

**CALS**  
**Review of Nigerian Law and Practice**  
Vol. 1(1) 2007

**TOWARDS REGAINING LEARNING AND CORRECTING  
LEANINGS IN THE LEGAL PROFESSION IN NIGERIA**

**Abdulmumini A. Oba**  
Senior Lecturer, Faculty of Law, University of Ilorin, Ilorin.

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### I. INTRODUCTION: A LEARNED PROFESSION

Lawyers are very proud of belonging to a learned profession. In the past, they grudgingly accepted that medical doctors and clergymen have some learning too.<sup>1</sup> It has changed now. Lawyers have wrested and won the exclusive label of being the learned profession. Lawyers have no doubt some right to this appellation because of the rigorous learning one goes through before one becomes a lawyer and because of the continuous rigorous learning one must engage in to maintain professional respectability. Again, there is no such profession as law where the mistakes of its members are paraded in the full glare of the public. Lawyers expose the weaknesses in their opponents with such zeal and force than laymen are often baffled when they see the lawyers who have just engaged in a court scuffle speak warmly and intimately to each other as soon as they stepped out of the court. Which other profession takes the views of its senior members to task as lawyers do when they appeal on a judgement? Do any other profession have the equivalent of a Justice of the Supreme Court berating a very senior judge of the High Court or Court of Appeal for “errors” of *law* and *facts*? Can any other profession combine the respectable treatment of judges by lawyers with the bashing their judicial decisions take from their senior and even junior colleagues at the bar in the academics and in legal practice? Even justices of the highest courts are not spared. When lawyers lose cases, some take their cases with all vehemence and bitterness to the law journals.<sup>2</sup>

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<sup>1</sup> The three ‘original’ professions are law, medicine and religion.

<sup>2</sup> For examples see Babajide Ogundipe, “*Professor M. A. Fassassi v Architects Registration Council of Nigeria*” 1(1) (1987) *The Legal Practitioners’ Review*, pp. 3 – 6 and Rasheed Ijaodola, “Divorcing Absentee Couple under Islamic Law: Need for Caution” 9 (2004) *The Jurist*, pp. 147 – 179.

When judges make pronouncements from their privileged seats, and such pronouncements do not go down well with lawyers, lawyers sometimes do retaliate furiously in learned articles.<sup>3</sup> At times, faulty judicial reasoning is politely and painstakingly corrected in learned papers.<sup>4</sup>

The critical approach in the profession is to the advantage of all. Judges need to be remanded - lest judicial complacency and over-confidence degenerate into judicial arrogance and autocracy - that they are like the rest of mankind - frail and fallible. As Justice Holmes pointed out: "Judges are elderly men, and are more likely to hate at sight any analysis to which they are not accustomed, and which disturbs repose of mind, than to fall in love with novelties".<sup>5</sup> So much of judges. What about lawyers?

Legal education in Nigeria is patterned after the position in England except whereas lawyers in England are solicitors or barristers, all lawyers in Nigeria qualify and can practice as both barristers and solicitors.<sup>6</sup> Legal education in Nigeria consists of academic study for four to five years (depending on the mode of entry) in a Law faculty and a year in the Law School followed by call to the Nigerian bar and enrollment as a legal practitioner at the Supreme Court.<sup>7</sup> Anyone who cares about lawyers and learning in the country will easily acknowledge that lawyers are now less learned than they used or ought to be.<sup>8</sup> In recent times, the leaders of the profession have repeatedly pointed out the falling standards in the performance of new wigs and some want the law school program extended from one year to two years. Two years of what? Two more wasted years I suppose. The problem is not with the period of learning but with the *quality* and *scope* of the learning.

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<sup>3</sup> For example see: Yusuf Olaolu Alli, "An Abuse of the Power of Dissent: Hon. Justice Karibi-Whye JSC in *Tukur vs. Government of Gongola State*" 1 (1995) *Kwara Law Review*, pp. 1 – 9; Emeka Chianu, "Joinder of Claims for Possession and Trespass – Why Not?" (1998) 1 *Journal of Commercial Private and Property Law*, pp. 1 – 10; and A. A. Oba, "Restraining Human Rights Excesses and Unbridled Feminism: *Augustine Nwafor Mojekwu v Mrs Theresa Iwuchukwu* (2004) 4 S.C.N.J. 180" 9 (2004) *The Jurist*, pp. 112 – 130.

<sup>4</sup> See for examples M. Tabiu, "The Right of Audience of Legal Practitioners in Shariah Courts in Nigeria" 15-17 (1985-1987) *Journal of Islamic and Comparative Law* p. 17 – 26 and A. A. Oba, "Do Lawyers have a Right of Audience in the Sharia Court of Appeal? *Karimatu Yakubu and Anor v. Alhaji Yakubu Paiko and Anor* Revisited" 4 (2) (2001-2002) *LASU Law Journal*, pp. 183 – 197 (2002) and 19-20 (2001-2002) *ABU Law Journal*, pp. 173 – 186.

