LAW, SPECIALIZATION, TEACHING AND PRACTICE

Anselm Uchechukwu Abonyi Ph.D
Mrs. Morning-Glory Okafor
Mr. Johnny Okongwu

Introduction

Specialization, Law, Teaching and Practices, is a vexing issue and has become inevitable in the emerging global community. The concept has also become imperative in every productive discussion relating to legal education and research both at the national level, regional fora and at the international scene. Any presentation and discussion on specialization in law teaching and practice is aimed at imbibing skills in the lawyer with particular reference to developing interest in specific or chosen area of law with a view of having specialized and technical knowledge other than the general knowledge he or she may have acquired during the general training as a law student in respective faculties of law as well as the law school. To this end, the idea of specialization borders on taking legal education to a point where a lawyer is no longer seen as a professional trained to know everything but more important acquired general knowledge of law but for purposes of teaching and practices takes interest and skill in one area or aspect of law.

Indeed, the idea in our view is not and should not be restricted to teaching of law by law teachers but should cut across board and extend to legal practices, this discussion therefore aims at looking at the implication of specialization in law teaching and practice, the legal market indices which actually contributes to the success or otherwise of the concept, the perceived dichotomy of interest between regulators of legal profession and advocates of specialization on the fear that specialization will destroy the profession, the challenges of specialization and possibly its impact on teaching, practice, clients and the public and finally the way forward.

It is not in doubt that this topic is germane considering the very excruciating economic realities in Nigeria, other African states and at global level which has negatively affected many sectors and professions and practitioner including the legal professions which we have collectively held to our chest against all odds, criticisms and grievances expressed by many in other areas as the most noble and learned out of professions on earth. Having stated the above, our firm view in this discussion is that specialization in teaching and practice of law has come to stay and is the global trend, Nigeria cannot wait while the whole world moves, but must key in and specialize so as to prosper and not left behind.

II. The Paper/Discussion

The title of the paper is instructive and quite apt and educative. Its presentation and discussion is a product of a mixture of empirical and non- empirical methods where views and responses of legal minds and non legal minds are received and are either adopted or improved. In addition,

secondary sources were consulted and the combination of the data obtained makes the paper quite comprehensive and the discussion very simple, concise and result oriented.

The discussion of the paper is focused on the following issues and situations which makes the understanding of the topic very clear. (i) The introduction which gives background to the paper (ii) the paper and discussion (iii) specialization, impact and challenges (vi) conclusion and (vii) recommendation.

iii. Specialization, the Lawyer, the Profession, Practice and the Legal Market.

As Richard Moore Head reasoned, specialization within professions poses interesting questions that go to the heart of the professional project[1]. The learned professor is apt in the sense that once the issue of specialization is raised, many questions follow, like; does specialization undermine value, or indeed the rationale of the general professional qualification? Is it indeed a vehicle for intra-professional closure or a means of strengthening the competitive hand of the elite? From the consumer perspective (i.e. clients) is specialization good? Is the way legal profession in which legal profession manage specialization consistent with the "lawyers" protecting the "public" or "the professions interest'[2]. We humbly adopt the above questions posed by Richard Moorhead as critical questions that must be answered in arriving at conclusions on the issue of specialization in law profession, its teaching and practice. Specialization strictly speaking imports the idea of focusing on specific area or line of practice instead of being generalistic.

It means choosing a given area or line of focus and concentration both in practice, research and even legal education and teaching and giving or paying less or no attention to other areas[3]. The history of specialization is traced to the tradition in the United Kingdom where the legal profession and indeed the legal practice is founded on two limbs and has progressed successfully on this premise over many years. In England and Wales, the law profession broadly speaking is stratified in two major leagues namely the solicitors and the advocates. Sometimes, some solicitors are not trained per se in law but have over the years acquired wide range of experience working in "law firms" and as a result of such experimental training are recognized by specific laws regulating the profession as having qualified to practice as "solicitors". For the advocates, they undertake

Anselm Uchechukwu Abonyi Ph.D, Faculty of Law, Chukwuemeka Odumegwu Ojukwu, University, Anambra State, barristeruchechukwu2002@gmail.com
Mrs. Morning-Glory Okafor, Faculty of Law, Chukwuemeka Odumegwu Ojukwu, University, Anambra State, ndu81@yahoo.uk.co
Mr. Johnny Okongwu, Faculty of Law, Chukwuemeka Odumegwu Ojukwu, University, Anambra State, lawleviokongwu@gmail.com

