

RELEASING THE ACADEMIC SPIRIT IN THE LEGAL SYSTEM: LAW FACULTIES AND LEGAL EDUCATION IN NIGERIA*

Abstract

As the historical narrative of legal education in Nigeria goes, the pre-independence Unsworth Committee recommended a two stage system of indigenous legal education for the country. This consists of an academic component offered at law faculties in the universities and a vocational component available only at the Nigerian Law School upon graduation from a University. Accordingly, since inception legal education in Nigeria has been provided jointly by University law faculties and the Nigerian Law School. Despite apparent continuation of this two-stage approach to legal education, there have recently been rumblings in some quarters that the quality of graduating lawyers is falling. Partly in response to such observations, this paper argues that although the Unsworth Committee's recommendation presupposes two distinctive but complementary paths to legal education, in practice, a single path has emerged with the academic component trapped as hostage to vocational training preferences. The paper argues further that increasingly, albeit informally, the law faculties are being evaluated by the performance of their graduates at the vocational course in the Nigerian Law School. Thus, law faculties have become preparatory institutions for the vocational component thereby denying the legal system of the benefits that ought to accrue from effective provision of studies in law as an academic discipline.

Introduction

In some ways, legal education in Nigeria has not changed much since it was first introduced in the early 1960s even though the number of institutional actors in the field has increased exponentially over the years. There has always been a two-stage qualification requirement for call to the Nigerian Bar leading to right of audience before the Nigerian courts and that remains the case. However, commentators and stakeholders continue to complain that the standard of legal education has fallen over the years triggering questions as to what has gone wrong and at what point things really went wrong. Not unexpectedly, much diagnosis has been made and so many different solutions proffered

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that it is nearly impossible to add any innovative ideas to the debate. Yet, it is critical to reconsider the diagnosis to see if asking questions differently will lead to somewhat different answers. Accordingly, the modest aim of this paper is to reopen the debate by drawing focus to the role of law faculties and the objective of law degree programmes in Nigerian universities in the hope that this will spark a different framework for thinking about, and evaluating the academic aspect of legal education in Nigeria.

One of the enduring legacies of colonial rule in Nigeria is the legal system. Despite the dismantling of colonial political and administrative structures after independence, judicial functions, processes and structures largely remain those introduced by the colonial masters. As a secondary structure of the colonial legal system,¹ legal education in Nigeria is best understood in the context of that colonial root. As legal historians show, up until the late 1950s, qualification to practice law in Nigeria was a function of prior qualification to practice in England or at least 'basic education and knowledge of English law'.² That changed when the Unsworth Committee in 1959 recommended *inter alia*, that 'Nigeria should establish its own system of legal education'.³ Naturally, the Unsworth Committee's recommendations drew from British experiences and proposed a two stage legal education for qualification to practice – an academic stage and a vocational stage. In the British model, despite the fact that qualification to practice law in England was initially based on apprenticeship and membership of the Inns of Court, the idea of legal education at a university prior to practical training became increasingly popular, prompting debates regarding the 'suitability of legal studies as an academic subject within a university'.⁴ Traces of this approach to legal education are noticeable in other parts of the old British empire/Commonwealth that retained the Common law system. With the introduction of university legal education in their legal systems, countries like Britain and Australia have critically examined their legal education and training system (often in comparison with the United States) in order to improve its overall contribution to the

¹ J.O Fabunmi and A.O Popoola, 'Legal education in Nigeria: Problems and prospects' (1990) 23 *Law and Politics in Africa, Asia and Latin America*, 34, at consider also take the view that legal education in Nigeria came on the trail of the English legal system and has remain since then.

² Generally see, M. O Onolaja, 'Problem of legal education in Nigeria' (undated) presented in the author's capacity as a justice of the Supreme Court of Nigeria and Chairman of the Council of Legal Education, available at www.alimiandco.com/publications/ACCREDITATION%20AND%20LEGAL%20EDUCATION%20IN%20NIGERIA.pdf (last accessed 10 June 2015)

³ Cited in B.A Bukar, 'Legal education and challenges of contemporary development in Nigeria' 20 *International Journal of Clinical Legal Education*, 594.

⁴ See P.A Thomas and G Mungham, 'English legal education: A commentary on the Ormrod report' (1972) 7 *Val. U.L. Rev.* 87, at 92.

system. Accordingly, Britain and other Common law states represent excellent comparators for understanding the character, challenges and prospects of legal education in Nigeria.

Although, or perhaps because it was modelled on, and therefore is supposedly similar to legal education in Britain, a number of controversies can be raised in relation to legal education in Nigeria. First, as was observed in relation to legal education in Australia, there is the question whether uncritically transplanting the British model 'to a country whose geography, demography and cultural make-up have at all times differed greatly from England'⁵ was a good idea. Considering how legal education affects the attitudes of actors in the legal field and ultimately the operation of the legal system,⁶ the path of the Nigerian legal system and its relationship with the common law continues to be mediated by a British-colonialism-oriented legal education. Thus, it ought to be questioned whether the prevailing model of legal education is not one intended to exert slavish attachment to the legacy of the colonial legal system, notwithstanding that system's underlying invasive philosophy. Second, as some commentators observe, the model of legal education introduced in Nigeria envisaged decentralised law degrees and a centralized vocational qualification without centrally setting out any identifiable objectives of each segment.⁷ Accordingly, individual law faculties were left to 'adopt and define in varying terms their objectives to teaching law'.⁸ This initial failure to specify the objective of legal education in the law faculties may also have warranted the vocation-oriented Council of Legal Education to fill the gap and take on a greater role in setting standards for law faculties and university law degrees.

Although, regulation of the law degree programmes in Nigerian universities is now a responsibility of the Nigerian Universities Commission finally centralizing framework objective-setting for academic legal education, the Council of Legal Education (CLE) and the legal profession generally continue to play important roles in shaping the direction of legal education in the law faculties. This paper argues that this deep involvement of the CLE and the practicing bar, added to the fact that law faculty graduates generally proceed to the Nigerian law school contribute to blurring the distinction between academic and vocational legal education. These factors also appear to create an increasing wave of anxiety on law faculties

⁵ M Chesterman and D Weisbrot, 'Legal scholarship in Australia' (1987) 50 *Modern Law Review* 709.

⁶ On the impact of legal education on attitude to law and operation of the legal system, see J.H Merryman, 'Legal education there and here: A comparison' (1975) 27 *Stanford Law Review*, 859. The author argues that:

'The examination of legal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law, what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society'.

⁷ See Fabunmi and Popoola, n 1 above, p 40 who claim that 'neither the Unsworth Committee nor the Sir Adetokunbo Ademola Board addressed in specific terms the issue of the objectives of legal education in Nigeria and how to achieve them'.