<sup>5</sup> W. Holmes, "Law in Science and Science in Law" 12 (1899) *Harvard Law Review* 455.

<sup>6</sup> See the historical background of legal education in the country in E. Nwogugu, *A Quarter Century of Legal Education in Nigeria: An Appraisal* (Lagos: Nigerian Institute of Advanced Legal Studies, 1985) and C. O. Okonkwo, "A Historical Review of Legal Education in Nigeria" in I. A. Ayua, *Legal Education for the Twenty-First Century Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2000) pp. 1 – 37.

<sup>7</sup> A. A. Oba, "Lawyers, Legal Education and Shari'ah Courts in Nigeria" 49 (2004) *Journal of Legal Pluralism*, 113 at pp. 122 – 126.

<sup>8</sup> See Ernest Ojukwu, "Revisiting Legal Training in Nigeria: Wanted a Mandatory Continuing Legal Education Programme" 1 (1998) *Journal of Commercial Private and Property Law*, pp. 19 – 39.

## II LEARNING AND LEANINGS IN THE LAW FACULTIES

In the universities, students are being taught much stuff they will never need and need not know. After more than 45 years of independence, the “common law of England” or simply “common law” is still the nucleus of laws in the country.<sup>9</sup> For this reason, antiquated principles of English law are still indispensable learning in many courses. Much that they need to know is completely excluded. Experience has shown that lawyers in Nigeria are versed in English law, English Courts system and English legal values than in those of their own indigenous laws. Apart from the smattering knowledge of Islamic law that some combine law graduates have,<sup>10</sup> how many law graduates know anything of customary law or Islamic law beyond their ‘repugnant’ aspects? Ironically, the administration of the repugnancy and other validity tests have exposed the prejudice and ignorance of lawyers as regards customary law and Islamic law. These limitations are more acute in the case of Islamic law whose sophistication effectively rivals the common law.<sup>11</sup> Yet all lawyers have unrestricted right of audience in Islamic and customary cases. To them ‘Law’ connotes only the Common Law. The case for incorporation of customary law and Islamic law into the main stream of legal education has often been made but nothing concrete has been done so far.<sup>12</sup>

As we have seen, lawyers’ learning has limits but their self confidence knows no limits. They are never afraid to swim in strange seas. A Jurist well known for commitment to social justice in Nigeria delivering a lecture on new perspectives in law and justice in Nigeria confessed:

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<sup>9</sup> See section 32, Interpretation Act, Cap. I23, Laws of the Federation of Nigeria, 2004 (federal) and in the States see for example, section 28 (1), High Court Law, Cap. 67, Laws of Kwara State, 1994.

<sup>10</sup> See the criticisms of the combine law program in A. H. Yadudu, “Colonialism and the Transformation of Islamic Law in the Northern States”, 32 (1992) *Journal of Legal Pluralism*, 103 at pp. 128, and 130 – 131.

<sup>11</sup> Tabi’u has cited several cases where Islamic law rules were wrongly interpreted (due to the court’s ignorance of Islamic law) and these wrong interpretations then declared repugnant: M. Tabi’u, “The Impact of the Repugnancy Test on the Application of Islamic law in Nigeria” 18 (1991) *Journal of Islamic and Comparative Law*, pp. 53 – 76.

<sup>12</sup> On customary law see: M. Tilley-Gyado, “A Case for the Inclusion of African Customary Law in the Curriculum of Law Faculties in Nigerian Universities” 2&3 (1993-1995) *Nigerian Current Legal Problems*, 246; on Islamic law see, Oba, “Lawyers, Legal Education and Shari’ah Courts in Nigeria” note 7, pp. 113 – 161, and A. A. Oba, “Re-Conceptualising Islamic Legal Education in Nigeria: The Case for Professionalisation” 2 (1999-2003) *Al-Maslah* 85-109; and on both Islamic law and customary law see: T. Akinola Aguda, *The Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century* being the Nigerian National Merit Award Winners Lecture delivered on 14 September, 1989, Lagos: Federal Government Press, 1988) pp. 24 - 35 and T. Akinola Aguda, ‘Towards a Nigerian Common Law.’ in M. Ayo Ajomo (ed.), *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989) pp. 249 – 266.

“I must admit that my knowledge of customary law and administration is perhaps not as deep as I would have wished; but my knowledge of Islamic law and procedure is so woefully inadequate that I dare not say more than a smattering. It follows that what I have just said that this discourse will of necessity be utterly lacking in those respects. However, the expert knowledge to which I believe I can lay some claim is mainly related to the concept of law as articulated by Western European jurists and their thinkers”.<sup>13</sup>

This aptly sums up the condition of most lawyers in the country. Notwithstanding the self-confessed limitations, his lordship advocates the “desirability of uniformity of laws in a multi-ethnic, multi-cultural and religious society such as ours” and wants judges to be “credited with some power of directing positive law” towards the improvement of the moral and cultural tone of the community.<sup>14</sup> These judges as Aguda rightly pointed out belong to the class that has “imbibed the imported concepts and have distanced themselves from the home-made ones” and who are “extremely proud of their western education, culture, and concepts”.<sup>15</sup> How can a lawyer be an instrument of social change in the country, if he is totally ignorant of indigenous and Islamic cultures? The country also needs lawyers who will be able to administer effectively customary law and Islamic law, not lawyers who will look down on anything that is not Common Law.

