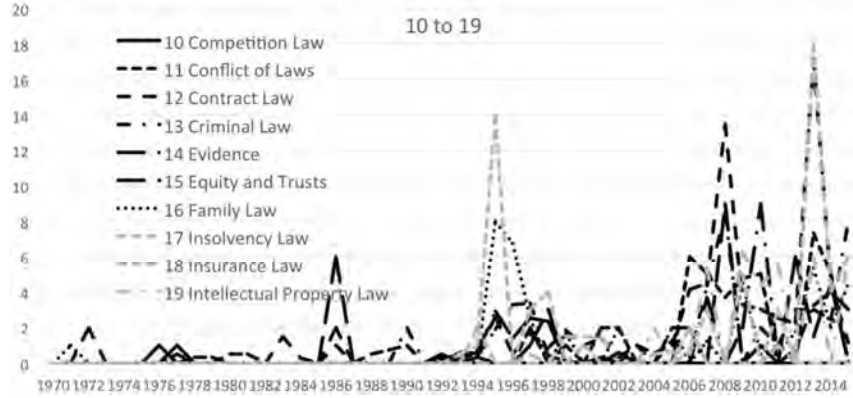
---

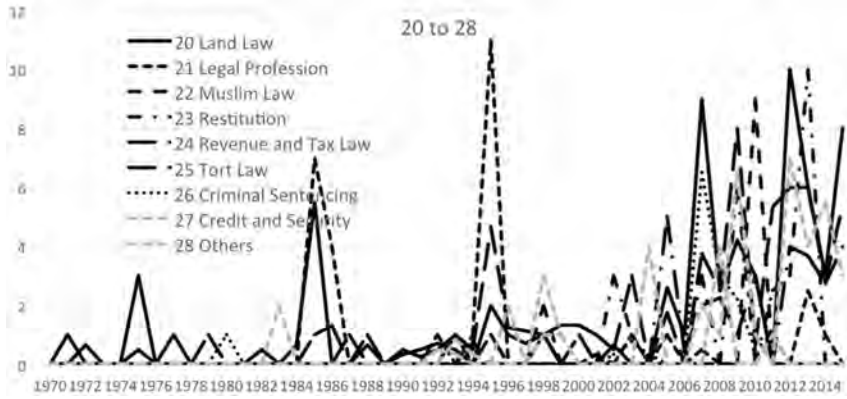
165 *Singapore Law – 50 Years in the Making* (Goh Yihan & Paul Tan gen eds) (Academy Publishing, 2015) at pp ix–x.

C. Legal areas experiencing increase in academic citations



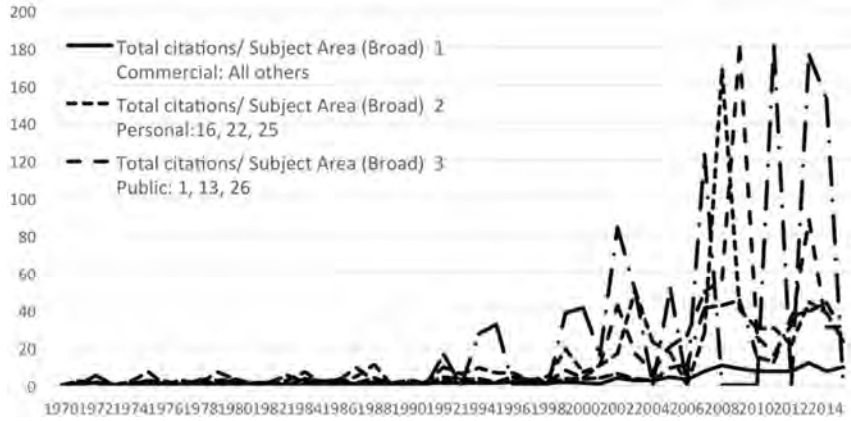






80 Data shows there has been an increase in academic citations across all areas of law. The three graphs above show the average number of academic materials cited per case, in a given subject area. Thus, data points measure the average number of cases in that subject area for a given year. This number is derived by dividing the total number of citations in a given subject area by the total number of cases for that subject area, in a given year. Computed as such, the highest average of cases cited in a given area have tended to be Admiralty and Shipping Law (2008), Administrative and Constitutional Law (2014), Insurance Law (1995), Contract Law (2008), Insolvency Law (2013), Legal Profession (1996), Land Law (2012) and Restitution Law (2013).