⁸ As above.

to satisfy the vocational goals of legal education hence shifting focus away from the academic goals. An important question is whether this has impacted on the quality of contribution that academic law makes to legal education and the legal system. In other words, do we create wrong expectations and ask the wrong questions when we evaluate university graduates and their law degrees by their performance in law school examinations and/or their ability to practice private law as soon as they graduate? Put differently, as compared to vocational legal education, what is the objective of academic legal education and should we judge its utility with the same parameters by which we evaluate vocational training in law? In fact, some have even formulated similar concerns by asking 'whether a university law school should serve as a vocational trainer for the legal profession or as a detached academy where all sorts of people can engage in independent and critical thought'.⁹

Adopting a modestly comparative and analytical approach to historical and contemporary evidence, this paper contends that the Unsworth Committee's recommendation of two distinctive but complementary paths to legal education has in practice all but disappeared. In its stead, a single path has emerged with the academic component trapped as hostage to vocational training preferences. The paper argues further that increasingly, albeit informally, law faculties are being evaluated by the performance of their graduates at the vocational course in the Nigerian Law School. Thus, law faculties have become preparatory institutions for the vocational component thereby denying the legal system of the benefits that ought to accrue from effective provision of studies in law as an academic discipline. The paper is arranged in five sections. Following this introduction, section two explores the conceptual difference between the academic and vocational aspects of legal education. In section three, contemporary legal education is analysed to demonstrate that the academic law as a means of liberating it from the shackles of vocational training. Section five sets out the main points of the paper.

Academic and vocational approaches to legal education: Two sides of a coin?

Critical to the thesis of this paper is the question whether there is indeed a real difference between the academic and vocational aspects of legal education. According to the October 1959 report of the Unsworth Committee on legal education in Nigeria, 'the qualification for admission to legal practice in Nigeria should be a degree in law of any University whose course is recognised by the Council of Legal Education and the

⁹ A Adetunmbi, 'Legal education in Nigeria: An evaluation of the recruitment practice for teaching law as a career', (2013) 39 *Commonwealth Law Bulletin*, 283, 284.

vocational course prescribed by the Council'.¹⁰ Based on this recommendation, an academic stage of legal education which precedes the vocational training at the Nigerian Law School is identifiable. That academic stage is 'characterised by acquisition of approved University law degree'.¹¹ By contrast, in order to practice as a legal practitioner in Nigeria, section 24 of the Legal Practitioners Act of Nigeria (the Act) only requires that a person 'produces a qualifying certificate' and 'satisfies the Benchers that he is of good character'. This provision has been interpreted to mean that there is no requirement for 'any educational qualification for being called to the Bar'¹² even though it is conceded that the CLE requires a certain quality of university law degree as precondition for admission into the Nigerian Law School.¹³ At the very least, this means that 'the qualifying certificate' mentioned in the Act is different from the university law degree which qualifies an applicant for admission to the vocational training programme and the qualifying certificate is not a continuation of the university law degree. Thus, even if not by the Legal Practitioners Act, on the bases of the recommendations of the Unsworth Committee and the practice of the CLE, a University degree forms part of the requirement for qualification to practice in the Nigerian legal system. But does this represent an independent stage of legal education?

Secondary literature on legal training is quite emphatic that there are generally two distinct approaches to legal education and therefore 'two main conceptions of the role of law schools in modern industrial societies: the professional school model and the academic model'.¹⁴ Gower for instance asserts that 'it is possible and desirable to draw a meaningful distinction between legal training for academic and professional purposes and ... it most emphatically is not a distinction based on a division of the seamless web of the law into "academic" subjects and "practical" subjects'.¹⁵ For him, the distinction lies more in the different aims that each model pursues.¹⁶ Twining also argues that 'there is a need to draw a clear distinction between the process of professional formation of lawyers ... and the nature and roles of law schools as institutions' this is because 'when the distinction is blurred, important aspects of institutional life tend to be downplayed or overlooked and the range of possible strategies open to the institutions themselves unnecessarily narrowed'.¹⁷

¹⁰ Reproduced in Onolaja, n 2 above, 6.

¹¹ Onolaja, n 2 above, 7.

¹² See F Adekoya, 'The problem of legal education in Nigeria-setting the tone for discussion' paper presented to the Summit on the future of legal education held under the auspices of the Nigerian Bar Association, Sheraton Hotels and Towers, 2 - 3 May, 2006.

¹³ As above.

¹⁴ See W Twining, *Law in Context*, (1997) Oxford: Oxford University Press.

¹⁵ L.C.B Gower, 'The inter-relation of academic and professional training' (1966 - 1967) 9 *Journal of Society of Public Teachers of Law*, 434.

¹⁶ Gower, n 15 above, 438.

¹⁷ Twining, n 14 above.

The common theme in these views is that whereas university legal education contributes to the professional development of students, it does so along the lines of the normal roles of the university rather on the 'trade school' role. Thus, proper articulation of the academic model depends on correct understanding of the purpose of a university.

Whatever else it may represent, the university is generally an institution dedicated to the 'pursuit of knowledge and ... revelation of truths'.¹⁸ From this perspective, the essence of university education is not training in the tools and processes of a given profession but the exploration and advancement of knowledge and learning in the deeper meanings of things, broadening the mind and horizon of the student, often triggering a desire to question critically even that which is settled. Applied to the study of law, university education should at the very least aim at equipping the law graduate 'with a broad education that could confer adaptability to new and difficult situations'.¹⁹ Adetunmobi captures this essence when he makes the point that 'the culture of the academic discipline of law is academic in nature' tilting towards 'critical analysis rather than vocational skills'.²⁰ If the essence and function of the university is to pursue and advance knowledge, the law degree from the university has to aid the degree holder to critically understand law but also the nature of law, of the legal system and of legal actors more than it equips the degree holder to memorize the law or acquire the skills required to appear in a court of law or to pass an examination aimed at allowing her to appear in a court.

If it is accepted that academic legal education has a distinct character which is based on the essence of university education, it is not uncommon to find pressure on law faculties to abandon that academic character in favour of the vocational. Describing the experience in Britain, Spence makes the point that 'it is all too easy for those in government and in the profession to see the law school as what we would call a 'trade' school, a place in which the apprentices of a particular craft hone their practical skills'.²¹ Spence attributes this pressure to the fact that most law graduates end up as practitioners in the private or public law spheres. The result is that 'the law schools have been under increasing pressure to focus on material which the legal profession regards as useful for the day-to-day practice of law'.²² Elsewhere, the common view 'that

¹⁸ See R West and D Citron, 'On legal scholarship' (undated material) available at <http://www.aals.org/current-issues-in-legal-education/legal-scholarship>, (last accessed 5 June 2015).

¹⁹ Chief Justice Robert French, 'Legal education in Australia - A never ending story' Paper presented to the Australasian Law Teachers Association Conference, 4 July 2011.

²⁰ Adetunmobi, n 9, 283.