There is also the rumour – a strong rumour at that - that as from the 2006/2007 academic year, only graduates will be admitted to study Law in Nigerian Universities. The proposed position tallies with the position in the United States. If the rumour turns out to be more than a rumour, one would suggest that the years for earning the Bachelors of Laws Degree (LL. B) be pruned from five to three years. The advantage in making law a post-graduate degree is improved quality in lawyers. It is therefore important that the degree is not restricted to Arts or Social Sciences. The legal profession will no doubt benefit from inputs from other disciplines. With legal practice and courts tending more and more towards specialization, the diversity of the degrees which form the entry qualification into the study of law will be of advantage to the profession.

### III. THE NIGERIAN LAW SCHOOL VERSUS THE LAW FACULTIES

The Nigerian Law School has the monopoly of the professional aspects of legal education in the country. From the Nigerian Law School perspective, every lawyer is going to be an advocate – a court room lawyer in English style courts - and that is all those concerned with Law School are tirelessly dedicated to creating. They have introduced “school uniforms” in universities. The ‘dress code’ they call it - black and

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<sup>13</sup> Timothy Akinola Aguda, *A New Perspective in Law and Justice in Nigeria* (The Distinguished Annual Lecture delivered at the National Institute for Public and Strategic Studies, Kuru on 25<sup>th</sup> October, 1985) pp. 1- 2.

<sup>14</sup> Ibid, p. 5.

<sup>15</sup> Ibid, p. 6.

white with the result that law students in law faculties now display the ‘choir boys and girls’ effect. It stands to reason that the conduct of undergraduates is the business of the universities. What is the use of the black and white dress code that neither protects morality – clinging blouses displaying much of the cleavage and tight fitting trousers are allowed for ladies - nor functionally necessary? One should say here that there is no such ‘tradition’ of black and white dress code for law students in English universities. The idea of a dress code in tertiary institutions has received a judicial set back.<sup>16</sup> The Law School also insists that its female students bare their heads for the three mandatory dinners. The authorities insist on this knowing fully well that such a directive violates the religious rights of female Muslim students whose religion forbids uncovering their heads in public.<sup>17</sup> What the Law School seeks to gain by this antagonistic attitude to Islam and the unnecessary barring of the modesty of female Muslims beats one’s imagination. One should equally point out that the hallowed “wig and gown” tradition to which the Nigerian judges and lawyers cling so tenaciously are not sacrosanct. The wig and gown were not adopted in American courts even though America is a common law country. Again, more and more common law jurisdictions are doing away with the wig and gown.<sup>18</sup> Anachronisms are disappearing even in England where the debate

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<sup>16</sup> In *S. J. Bamigbade v Vice Chancellor, Obafemi Awolowo University* (Unreported) HIF/MISC20/2002 delivered at the Ile-Ife High Court on 9/5/2002, Awotoye J issued an interim order declaring the dress code issued by the respondent university as a violation of the constitutional rights of the students although this order was later discharged by the court: This case was cited and reviewed in K. O. Fayokun, “Limits to the Campus Dress Codes” 7(1) (2003) *Journal of International and Comparative Law*, 15. However in Ilorin High Court in *Bashirat Saliu and Ors v The Provost, Kwara State College of Education, Ilorin and ors* (Unreported) Suit No. KWS/28M/2006 delivered by Kawu J. on 8 May 2006) where the court struck down the regulation prohibiting female Muslim students from wearing veils (*niqab*) on the College of Education, Ilorin campus. See also the news report of the case in Nigeria: “COE Ilorin: Muslim Students Floor Provost Over Dress Code Law” *Daily Trust* (Abuja), May 9, 2006 available online at <<http://www.dailytrust.com/news1d.htm>> and <<http://allAfrica.com/stories/200605090734.htm>>

<sup>17</sup> On the ‘hijab’ controversy see: M. Bayero, “The Prescribed Mode of Female Dressing by Allah’s *Shari’ah*: A Case, for Muslim Lawyers”, 1 (1998) *Al Maslaha – A Journal of Law and Religion*, 92-109; Oba, “Lawyers, Legal Education and Shari’ah Courts in Nigeria” note 7, p. 18; A. A. Oba, “Religious Rights and the Corporate World in Nigeria: Products and Personnel Perspectives” 2004(2) *Recht in Afrika (Law in Africa)*, 195 at pp. 202 – 203 and Nimatallah Modupe Abdulraheem, “The *Hijab*, Barristers’ Dress Code and Religious Freedom in the Legal Profession in Nigeria” (*IIUM (International Islamic University Malaysia) Law Journal* Forthcoming, 2006).

