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## **Five-foot Way as an Embodiment of Public and Private Rights: The Origin, Survival and Preservation of Spatial Heritage in Singapore and Beyond**

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# Five-foot Ways as an Embodiment of Public and Private Rights: The Origin, Survival and Preservation of Spatial Heritage in Singapore and Beyond

By Andrew Harding

Abstract:

*This paper explores the spread of the five-foot way (5FW) as an aspect of urban design peculiar to Southeast Asia. It locates the 5FW as an aspect of planning law and property law that has been adapted culturally, in spite of conflicts over appropriate use, to provide a unique space for public-private interaction.*

Insufficient attention has been paid to the law in the context of the organisation of urban spaces in Asia.<sup>1</sup> This is especially true in Southeast Asia, which has historic urban spaces as well as sprawling modern cities such as Jakarta (population now exceeding that of the entire continent of Australia), Bangkok, Manila, and so on. Many of these, such as the three former Straits Settlements of Singapore, Malacca and Penang, as well as cities laid out at a similar period under British rule, such as Kuching, Ipoh, Johor Bahru and Kuala Lumpur, have been deeply affected by colonial urban planning laws, which have also not been extensively examined.<sup>2</sup>

Both historically and in the contemporary Southeast Asian city law plays a crucial role in organising urban space and in preserving historical spaces as social, cultural, or aesthetic artefacts. Some indeed, like Penang and Malacca, are designated as UNESCO World Heritage sites.<sup>3</sup> Scholarship in social sciences emphasises the fact of and the need for survival of the ‘vernacular’ and of communities in spite of the contemporary urban sprawl.

The design of these historic elements of built environment, including spaces, owes much to colonial urban planning under British rule, influenced as it was by British or other colonial urban design cultures as well as social, economic and political factors.<sup>4</sup> That the models adopted in these cities have survived the test of time (at least two hundred years in some cases such as Singapore<sup>5</sup>) shows that they remain not just an aspect of heritage but have been functionally relevant as well as socially and culturally adapted to Southeast Asia’s post-colonial world. They have also been sites for contestation between subject peoples and colonial governments, as Brenda Yeoh’s work has shown.<sup>6</sup> They are in short living built

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<sup>1</sup> Jack Tsen-Ta Lee, ‘We built this city: Public participation in land-use decisions in Singapore’ 10:2 *Asian Journal of Comparative Law* 213 (2015).

<sup>2</sup> For notable exceptions, see R Home, *Of Planting and Planning: The Making of British Colonial Cities* (London, Chapman Hill, 2008) (chapter 8 looks at the evolution of planning law in the colonies); B Yeoh, *Contesting Space in Colonial Singapore: Power Relations and the Built Environment* (Singapore, NUS Press, 2003). The latter looks (ch.7) at inter alia disputes over the use and definition of ‘verandahs’, i.e., 5FWs.

<sup>3</sup> See <http://whc.unesco.org/en/list/1223>.

<sup>4</sup> Home, above n.2, chapter 3.

<sup>5</sup> Construction of new shophouses with 5FWs stopped in Singapore in the 1960s, so that the 5FW coincides almost precisely with its colonial history, but it continues unabated elsewhere, e.g. in nearby Johor Bahru. See also below, n.14.

<sup>6</sup> Above, n.2.

heritage. And there is no better example of this than the five-foot way that is the modest subject of this article.

The '*kaki lima*' or five-foot way (5FW) is a unique concept in Southeast Asian urban design, which has spread to several places across Asia, not just those that were British colonies (e.g., Xiamen in Fujian province, China, and Manila). The 5FW, introduced by Stamford Raffles under the Jackson Plan in Singapore in 1822 or 1823,<sup>7</sup> is a very simple but effective concept. It is a pedestrian walkway which runs along the frontage of adjoining buildings in a street, overhung by the second floors of those buildings, which are supported by columns along the highway side of the 5FW, each placed at the limit of the individual tenement and fronting the street, creating a colonnade, or, in 19<sup>th</sup> century usage, a 'verandah'.<sup>8</sup>