²¹ M Spence, 'The role of the law professor in legal education' (2002) available at <http://www.petersoneducationtrust.org/uploads/1/9/0/8/19087331/michaelspencemay2002.pdf> (last accessed 9 June 2015). At the risk of stating the obvious, law school as used by some non-Nigerian writers refers to law faculties rather than an equivalent of the Nigerian Law School.

²² As above.

"law" is more of a profession, more than a scientific discipline continues to structure legal scholarship and legal academia. ... Law schools and departments are expected to produce able practitioners rather than scientists'.²³ This recognition that law faculties are under pressure to pursue one model of legal education rather than another is hence, further evidence that a real distinction exists between the academic and vocational models. To some extent, such pressure appears to be more evident in countries with legal systems that are based on the common law tradition.

In addition to Britain, legal education in the United States and Australia represent the common law prototype. In Twining's opinion American law schools (university law faculties) heavily favour professionally-biased legal education because they 'tend ... to assume that law schools are essentially preparatory schools for private practice. ... by concentrating on the needs of intending private practitioners, of marginalizing or totally ignoring other potential beneficiaries of law school services both within and outside legal practice'.²⁴ A similar observation is made by Parker and Goldsmith in relation to law faculties in Australia when they claim that 'trade mentality flourished aided by the fact that profession-dominated councils of legal education and professional admission boards enabled a high degree of influence over the content of the LLB'.²⁵ This contrasts with Merryman's analysis of legal education in the civil law galaxy. According to him, 'legal education in the civil law world is, at bottom, general education, not professional education' and 'It is not anticipated that all, or even most, of those who attend the faculty of law will become advocates, or judges or notaries. Law is merely one of the curricula available to undergraduate students'.²⁶

Thus, two extreme positions are identifiable – at one extreme is legal education as a vocational training programme which aims strictly at developing professionals and at the other end is the academic model which views legal education in the university as the pursuit of knowledge and truth with the aim of producing legal scientists. Although, a middle course is possible and in fact desirable, it is important to tentatively conclude at this point that an academic model of legal education which is, or should be the business of law faculties does exist. It differs from the vocational model which is the business of the Nigerian Law School. The distinction is a function of objectives – the pursuit of critical

²³ Career guidance pamphlet of the European University Institute, Florence Italy.

²⁴ Twining, n 14 above

²⁵ C Parker and A Goldsmith, "'Failed Sociologists" in the market place: Law schools in Australia' (1998) 25 *Journal of Law and Society* 33 at 34.

²⁶ Merryman, n 6 above, 865.

knowledge and truth on law and its process and, method – empowering students to search for truth and knowledge with ability to apply these in diverse contexts not limited to courtroom practice of law.

Legal education in Nigeria: Are the law faculties hostages?

Like their counterparts elsewhere, law faculties in Nigerian universities face the dilemma of choice between the academic and vocational paths to legal education. In theory, statements of official institutional objectives attest to a recognition of the distinctive paths and even possibly an indication of the side on which particular institutions fall. Despite such statements, formal and informal assessment of law faculties and the institutional responses to such assessments and commentaries constitute the proxy by which the actual attitude to legal education is discernible.

As shown already in this paper, the Unsworth Committee's report introduced the two stage approach to legal education, effectively saddling law faculties with responsibility for providing academic legal education while the Nigerian Law School was proposed for providing vocational training. The attitude of the law faculties to their academic role can be observed in two epochs. In the first epoch, owing to the absence of a centrally laid down objective or set of objectives, individual law faculties announced their conception of the objective(s) of their Bachelor of Laws (LLB) Programmes.²⁷ In the second epoch, with the entry into the picture of the NUC, the objectives of the LLB were set centrally leaving little or no room for individual variations. The objectives of the LLB programmes of the University of Lagos and the old University of Ife represent good examples of the first epoch.

According to the 1977 – 1980 Prospectus of the University of Lagos, that institution's LLB Programme aimed at providing students with 'a sound University education in Law ... to satisfy the needs of varied classes of candidates ... prospective legal practitioners ... and prospective administrators whose services would be needed in the public service and generally in industrial and commercial establishments'. It also aimed to 'provide students with a solid foundation of legal knowledge taking into consideration the need to teach law in the light of social, political ... changes in the society and to inculcate in the student the idea of understanding law not for its own sake but by reference to its relevance in society ...'.²⁸ Notably, these aims convey acknowledgement that the graduates were being prepared for roles not restricted to private practice of law and thus, that students ought to be equipped with contextual knowledge of the law beyond rule memorisation. For its

²⁷ The LLB degree is the common denominator that all law faculties in Nigeria share and it is the prerequisite for admission to the Nigerian Law School.

²⁸ Reproduced by Fabunmi and Popoola, n1 above, 41.

part, the objective of the LLB programme of the University of Ife was to 'to present law to students as it exists in Nigeria. Emphasis is accordingly laid on Nigerian statutes and case law for while Nigerian law is based broadly on the English law, the two are not quite the same...'.²⁹ Despite the apparent focus on rules, the University of Ife indicated that 'courses leading to the degree of Bachelor of laws are designed both for those who after graduation will proceed to the Nigerian Law School in Lagos and qualify as legal practitioners in Nigeria and for those who wish to obtain the degree as a qualification for employment in international and national agencies, federal, state and local governments, public and other statutory corporations and commercial industrial and other enterprises'.³⁰ In effect, this was recognition that the LLB programme was not targeted exclusively at prospective private legal practitioners ultimately bound for the Nigerian Law School. Hence, in some ways, both law faculties exhibited awareness that they are providers of academic legal training and their respective law degrees ought to be wider than the practice-oriented vocational programme.

Arguably, the more elaborate articulation of the academic nature of the LLB degree in Nigeria is captured in the objectives laid out by the NUC. According to the NUC's 2007 Benchmark Minimum Academic Standards for Undergraduate Programmes in Nigerian Universities (BMAS):³¹

The Law programme is designed to ensure that the graduate of Law will have good general knowledge of law, including a clear understanding of the place and importance of law in society ... It is therefore necessary that the student of Law should also have a broad general knowledge and exposure to other disciplines in the process of acquiring legal education. The programme should introduce students to the general knowledge in Law, acquaint them with principles of judicial process and legal development, and equip them with the basic tools of legal analysis and methods.

Legal education should act first, as a stimulus to stir the student into critical analysis and examination of the prevailing social, economic and political systems of his community and, secondly, as an intellectual exercise aimed at studying and assessing the

²⁹ Also reproduced by Fabunmi and Popoola, n1 above, 40.

³⁰ As above.

³¹ Available at www.nuc.edu.ng/nucnet/file/DASS/BMAS%20Law.pdf (accessed 6 June 2015)

operation, efficacy and relevance of various rules of law in the society. The curriculum must also ensure that law is taught as it exists at any given moment and that every law student should be comparative in his approach to legal studies, bearing in mind that there are many systems of law (statutory law, common law, customary law and Islamic law) currently in operation.