<sup>18</sup> Barbados is the latest country to do away with the wig and gown: Rosalea Hamilton, “Why are we still trading in legal wigs and gowns” *The Jamaican Observer* Sunday October 19, 2003 also at <[http://www.jamaicaobserver.com/news/html/20031019T010000-0500\\_50418\\_OBS\\_WHY\\_ARE\\_WE\\_STILL\\_TRADING\\_LEGAL\\_WIGS\\_AND\\_GOWNS](http://www.jamaicaobserver.com/news/html/20031019T010000-0500_50418_OBS_WHY_ARE_WE_STILL_TRADING_LEGAL_WIGS_AND_GOWNS)>.

on whether to keep the wig keeps reoccurring.<sup>19</sup> One can safely predict that in Nigeria the wig and gown will eventually go the way of the Judicial Committee of the Privy Council. Even the antiquated House of Lords is threatened with modernity.<sup>20</sup>

Perhaps the Nigerian Law School and the legal profession is worried about “dignity” of lawyers. In those days when education was less diffused, educated persons including lawyers were highly respected by an overawed populace. Those days are gone forever. The legal profession should now seek dignity and respectability in decency and high level of professional integrity among its members rather than in mediaeval costumes. This integrity was very much put on the line when the Law School had to review the Bar results for 2005 a few weeks after the release of the results. The consequence was that about scores of candidates had their results reviewed upwards (from fail to conditional pass and even to Second Class Upper!). The Director-General of the Law School attributed the problem to computerization of the result occasioned by “the failure of the computer to accurately read and interpret the rules relating to conditional passes and failure respectively”.<sup>21</sup> The D-G had spoken but many will still attribute the ‘problem’ to “Nigerian factor”, that is, the “settlement syndrome”.

The Law School in its guise as the Council of Legal Education by its power of accreditation now holds a life or death power over law faculties. The story is told of a Director-General of the Nigerian Law School who as head of a Council of Legal Education accreditation panel was furious because the Dean and Heads of Departments of the Law faculty being visited did not meet the accreditation panel at the outskirts of the town. The Dean’s apologies and ‘explanation’ that the ‘slight’ was unintended because there were at the material time five different routes one coming from Abuja could enter the town and they did not know which one the panel would choose (that was before the days of general availability of the GSM phones), only slightly mollified but did not extinguish the Director General’s anger which smoldered on for hours thereafter. The imperialistic attitude of the Director General was no doubt due to the nebulous form accreditation visits take. At the next accreditation visit (headed by the same Director General), the Dean and the Heads of Department were out full force to receive the panel several kilometers out of town. But as fate would have it, the Dean and his entourage narrowly missed the accreditation team which arrive minutes after the Dean and company had left

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<sup>19</sup> See Charles M. Yablon, “Wigs, Coifs, and Other Idiosyncrasies of English Judicial Attire” *Wisconsin Law Review* (1995), a summary of the paper is available online at <[http://www.cardozo.yu.edu/life/spring1999/Wigs, Coifs, and Other Idiosyncrasies of English Judicial Attire.htm](http://www.cardozo.yu.edu/life/spring1999/Wigs,_Coifs,_and_Other_Idiosyncrasies_of_English_Judicial_Attire.htm)>, and Laura Warfield, “Legal London Walking Tour” Online at <<http://www.hawaiiiparalegal.org/londwalk1.htm>>.

<sup>20</sup> There are proposals to replace the Judicial Committee of the House of Lords in England with a Supreme Court distinct from the House of Lords: Commonwealth Legal Association, “Constitutional Developments in the Commonwealth – Emerging Trends and Implications for Westminster Style Governance” 98 (2005) *Commonwealth Legal Education*, pp. 20 - 22.

<sup>21</sup> Gbolahan Gbadamosi, “40,000 students await admission to Law School” *The Guardian*, Wednesday, November 9, 2005, p. 80 (back page).

the “bush” after waiting for over five hours. Again, an accreditation panel may properly be interested in facilities – staff offices, lecture rooms, common rooms, moot courts and so on – available at the law faculties, but one suspects a touch of delusion of the grandeur when an accreditation panel demands separate sporting facilities for law students different from the facilities available to all the students of the university.

There are a number of objective standards – such as student/teacher ratio, number teachers in the senior lecturers and professorial cadre, student population per level, library holding and so on – upon which accreditation can be done. The criteria for accrediting law faculties should be a system of marks awardable for specific requirements so that the criteria should neither continue to vary with the Director General’s foot<sup>22</sup> nor depend on the faculty’s “connections”. The criteria should be clear and so simple that different persons applying them can assess a law faculty with a reasonable measure of unanimity. One questions again the insistence of the Council of Legal Education that Deans of Law Faculties in the country should be persons called to the Nigerian Bar. This requirement ignores the pluralistic nature of the Nigerian legal system and the supra national nature of law. Such requirement for all teachers in law faculties does no more than stultify the development of legal education in the country by deriving students and staffs the benefits of exposure to scholars from other jurisdictions across the world. This would be a retrogressive step. In a world of reciprocity, it could deprive law teachers in the country opportunities of sabbaticals and fellowships abroad.