Shophouses are carefully described by Singapore's Urban Redevelopment Authority (URA) as follows:

narrow, small-scale terraced houses that are used for both work and dwelling and offer heat and rain protection for the passing public ... [they are] typically two to three storeys high, are built in contiguous blocks bounded by a grid pattern network of roads and backlanes ... and share party walls. [The shophouse] provides facilities for business premises on the ground floor and residential accommodation on the upper storeys – an ideal unit for small-scale, family-based commercial operations ... the upper floors of the shophouse are accessed through the open door-front on the ground floor or from side stairs leading from the five-foot way.<sup>9</sup>

The benefits of the 5FW are as many as they are obvious. The pedestrian is sheltered from the sun and rain – factor of great importance in Southeast Asia with its hot sun and torrential rainstorms. She may view shops and restaurants under cover while proceeding along the street. Crucial living space in crowded areas is saved due to the projection of the buildings' upper floors. The 5FW is both a highway for the pedestrian public to 'pass and repass' (to use traditional common law terminology<sup>10</sup>), and social space for interaction between

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<sup>7</sup> 'Plan of the Town of Singapore by Lieut. Jackson' (1822 or 1823), reproduced in 42:1 *Journal of the Malaysian Branch of the Royal Asiatic Society* (1969), at 200; see also HF Pearson, 'Lt. Jackson's Plan of Singapore' in the same issue at 161, and in M Sheppard (ed), *Singapore: 150 Years* (Singapore, times Books, 153: 1984), at 150.

<sup>8</sup> The word veranda (or verandah) contains an important ambiguity that may even have led to confusion about the purposes of 5FWs. Derived from a Hindi word meaning balustrade, it can, according to the OED, mean 'a roofed platform along the outside of a house, level with the ground floor'; or 'a roof over the pavement in front of a shop'. The later usage describes the 5FW, and is regular in Australia and New Zealand. 'Covered footway' and 'colonnade' were sometimes used as alternatives.

<sup>9</sup> URA, 'Understanding the shophouse: More than an arcade', Conservation Technical Leaflet (undated).

<sup>10</sup> In *Clerk & Lindsell, The Law of Torts*, 17th ed. (1995), para. 17-41 the current state of the common law as to the question of use of a public right of way is summarised in these terms: 'The right of the public in respect of a highway is limited to the use of it for the purpose of passing and repassing and for such other reasonable purposes as it is usual to use the highway; if a member of the public uses it for any other purpose than that of passing and repassing he will be a trespasser.' This passage was cited with approval by Lord Irvine in *DPP v Jones and Another* [1999] 2 AC 240. His Lordship set out the limits of this right in the following terms: 'The question ... is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the general public to pass and repass, they should not constitute a trespass'. On this basis it is not at all certain whether appropriation of a 5FW for use by the landowner or his tenant that would *not actually obstruct* the public in the exercise of its right of passage would be unlawful. The matter remains to be tested in the courts in Singapore.

shopkeepers, restaurateurs and the public, or for the benefit of local residents. Moreover 5FWs can be easily lit at night without resort to lampstands. Some, in the author's own observation, are even endowed with ceiling fans provided by the adjoining owner. In practice, as anyone who has been to Southeast Asia will know, the 5FW is also used for maximising private space, usually for profit. It is usual, although not always wholly acceptable, for the 5FW to be used for almost any activity - repairing motorcycles, display of merchandise, stacking garbage, providing extra restaurant tables, selling motor insurance or lottery tickets, frying noodles, or executing one's homework - to name but a few examples observed by the author in recent years. In 19<sup>th</sup> century Georgetown and even up to 2000 they were used for *jagas* (Sikh guards) to sleep on their *charpoys* (string beds). In the Hokkien (Fujian) Chinese dialect, trades known as *gho kha ki*<sup>11</sup> trades are those carried on in 5FWs. As Limin Hee and Giok Ling Ooi have explored, the 5FW has often been a contested space due to overcrowding and a general lack of city planning, historically speaking at least, in Singapore:

most of the time, these walkways did not actually serve pedestrians because they were privatized and often used as additional storage or retail display space. More often than not pedestrians had to spill over to the already crowded streets and their traffic. The verandah thus became a strongly contested terrain, its municipal definition as planned circulation space constantly frustrated by business, communal and social activities. While events such as the 'verandah riots' of 1887 represented dramatic conflicts over the use of these spaces, the daily contestations tempered the colonial municipal vision of an orderly city.<sup>12</sup>

Despite the policy of locating traders, especially food-hawkers, to custom-built food courts and similar relocation policies, habitual usages even now often impede the 5FW's use as a public passageway. On the other hand, such spillage of private into public space also makes for a characterful and colourful spectacle. Many 5FWs have charm (see the photographs at the end of this article), and where they are not present, as in the very oldest parts of Malacca, their absence is sorely felt by modern residents and visitors, dodging traffic in the street and avoiding sun and rain to circumvent closed off 'verandahs', there being no other means of passage.