While these objectives accommodate materials that a prospective private practitioner will find useful in daily practice, its claim to an academic oriented approach is again that its purpose is wider than the vocational apprenticeship model and it invites critical contextual learning beyond rules and principles of law. The contrast becomes even clearer when these objectives are read against the objectives of the Nigerian Law School. Those objectives are to:

educate and train law graduates in vocational skills that would enable them function optimally as barristers and solicitors; adopt skill based, interactive and clinical methods of learning that would adequately prepare the graduate for their roles as lawyers to function as teachers, advocates and solicitors, advisers, leaders in private enterprise and public service; train students to conform to ethics and traditions of the legal profession and exhibit the highest sense of integrity and candour in the discharge of their professional calling and; inculcate in its graduates the ideals of rule of law, social justice and community service such as providing free legal services to the indigent and encouraging the development of opportunities for access to justice.³²

At the risk of stating the obvious, the purpose and methods are significantly different from those of the law faculties even though the target trainees are comparable in the sense that they are not limited to the potential private practitioner. Thus, at this level of institutional formulation and conveyance of objectives, there is an obvious recognition of the distinction between academic and vocational approaches to legal education in Nigeria. The law faculties appear to be aware that the LLB is a general academic degree in law.

³² Reproduced in E Ojukwu, 'Preparing lawyers for the practice of law through placement clinic: The Nigerian Law School Experience' (undated) available at <https://www.northeastern.edu/law/pdfs/academics/x6/nigerian-law-school-exp.pdf>

At the level of reception by stakeholders, there is equally some evidence that informed commentators expressly or impliedly acknowledge that distinctive paths to legal education exist or ought to exist in Nigeria even though not all commentators agree that law faculties have been faithful to their academic law responsibilities. Ojukwu's observation that 'Most of the law courses at the University are taught like any liberal art subject' is one such acknowledgement.³³ In his assessment of the NUC stated objectives, Bukar also acknowledges the distinctive paths as he opined that the 'philosophy underpinning the LLB law programme may satisfy the academic requirements of a law student who desires to be content with being acquainted with general principles of law and legal conditions of his immediate environment. However, in vocational terms, a law student needs to go much further in order to actualize his dream of becoming a 21st century lawyer'.³⁴ Onolaja insists that 'Academic law focuses on the acquisition of knowledge and habit of analysing and defining conceptions. It is intended to provide a deep understanding of the fundamental principles of law, teach analytical research skills and equip students with problem solving skills'.³⁵ Popoola's position caps it all in the assertion that – 'Legal education does not consist of mere learning of legal rules and craft skills; it is an intellectually challenging exploration of the genesis and growth of basic social institutions ... legal education, however, stands to forfeit its entitlement to University status if its teaching becomes mere rote-learning of rules and doctrines or drills in craft skills, if its study is abstracted from the cultural, economic and political life of the society ...'³⁶

The preceding review demonstrates that despite dissenting voices,³⁷ at a general level, the distinctive roles that law faculties and the Nigerian Law School have is acknowledged. This is also even captured in their respective curricula with the law faculties supposedly focusing on

³³ Ojukwu, n 32 above, 1.

³⁴ Bukar, n 3, 599.

³⁵ Onolaja, n 2, 7.

³⁶ A.O Popoola, 'Restructuring legal education in Nigeria-Challenges and options' NIALS Conference Paper published in I.A Ayua and D.A Guobadia (eds) *Law Education for Twenty-First Century Nigeria* 2000, cited by Adekoya, n 12 above.

³⁷ For instance, see Fabunmi and Popoola, n1 above, 41 - 42 who holds the opinion that the practitioner biased objective of legal education in Nigeria makes training heavily rule-oriented.

'substantive courses' while the Nigerian Law School focuses on 'Procedural subjects'.³⁸ In fact, for Onolaja, 'There is no doubt that the curriculum especially that of the Nigerian Universities is sufficient and capable of delivering a sound academic legal education'.³⁹ However, some keen observers do not consider that there is sufficient fidelity to that distinction. For instance, at the end of his analysis of legal education in Nigeria, Adetunmobi questioned 'whether a university law school (faculty of law) should serve as a vocational trainer for the legal profession or as a detached academy where all sorts of people can engage in independent and critical thought'.⁴⁰ Similarly Fabunmi and Popoola have also observed that;⁴¹

It is also relevant to ask whether the training in the Law Faculties is not unduly or excessively 'rule-oriented' whether the scope and contents of the courses can really equip the lawyer with the breath of vision required of him in his later-day professional life: whether there is not a yawning gap between the logically arranged legal norms in the textbooks and the stark reality that surrounds their practical operations: whether the Law Faculties have a share in the responsibility for this gap and whether the duties of the Law Faculties are discharged in teaching the 'pure' law of the statute books, or whether they should help the students to relate the law to its social effects.

If such questions remain, it can only mean that there is insufficient respect for the distinction between the two stages of legal education.

Recall that the conceptual discourse had shown that objectives or purposes and methods were some of the more important features that distinguish between academic and vocational legal education. Since the objectives and philosophy of law faculties and the Law School demonstrate awareness of the distinction, the conflation has to lie elsewhere. Arguably, whatever shortcomings there may be with the content of curriculum, such shortcomings are insufficient to bind law faculties as hostages to vocational preferences. Hence, it is suggested that the method and approach to teaching could well be one major means by which law faculties bind themselves to the vocational approach. As Onolaja advises, 'in the teaching of the curriculum, the Universities must always remember that academic legal education is

³⁸ Adekoya, n 12; Adewale Kupoluyi, 'Need for review of legal education' available at <http://www.opinionnigeria.com/need-for-review-of-legal-education-by-adewale-kupoluyi/#sthash.PCOWtYlc.dpuf> (accessed 4 June 2015).

³⁹ Onolaja, n2 above, 9.

⁴⁰ Adetunmobi, n 9 above, 284.

⁴¹ Fabunmi and Popoola, n 1 above, 45

concerned primarily with the search for principles. It is not the function of academic law to teach students all the knowledge that they would require to practice law'.⁴² Other stakeholders have also noted that 'in both the University and at the Law School subjects are taught by rote, with students being given handouts and lecture notes' often with a focus on teaching 'only what would come up in the examinations as if education is solely about passing examinations'.⁴³ Thus, to the extent that law faculties are unable to adopt more critical methods and approaches to teaching and learning, they remain hostages to the vocational model.