The foregoing raises the extent of jurisdiction of the Council of Legal Education on the Law faculties. The law school and the universities can never have the same minds on many issues. The university is all about freedom, initiative, explorations and innovations but the Law School is built on regimentation, formalism, and conformity. No doubt, we need legal practitioners who would be able to practice effectively but we also need legal thinkers too – persons who would thrive outside the intellectual shackles of the dull conformity and narrow-mindedness that are silently but relentlessly enveloping the legal profession; and persons who having been brought up in “a tradition of student skepticism and critical judgement”<sup>23</sup> will beat out new directions in legal reasoning and fashion out newer and more efficient methods of attaining justice. The universities see their law faculties and law students as integral part of the university community while the law school wants law faculties and law students treated as a class apart from the university community. The Council of Legal Education and the National Universities Commission are currently locked in a struggle for control of the academic

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<sup>22</sup> Remember when equity varied with the length of the Lord Chancellor’s foot?

<sup>23</sup> J. O. Arwa, “Towards a Better Legal Education for the New Century: A Student’s Perspective” 77 (1998) *Commonwealth Legal Education*, 11 at p. 19 quoted in Ojukwu, “Revisiting Legal Training in Nigeria..”, note 8, p. 27.



curriculum of law faculties.<sup>24</sup> What has happened to the division between academic and professional education?<sup>25</sup> Does the business of the Law School accreditation of law faculties go beyond the teaching of the core courses and the facilities connected therewith? Parochialism and servility to western legal culture has become the norm in the legal profession. Any taking-over of the law faculties by the Council of Legal Education will lead to further anglicisation of legal education and to the total marginalisation of Islamic law and customary law learning in the universities. It will also spell doom for academic freedom because emphasis will shift from academic (which is the *raison d'être* of establishment of universities<sup>26</sup>) to vocational and “practical” oriented courses. The distinction between vocational and academic aspects of legal education is already worsened by the involvement of many law teachers in active practice. So much has the dividing line become blurred that a Deputy Director of Nigerian Law School could say:

“I have compared books and articles written by teachers in practice and teachers of the classroom only and there is a deep gully between the two. The classroom teachers are simply not real in most cases. I have been in active legal practice as a law teacher at the university for 15 years and I know the difference”.<sup>27</sup>

I doubt whether committed and dedicated full-time law teachers will agree this view. What does *real* mean here? It cannot mean more than the dull monotonous repetition of archaic legal ideas and expertise exhibited in the drudgery of procedural ‘rituals’ which practicing lawyers over exult on. Again, the statement can also be viewed against the background of the pecuniary and self-interest motivated controversy as to the legality of full-time law lecturers appearing for clients in courts.<sup>28</sup> The rise of “Man-O-Man” journals dedicated to self-publication and publications of articles by friends means that law teachers engaged in active

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<sup>24</sup> The Council wants to revert the law faculties to the sessional program where “almighty June” examinations were held once a year as opposed to the semester program currently in operation where examinations are held at the end of each of the two semesters.

<sup>25</sup> For analysis of the distinction between the two see: Brian Hogan, *A Career in Law* (London: Sweet and Maxwell, 1981) pp. 10 and 14 – 46.

<sup>26</sup> See the brilliant defence of the ‘academic’ approach in universities in Peter P. Ekeh, *Colonialism and the Social Structure*, Inaugural Lecture, June 1980 (Ibadan: University of Ibadan, 1983) at pp. 24 – 26.

<sup>27</sup> See the interview by Gbolahan Gbadamosi captioned “Advertisement by legal practitioners may soon be legalised in Nigeria says Ojukwu” *The Guardian*, Tuesday, July 20, 2004 at p. 77.

<sup>28</sup> See the case against law lecturers appearing in court in A. Zubair, *Shariah in our Citadels of Learning* (Sixth-Sixth Inaugural Lecture, 27<sup>th</sup> March, 2003, University of Ilorin, Ilorin) pp. 37 – 38 and the defence of law lecturers in E. Ojukwu, “Entitlement to Practise as a Legal Practitioner in Nigeria: A Comment” 1994 *Nigerian Current Law Review* pp. 122 – 132 and A. O. Giwa, “Law Lecturers and Courtroom Attendance” 1(4) (2003) *Nigerian Bar Journal* 505-513. The controversy which has continued to threaten the Nigerian Bar Association is unfortunately essentially on both sides about competition for “income”.

practice can boast of *scores* of ‘scholarly articles’ in learned journals.<sup>29</sup> It has also meant that a lawyer engaged fully in active practice can also have to his credit scores of ‘learned articles’. Anyone engaged in active and successful legal practice will testify to the engrossing nature of legal practice. As young barristers are frequently warned: the law is a good wife but a bad mistress. Active legal practice does not easily admit of other diversions nor does also, an active academic career. The law teacher who is also fully engaged in private practice will not progress beyond being at best, a “local champion”. There is or should be a world of difference between papers by lawyers in the academics and those by lawyers engaged in active practice. Papers by academics are supposed to be more incisive, analytical, comprehensive and original than those by practicing lawyers who are supposed to draw more on their experience, which experience are also raw materials for those in the academics.

