

ETHICS

SANDRA OKE

sandra.oke@norfolk-partners.com



Teaching Legal Ethics: a Necessary Tool for the Restoration of the Legal Profession

Quote "The Law Floats on a Sea of Ethics"

Former United States Supreme Court Chief Justice Earl Warren

Legal practitioners, Judges and stakeholders all agree that standards have fallen in the legal profession. Several solutions have been proffered to tackle this matter. However, not much attention has been paid to the role teaching legal ethics can play in restoring the age-old values of the profession. Apart from the Law School, Legal Ethics should be taught in Universities and be part of Continuing Legal Education Programmes.

There have been arguments for the introduction of Professional Ethics as an Undergraduate course in the University. Russel G. Pearce in his article titled "Legal Ethics Must Be the Heart of the Law School Curriculum Symposium: Recommitting to Teaching Legal Ethics- Shaping Our Teaching in a Changing World" strongly asserts that "If the commitment of the legal profession and of legal academia to producing ethical lawyers is genuine, legal ethics must be the most important subject in the curriculum. Properly taught, ethics courses should provide the lens through which students view what it means to be a lawyer and discover how to find meaning in their work." Peter McFarlane in his article titled "the Teaching of Legal Ethics at the Undergraduate Level" explains that legal ethics needs to be understood within the context of learning the law. He asks a pertinent question which is "how can one teach and understand the basic elements of rule of law or the legal process, or the notions of justice or equity, if there is nothing about conflicts of interest, the duty to the court, the ethics concerning the rights of an accused who confesses guilt; or the competing public policy considerations concerning confidentiality." This argument is very cogent because even within substantive law which is taught at the University, ethical issues arise. It would be helpful for students to be taught how to deal with these issues at an early stage in their legal education. For example in criminal cases the prosecutor has an ethical and a legal duty to disclose to the defence any information known to him and unknown to the defence that might exculpate the defendant or mitigate the punishment, also when a testamentary gift is made to a lawyer by a client ethical issues regarding the propriety of the gift will have to be considered before it becomes valid under the law. Joe Kyari Gadzama SAN in his paper titled "50 years of Legal Education in Nigeria a Critique" alluded to the importance of introducing Professional Ethics as a course in the University he stated "that at the Law School, a law graduate is introduced to the ethics of the profession but one wonders if nine (9) months is not too short a period for this. The



Law Faculties could be made to incorporate professional ethics into their curriculum over the five (5) sessions that a law student is expected to spend in the University. Overtime, the ethics of the profession become engraved in the minds of the law students who will most likely know them by heart by the time they graduate. This same solution could be applied to other aspects of law in which lawyers experience problems today. That way, the introduction to procedural law is gradual and not sudden. It should also be a pre-condition that a Law Student must be found worthy both in learning and in character before he/she is sent to the Nigerian Law School. This will go a long way in preparing law students for the side of law which is nothing like what they have learnt in the University."

Other legal academics have noted that the following opportunities might arise from teaching ethics at the University these are "it can equip students to critically assess professional codes, it involves training students on how to think about ethical issues, not what to think about them, it can encourage a student's personal development, it can help to prepare students for employment of any kind -not just legal practice, teaching ethics need not be limited to law and ethics can be taught across all subject disciplines."

Conversely, some have argued that it is not necessary to teach professional ethics at the Law School. James Moliterno in his article titled "An

Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentices System in the Academic System" opines that "ethics-legal profession teaching serves an arguably higher and unquestionably more elusive goal; this goal has been characterised as the teaching of "character," "integrity," "virtue," and "values." This goal, however characterised, is not uniformly regarded as being achievable. Indeed, whether the law school experience generally, and course work in ethics specifically, can positively affect students' moral development has been the subject of debate." Russel Pearce summarised the reasons against teaching ethics at the Law School these are one, that the conventional method of teaching law is sufficient for the student to build a moral character. Second, some legal academics believe that ethics cannot be taught. They explain that the law student's character is formed before law school and is not likely to change. Admittedly, a student's character might be formed before entry into the law school this does not mean an attempt should not be made to teach the student the rules of legal ethics. Additionally, this is a compelling argument for teaching legal ethics at the University.