The second set of evidence that law faculties are hostage to the 'trade school' mentality can be found in the assessments and commentaries on law faculties and their work. Although, institutional responses to assessments and commentaries are hardly, if ever documented and are therefore difficult to capture for scientific purposes, those assessments and commentaries remain another important proxy for understanding both popular and institutional attitude to legal education. While popular sentiments have always indicated dissatisfaction with legal education in Nigeria, the relatively high rate of failure at the Nigerian Law School examinations in 2014 provide the most recent basis for expression of dissatisfaction.⁴⁴ Significantly, despite the fact that the failure occurred at the Nigerian Law School, blame is either placed squarely at the feet of the law faculties or shared between the law faculties and the Nigerian Law School.⁴⁵ For instance, some commentators insist that law faculties ought to better synergize their LLB programmes with the curriculum of the Law School because of 'the remarkable difference or distinction between what is taught by both institutions of learning. This makes for an awkward transition for the law students'.⁴⁶ Failing to synergize it is argued, law faculties ought to take the blame for not preparing their graduates to 'pass well' at the law school.⁴⁷ Hence, it is not uncommon to find advice that the 'integral course being taught in the law school be

⁴² Onolaja, n 2, 9.

⁴³ Adekoya, n 12, at p 8.

⁴⁴ See for instance, Wale Igbintade, 'Bar exams: SANs, top lawyers decry falling standards of legal education' available at nationalmirroronline.net/new/bar-exams-sans-top-lawyers-decry-falling-standard-of-legal-education (accessed 6 June 2015); 'Standard of legal education is increasingly declining -Adedolun' available at Dailyindependentnig.com/2013/10/standard-of-legal-education-is-declining-adedolun (accessed 6 June 2015); 'Legal education standard has fallen - Yusuf Ali' available at Newstrack.ng/more/education/6220-legal-education-standard-has-fallen-yusuf-ali - 22 May 2015 (accessed 6 June 2015).

⁴⁵ For a very good example of how the law faculties take the blame, see 'Adewale Kupoluyi, 'Need for review of legal education' who writes that 'To begin with, the unfortunate development is a reflection of the quality of graduates being churned out by our universities ...' available at <http://www.opinionnigeria.com/need-for-review-of-legal-education-by-adewale-kupoluyi/#sthash.PCOWtYlc.dpuf> (accessed 4 June 2015).

⁴⁶ Joe-Kyari Gadzama, '50 Years of legal education in Nigeria: A critique', Paper presented at the 50th Anniversary of the Nigerian Law School. Published in the Nation Newspaper of 18 Feb 2014, available at thenationonline.net/new/50-years-of-legal-education-in-nigeria-a-critique-2/ (accessed 11 June 2015)

⁴⁷ As above.

transferred to law faculties'.⁴⁸ For these commentators and those who sympathise with their position - a good number of law faculties and their graduates - a successful law faculty is one which is able to ensure that graduates are prepared in the subjects that they will face in law school examinations.⁴⁹ Obviously, this turns the dichotomy between academic and vocational legal education on its head.

At a more formal level, ranking of law faculties by certain institutional actors in the field of law also lend support to the idea that the most important function of law faculties should be to prepare students for law school examinations. In the most recent example, following release of the 2014 Bar Final Examinations, the Council of Legal Education set up a Committee which included representation from law faculties to evaluate law faculties 'based on cumulative performance' at Law School examinations.⁵⁰ Based on such cumulative performance, a so-called 'best law faculty in Nigeria' has been declared. Expectedly, the faculty so declared attaches premium to its 'victory'.⁵¹ This is not an isolated event. An earlier ranking by the Nigerian Institute of Advanced Legal Studies (NIALS) done in 2013 had turned up ten other law faculties as the top ten in Nigeria.⁵² *Ikechukwu Nnochiri,*

'UNILAG, OAU, UNIJOS among top ten Nigerian law faculties'

www.vanguardngr.com/2013/01/unilag-oau-unijos-among-top-ten-nigerian-law-faculties

Although the NIALS ranking came out different because it applied a number of other globally accepted benchmarks, it is noteworthy that it also listed 'Performance of graduates at the Law School' as one of its criteria. While the argument can be made that a law graduate with decent academic legal education should have no problems succeeding at Law School examinations or in private legal practice for that matter, the risk in the current practice is that law faculties are motivated to either change or adapt curriculum and methods to 'prepare' students for the law school. Effectively, law faculties become hostages to vocational preferences and turn into 'extramural classes' or preparatory grounds for the Nigerian Law School. In so doing the distinction between the two stages of legal education in Nigeria become blurred such that the complementarity and its envisaged benefits are lost. In order to

⁴⁸ See Kupoluyi, n 45 above.

⁴⁹ Semi-formal interview with faculty members and graduates of three universities in the South South indicates that this is a popular position.

⁵⁰ 'Council of Legal Education declares Unilorin Law Faculty best in Nigeria' available at <http://theeagleonline.com.ng/new/law-faculty-best-in-nigeria> and at www.nairaland.com/2276162/24-law-faculties (accessed 14 June 2015).

⁵¹ The news is given top spot in the University's Bulletin of April 20, 2015. Available at [https://www.unilorin.edu.ng/il%20\(4\).pdf](https://www.unilorin.edu.ng/il%20(4).pdf) (accessed 14 June 2015).

⁵² Ikechukwu Nnochiri, *'UNILAG, OAU, UNIJOS among top ten Nigerian law faculties'* www.vanguardngr.com/2013/01/unilag-oau-unijos-among-top-ten-nigerian-law-faculties.

recover those benefits, certain recovery action is required. The next section is dedicated to ideas in that regard.

Liberating academic law from the chains of the profession in Nigeria

A starting point for any recovery has to be to recall the essence of academic legal education in order to stimulate a return to those original ideal function(s) of law faculties. The Unsworth Committee's report did not provide any clear statement of such essence but the understanding of academic legal education elsewhere and its comparison to professional training gives a fair indication as to that essence. By one account, the Ormrod Committee's idea was that the objectives of the academic stage would be 'to instil a basic knowledge of the law, the intellectual training necessary to apply abstract concepts to facts of particular cases and an understanding of the relationship of the law to the social and economic environment in which it operates'.⁵³ This essence ought to lead to the production of well rounded law graduates, critical legal scientists adept at social engineering. Some commentators summarize it as follows: 'professional training... encourages the production of narrow, uncritical technicians. In sharp contrast ... the image of the lawyer that frequently dominates law teaching in the universities is one of academic purity and isolation from the vocational aspect of education'.⁵⁴ This is probably because in civil law countries with robust academic law traditions, 'The professional lawyer is thought of as a technician who does important but uncreative and narrowly professional work'.⁵⁵ Between the two extremes - the professional lawyer as a technician and the academic lawyer as a purist - there has to be a middle ground, bearing in mind that apart from prospective private practitioners who will apply law only to win cases, those who will apply the law to grow it and develop the legal system: judicial officers, lawmakers and policymakers will also pass through the law faculties.

Against this background, Gower's enumeration of the roles of academic law becomes even more persuasive. He suggests that whereas the primary role of academic law is to 'give students an understanding of critical aspects and issues of law', its secondary role is to 'undertake legal research and the training of students to undertake such research'.⁵⁶ Persuaded by these positions and convinced that legal education in Nigerian law faculties currently tilts towards the production of the

⁵³ French, n19 above, 12.

⁵⁴ Thomas and Mungham, n 4 above, 94 - 95.