As such the 5FW is uniquely deserving of both study and preservation as an aspect of living the Southeast Asian culture. It is, for example, carefully buttressed by steel scaffolds during Singapore's Mass Rapid Transit expansion around Jalan Besar, in case of damage to shophouses and injury to the public from vibration and piling. Documentation issued by Singapore's URA explains much to owners of old shophouses about the importance of 5FWs.<sup>13</sup> 200 years of development have in no sense reduced the utility of the 5FW. It has been adapted and increased in size for modern streets of office blocks, and can be found even at the upper floors of markets and shopping precincts. Suburban Johor Bahru in Malaysia displays numerous examples of shophouse precincts with 5FWs constructed within the last two or three years.<sup>14</sup> These are essentially no different from those built in early 19<sup>th</sup> century

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<sup>11</sup> Singapore Archives and Oral History Department, *Five-foot-Way Traders* (Singapore, 1985). 'Kha ki' is, of course, derived from the Malay '*kaki*' (foot).

<sup>12</sup> Limin Hee and Giok Ling Ooi, 'The politics of public space planning in Singapore', 18:1 *Planning Perspectives* 79 (2003), at 85-6. See also B Yeoh, above n.1; Singapore Archives and Oral History Department, *Five-foot-Way Traders* (Singapore, 1985).

<sup>13</sup> See <<https://www.ura.gov.sg/uol/about-us/our-work/protecting-identity.aspx>>.

<sup>14</sup> For the origins and spread of the shophouse, see Jon S. Lim, 'The "shophouse Rafflesia": An outline of its Malayan pedigree and its subsequent diffusion in Asia', 66:1 *JMBRAS* 47 (1993).

Singapore. ‘Five-foot’ is of course an approximation based on Raffles’ original instruction; in practice the five feet may be larger or smaller depending on local needs. Indeed by a regulation of 1908 the Municipal Commissioners in Singapore already expanded the 5FW to a seven-foot way, and, such was their belief in this design that they even imposed the creation of such ‘7FWs’ as a condition for submission of any new building plan.<sup>15</sup> By-Law 121, made under the Municipal Ordinance,<sup>16</sup> stipulated that any person ‘who shall erect a building which abuts on a street or road shall provide a verandah-way or an uncovered foot-way of the width of at least seven feet’.<sup>17</sup>

Of course the preservation of this special space depends on the preservation of the buildings that define it, as the URA has constantly stressed.<sup>18</sup> Nowadays, URA policy in Singapore provides for preservation of 5FWs just as it provides for the preservation of old shophouses.<sup>19</sup> The two are inextricably intertwined and in many ways mutually dependant as we will see.

### *Origins*

The origins of the 5FW are probably less important than its claim to longevity. Still, if we claim that it is uniquely Southeast Asian, that claim needs to be explained and substantiated.

Raffles may well have introduced the 5FW in Singapore having seen it in Dutch Batavia (modern Jakarta) when he was Governor of Java (1814-18: he arrived in Singapore in 1819). It is also possible that it has origins in Southern Europe (Spain, Italy), which have a similarly hot climate to Southeast Asia. Indeed in the Spanish empire, attempts were made to predetermine aspects of city planning by legislation; the Spanish *Law of the Indies* of 1542 provides at Ordinance 115:

Around the plaza as well as along the four principal streets which begin there, there shall be arcades, for these are of considerable convenience to the merchants who generally gather there; the eight streets running from the plaza at the four corners shall open on the plaza without encountering these arcades, which shall be kept back in order that there may be sidewalks even with the streets and plaza.<sup>20</sup>

There is an interesting difference with the 5FW. The ordinance indicates that the ‘arcades’ are for the convenience of the merchants, and not necessarily for passage, since there would be a separate sidewalk for pedestrians. It may be that this early Spanish concept in urban design avoided the constant conflicts over use of 5FWs in areas coming under its British

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<sup>15</sup> This regulation, or its successor, was clearly controversial, and was the subject of a successful mandamus application, cutting down in effect the scope of the regulation, in 1937 in *Municipal Commissioners v Syed Abdulrahman bin Shaikh Alkaff & Ors* [1937] MLJ 183, attracting also in the process the clear disapproval of a majority of the appeal court judges.