Conclusion

Following from the above, it is strongly advised that legal ethics should be taught at both the University and the Law School. Firstly, it will prepare students for the practicalities of life as legal practitioners. In reality lawyers are faced with constant ethical dilemmas which only a thorough understanding of the Rules of Professional Conduct will help them resolve. Secondly, it will demonstrate to the society at large how the legal profession values its time-honoured principles and values. Deborah Rhode and David Luban in their book "Legal Ethics" explain that "The failure of law schools to institutionalise ethical discussion throughout the law school curricula itself raises ethical issues. For the faculty to treat professional responsibility as someone else's responsibility encourages future practitioners to do the same. One primary cause of unethical conduct, particularly in organisational settings, is the assumption that moral responsibility lies elsewhere. Legal educators cannot afford to mirror this approach in classroom priorities. A "minimalist approach to legal ethics marginalises its significance. Educational priorities are apparent in sub-texts as well as texts. What the core curriculum leaves unsaid sends a powerful message that no single required course can counteract. Although law school experiences cannot fully simulate, or insulate individuals from, the pressures of practice, it can provide a setting to explore their causes. Particularly in areas where the interests of professionals and the public do not coincide, future lawyers benefit from analysing the gap before they have a vested interest in discounting it."

NEW LAW BARS POLICE FROM PROSECUTING FEDERAL OFFENCES CONTINUED FROM PAGE 5

Act was not intended to create competition between the NPF and the Federal Ministry of Justice, but to ensure effective prosecution by trained lawyers.

According to him, the provisions of the law automatically remove lay police prosecutors.

He elucidated that: "The Police should concentrate on investigative activities. The police should direct their resources towards guiding investigation to ensure that thorough investigation is conducted. When this is done, prosecution will be quicker and this will be to the glory of the police also.

"We consider this phase a transition process. This is why we still allow them (lay prosecutors) to engage in prosecution despite the specific provision of the Act. Once this transition phase is over, we will close shop for lay prosecutors, who engage in prosecution in our courts."

He observed that the friction between the Police and the Federal Justice Ministry would not serve the interest of the law but would defeat the intention of its makers. He urged the Executive to fund the implementation of the Act

Justice Bello explained that the fundamental innovations contained in the law, aimed at ensuring prompt

dispensation of justice will be defeated where the Executive fails to provide the necessary facilities for the application of the law.

"The integrity of the system is likely to be impeached if the key components of the system do not play their roles. It is the responsibility of the Executive to make investment in this regard," the judge stated.

He mentioned the need for the production of necessary laboratories for the production of reports to aid criminal prosecution. He was of the opinion that some of the laboratories for scientific investigation do not exist in the country, and where they exist, they are poorly equipped.

While welcoming participants to the workshop, the head of CSLS, Professor Yemi Akinseye-George, SAN said if properly funded, the ACJA "will address most of the problems currently facing the administration of criminal justice in Nigeria, especially the delay in investigation and prosecution.

"It will also eliminate the long period of remand of suspects in prison custody without trial, lack of witness protection, manual writing of court proceedings by judges, reluctance of witnesses and the resultant incessant adjournment of cases and other problems bedevilling the criminal justice

system.

"ACJA is now applicable in the investigation and prosecution of federal offences as well as in the Federal Capital Territory," Professor Akinseye-George asserted. He argued that the adaptation of the Act by all states of the federation will "reduce the difficulties faced by the justice system in effective and efficient prosecution of criminal cases in the country."

Representative of the Police, David Igbo, an Assistant Commissioner of Police (ACP) of the Police Legal Department, Abuja guaranteed the police commitment to ensuring the success of the Act. He said the police have enough capable lawyers to replace lay police prosecutors soon to be phased out.

The National Project Officer of the United Nations Office on Drugs and Crime (UNDOC), Ugona Ezekwem commended the country for enacting the ACJA and assured that her organisation was willing to partner with all stakeholders to ensure the success of the law.

Godwin Odo of Justice for All warned that the implementation of laws had always been a challenge and called on stakeholders to double their efforts to make the ACJA a success.