⁵⁵ Merryman, n 6 above, 867.

⁵⁶ Gower, n 15 above, 439. Also see Chesterman and Weisbrot, n 5 above, 715 - 716 in relation to Australia. They point out that with greater responsiveness to their academic law functions, 'Australians were confronted with the notion that law teachers were not just people who imparted arcane learning to intending barristers and solicitors, but could also, in conjunction with their vocation as law teachers, be radical political animals. The notion that the academic function might include criticising legal rules and institutions received some endorsement from the legal profession...

professional lawyers in the same manner that the Nigerian Law School operates, this part of the paper makes the case for a more mediated academic approach to teaching and learning law as well as a more robust engagement with critical research and scholarship in the law faculties.

Towards a more academic approaching to teaching and learning in law faculties

Recalling that purpose/objective and methods are features that distinguish the academic approach to legal education, giving a more academic character to legal education must require both refocusing of objectives and a review of methods. In terms of the objectives of legal education, while most commentators would have their own ideas of what students should get from the ideal legal education, LeDain captures fundamentals that all law graduates would find useful. For him, the ultimate aim of legal education is to 'build what he calls 'the legal mind' which comprises of such qualities as 'thoroughness, intellectual self-reliance and the critical faculty, imagination, foresight, resourcefulness, reasoning ability, judgment, sense of relevance, the ability to perceive similarities, distinctions and relationships, the ability to do effective research and skill in the use of words'.⁵⁷ From the perspective of law as a subject of liberal study in the university, law faculties ought to aim at producing graduates who can boast of liberal education with attributes such as 'intellectual discipline, detachment, breadth of perspective, an interest in human nature and a capacity for independent and critical thought'.⁵⁸ These qualities can fit in and be analysed on the basis of the Bloom's Taxonomy⁵⁹ in order to show how teaching and learning objectives in Nigerian law faculties can be improved.

In relation to the cognitive domain of the Bloom's Taxonomy, six categories of objectives are listed in cumulative hierarchical order - knowledge, comprehension, application, analysis, synthesis and evaluation.⁶⁰ Cumulative hierarchy presuppose that learning at the higher level depends on whether lower level categories have been mastered. According to the taxonomy, knowledge is the lowest objective of learning and aims at enhancing students' capacity to know, recognise and recall facts, terms and basic concepts. Focus is on memorisation of material in the original form in which it was presented during the learning process. Comprehension aims at enhancing understanding and knowing the meaning of things. Comprehension involves an ability to

⁵⁷ G. E LeDain, 'The theory and practice of legal education' (1961) 7 *McGill Law Journal* 192, 193-194.

⁵⁸ Twining, n 14 (Plumber).

⁵⁹ The Bloom's Taxonomy is a framework of educational objectives developed by a committee of educators under the chairmanship Benjamin Bloom. For a very simplified summary of the Bloom's taxonomy in application to teaching and learning law, see P.S Ferber, 'Bloom's Taxonomy: Teachers' Framework' (1997) 4 *The Law Teacher*, 4-5.

⁶⁰ Ferber, n 59 above.

translate, interpret and extrapolate materials considered in the learning process. The next category is application which aims at building capacity to put acquired knowledge into problem solving. Application involves the ability to identify and correctly utilise originally learnt ideas in totally new contexts and situations. Above these four categories come analysis, synthesis and evaluation. Analysis involves the ability to disaggregate material into smaller constituent parts in order to extract correlative, causative and other relationships as well as to explain generalisations. Synthesis aims at enhancing capacity to create new structures and patterns by the combination of seemingly unrelated materials while evaluation focuses on the ability to make defensible valuable judgments on the materials under study.

Applying the Bloom's Taxonomy to LeDain's list will immediately show that the list includes qualities that can be situated in the upper level learning categories, particularly application, analysis and evaluation. Although, LeDain's list enumerates qualities that every self-respecting lawyer needs, arguably, legal education in Nigeria currently does not consciously aim at equipping graduates with these qualities at the upper level. With semester or year-end examinations in mind and restricted by the substandard nature of facilities especially the law library, most law faculties rather aim at developing knowledge and building capacity to memorize, recall and reproduce legal materials in the original form in which those materials were delivered to students. Perhaps prompted by a desire to 'simplify learning' for students, faculties encourage law teachers to simplify legal material to the easiest possible state for presentation often in the form of *lecture notes*. At a general level, the objective is usually to produce 'excellent' but mechanical rote-learning that arguably de-emphasises intellectual self-reliance, the critical faculty and imagination to the extent that memorisation of rules and case law is prioritized while critical analysis that challenges established knowledge is discouraged.⁶¹ Aiming at producing competent professional lawyers who can recall and reproduce forms, statutes and cases for uncritical application in legal practice, law faculties ignore most of the NUC recommended objectives, focusing instead on enhancing knowledge of rules in addition to spreading into skills such as legal drafting and advocacy which ideally fall under the purview of the vocational stage. Thus, the celebrated students in law faculties are those who are able to memorise the lecturers' notes or the recommended text books (at best akin to the treatise or at worst a glorified collection of lecture notes) and reproduce their contents as meticulously as possible in the examination. While such abilities can

⁶¹ Also see Gower, n 15, 437 who argues that 'academic training is training not specifically designed to equip students for the practice of the law but rather to train them to think and reason and to instil in them an understanding of the basic principles and purposes of a legal system Professional training on the other hand, is that aimed specifically at equipping students for the practice of the law. But this distinction is meaningful only if the two different purposes lead to different results'

be useful in the vocational model of the trade school that has no need for creative or critical thinking, applying the same in the academic context contradicts the academic character that requires expansion of knowledge and improvement of society - in this case, the legal system - through constructive questioning.

While the relevance of rules cannot be denied, a more engaging study that critically interrogates the nature and processes of rule formation ought to be aimed at.⁶² In other words, with deep, critical and self-mediated learning in focus, the aim of the law faculty has to change from encouraging memorization to encouraging critical analysis and building the capacity of students to develop own confidence by asking deep and searching questions that challenge not only the knowledge of the lecturer but also test the boundaries of the otherwise settled law. Law faculties need to shift closer to developing a science of law that equips the law graduate for constructive but critical appreciation of law upon which the vocational training can be hoisted. In the Bloom's taxonomy, the shift of objectives should move law faculties towards encouraging learning that prioritizes comprehension, application, analysis, synthesis and evaluation of legal materials and institutions rather than restricting learning to knowledge of rules and similar materials and some institutions. It is only in this way that academic law that happens in the law faculties can distinguish itself from vocational and professional legal education of the Nigerian Law School.