There is no doubt that experience in active legal practice is useful for a law teacher, but combining active legal practice with law teaching is not the answer. Law teachers who are also engaged in active practice are just like part-time law teachers with all the attendant disadvantages but on full pay.<sup>30</sup> There has also been the extreme cases when a law teacher-cum-practicing lawyer have held simultaneously the positions of Dean of a Law Faculty (or Head of Department) and Chairmanship of the local branch of the Nigerian Bar Association.<sup>31</sup> For the law teacher-cum-practicing lawyer, law teaching invariably takes a secondary position in the struggle for his attention, after all - “Allah has not made for any man two hearts in his breast”.<sup>32</sup> Strange, isn’t it, that in the typical ‘Naija’ manner, the vice of divided interest has become a virtue in law teaching?<sup>33</sup> A better solution to the question of practical experience for law teachers was suggested by Holdsworth who says that a

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<sup>29</sup> See the very revealing review of academic publishing in Nigeria in Ayodeji Olukoju, “The Crisis of Research and Academic Publishing in Nigerian Universities: The Twentieth Century and Beyond” (Paper presented at the 28th Annual Spring Symposium, “African Universities in the Twenty-First Century”, University of Illinois/CODESRIA, Dakar, Dakar, Senegal, 25-27 April 2002) pp. 6 – 8, also available at <[http://www.codesria.org/links/conferences/universities/Ayodeji\\_Olukoju](http://www.codesria.org/links/conferences/universities/Ayodeji_Olukoju)>.

<sup>30</sup> See the disadvantages of part-time law teaching in William Twining, *Academic Law and Legal Development* (Taylor Lectures, 1975) (Lagos: University of Lagos, 1976) at pp. 53 - 56.

<sup>31</sup> See the example in Gbadamosi, “Advertisement by legal practitioners...”, note 21. The Ilorin Bar offers another example.

<sup>32</sup> Quran 33:4.

<sup>33</sup> Medical Doctors have outdone lawyers in this regard. Some of them are engaged simultaneously in three full-time jobs as University Lecturers, Consultants at Teaching Hospital and proprietors of private hospitals/clinics and still moonlight as consultants for specific operations in other private hospitals.

lawyer should practice law actively for five years before embarking on full-time academic teaching.<sup>34</sup>

Many of the papers published in law journals in Nigeria in recent times which no doubt account for bulk of the articles which Ojukwu describes as “real”, do not meet the high standard of works published in Nigerian journals in the sixties and seventies<sup>35</sup>, and those published in foreign law journals. In the sixties and seventies, leading foreign journals parade many papers by Nigerian full-time law teachers.<sup>36</sup> It is significant that less Nigerians are published abroad now than in the sixties and seventies.<sup>37</sup> In those days, it was nigh impossible to be appointed a senior lecturer without solid publications locally and internationally but recent times have witnessed professorial appointments based on other considerations. One agrees with Professor Olukoju who said:

It should be adopted as a general principle that candidates for the position of Senior Lecturer must have published at least one of their papers in an established international journal. For higher positions, the number should increase if only to attain the goal of making academic research and publishing in Nigeria to fully conform to the highest possible standards. Anything short of this would only result in the breeding of what Nigerians call “local champions,” scholars whose intellectual relevance (if any) does not extend beyond their campus or Faculty.<sup>38</sup>

Many universities now require candidates seeking appointment to the senior lecturer and professorial cadres to have publications in foreign journals. This will surely promote scholarship in the country. The variation one would suggest to Professor Olukoju’s proposal is that the number of foreign publications should be computed in a ratio to the local journals. It would not be too much to ask for would-be senior lecturers that 10% of their publications be in foreign journals. That means a ratio of 1 to 10. The percentages for Professors and Associate Professors (Readers) could be at least 20% and 15% respectively.

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<sup>34</sup> William Holdsworth advised Professor Francis Newark “No-one can teach law unless he has practiced law. Go to the Bar for five years and then think of teaching law”: F. J. McIvor (ed.), *Elegantia Juris, Selected Writings of F. H. Newark* (Belfast, 1973) p. xiii quoted in Twinning, note 30, p. 56.

<sup>35</sup> The journals of that era displayed very high academic standards and were comparable to leading foreign journals. These journals included the *Nigerian Bar Journal*, *Nigeria Law Journal*, *Journal of Islamic and Comparative Law*, and *Nigerian Journal of Contemporary Law*.

<sup>36</sup> A perusal of the relevant volumes of journals such as *International and Comparative Law Quarterly*, *Journal of African Law* and *Journal of Legal Pluralism* will show contributions by law teachers such as Elias, Agbede, Aihe, Oluyede, Okonkwo, Achike, Ajayi, Akpangbo, Obilade, Ijalaye, Jegede, Ojo, Aguda, Adegbite, Karibi-Whyte, Kumo, Ezejiofor, Uvieghara, Ajomo, Olawoye, Nylander, Ohonbamu, Umozurike, Nwogugu, Omotola and so on.