<sup>16</sup> Cap.135.

<sup>17</sup> For the legislative history, see the judgment of Terrell CJ in *Syed Abdulrahman*, above n.15. In a new development in Tanjong Pagar, one of Singapore’s most historic districts, the ways are, as observed by the author, as much as 10 feet wide.

<sup>18</sup> Above n.13.

<sup>19</sup> For URA conservation guidelines, see <<https://www.ura.gov.sg/uol/guidelines/conservation/Conservation-Guidelines.aspx>>.

<sup>20</sup> See, further, AI Mundigo and DP Crouch, ‘The City Planning Ordinances of Law of the Indies Revisited. Part One: Their Philosophy and Implications’, 48:3 *Town Planning Review* 247 (1977).

equivalent. At the same time, the utility of the Spanish design to the public would have been reduced compared to the 5FW.

However, the 5FW could have its origins in Southern China, which also shares a tropical climate with SE Asia. Plausibly (and this is the view the author prefers, although we will probably never know for certain) it could have been brought to Batavia by Southern Chinese migrants from Fujian or Guangzhou and been adopted (or perhaps merely allowed?) by city authorities there. Raffles may well have seen it as the simple but effective design it is and adopted or encouraged its use in Singapore as Chinese migrants arrived in the early 1820s and beyond. As with most things associated with Southeast Asia, its origins probably lie outside the region, but its uniquely Southeast Asian nature is attributable to the way in which it has been culturally adapted to Southeast Asia and has persisted to this day. The concept spread rapidly from Singapore through British colonies, especially Georgetown, Penang, and later other urban centres in Malaya such as Ipoh, Johor Bahru, Kuala Terengganu, and further afield in Sarawak's capital city, Kuching, Jesselton the capital city of North Borneo (modern Kota Kinabalu/ Sabah), and Brunei, all on the island of Borneo.<sup>21</sup> It is found even in quite small settlements in Peninsular Malaya such as Kuala Pilah in Negri Sembilan and tiny Yong Peng, a one-street Foo-chow (Fuzhou) Chinese town in Johor. Wherever the Chinese settled under British rule, invariably in urban or semi-urban settlements, the shophouse and the 5FW inevitably followed. Malacca on the other hand has few 5FWs due to it having been largely laid out in earlier colonial times before the 5FW became fashionable; nonetheless, as elsewhere, 5FWs may be found in its newer (i.e. early 20<sup>th</sup> century) Chinatown streets.

On his return to Singapore in 1822, Raffles was disturbed by the laissez-faire manner in which the new colony had grown up, and instituted concerted town planning in the form of the *Jackson Plan*, which defined ethnic areas and laid out the city on a grid basis.<sup>22</sup> This 'Plan for the Town of Singapore' was made by a committee and named after its chair, Lieutenant Philip Jackson, land surveyor and engineer of the colony.<sup>23</sup> This grid plan had a number of useful functions. It made efficient use of space, which was important in a busy, commercial port city. It allowed for more light, for more air to circulate, and improved public health in areas that would be densely inhabited. 5FWs can be effectively air tunnels creating a welcome breeze. The main advantages of the 5FW system, according to Raffles, were ventilation and scavenging (refuse collection).<sup>24</sup> Reserving wide streets between the 5FWs for vehicular traffic was a safe and efficient means of providing for trade and communications. In a sense the 5FW provided a useful trade-off, because these wide streets were unprotected from the elements; the public could escape the traffic and enjoy the advantages of the mixed-use 5FW. The danger of accidents involving pedestrians, as motor vehicles became more common, was slight: kerbs and pillars would normally prevent a vehicle from entering the 5FW at all. Nowadays, in modern Singapore, road verges are often full of trees that overhang the road, providing protection for the road and its traffic, as well as growing tall enough to avoid the tops of the largest vehicles.