If and once it is accepted that the objectives and purpose of legal education in the law faculties should change, it will become clear that the method of delivery in the law faculties will also have to change. Spence's ideas in this regard are rather persuasive. According to him, the first role of the 'legal educator must be to empower students and to equip them with the skills that they need to teach themselves' because 'The task of a legal educator is not to teach a student the law. It is not even to teach a student ideas about the law. It is to teach a student to teach herself the law and to guide her to ask the most pertinent and pressing questions about it'.⁶³ Gower agrees because he holds the opinion that 'it is one of the tasks of a university to teach students to think and reason'.⁶⁴ If the objective of teaching and learning the law at the university is not to capacitate the student to memorise rules and principles but to encourage the audacity to know through questioning, to apply, to analyse and to evaluate the

⁶² Also see French, n 19 2.

⁶³ Spence, n 21 above, 2.

⁶⁴ Gower, n15 above, 436.

law, the responsibility to do so has to shift to the student under the guidance of the lecturer. In relation to the Law Faculty at the University of Oxford, Spence narrates that 'we believe that as a process of guided self-instruction, it (our teaching style) develops independence of mind and an ability in the student to think for herself. We believe that these are more important gifts than a detailed knowledge of a larger number of subjects'.⁶⁵

The question becomes from what methods do we move and to what methods? As previously shown, generally legal education in Nigeria is delivered through instruction by way of lectures or lecture notes.⁶⁶ While dictating lecture notes does not appear to benefit law students in any meaningful way,⁶⁷ delivery of instructions through lecturing is not completely abnormal. As LeDain observes, 'All teaching basically takes one of two forms: in the first, the teacher tells the student; in the second, he induces the student to tell him. In legal education, the first is typified by the formal lecture, the second approach by the case and problem methods'.⁶⁸ Gower expands this further as he claims that 'The methods of instruction available to law teachers include: lecture i.e. telling the student; the Socratic method i.e. ask the students questions; the tutorial method i.e. set the students work to do and then discuss and criticise their work; or give the students what to read'.⁶⁹ In essence, since nearly all instruction is delivered in the form of lectures with room for questions from students seeking clarification, only the most gifted students rise above the level of comprehension of the legal materials. Application, analysis, synthesis and evaluation hardly feature in the scheme of things under the current arrangement. Thus, change in methods has to mean an evolution towards the tutorial and so-called Socratic methods that allow students to prepare and digest a variety of primary and secondary legal materials before class in order to enable discussions under the supervision of the instructor or lecturer. The goal of realising self-mediated learning that encourages critical intellectual independence and creativity is possible in relation to substantive law that is mostly within the purview of the law faculties. Whereas procedural rules allow for little or no variation in application, substantive law, including the justice thereof, depends on the direction that its users urge. The ability to creatively engage with law is therefore something to be encouraged at the law faculties.

⁶⁵ Spence, n 21 above, 1.

⁶⁶ See Adekoya, n 12 above, Fabunmi and Popoola n 1 above, 46, also assert that 'The predominant method of teaching in the law faculties and the Nigerian law school is by lectures and tutorials ... In recent times, some lecturers have had to dictate notes to their students due to shortage or non-availability of suitable textbooks'.

⁶⁷ LeDain n 57 above, 198 even claims that 'I am firmly convinced that the worst thing a teacher can do is to give the students a neat set of notes and that nothing is more futile than the examination which tests the student's knowledge of the teacher's notes... The teacher who sums up everything for the students is developing intellectual cripples instead of minds capable of doing what he has done'.

⁶⁸ LeDain n 57 above, 197.

⁶⁹ Gower, n 15 above, 440.

Critical Scholarship: Enhancing the utility of academic law in the Nigerian legal space

Another role of the university law faculty which sets it apart as an academic institution for the study of law is its engagement in research and critical scholarship. This role constitutes part of the university's function to pursue 'knowledge and ...revelation of truth' just as it 'reflects the legal academy's dual identity' as part of the university community but also part of the legal professional community.⁷⁰ Since university authorities in Nigeria demand specified number of publications as part of the prerequisite for promotion, every self-respecting law teacher engages in publication⁷¹ of articles, book chapters or whole books. Hence, faculty member publications abound within and outside Nigeria. However, a number of questions can be asked regarding such publications. How useful are they for the development of the law? In the build-up for this paper, a mini-pilot survey of judges in South-South Nigeria indicated that judges rarely bother to look at law journal articles in Nigeria.⁷² What is the quality of research that feeds into the writing of the works and how much of it feeds into the teaching and learning process at the faculties? Do they indeed contribute to the search for, and dissemination of knowledge and truth?

At a general level, some of the question raised in relation to legal scholarship in Nigeria has also emerged in different forms elsewhere. For instance, Collier notes that 'Legal scholarship has traditionally been conceived as a modest, unambitious enterprise. ... It is judicious in the sense of being balanced, reasonable, moderate, temperate and pragmatic; it is largely descriptive, respectful of previous authority and faithful to existing law and it recommends only modest improvements in the law'.⁷³ Jakab presents an even more cynical description of a brand of legal scholarship that most honest commentators will recognise as reflective of a good percentage of what can be found in Nigerian law faculty journals. Jakab claims that this particular brand of scholarship is produced by those he cynically refers to as the 'Humble Clerk' who 'simply repeats what the judges and legislators decided'.⁷⁴ With the practicing Bar and law students as her primary audience, Jakab continues, 'The Humble Clerk is never considered an authority. The more precise he is in repeating what judges and legislators said, the better clerk he is'.⁷⁵ Ultimately, by merely restating the law, this kind of scholarship does not advance knowledge and does not seek or disseminate truth. Thus, it cannot realistically claim the academic character.

⁷⁰ See West and Citron, n 18 above 3.

⁷¹ I have used this term deliberately to distinguish it from scholarship in the hope that my meaning will become clearer - critical scholarship is scholarship as distinguished from publishing for the sake of prospective job promotion.

⁷² Although a very small number of judges - 10- were surveyed, 95% of the respondents indicated that they do not bother to read journal articles. However, the major reason given was that as a result of stare decisis, judgments of higher courts were more useful and authoritative than reading materials even if about 40% of respondents expressed dissatisfaction with the quality of articles.

⁷³ C. W Collier, 'The use and abuse of humanistic theory in law: Reexamining the assumptions of interdisciplinary legal scholarship' (1991) 41 *Duke Law Journal* 191, 195

⁷⁴ A Jakab, 'Seven role models of legal scholars' (2011) 12 *German Law Journal* 757, 769.

⁷⁵ As above.