81 To put the data in a more meaningful perspective, the 28 subject areas have been divided into five broad categories, namely, commercial law, personal law, public law, procedural law and professional law. Personal law cases are defined as cases in Family Law, Muslim Law and Tort Law, whereas public law cases are defined as cases in Administrative and Constitutional Law, Criminal Law and Criminal Sentencing. Procedural law encompasses cases from Civil Procedure, and Evidence. Finally, professional law contained cases from Biomedical Law and Ethics, and Legal Profession. The remaining subject areas are defined as commercial law. The authors acknowledge of course that this is not a perfect categorisation; in particular, there may well be an overlap in so far as some subject areas are concerned. However, from a broad perspective, it was felt that this comparison afforded some way of making sense of the otherwise minute data. The graph below therefore shows the average number of cases cited per case in a given subject area, for a given year.



82 From this categorisation, it is noteworthy that the highest number of academic citations per year concerned largely commercial law areas. That this is so is unsurprising. These are key areas of growth given Singapore's aspiration to be a global legal hub and its establishment of an International Commercial Court. The fact that much academic citation is taking place in these areas shows that academic material is contributing to the development of case law in legal areas identified as key areas of growth. Moreover, as a practical matter, given that many more commercial cases reach the courts, it is unsurprising that the number of issues needing resolution also increase. Together, this therefore gives the courts many more opportunities to consider academic materials in these areas.

83 Nevertheless, it should also be noted that judicial decisions in some non-commercial law areas also employ relatively large numbers of academic citations, such as Evidence and Criminal Law. Both these areas have been recognised as growth areas or areas in need of development. Since 2010, Singapore has adopted significant amendments to the Penal Code,[166] the Criminal Procedure Code[167] and the Evidence Act.[168] References to academic material in such growth or developing areas show that the Court of Appeal perceives that citing academic material would help justify or legitimise its decisions in these areas.

84 To sum up, the empirical data shows that there has been an increase in the Court of Appeal's citation of academic material over the years. In addition, when looking at the spread in the court's citation of academic material across different areas of the law, one notices that the

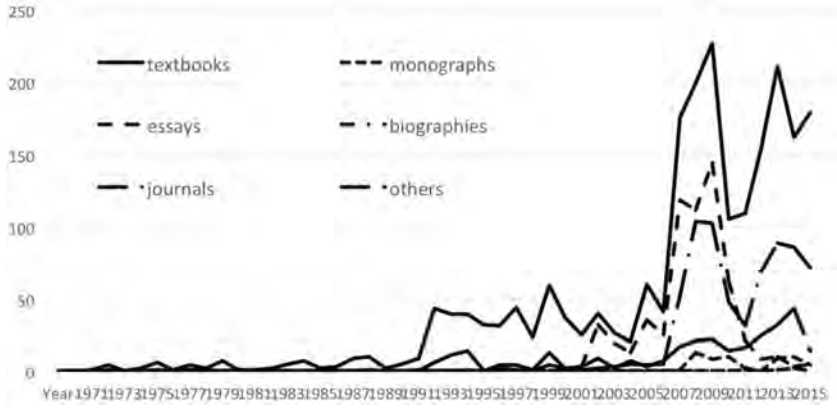
166 Cap 224, 2008 Rev Ed.
167 Cap 68, 2012 Rev Ed.
168 Cap 97, 1997 Rev Ed.

highest number of judicial academic citations take place in areas of law experiencing growth or development. For such emerging and fast developing areas of the law, there may be insufficient or inadequate case law due to the novelty of legal questions posed. This may explain why the Court of Appeal has had to make up for the lack of case law in this area by citing more academic material. More detailed empirical data comparing the proportion of case law with academic citations will be necessary to confirm whether this is so. If so, this may show academic material playing a more important role than case law when formulating and justifying judicial decisions in areas of law experiencing change or development.