<sup>37</sup> One must acknowledge the efforts of modern scholars such as Udombana, Nwauche and Ebeku and others who have respectable publications in prestigious law journals abroad. All of them are primarily and even exclusively law lecturers than law practitioners cum law teachers.

<sup>38</sup> Olukoju, note 29, p. 13.

The days of the law teacher-cum-practitioner are certainly numbered. With the increasing number of new wigs, practice has become more competitive. The stringent promotion requirements for university teachers being contemplated by the National Universities Commission and the individual universities would mean that indolent lecturers or lecturers with divided interests would find it difficult to cope. Thus, new entrants into the legal profession would do well to choose carefully but firmly between teaching and practice.

#### IV THE NIGERIA BAR ASSOCIATION: LEARNING AND LEANINGS

The Nigeria Bar Association is body encompassing all lawyers called to the Nigerian Bar. However, it is a juridical but not a juristic person.<sup>39</sup> In other words, it is a 'person' known to the law but it is not a person before the law. The Nigerian Bar Association is concerned about falling standards too. So, it wants to institute a mandatory continuing education scheme.<sup>40</sup> It is good, but I suspect that it will be more learning of the old alien irrelevant muck. Some have suggested "clinical legal education".<sup>41</sup> Lawyers need to learn but not only from themselves. They need to learn also from other experts such as historians, anthropologists, sociologists, medical practitioners, political scientists and Islamic scholars.<sup>42</sup> As Solanke puts it "[a] lawyer needs a broad educational background to practise law".<sup>43</sup> There is another fear regarding the proposed continuing legal education - a continuing education scheme will most certainly drive many juniors into penury. It is no secret that in many law offices, principals pay their juniors a mere pittance on which the juniors cannot live on without subsidy elsewhere. How can these juniors, struggling to elk a living out of the profession, afford the exorbitant fees that are likely to occasion from attendance of Seminars and Conferences in the highbrow venues in which they would invariably be held?

The Nigerian Bar Association also wants to issue annually practicing certificates to lawyers - at least, that is what is in the bill proposed by the association. A lawyer must among other things, "satisfy" the Nigerian Bar Association that "he is a person of good character" before he can be issued a practicing certificate or before his

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<sup>39</sup> *Chief Gani Fawehinmi v Nigerian Bar Association and ors (No. 2)* (1989) 4 S.C.N.J. (Part I) 40.

<sup>40</sup> See clause 10 (3) (a), Legal Practitioners Act 2004 (Draft) in *The Guardian*, Tuesday, July 20, 2004 at p. 81. See the case for a mandatory continuing legal education in Ojukwu, "Revisiting Legal Training in Nigeria..", op cit, pp. 34 – 39.

<sup>41</sup> See the interview referred to in [n 14] supra.

<sup>42</sup> See similar suggestion in Folanke Solanke, "The Lawyer and the Society: Yesterday, Today and Tomorrow" in E. S. Olarinde, Kunle Adeigbe and Oluseye Chukura (eds.), *Contemporary Issues in Nigerian Legal System* (Ibadan: GLJ General Services Ltd for Nigerian Bar Association, Ibadan Branch, 1997) 45 at p. 63.

<sup>43</sup> Ibid.

practicing certificate could be renewed.<sup>44</sup> If a person has been found a fit and proper person worthy of being called to the Bar<sup>45</sup>, then one should think that he should remain so until found otherwise by the Legal Practitioners Disciplinary Committee.<sup>46</sup> Those who are familiar with administrative law know that the word “satisfied” is subjective and admits of much arbitrariness. The Bar Association did not even suggest an appeal from its decision. This is very strange. After all, even when the Legal Practitioners Disciplinary Committee directs the suspension or striking off the name of a legal practitioner, there is a statutory right of appeal to the Appeal Committee and thereafter to the Supreme Court.<sup>47</sup> Refusal to issue a practicing certificate to a legal practitioner has practically the same effect as striking off or suspension. Both are punishments reserved for the most serious misconduct.<sup>48</sup> Why should an association that spent the better part of the 1990 decade in acrimonious internal bickering want to acquire the power of pronouncing professional capital punishment over its members?<sup>49</sup> For its heavy weights to send their opponents to professional death, I presume. Were this weapon available during Chief Gani Fawehinmi’s stormy days with the NBA in the mid 1980s to early 1990s, the courageous and upright lawyer would have been long dead professionally.<sup>50</sup> That he subsequently became a Senior Advocate of Nigeria (SAN) is a testimony to the folly of the proposed requirement for issuance of practicing certificates.

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<sup>44</sup> Clause 10 (3) (c), Legal Practitioners Act 2004 (Draft), op cit.

<sup>45</sup> A person must satisfy the Benchers that he is of good character before he can be called to the Nigerian Bar: section 4 (c), Legal Practitioners Act, Cap. L. 11, Laws of the Federation of Nigeria, 2004.