Despite the claim that legal scholarship is characteristically unambitious in comparison to scholarship in some other more academic disciplines, there is evidence that legal scholarship can be more than mere repetition of the contents of judgments and statutes. For instance, while acknowledging that the largely inward looking nature of legal scholarship - legal materials and mostly legal audience - has reinforced the internal perspective to legal scholarship since its early days, Posner refers to a body of useful academic legal scholarship which was either reform oriented or law advancing to the extent that it led the scholar 'to extract a doctrine from a line of cases or from statutory text and history, restate it, perhaps criticize it or seek to extend it, all the while striving for "sensible" results in light of legal principles and common sense'.⁷⁶ Such useful scholarship has to be the hallmark of the academic lawyer who has a responsibility to 'maintain the legitimacy of the legal system of which she is part by ensuring that it is as defensible as possible'.⁷⁷ From one perspective, the need to maintain legitimacy of law and the legal system in the eyes of those within and outside the field of law arguably justifies the accommodation of critical legal scholarship by legal policymakers including the judges. For it is the detached constructive but critical analysis and evaluation of the law and legal institutions that provides or should provide the bases for legal policymakers to develop the law and the legal system in a dynamic manner. Merryman also partly captures this point in his assertion that 'On the common law side, we tend to think of the work of legal scholarship as another aspect of social engineering, it is our business as scholars to monitor the operating legal order, to criticize it and to make recommendations for its improvement. Improvement to us, means coping more adequately with concrete social problems. Our outlook is professional. These diverse attitudes, expressed in the form of legal scholarship are also expressed in the content of legal education itself ...'.⁷⁸ The overall point that emerges is that the utility of legal scholarship that emerges from the law faculties has to be its academic perspective which should distinguish it from the material that emerges from the practitioner - the legal treatise that merely reproduces the law for the practitioner. That utility lies in the normative and prescriptive character of academic legal scholarship and not in accurate description of what judges and the statutes say. In Rubin's opinion, 'When viewed as an academic discourse, the most distinctive feature of standard legal scholarship is its prescriptive voice, its consciously declared desire to improve the performance of legal decision-makers'.⁷⁹ In order to be considered useful in the real sense, such normative scholarship needs

⁷⁶ R. A Posner, 'Legal scholarship today' (2001) 115 *Harvard Law Review* 1314 – 1316.

⁷⁷ See Spence, n 21 above 3.

⁷⁸ Merryman, n 6 above, 867.

⁷⁹ E. L Rubin, 'The practice and discourse of legal scholarship' (1988) 86 *Michigan Law Review* 1835, 1847

to be of a quality that persuades actors in the field of law to rethink aspects of the law that is the subject of scholarship. This is because 'Normative legal scholarship aims to add to our stock of knowledge about the law, but it also aims to influence judges, lawyers, legislators or regulators to reform, interpret or preserve existing law. It aspires to influence the public conversation about the law's ability to serve justice and to point it in a more just direction'.⁸⁰ It is in that regard that academic legal scholarship is different from brief-writing which aims at convincing the judge to rule in the author's favour.

A number of reasons account for the suitability of the academic lawyer for this role. Those reasons are not new and have been supplied in different contexts by different writers. First, in the academic context, the scholar is motivated more by the desire to search and advance knowledge and truth rather than myopic 'self-interest or professional responsibility' to win a case for a client.⁸¹ Further, the academic lawyer is also not constrained by context in the way judges are constrained when performing decision-making functions. Thus, the academic lawyer is able to engage in forward-looking holistic analysis in a manner that the narrow confines of adjudication do not allow judicial officers to do. Hence, the academic lawyer in the law faculty can 'probe deeper and with a broader lens than the opinion rendered by the judge' since scholarship 'is not bound by standing, mootness, what the lawyers argued or the absence or presence of a litigant seeking a remedy - structures and limitations of litigation'.⁸² The academic lawyer is also further required to play the role of the watchdog over the judiciary which watches over society yet remains largely unaccountable to any other institution. Riding the wave of institutional authority that comes with the office of judge, the fact cannot be ruled out that some judges may be tempted to deliver judgments that threatened the legitimacy of law and the legal system since the authority of their decision is not dependent on the quality of the judgment. Perhaps it is in recognition of this danger that Justice Robert H Jackson of the United States Supreme Court is quoted to have said that 'we are not final because we are infallible, but we are infallible only because we are final'.⁸³ By contrast, lacking the benefit of institutional authority, the academic lawyer necessarily depends on the persuasiveness of his intellectual authority⁸⁴ and is more likely to engage in rigorous work that is beneficial to the legal system as it keeps the judge in constant check and awareness of emerging risks to the legitimacy of law and the legal system.

⁸⁰ See West and Citron, n 18 above, 3.

⁸¹ Justice G Samuels of the New South Wales Supreme Court cited by West and Citron, n 18 above.

⁸² See West and Citron, n 18 above, 6.

⁸³ In the case of *Brown v Allen* 344, U.D. 443, 540 (1953) cited by LeDain, n 57 above, 220

⁸⁴ I have used 'institutional authority' and 'intellectual authority' in an extremely oversimplified manner. For a more elaborate and original presentation of these terms, see Collier, n73 above.

Overall, academic legal scholarship has a potentially important role to play in the development of law and the legal system in Nigeria. That role falls to the law faculties not only because like other liberal subjects within the university, academic legal education must necessarily advance knowledge and truth. It is also practical in the sense that critical engagement with substantive law should take place at the law faculties even if it does not take place at the Law School or in the courtrooms. Such critical engagement - comprising of analysis, synthesis and evaluation must then feed both the training of future law graduates and constitute the law faculty's contribution to the legal profession.

Conclusion

An important question that this paper has tacitly posed is: why do we have two stages of legal education in our legal system and what differentiates legal training in the Nigerian Law School from the legal education that is offered by the law faculties in the Nigerian universities? In several ways, these are not entirely new questions and this fact is clearly demonstrated by the volume of literature that is already available on most of the issues considered in this paper such that very little original thoughts have been expressed in this paper. However, the utility of the paper has to be that it has reopened the debate on the alleged decline of legal education in Nigeria by asking the questions differently and adapting answers developed elsewhere to try and create a coherent body of ideas that will hopefully allow for rethinking legal education in Nigerian under a different conceptual framework.

Relying on existing legal historical work, this paper has tried to show that at the inception of legal education in Nigeria, the decision to develop a two stage legal education system was made with the intention that a complementary rather than an identical process of legal training will emerge. The paper has also shown that in that regard, the legal education that takes place within the five years of study in the university law faculties has to be different from the training that the Nigerian Law School offers a liberal academic study of law, legal institutions and the legal system, the other is more of a trade school model for vocational training. Thus, it has been argued in this paper that assessment and other practices that seem to compel law faculties to redirect the academic stage of legal education to preparing students for the Nigerian Law School creates a hostage situation in the sense that the law faculties are held hostage to vocational training preferences that deny the legal system of the benefits that academic legal education promises. Hence,

this paper has also suggested remedial action that law faculties need to undertake to restore the academic character that distinguishes them from the Nigerian Law School. In specific terms, it has been shown that remedial action should take place both in the teaching and learning of law and in the production of critical legal scholarship. Effectively, the call is for the law faculties to pay attention to the fact that the academic angle to legal education that they have responsibility for requires that while they contribute to training prospective law graduates for a role in the day-to-day administration and application of law for individual and group benefit, they cannot abandon the greater task of preparing students for current and future involvement in the development of law in and outside of the court rooms.