D. Types of academic research cited

85 To learn more about the Court of Appeal's approach to academic work, it is useful to examine the type of academic material cited. Given the preliminary nature of this research and the large number of cases under study, the data collected at this stage focuses on the type or form of the research rather than its substance, which would require a narrower selection of cases and more fine-grained analysis.

86 Given debates occurring in other jurisdictions about the types of academic research most useful to the Judiciary, it is useful to more closely examine the types of publications being cited by the Court of Appeal. The court has cited a range of academic materials: textbooks, monographs, collections of essays, biographies and journal articles.



87 The chart above shows the total number of citations of a given type of academic work for a given year. The bar graph breaks this down proportionately on a yearly basis. Hence it is easier to see that, for example, in 2013, textbooks formed the vast majority of academic materials cited by the courts. From this graphical representation, it is clear that, historically, the majority of academic works cited by the Court of Appeal was textbooks. From 1983 to 1987, the Court of Appeal solely referred to textbooks when citing academic material. Textbooks continue to be the type of academic material the Court of Appeal cites most today. However, since 2001, the proportion of journals cited by the Court of Appeal has increased in comparison to textbooks and other academic materials.

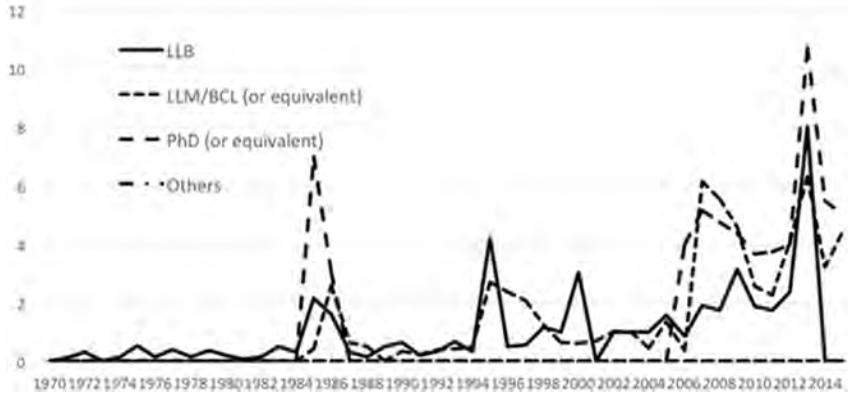
88 Generally, textbooks aim at elucidating or explaining the law. They aim to give a big picture or holistic view of a given area of law. For example, textbooks on contract law aim to show how the different elements of contract law fit together as a whole, and aim to explain doctrine to better the reader's understanding. In contrast, journal articles often aim at discussing cutting-edge developments and introducing more targeted new ideas to the law. This is similarly the case in Singapore. For example, the *Singapore Journal of Legal Studies* states that it "continues to advance the boundaries of global and local developments in law, policy and legal practice by publishing cogent and timely articles, legislation comments and case notes on a biannual basis".

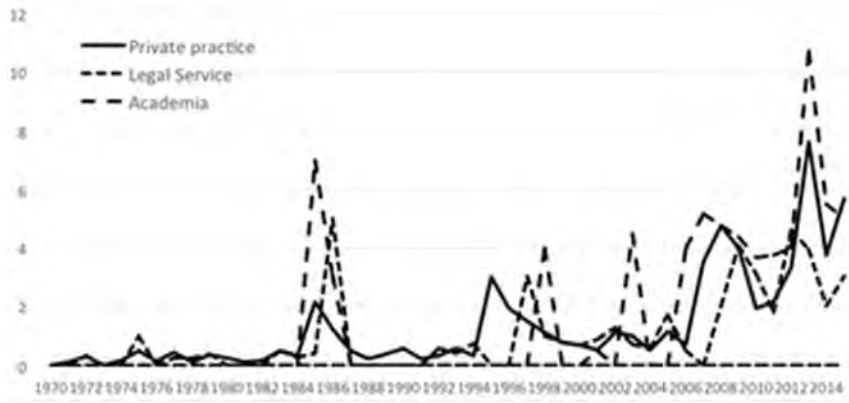
89 By continuing to cite a larger proportion of textbooks in terms of cited academic material, the Court of Appeal's citation practice may indicate the court's continuing concern to ensure holistic and consistent development of the law, taking into consideration how legal questions fit in the larger framework of the law. This is reasonable and to be expected as Singapore's legal system continues to be relatively young when compared to that of other developed countries. However, a larger proportion of journal articles cited in recent years may indicate that the

Court of Appeal has had to take into account more novel questions when developing grown areas of the law.