[1] *Richard Moorhead, Profession of law, Cardiff Law School, Cardiff University, "Lawyer Specialization, Managing the profe*
[2] *ssion paradox".*
[3] *ssion paradox".*

educational training in law in recognized school and institutions and pass through regulatory measures and examinations after which following their qualification both in learning and character, they are invited and inducted or called to the bar with strict traditions as laid down in their domain or jurisdiction. Specialization has gone beyond "solicitors" and advocates and presently the concept now explores situations where even among the solicitors and advocates, there is the progressive tendency of practitioners concerned in going into specific practice areas or focus. Notably, the Nigerian legal history has no record or tradition of lawyers either referred on one side as solicitor or on the other hand as an advocate. Our own clime is premised on the dual phenomenon encapsulated in one person "the lawyer" who is not only a "solicitor" but also an advocate of the supreme court of Nigeria before navigating to other market areas in law profession[4].

Argument has been made that specialization brings about closure and reduce the essence of profession and qualification. It is our firm view that specialization is necessary to professionalism; professions after all are usually found on a claim to exclusive application of specialist knowledge. Superficially, all professionals are specialists, lawyers specialize in law, and doctors specialize in medicine. However, in the context of the present discourse, we are looking beyond law but saying that within the specialized area of law, there is a fragmentation of persons specializing in specific aspects, areas and practice based in the field of law. Specialization emphasize general practice but encourages "specialty". Professions emphasize "generalty" and see the lawyer and lawyers as person or persons trained in law with requisite knowledge in law and regulated under a professional body or calling with qualification evidencing the training.

In England and Wales, the proliferation of accreditation schemes within the solicitors profession attests to the increased importance of the distinction between the specialists and generalists whereas the specialist may claim to the one leading a field, developing the law and its techniques and thus advancing the broad claims of the profession to advance the production of specialist knowledge in their clients' interest.

We share the humble view of Moorhead that specialization threatens the professional project as intra-professional competition and specialization intensities. The first threat is that specialization renders the profession:

1. fragmented
2. stratified
3. lacking in any professional coherence

It is noteworthy that the fragmentation question raises issues of professional ethics and makes regulation more broad. The second threat is that specialization pertains directly to the professions core claim to competence. The legal profession provides practitioners with general warrant of

[4] *Ibid*

competence on the whole meaning that once qualified, a lawyer can practice in any area of law. But the existence of specialists raises questions about the validity of this generalist qualification which calls to question whether lawyers are genuinely Omni-competent. This phrases Omni-competent is derived from the work of Heinz and Lamman in the seventies questioning the "legal standing or validity of qualification as basis of measuring competence in practice or in the rendering of services to clients".

We hereby submit that qualification which merely makes the practitioner to be recognized as a member of profession does not in any manner serve as yardstick to how competent a lawyer is or how incompetent he is.

Thus, if professional competence of specialists is significantly higher than that of the generalists and generalists show significant level of incompetence than the value of this general warrant of competence, as a result hid competence is called to question along with the profession itself. One wonders that the level of competence demonstrated by specialists and generalists in legal aid work both in England and Wales and other areas including Nigeria. Thus, one asks the question whether the specialists provide higher quality of services than non-specialists? This is a relative question but it also raises questions whether the generalists can be good enough in the services rendered and levels of incompetence among them is at a tolerable level referred to as being below absolute quality.

It is noted that quality should not be the only criteria to judge the issue of specialization. We observe seriously that specialization increases cost by reducing access and increase "close up". Specialization therefore

1. emphasize quality services
2. reduces access = the number of specialists is narrowed and as a result it becomes a kind of monopoly, the demand for the services of the specialists skyrockets.
3. it ultimately increase cost of legal services
4. there is positive movement in legal market index as the demand soars chasing few or little supply. All the above combines to make the specialists a hot cake, very influential, expensive whereas the generalist low income and revenue profile.
5. The consumer suffers and personal interest is preferred and public interest also suffer a great setback. In the case of a generalist, there is

1. Low patronage and short fall in demand for the generalist.
2. Increased and bloated supply
3. Low pricing and cost.
4. Increased disposition to incompetence and poor service delivery = the generalist engages in diverse areas but performs abysinally in all "master of none".

Professional regulation supports generalists' ideas as it sees all the professionals with the same body of knowledge acquired after training and qualification obtained and as so such a person can practice any area of law. However, profession does not support specialization as it goes beyond having a body of knowledge supported with certificate after training and tends to create a closure and reduces access to legal services, increase competence and cost.