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<sup>21</sup> See Lim, above, n.14,

<sup>22</sup> CM Turnbull, *A History of Modern Singapore, 1819–2005* (Singapore, NUS Press, 2009), at 39. Cities were 'laid out' but not 'planned'. I suggest the difference in usage is significant: see Home, above n.1, at 2. However, town planning 'missionary' CC Reade, who pioneered modern town planning in the British colonies, derived inspiration, he claimed, from, inter alios, Raffles: *ibid.*, at 154.

<sup>23</sup> Above, n.7.

<sup>24</sup> Home, above n.1, ch.7.

Of course one might also see, in this clinically clean-lined form of planning, evidence of a colonial, enlightenment-thinking-driven obsession with mathematical precision as good for both body and soul. If one does, the attitude in question has also a strong fit with the clinical tidiness of modern Singapore's highly regulated thoroughfares. It made a strong statement about the superiority of orderly British government over chaotically inductive Asian urban pluralism, emphasising not just economic efficiency but social improvement too. In this way, Asian urban design traditions were, according to Robert Home, deliberately ignored,<sup>25</sup> yet the vernacular certainly fought back, resisting the attempts at rationalising its behaviour.<sup>26</sup> Still, one wonders if Raffles and Jackson considered the 5FW to be culturally relevant to the Chinese population at least. It may even be, as is argued above, that they culled the 5FW itself from observation of spontaneous Chinese migrant housing. In one respect at least this British town planning did ignore a culturally relevant factor, namely the traditional air well of Chinese houses, which one can see often in (pre-Raffles) Malacca, but not in the Singapore of Raffles' time and immediately following, although it appears in some later versions of the Singapore shophouse. Given the consideration given to public health, this is odd: the air well provided light and air in what would otherwise be the dark and dank rear and middle areas of the shophouse, where members of the shopkeeper's family would be housed.<sup>27</sup>

The British Empire was not exactly acquired in what Churchill famously alleged as a 'fit of absent-mindedness'. Nonetheless it was extremely messy in terms of what we might call constitutional and legal status, depending largely on the modes of imperialism preferred by local officials on the basis of creating some kind of contextually salient legitimacy. Accordingly, even the status of the Crown varied greatly across the empire's numerous categories of imperial presence. When it came to urban planning, however, and the regulatory laws that were introduced, standard positions did ultimately emerge, even if they were often ignored or departed from radically, as one might expect, in the actual implementation locally. Robert Home shows how, across the world from the American colonies to Australia, Asia and Africa, a 'Grand Modell' was developed by Lord Shaftesbury and others from the Restoration (1660s) period (the same period as Wren's rebuilding of the City of London and St Paul's Cathedral) and then changed over time up to the 20<sup>th</sup> century to deal with new circumstances. This model was sufficiently dirigiste in some areas that the grid pattern was modified by introducing diagonal streets to make the town plan look exactly like a Union Jack: that is quite an imperial statement. It tended to transcend the constitutional and even geographical particularities of the city or town in question, even if it failed to replicate the highly centralised, regularised, bureaucratic approach of the Spanish empire in South America. In Singapore, the grid plan of Lieutenant Jackson was modified somewhat by the irregularity of the island it sought to control. Even the Spanish laws recognised that locality might demand some modification. Asia differed from South America in that, in general urban centres, they were populous and highly developed before the arrival of European powers. Singapore is an exception in this regard, and Raffles had a much freer hand than many other colony-planters.

In Asia one function of this type of urban planning was to divide the various ethnic groups from each other.<sup>28</sup> This can still be easily seen in the street names of downtown Singapore<sup>29</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> Yeoh, above n.1.

<sup>27</sup> Home, above n.1, ch.7.

<sup>28</sup> Home, above n.1, ch.7.

<sup>29</sup> HT Haughton, 'Native names of streets in Singapore', in M Sheppard (ed), *Singapore: 150 Years* (Singapore, Times Books, 1953: 1984), 208; VR Savage and Yeoh, *Singapore Street Names: A Study of Toponymics* (Singapore, Marshall Cavendish Editions, 2013).

such as Bencoolen Street, Hong Kong Street, Arab Street, Armenian Street, Bugis Street, and so on. Bencoolen Street, for example, was inhabited by Bengkulu people who followed Raffles to Singapore after he was Governor of Bencoolen in Sumatra.<sup>30</sup> The 5FW may be seen not just in Chinese areas; it is prevalent in Little India around Serangoon Road, and in parts of Kampong Glam, which is a traditionally Malay area.