E. Examining role of individual judges and lawyers

90 Further, it is worth considering whether academic citation practices vary depending on the individual judge. The empirical data collected focused on the education and work experience of individual judges. Could the rise in academic citations be attributed to the academic qualifications or work experience of individual judges?





91 The graphs above show the average number of academic materials cited per case in a given year, by a judge with the described characteristic (for example, holding the rank of Judge of Appeal, or having previously been in private service). There are several conclusions that can be drawn from this data. First, there appears to be no correlation between the rank of the judge and the average number of citations. This is more obviously true for judges holding the ranks of Chief Justice or Judge of Appeal. However, it seems that judges sitting on the Court of Appeal who are neither of these ranks, and who write the judgment in a case, do not cite nearly as many academic materials as judges who are either the Chief Justice or a Judge of Appeal. Given that the Chief Justice and Judges of Appeal are permanent members of the Court of Appeal, this may be explained by the fact that a permanent membership brings with it less hesitation in propounding on the law as an appellate judge would do more often than a trial judge.

92 Secondly, and interestingly, the data did not show that judges holding doctorate degrees or with academic work experience were citing more academic materials in judgments that they penned. In fact, the opposite was the case. Citation of academic work was largely being made by judges holding Bachelor of Laws degrees. In examining this data, it needs to be considered that the majority of judges in the Court of Appeal did not choose to pursue doctorate studies (although a majority would have had a post-graduate degree).

93 Thirdly, the data showed very little relationship between the previous profession of the judge concerned and the citation of academic works. While one might have postulated that judges with academic backgrounds may cite a higher number of cases on average, this has not been borne out by the citation data. Indeed, in some years, judges from either private practice or legal service experience have cited more academic materials on average compared to former academics. An explanation will obviously require more study, but it might be thought

that all judges have access to the same resources in a particular case, such as submissions from counsel and research assistance from law clerks, and so the eventual consideration of academic materials is likely to be very similar.

94 These findings show that the academic qualifications or work experience of individual judges on the Court of Appeal do not significantly influence the amount of academic citations made. This is consistent with findings made by another recent empirical study on the academic citation practices of Singapore judges over the past decade.[169] The factor influencing citation practices is not judge-specific but possibly institutional in nature. It is best understood, as explained above, in the light of the Singapore judiciary's broader adoption of an expository approach to adjudication as well as the Judiciary's encouragement of more "local" scholarship.

V. Some observations and proposals

A. Judicial citations and academic practices: Bridging the disconnect?

95 The previous part's analysis of empirical data shows that the Court of Appeal has increasingly cited academic material, particularly in legal areas of growth and development. This needs to be appreciated against broader judicial developments in Singapore. As explained above, recent empirical research shows that the Singapore judiciary has generally been producing longer judgments and citing more sources in support of its judgments.[170] Increased citing of academic material is thus reflective of the Singapore judiciary's adopting of a more expository approach to adjudication and law-making. By citing academic material, it appears that Singapore's courts consider academic opinion and research as important building blocks of judicial decisions.

96 The Court of Appeal's recognition of academic material as a judicial building block should be considered a positive development for several reasons. It indicates that judges are, at the very least, familiar with academic material being produced. It may also demonstrate that practitioners are engaging with academic material in cases where the material concerned was brought to the court's notice by lawyers involved in the case. Such familiarity and consideration of academic

169 Lee Zhe Xu *et al*, "The Use of Academic Scholarship in Singapore Supreme Court Judgments: 2005–2014" (2015) 33 Sing L Rev 25.