<sup>46</sup> The Legal Practitioners Disciplinary Committee is responsible for the discipline of lawyers: section 11, *ibid*.

<sup>47</sup> *Ibid*, section 11 (1) and (5). The draft Act omitted appeal to the Appeal Committee but retains appeal to the Supreme Court: clause 20 (4), Legal Practitioners Act 2004 (Draft), op cit.

<sup>48</sup> J. Ola Orojo, *Conduct and Etiquette for Legal Practitioners* (London: Sweet and Maxwell, 1979) 178. As Blackall P pointed out, striking a name off the roll “for a professional man, is a sentence of death, and ... should only be imposed as a last resort”: *Re. C. B. R. Wright* (1951) 13 W.A.C.A. 119 at p. 124.

<sup>49</sup> See story of the “war” among lawyers that lasted between 1992 and 1998 in Bolaji Adebisi, et. al., “ ‘Rowdy’ Men of the Bar” *Citizen*, September 7, 1992, pp. 10 - 19 and A. S. Awomolo, Speech of the Chairman, Committee of Chairmen and Secretaries of all the Branches of the Nigerian Bar Association” in Nigerian Bar Association, *Conference Handbook Abuja, '98*, pp. 43 - 49.

<sup>50</sup> See Chief Gani Fawehinmi’s account of his problems with some ‘leaders’ of the bar in Ndubuisi Okwechime and Dapo Ajanaku, “A Man Called Gani” *THISWEEK* January 18, 1988, pp. 25 - 26. These problems culminated in law suits that ended in the Supreme Court: *Chief Gani Fawehinmi v Nigerian Bar Association and ors (No. 2)*, op cit and *Chief Gani Fawehinmi v Nigerian Bar Association and ors* (1989) 4 S.C.N.J. (Pt. I) 1.

## V. CONCLUSION

We should realise that we can no longer study “law” as an abstract concept. Law must be rooted in the society. In Islamic law, law is an expression of the totality of the Islamic way of life. Customary law too cannot be divorced from culture and society. So also should be a ‘Nigerian common law’ or ‘common law in Nigeria’.<sup>51</sup> For example, one cannot profitably study constitutional law without having a vast knowledge of the political terrain of the country. Nigeria has not evolved a lasting and relevant constitution simply because we have continually ignored local realities in favour of imported concepts in our constitutional-making efforts. A good knowledge of the vastness in cultural diversity of Nigerian peoples will easily show that there cannot be one answer to the same questions in all parts of the country. If you ignore this diversity, then you are going nowhere except in circles. Legal education at the universities must be more encompassing and comprehensive. It is high time that lawyers become worthy again of being described as learned. The Law School can concentration on what it is doing, after all, the universities are interested in producing “legal engineers” while the law school are established to produce “legal technicians”.<sup>52</sup> We agree with Harold Laski that “[L]egal education .... must be more than the acquisition of a merely practical technique”.<sup>53</sup> It should produce students who will “go out not merely to practice, but also to improve”.<sup>54</sup> Finally, there is the question of globalization. The question here is: have legal education and the legal profession in Nigeria prepared the appropriate response to globalization? I suspect that the honest answer is: No! Experience from other jurisdictions has shown that the future of legal profession lies in trans-national practice. Will Nigeria open its legal practice to foreign lawyers as has been done in some countries?<sup>55</sup> Are Nigerian lawyers properly educated in the laws of other countries so as to practise effectively in such countries where foreign lawyers are allowed to practise? Legal education in the universities should now include courses

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<sup>51</sup> The terminologies are those of Aguda and Elias respectively, see T. A. Aguda, “Towards a Nigerian Common Law” in M. A. Ajomo (ed.), *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989) 249 and T. O. Elias, *Law in a Developing Society* (Lagos: University of Lagos Inaugural Lecture, 1969) pp. 18 – 19.

<sup>52</sup> Legal technicians apply law mechanically and uncritically. To this group belong most legal practitioners for whom Supreme Court judgements are farthest extent of knowledge conceivable. The legal engineer is concerned with redesigning and improvement of laws. As Scott puts it in Guy Mannering: “A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect” quoted in Granville Williams, *Learning the Law* (London: Stevens and Sons, eleventh edition, 1982) p. 226.

<sup>53</sup> Harold J. Laski, *A Grammar of Politics* (George Allen and Unwin, fifth edition, seventh impression, 1982) p. 575.

<sup>54</sup> *Ibid*, p. 577.

<sup>55</sup> Singapore has taken the giant step in liberalising its legal market: Hassanuddeen A. Aziz, “Era of Globalisation: Should Foreign Lawyers be Granted Right to Practise in Malaysia?” 12(2) (2000) *IJUM Law Journal*, 197 at pp. 208 – 211.

in comparative law and comparative legal systems. The law school should also include courses in the professional and court practices of foreign jurisdictions. The major challenge today is how well can legal profession in Nigeria defend the appellation of “learned”.