The *Jackson Plan* divided Singapore into ethnic subdivisions<sup>31</sup> and laid out the new colony in the familiar grid pattern, at least as far as the contours of the island permitted. Four areas were delineated: a European town for Europeans, Eurasians, Jews, Armenians, and wealthy Asians (i.e., those referred to by Raffles as ‘respectable’) - this area corresponding to modern downtown Singapore’s civic and heritage district; a Chinese kampong (modern Chinatown); Kampong Chulia (modern Little India) for ‘Indians’ or South Asians; Kampong Glam for Muslims, primarily Malays and various Arab or other Muslim groups.

The shophouse itself was well adapted to the economy and culture of the 19<sup>th</sup> and early 20<sup>th</sup> century Straits Settlements. The influx of females mitigated an overwhelmingly male demography, introducing eventually family life and children.<sup>32</sup> The shophouse and its 5FW offered an opportunity to combine the public presence of the family business with the need for the privacy of growing families. This made a useful contribution to the survival and adaptation of the 5FW to more modern conditions. It was good for business but did not expose the privacy of the family to unwelcome invasion by the public.

During the 19<sup>th</sup> century planning laws and policies were developed further, making as we have seen copious use of the power of the Municipal Commissioners and, later, the Singapore Improvement Trust, to make by-laws. This process was carried to a logical conclusion under Singapore’s post-independence government, which, via the URA, stressed even more the benefits of good planning and strict laws enforcing planning policy. By the 1980s the issue had become one of preservation rather than use of 5FWs.<sup>33</sup> The policy of segregation was reversed. In modern Singapore the ethnic groups would be homogenised in HDB estates and kampongs (villages of Malay *attap* houses) would be done away with.<sup>34</sup>

## ***Regulation***

This leads us inevitably to the issue of regulation.

Strictly speaking, in law the 5FW is normally within the freehold of the tenement adjoining the highway, and the public has merely a right of way over it (that is to say, as we have seen above, merely the right at common law to pass and repass). The 5FW offers a legally suitable means of providing for public access. It offers a useful compromise between public and private. It facilitates support for the upper levels of the shophouse, providing extra living space that would not otherwise be available, and safety for the public passing below. As a matter of observation, however, in actual social usage the 5FW is treated as a shared rather

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<sup>30</sup> See <[http://eresources.nlb.gov.sg/infopedia/articles/SIP\\_174\\_2005-01-25.html](http://eresources.nlb.gov.sg/infopedia/articles/SIP_174_2005-01-25.html)>.

<sup>31</sup> Although the ethnicity of these areas may be observed even today, it seems clear that Raffles’ delineating factor was essentially more economic than ethnic: Home, above n.1, at 119-121.

<sup>32</sup> Turnbull, above n.22, at 87.

<sup>33</sup> See <<https://www.ura.gov.sg/uol/conservation/vision-and-principles/brief-history>>.

<sup>34</sup> Turnbull, above n.22, at 301-2.



than public space (see photographs). Even in modern, highly regulated Singapore it is common to see restaurant tables in the 5FW as well as many other private uses. The right the public enjoys in practice at common law is for its 'passing and repassing' not to be completely obstructed, as indicated by the House of Lords in *DPP v Jones*.<sup>35</sup> In other words (for example in the local context of Singapore and other 5FW settlements) the pedestrian may have to thread her way around tables, step over parts of motorcycles, avoid stacks of cartons, fridges, and so on, but complete obstruction is rare these days, and would not normally be tolerated officially or unofficially. The result, even in Singapore, is a sense of chaos that might be seen as either charming or inconvenient, depending on one's point of view. An exception that becomes increasingly common is the renovation of shophouses,<sup>36</sup> where it may be necessary on a temporary basis to block off access to the 5FW while renovation is being carried out, as a matter of both convenience for the contractors, and safety for the public. In this usage the 5FW pillar, historically often used for Chinese-character advertising or hanging menus or calendars, is used to hang a curtain of tarpaulin or the like, preventing dust and signalling the pedestrian to walk around the cordoned-off area.