170 Goh Yihan & Paul Tan, "An Empirical Study on the Development of Singapore Law" (2011) 23 SAcLJ 176.

material by judges and practitioners beyond academic circles demonstrates the impact that academics and universities can make in the field of practice. Academics and universities aspire to, and undertake, a range of educative and intellectual objectives, including the dissemination of knowledge beyond an academic institution's four walls.[171] Judicial citation serves as an indicator, among others, that one's academic work is considered and discussed among the broader legal community.[172]

97 Based on the empirical data set out in Part IV,[173] this part of the article puts forward some observations and suggestions on how judicial consideration of academic material and the relationship between the Judiciary and academia can be further developed. It takes into consideration current institutional practices in academia as well as the Judiciary, as well as broader global trends influencing academic and judicial practices.

B. Incentivising and recognising academic research

98 The call to recognise contributions made by academics to Singapore jurisprudence has been made before. Chin Tet Yung, the former dean of NUS Law, has underscored the need to affirm the "academic role of adding to the jurisprudence of Singapore".[174] Chin argues that "[j]udicial decisions must be complemented by sound commentaries to develop a strong legal system".[175] Simon Chesterman, the current NUS Law dean, has also called on academics to "not forget our obligation to domestic law reform issues".[176] However, this academic role and obligation has come under some pressure due to the global aspirations of Singapore's universities.

---

171 For more in-depth discussion about the aims of universities, see Stephen Collini, *What are Universities for?* (London: Penguin Books, 2012).

172 There are many other indicators that one's academic work is valued and debated within broader society that this article does not have the opportunity to discuss. This often depends on the nature of the research topic and research. For example, academic research may inspire or form the basis for popular documentaries or exhibitions.

173 See paras 65–95 above.

174 *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 92.

175 *Change and Continuity: 40 Years of the Law Faculty* (Kevin Tan ed) (Singapore: Times Editions for the Faculty of Law, National University of Singapore, 1999) at p 92.

176 Simon Chesterman, "In Conversation: Professor Simon Chesterman" (2012) 30 Sing L Rev 3 at 6.

99 The internationalisation of Singapore's academic landscape adversely impacts academic contribution to local jurisprudence in direct and indirect ways. As mentioned above, Singapore's academic institutions pay close attention to global ranking systems. Focus on these global ranking systems may result in academic institutions, explicitly or implicitly, potentially privileging certain types of research and publications over others. Specifically, academic institutions may seek to encourage academics to publish with "international" journals or publishers that are taken into account by these global ranking systems. As of 2016, the *Times Higher Education* ranking methodology only includes "academic journals indexed by Elsevier's Scopus database per scholar".[177] This does not include the textbooks cited by the Court of Appeal in recent years.

100 The negative consequences of overemphasising international rankings on academic research have been highlighted. In June 2016, Acting Minister for Education Ong Ke Yung cautioned that while "good rankings" increase opportunities for students and staff, and while these rankings are "significant achievements", there is a need to "recognise that rankings, done by private organisations, are based on criteria that may not entirely align with the public missions of our IHLs and universities".[178] Ideally, academic research should be evaluated on its merits. Indicators, such as the journal or publisher involved, may assist this process but should not determine it. A broad range of indicators and factors, reflective of the varied aims of a law school and university, should be taken into account.[179] Being overly fixated on the "international" pedigree of academic research will fail to recognise much of the academic research that has served as building blocks of Singapore judicial decisions. Having said that, it remains true of course that more "international" legal research may still be useful to the development of Singapore jurisprudence, which is itself part of a more global network of the common law. However, it remains equally true

---

177 *Times Higher Education* website <https://www.timeshighereducation.com/news/ranking-methodology-2016> (accessed 18 October 2016).

178 Ong Ye Kung, "Keynote Address by Mr Ong Ye Kung, Acting Minister for Education (Higher Education and Skills), at the Straits Times Education Forum at Singapore Management University" (25 June 2016) <https://www.moe.gov.sg/news/speeches/keynote-address-by-mr-ong-ye-kung--acting-minister-for-education-higher-education-and-skills--at-the-straits-times-education-forum-at-singapore-management-university> (accessed 19 October 2016).

179 For a discussion of the different aims of higher learning and universities, see Ong Ye Kung, "Keynote Address by Mr Ong Ye Kung, Acting Minister for Education (Higher Education and Skills), at the Straits Times Education Forum at Singapore Management University" (25 June 2016) <https://www.moe.gov.sg/news/speeches/keynote-address-by-mr-ong-ye-kung--acting-minister-for-education-higher-education-and-skills--at-the-straits-times-education-forum-at-singapore-management-university> (accessed 19 October 2016).

that more "local" academic research targeting issues of particular concern in Singapore will also be useful towards the development of Singapore law.