An attempt to use profession to regulate specialization raises questions. Some questions including

1. How best can balance be made between quality and detriment against the public and the consumers of legal services? The specialist contend they have quality but it is perceived the quality and competence notion is adopted to the detriment of the public and the consumer. The lawyer thus specializes for his personal benefit and enrichment. Although, the above is true but specialization is supported.
2. Can the generalist really maximize the interest of consumers just like the specialist, the answer is no because both take advantage of the consumers.

Whereas specialists provide quality services and go for high cost and reduction of access, the generalists renders uncoordinated, poor services that defeats the interest of the consumers. Under the above situation, which out of the two should be adopted, we do not want to be sentimental or bias but in our firm view specialization takes the lead. Though we agree to the fact that a lawyer once trained knows all the law and should embark on research once there is a matter, this view popularizes the professional disposition which advances regulation within the limits and dictates of the profession. The purport of it is that specialization is attacked by the profession and the attack is best explained as part of the professions desire to protect the members' interest and its collective identity. As such, is an example of what can be described as a professional paradox which is a necessary trade-off between consumer interest and his detriment which the profession resolves in its own interest than that of public or the consumer.

Specialization therefore needs and demands the following:

A. Further accreditation or 2. Licensing above the normal qualification obtained by members of the profession. With that, it is imperative that whether or not a practitioner will decide to specialize will be determined by:

1. How does the practitioner want the public and consumers of legal services to see him?
2. Does he want to be seen as a person who will give quality legal advice which will assist his client solve his problem even if it means paying more than the ordinary?
3. Is he really providing quality service or services or does he do bad job and give legal advice that puts the consumer in pains?
4. How does the consumer receive the services of the practitioner, do consumers blame him for a poor work or advice or do they tell him kudos for a job well done?
5. How ready is the consumer prepared to pay and what is the demand pattern?

We view that if the answers to the above questions favour the specialists, then specialization will be the best option but if it does not, then by implication, adopting the generalist concept will be the option.

Summarily therefore, specialization is now the modern trend, quality is of essence, further accreditation is needed and the cost or price for legal service should be determined by market structure and not only the basis of professional regulation or control.

Law is like other notable professions. In the field of medicine, specialization has come to stay and at present most doctors who are known in the practice of medicine are specialists in their specific areas hence some specialize in issues relating to the heart, some handle issues of bones, some

children, some mental health, some strictly on women, others on eye and ear, these specialists are few in number, access is reduced, demand and soars and the price and cost of their services becomes high, they restrict themselves to one particular part of human body and know virtually everything about the part, the generalists engage in all parts of human body and believe that he stands opportunity of having more clients but because he is taking all and knowing none, the demand of his services fall, the price and cost of his services fall too, access to him and his services high because of its poor quality orchestrated by unpardonable form of incompetence. Of all the vibrant and positive development in the medical profession as shown by increased rate of specialization among doctors, the Nigerian Medical Association has not died and has not failed in its professional responsibility to control its members through the regulations and rules prescribing responsibilities to them as medical doctors.

We do not agree that specialization by men of the legal profession will destroy the legal profession nor will it render the Nigerian Bar Association incapable of providing its professional responsibilities to its members all over Nigeria. This in our view is merely fearing the fear induced by regulators of the profession.

ii. **Law teaching, Practice and Best Practice:** Our take is on this issue and idea is clear:

1. Law teaching is a crucial issue in the overall development of legal profession in Nigeria.
2. We adopt the Carnegie Solution contained in the Carnegie Report or recommendation on what the Law school curricula should focus and achieve for the students to wit:
   (1) To prepare the Law students at the Law school level with the requisite skill to make them "practice ready lawyers" unless this is done, we shall be where we are. How do we implement this? We have to imbibe elements of
      (1) Clinical Legal Education
      (2) Internship Practice
      (3) Course Simulation must be strengthened
3. We also adopt entirely the views and opinions of N. J. Madubuike Ekwe, the former HOD of Public Law, Benson Idahosa University in his article "Challenges and Prospects of legal Education in Nigeria". An Over View, Ekwe argued which is completely accepted and adopted by us that:
   (1) The traditional lecturing method is another impediment to the attainment of the philosophy and goals of NUC's Benchmark Minimum Academic Standards in Universities.
   (2) The law faculties in Nigerian universities adhere strictly to traditional and conservative teaching methods of the curricula.
   (3) The law faculties purely teach theoretical aspect of law while the law school teaches the practical using the traditional method where teacher is the boss.
   (4) In most law faculties, lecturers teach through the use of handouts and materials, requiring 'dictating' of notes to students. There is no planning nor is there any clear objective of teaching and of course no special skill in teaching. This in our view is:
      (a) Devastating
      (b) Demoralizing
      (c) Embarrassing and
      (d) Has also contributed to casualties in examinations in the law faculties and the Nigerian Law School.