From this it is clear that social usage in Southeast Asia does not exactly conform to the binary notion of public and private rights (i.e., public rights over private property) that the common law espouses and has found convenient in the observance over many centuries in England. Rather, in Southeast Asia, the line between the two is fuzzy and shifts according to circumstances, or according to how far the private owner feels able with impunity to make use of or impinge on the public right of way. From time to time, attempts are made to 'clear' 5FWs. 'Local authorities must ensure', pontificated one urban guru in a Malaysian newspaper in January 2016, 'that their building inspectors clear the five-foot ways of obstacles. Those not familiar with five-foot ways and how these are misused, are encouraged to take a walk along Campbell Street in Georgetown, Penang'.<sup>37</sup> Given the funding pressures on Malaysian local authorities, this is highly unlikely to occur on any consistent or ongoing basis, or perhaps even at all. Much the same could be said about Singapore's Little India, where the authorities have succeeded in controlling alcohol sales and consumption following a riot of migrant workers in 2013.<sup>38</sup> They could similarly regulate the use of 5FWs but presumably choose not to do so. The issue of regulating 5FWs is certainly one known to the URA.<sup>39</sup>

Officially, public authorities tend, not surprisingly, to take a rather more clear-cut position than they do in their actual practice. Attempts have sometimes been made to force shopkeepers to clear the 5FW completely. Such attempts were made in Singapore in 1888, prohibiting food hawkers from using 5FWs, leading to the so-called 'Verandah Riots'.<sup>40</sup> Regulation has not been very much in evidence since then. The author also witnessed an ugly incident in Shanghai in 2005 in which truckloads of police forced shopkeepers in the old part of the city to remove their goods from the street. The shopkeepers clearly thought they had a right to use the sidewalk in this way and some, violently resisting the police, were arrested.

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<sup>35</sup> Above, n.10.

<sup>36</sup> See URA site, above n.13.

<sup>37</sup> 'PJ puts pedestrians first', *The Sun Daily*, 16 January 2016: <<http://www.thesundaily.my/node/344799>>.

<sup>38</sup> 'Little India riot: One year later – the night that changed Singapore', *Straits Times*, 6 December 2014: <<http://www.straitstimes.com/singapore/little-india-riot-one-year-later-the-night-that-changed-singapore>>; D Goh, 'The Little India riot and the spatiality of migrant labour in Singapore', *Indo-Pacific Review*, 8 September 2014; G Radics and S Dorairajoo, 'Post-Colonial legacies, global economy, and local fissures: Singapore's Little India riot and the Public Order (Additional Temporary Measures) Act' (unpublished article on file with the author, 2017).

<sup>39</sup> Personal communication with URA official, June 2016.

<sup>40</sup> B Yeoh, above n.1, at 254.

Later visits indicated that the behaviour of shopkeepers had not been in the least affected in the longer term by this police action. This is similar to the outcome in Singapore in the 1880s.<sup>41</sup> More recently in an incident over Chinese New Year in February 2016 in Hong Kong, known as the ‘Fish-ball Riot’, the authorities broke up a customary practice of selling fish-balls on the street at Chinese New Year.<sup>42</sup> This did not relate specifically to 5FWs, but it is an illustration of how customary usage can contradict or modify the effect of statute law, creating tension between police and local communities. A study of Singapore’s Little India indicates similar conflicts (between arcade managers and shopkeepers) at a more modest level of outrage. An Indian retailer complained to researcher TC Chang: ‘[the owner] won’t allow me to have my wares spilling out on to the pavements. This is the typical Indian way of selling things but what do they know about Indian customs?’ Not everyone complies: ‘As a means of unleashing their Indian way of life, these merchants deliberately spill their wares beyond prescribed boundaries ...’; the management is described as ‘all professional “doctors or lawyers” ... completely out of touch with the Indian common folk’.<sup>43</sup> One might add that the tendency for wares to spill out into 5FWs is not confined to the Indian community, much as the latter views this as an Indian custom.

When we decide on preservation of the built environment, we might well then ask, are we preserving bricks and mortar, or are we preserving an existing way of life, an aspect of ‘the vernacular’? Clearly there needs to be some regulation, but this should not mean securing the removal of everything that is private from the public right of way. Rather it should merely ensure that passage is not seriously impeded. Such accommodation tends to preserve the vernacular and the charm of these areas, while maintaining the purpose of the right of way.

### ***Heritage Preservation and Planning Law***

The other relevant aspect for 5FWs from a heritage point of view is planning law.