101 Apart from academic institutions, the Judiciary and other stakeholders may wish to adopt measures to encourage academic research that may not, at least for now, be given adequate recognition by global ranking systems or academic institutions. This includes textbooks and research published by Singapore-based journals or publishers not captured by these global ranking systems. To offset the lack of recognition by global ranking systems, Singapore-based journals and publishers could establish competitive research grants, fellowships, or prizes to recognise research potential and excellence.

102 An example of a recent initiative to encourage academic research relevant to Singapore would be the research grants scheme administered by the Singapore Judicial College ("SJC"). The SJC, established by the Singapore Supreme Court, aims to "provide and inspire continuing judicial learning and research to enhance the competency and professionalism of judges".[180] Apart from training of judicial officers, the SJC aims to be "an Empirical Judicial Research laboratory" and for this reason runs a research grant programme that awards research grants for empirical research related to the Singapore judiciary.[181] Indeed, this very study is funded by the SJC.

103 Another possibility is the establishment of a formal Law Commission in the mould of other similar institutes elsewhere. While the Singapore Academy of Law currently has a Law Reform Committee that performs a similar function, it may help academics professionally if they may serve as "Law Commissioners" as opposed to committee members. Such a formal appointment may also encourage universities to accord due recognition to such academic contribution. Indeed, in the UK, several top private law academics, such as Andrew Burrows, served as Law Commissioners on secondment from their universities to engage in full-time law reform work. The result is not only a more focused and substantive law reform process, but also increased professional benefit to the academic concerned.

---

180 Singapore Judicial College website <http://www.supremecourt.gov.sg/sjc/home> (accessed 18 October 2016).

181 For details of some of the inaugural research grants awarded by the Singapore Judicial College to law academics, see the Singapore Management University website <http://research.smu.edu.sg/news/2015/09/18/smu-school-law-wins-singapore-judicial-college-grant> (accessed 18 October 2016).

C. Judicial-academic exchanges and research dissemination

104 Singapore law schools have always placed importance on engaging members of the profession, including the Judiciary.[182] A number of judges serve as advisers on the advisory boards of NUS and SMU.[183] To enhance the Judiciary's familiarity with scholarly research, more informal and formal avenues of interaction could be established between the Judiciary, academic institutions and other legal stakeholders. For example, since 2002, the Supreme Court and NUS Law have taken turns to host lunches between Supreme Court judges and NUS law academics.

105 More opportunities for judges and academics to participate or contribute to the work of each institution would increase familiarity with each other's work, such as questions being dealt with by the Judiciary and debates taking place among academics. There are currently a number of initiatives in place which could be broadened. The Supreme Court currently runs a Young Amicus Curiae Scheme targeting "young advocates and solicitors".[184] Apart from the programme, the Singapore courts are now more regularly appointing academics as *amicus* to assist in novel questions of law. These experiences help the academics to understand the problems in practice and improve their research accordingly. However, to facilitate the involvement of academics who may not be called to the Singapore Bar, the Singapore Supreme Court could consider exempting academics with the relevant background or experience from the bar requirement.[185]

106 Longer-term engagement between the Singapore judiciary and academia could be developed at the institutional level as this would

---

182 An example would be the Continuing Legal Education Programmes of National University of Singapore Law and Singapore Management University Law that run courses for practitioners.

183 For the list of advisory members on the National University of Singapore Law Advisory Council and the Singapore Management University Advisory Board, see the National University of Singapore Law website <http://law.nus.edu.sg/about_us/advisors.html> (accessed 18 October 2016) and the Singapore Management University Law website <https://law.smu.edu.sg/about/advisory-board> (accessed 18 October 2016).

184 The Singapore Supreme Court runs a Young Amicus Curiae Scheme that aims "to allow young advocates and solicitors to assist the court on novel points of law or important issues of public policy". For details on the scheme and requirements, see <http://www.supremecourt.gov.sg/legal-professional/application-for-young-amicus-curiae-scheme-2016> (accessed 18 October 2016).