There is nothing more depressing psychologically in the life of a student including law students than a style of teaching where the teacher has nothing to teach based on a planned lecture "as a person with knowledge and experience" than the student but "dictates" note for 2 hours or more. Some of our colleagues in the law faculties dictate notes either

(1) because they did not prepare for the lecture and uses that to cover their ignorance before the student "this is intimidation of students" not teaching.

(2) others dictate note because they failed to utilize the lecture hours and time by their protracted absence from lecture and recognizes few days to the exam that he or she has done nothing and bombards the innocent and helpless students with notes.

We have hard interaction with students from many law faculties in Nigeria and they shared their experience about the encounter with lecturers who find favour with dictating notes. Their view is that most of such lecturers copy verbatim their lecture notes from seasoned books and once the students discovers where the notes are being made, they stop copying, some either sleep while dictation is on or others leave the class. In the Law School too, we do not know now whether the teaching method of dictating notes has stopped, then every student must be in the class before 9am to sign attendance usually placed at the entrance of the classroom and shortly after 9am, lectures starts and notes will be dictated for hours. We thank God that many did not develop "Parkinson Challenges" then.

What we are saying therefore is that the traditional method of teaching currently in place in law school and the faculties should be replaced and the more purposeful methods that will create opportunity for law students at Law School and practice law be strengthened which a mixture of traditional; method and interactive method where the teachers is not the boss.

All in all, we advocate that the best practice principles should be imbibed in law teaching and legal education in Nigeria. A lawyer should be trained to observe the law and have the skill to protect the interest of his clients. To be equipped with the skill to do that, the traditional method of teaching must be improved and strengthened by a combination of clinical legal education, simulation based approaches such as interviewing, counseling and trial practice, all these widens "experimental training of the lawyer" and keeps him fit and ready to practice law and discharge effectively the professional responsibility to his colleagues, his clients and the general public.

iii. **Specialization, Impact and Challenges:**

Summarily, we submit that the impact of specialization are:

(1) Specialization may be seen as a mystification of professional status of the lawyer where he develops complex solutions to the legal problems of his client which they can validate where one or more solution is enough. The specialist creates a niche for himself and makes his professional ability and capability look mystic and no doubt increases his economic viability in the legal market. The generalist suffers while the specialist becomes bigger.

The concept is also challenged by the following

1. Routinization: Specialization is seen as socially harmful because it leads to squeezing out of creativity and professional skill. We do not agree to this, it makes the specialist to be a monopolist of his skill instead.

2. Subordination: Specialization takes care of the progress with the trend of economic development. With complex transactions, the general practitioner is weeded out. We agree to this.
3. De- ethicalisation: It is argued that it wittles down the lawyer autonomy in ethical sense. This we also disagree, it gives room for professional judgment.

vi. **Conclusion:**

The legal market and the transactions are becoming more and more complex and sophisticated; the option for lawyers is specialization in both teaching, research and practice.

Recommendation:

In terms of recommendation:

1. We adopt the tips suggested by Uchechi Anyanele as guide for legal career direction and specialization for Young Lawyers in Nig. Nigerian Law Toady, July 1st 2018. The crux of his argument and suggestion is that "with the growing trends in globalization and more complex transactions, there is now the growing emphasis on specializing and carving out a niche for oneself." For us, it must not be restricted but must extend to teaching and practice.

2. We also adopt the views and expressions of many eminent senior members of the bar promoting specialization concept and agree with them that the greater point that determines whether a lawyer will specialize or not is the internal workings in the legal market. If the market booms as a result of specialization leading to the increase of demand and possibility the cost and price of legal services, access will be reduced, and the specialist enjoys even though that may or may not necessarily impact negatively on the consumers and public.

3. Finally, there is need for immediate overhauling of the law faculty and law school curricular such that the traditional method of teaching be improved by strong clinical educational culture, simulation course method and trial procedure. This makes the law school student and the faculty law student to be prepared to practice law. Once more, interactive lecture approach is recommended.

4. All suggestions above on specialization will be incomplete without a legal framework to enforce requirements and guidelines for specialization in law teaching and practice in Nigeria and as a result a law to that effect should be enacted.