Modern planning laws on the British pattern date from the early 20<sup>th</sup> century.<sup>44</sup> In a real sense the *Jackson Plan* is a precursor of these laws, with its insistence on the primacy of state regulation, and attention to use-zoning, economic viability, and public health. British officials such as CC Reade, who worked in Malaya 1921-9, were able to experiment with these laws, and planners in England itself were interested in what could be learned from Malayan/ Straits Settlements experience as the planning-law bandwagon moved uncertainly forward in the first half of the 20<sup>th</sup> century.<sup>45</sup>

The objectives of these laws were primarily social and economic, and they were not specifically aimed towards heritage preservation except where religious buildings were involved. The Bombay Town Planning Act 1925, for example, used this formula when laying out

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<sup>41</sup> Ibid.

<sup>42</sup> ‘Hong Kong police fire warning shots during Mong Kok fish ball “riot”’, CNN 8 February 2016: <<http://edition.cnn.com/2016/02/08/asia/hong-kong-riots-shots-fired/>>.

<sup>43</sup> TC Chang, ‘Theming cities, taming places: Insights from Singapore’, 82: 1 *Human Geography* (2000), 35, at 49.

<sup>44</sup> A Harding, ‘Planning, environment and development: A comparison of planning law in Malaysia and England’ 5:4 *Environmental Law Review* 231 (2003).

<sup>45</sup> Home, above n.2, at 161.

planning powers: ‘the preservation of objects of historical interest or natural beauty and of buildings actually used for religious purposes or regarded by the public with special religious veneration’. Given that shophouses and 5FWs enjoyed their heyday probably as late as the 1930s-50s and at that stage were awarded neither religious nor historic significance, they would not have been protected by such provisions.

From around 1980 the government of Singapore increasingly embraced urban heritage preservation, and the traditional shophouse is now seen as a specific target for preservation as part of Singapore’s cultural heritage as well as for safety reasons, having regard to their age and possible fragility.<sup>46</sup> In URA documentation ‘colonnaded five-foot ways’ are labelled as integral to the shophouse design, as we have seen above. It is worth noting here that this extends not just to the social and economic function of the 5FW but also to its aesthetic value:

The five-foot way paving ... is commonly finished with traditional finishes such as plain cement screed, terracotta tiles, clay tiles, cement terrazzo, mosaic, marble-chip terrazzo or granite slab. Tile patterns used on the five-foot way are sometimes repeated on the front wall of the shophouse either ending as a skirting or under the window to form a decorative wall.<sup>47</sup>

## *Conclusion*

The 5FW, like most things characteristic of Southeast Asian culture, may not be uniquely Southeast Asian in origin (of this we remain unsure), but is an interesting example of the way in which in the local culture of the region social usage and understanding may wrap around an artefact, including a legal artefact, to produce something that is, nonetheless, characteristic of the region and unique in some ways.

In this paper I have used the 5FW as an example having salience both in law and in social usage. More generally we need to know much more about the effectiveness of laws on urban planning and conservation. Many relevant laws in Southeast Asia are survivals from Dutch or English legal precedent circulating across the world. They have been constantly reformed and retooled in Europe to provide sophisticated instruments for avoiding conflict and encouraging good decision-making. Asia’s cities are expanding at a phenomenal rate. It seems inherently unlikely that current laws are adequate (Singapore may well be an exception) to cater for the conflicting demands of development, transport infrastructure, and preservation of the precious social and built heritage of this region. Legal scholarship needs to embrace this field in an interdisciplinary manner and encourage integrated and effective solutions to these problems. In this we can learn much from the history and survival of the 5FW as an example of the preservation of social value.

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<sup>46</sup> Above n.33.

<sup>47</sup> Above n.13.

## APPENDIX



1. Singapore 5FW with clutter



3. Formal historic 5FW, Jinriksha Station, Singapore



2. Illegally blocked 5FW in Little India, Singapore



4. Decorated 5FW as hotel entrance, Tanjong Pagar, Singapore



5. Historic shop houses near Chinatown, Singapore



7. Modern wide 5FW, Singapore



6. 5FW with fans and lights, Singapore



8. Very cluttered 5FW, Xiamen, PRC



9. Colourful 5FW, Kuala Pilah, Malaysia



10. 5FW with Chinese characters, Johor Bahru, Malaysia