185 See para 5(b) which requires applicants to "be a qualified person (as defined in section 2 of the Legal Profession Act (Cap 161))": Information Note of the Application for Young Amicus Curiae Scheme <http://www.supremecourt.gov.sg/legal-professional/application-for-young-amicus-curiae-scheme-2016> (accessed 18 October 2016).

facilitate deeper understanding of each other's institution and could also lead to fruitful collaboration between individual judges and academics. Law schools could create distinguished visitor programmes aimed at hosting senior or retired judges for longer periods of time.[186] To involve academics in the workings of the Judiciary, Singapore courts could consider allowing academics researching on topics related to the Judiciary to have access to court materials.

107 Having more platforms or opportunities for discussions and exchanges of opinion will increase the familiarity of judges and academics with each other's work. The Judiciary and Singapore law schools could organise annual conferences or workshops that bring together academics and judges.[187] Closed-door or registration-only roundtables or events could be held to encourage more frank sharing of opinions and experiences. Law schools could provide updated lists of publications and works-in-progress to the Judiciary through the year.[188] Since law schools already compile such lists for the university, these lists could be sent to the Judiciary by e-mail with little additional administrative work.

VI. Conclusion

108 This article adds to emerging studies on the Singapore judiciary's citation of academic scholarship. First of all, empirical evidence confirms that the Court of Appeal has increasingly cited academic material in its decisions. There has been an increase in citations across all areas of law, with a particularly high number of citations in areas experiencing rapid development in Singapore. While the court has continued to largely cite textbooks, it has cited a larger proportion of academic journals in recent years. This possibly reflects the fast developing and cutting-edge nature of legal issues addressed by the court of late.

109 If such academic contribution to Singapore jurisprudence is a positive development, a number of steps can be taken to promote and facilitate judicial citation of academic scholarship. For example, a consistent message could be sent at all levels of the university that academic contribution to Singapore jurisprudence is valued and judicial citation is an indicator of such contribution. Research grants supporting research of particular interest to the Singapore judiciary, such as those awarded by the SJC, will also help encourage research in court-related areas. In addition, there could be more informal and formal platforms

186 Some US law schools host judges through their distinguished visitor programmes.
187 Thanks to Assistant Professor Swati Jhaveri for suggesting this.
188 Again, thanks to Assistant Professor Swati Jhaveri for suggesting this.

for judicial-academic exchange and discussion. This will enable judges and academics to familiarise themselves with each other's work, including scholarship. More academics will be exposed to the legal questions that courts are dealing with.

110 To conclude, a broader theme underlying this article's discussions is the role of law schools and academics in Singapore's rapidly changing legal system and higher education landscape. So far, debates about the role of Singapore's law schools have largely focused on whether law schools should focus on teaching legal skills or delivering a more broad-based liberal education.[189] Less attention has been given to the role of academics and the aims of legal research. Should legal research be evaluated based on international standards, the shaping of domestic law, or other forms of influence? How should research value be assessed? This conversation needs to be comprehensively undertaken to avoid the entrenchment of research indicators that do not fully reflect the multiple roles of law schools, academics and research.[190] Discussions should involve stakeholders within and outside the university given the public nature and aims of law schools and universities.

111 Above all, apart from exploring judicial citation practices of academic works, this article hopes to serve as a springboard for bigger discussions about the role of law schools, academics and research in Singapore. Indeed, as mentioned earlier, this article only presents a snapshot of the empirical research undertaken of the Court of Appeal's citation of academic works. It is envisaged that more papers will follow in due course.

---

189 See, *eg*, Tan Cheng Han, "Challenges to Legal Education in a Changing Landscape – A Singapore Perspective" (2003) 7 *Singapore Journal of International and Comparative Law* 545 at 556–565.

190 The assessment of academic research and academic contribution through using metrics and indicators has been the subject of much criticism and research in the UK. See, for example, Roger Burrows, "Living with the H-Index? Metric Assemblages in the Contemporary Academy" (2012) 60:2 *The Sociological Review* 355 and Andrew C Sparkes "Embodiment, Academics, and the Audit Culture: A Story Seeking Consideration" (2007) 5 *Qualitative Research* 521.