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Multidisciplinary Practice Through Developing-Country Lenses: The Imperatives of the Nigerian Regulatory Context

By
George C. Nnona*

ABSTRACT

This article addresses cardinal issues of law and policy raised by the subject of multidisciplinary practice (MDP) as that subject relates to a specific developing country: Nigeria. In so doing the article confronts a neglect of developing country perspectives in the academic literature on the subject—a neglect arguably with its roots in the notion that MDP is a subject at the cutting edge of professional regulation to which developing countries have neither the need nor the wish to contribute. More specifically, the article argues that the Nigerian regulator, in the light of the country's developmental needs, faces certain critical choices in its approach to the MDP question. These critical choices have consequences not just for the legal profession as an interest group, but more importantly, for the broader social and economic development of the country. The article cautions against too dogmatic an approach to MDP regulation and counsels instead a pragmatic and strategic view of MDP in the context of the history and functions of the legal profession within the peculiar social milieu of Nigeria, as well as the reality of a globalizing legal services arena in which legal services constitute not just an element of domestic social regulation but also items of international trade amenable to certain economic considerations. In counseling a pragmatic and strategic approach to the issue, the article draws attention to the strategic policy considerations that influenced regulatory decisions on MDP in several jurisdictions, especially the United States and France, the divergent resolution of the MDP question in these jurisdictions, and the ultimate primacy of each jurisdiction's needs and circumstances—rather than a particular orthodoxy—in addressing and resolving these policy concerns.

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I.
INTRODUCTION

Multidisciplinary Practice (MDP) may be defined as joint professional practice between lawyers and members of other professions where their professional activities in pursuit of such joint practice involve the offer of legal services to the public.¹ Depending on the context, the term may also mean the professional grouping or entity under which or through which such joint practice is undertaken. In the latter sense, it is coterminous with the term “Multidisciplinary Partnership.” MDP is distinguishable from a situation involving an individual with dual or multiple professional qualifications, who is thereby licensed to practice law and one or more other professions. Such a professional implicates some regulatory difficulties, but these difficulties are quite distinct from those involving MDP as defined above.

In the last few years MDP and its propriety have been the focus of intense attention and subjects of debate in major professional and academic circles around the world.² However, following the Enron Corporation accounting scandals of 2002 and the subsequent conviction of Arthur Andersen by a Texas court in connection therewith, the debate over MDP waned. It waned because accounting firms, especially the global accounting firms represented by the Big Five,³ constituted the single most powerful constituency driving the quest for the legalization of MDP in the United States and beyond. Arthur Andersen was the flagship of the group and its conviction delegitimized the accountants’ quest for additional professional jurisdiction that MDP represented.⁴ While the debate

1. See George C. Nnona, *Multidisciplinary Practice In International Context: Realigning The Perspective on the European Union’s Regulatory Regime*, 37 CORNELL INT’L L.J. 115, n.3 (2004).

2. This debate spawned a voluminous literature. See the literature referenced *infra* note 7. The American Bar Association has played an active role in the debates, as indicated by the substantial response elicited by way of testimonies, comments and reports by the commission it set up in 1998 to investigate the MDP question. For the records of that commission, see AMERICAN BAR ASSOCIATION CENTER FOR PROFESSIONAL RESPONSIBILITY, *Multidisciplinary Practice*, <http://www.abanet.org/cpr/mdp/home.html>. Apart from the American Bar Association, the CCBE (Commission Consultative des Barreaux de la Communaute Europeene; or, in English, the Council of the Bars and Law Societies of the European Communities) has also been a forum for intense discussion of the subject, though the CCBE became decidedly set against MDP early in the debates. On the CCBE, see Nnona, *supra* note 1, at 150. MDP has also attracted the attention of the International Bar Association (IBA), which issued the Resolution on Multi-Disciplinary Practices. INTERNATIONAL BAR ASSOCIATION, *Resolution on Multi-disciplinary Practices* http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm (1998).

3. Deloitte & Touche, Arthur Andersen, Ernst & Young, PricewaterhouseCoopers and KPMG.

4. The United States Supreme Court recently overturned Arthur Andersen’s conviction. See *Arthur Andersen v. United States*, 544 U.S. 696 (2005). Arthur Andersen’s conviction and the circumstances surrounding it, however, provided support for the arguments made by MDP critics that the accounting firms (and by extension other professional groups) out to penetrate the legal market via MDP were not equipped to safeguard the essential characteristics and functions of the legal profession in a democracy.

over MDP has waned, particularly in the United States, the changes wrought as a consequence of the debate are considerable. This is especially so in the civil law countries of Europe where the debate led to dramatic changes in the regulation of the legal profession.⁵ Even in the United States it led the state of New York to consider adjustments to its regime for the regulation of lawyers, though these adjustments were rather token.⁶

A noticeable aspect of this debate has been that notwithstanding its essentially international character, the discourse has retained an unapologetically Americocentric and Eurocentric focus.⁷ In particular, very little, if any, consid-

5. In France, it led to the Nallet Report, which recommended far-reaching changes to the structure of the French legal profession toward the accommodation of MDP. *See infra* note 89 and accompanying text. In Germany, where MDP had traditionally been permitted, albeit in restricted form, the debate engendered a more liberal attitude toward MDP. *See generally* Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000) (discussing German MDPs). In Spain, it led to a 2001 review of the General Act of the Spanish Legal Profession of 1982, to make provisions for MDP. Article 29 of the revised legislation allows lawyers to form MDPs with members of liberal professions which are not incompatible with the practice of law. *See* General Act of the Spanish Legal Profession (*Estatuto General de la Abogacia Española*) 1982, as approved by Royal Decree 658/2001 of 22 June, 2001. I am grateful to Maria Isabel Köpcke Tinturé of the Spanish Bar, Barcelona, and Farina Rabbi of Gibson Dunn and Crutcher LLP, New York, for translation of Spanish language material.

6. The New York State Bar Association proposed rules to govern ancillary services by lawyers and strategic alliances with non-legal professional service providers. These rules were adopted by the Appellate Division of the New York Supreme Court effective November 1, 2001. The rules did nothing more than facilitate the provision of ancillary services and contractual relationships between lawyers and non-lawyers, rather than a fully-collaborative MDP. The District of Columbia remains the only regional authority in the USA to have meaningfully allowed MDP by adjusting its version of the American Bar Association's Model Rules of Professional Conduct (Model Rules) to accommodate it, albeit with significant restrictions. District of Columbia's version of Model Rule 5.4 provides, in paragraph b, as follows:

b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:

- (1) the partnership or organization has as its sole purpose providing legal services to clients;
- (2) all persons having such managerial authority or holding a financial interest undertake to abide by these rules of professional conduct;
- (3) the lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;
- (4) the foregoing conditions are set forth in writing.

See the Rules Governing the Bar of the District of Columbia, as amended by the District of Columbia Court of Appeals via the Rules of Professional Conduct Order of March 1, 1990. A recent amendment to the District of Columbia Rules of Professional Conduct which was adopted by the D.C. Court of Appeals on August 1, 2006 to take effect on February 1, 2007, left Rule 5.4(b) unchanged.

7. Apart from individual essays in myriad journals, there are significant collections of material on the subject of MDP in the European and U.S. contexts. The American Bar Association's Commission on MDP, <http://www.abanet.org/cpr/mdp/home.html> (last visited Oct. 6, 2006) is a

eration has been given to the implications of MDP for developing countries, the assumption being perhaps that MDP is an issue at the cutting edge of professional regulation and developing countries have neither the resources nor the need to contribute to the debate.⁸ This article takes a different tack. It indicates that MDP is an issue to which developing countries ought to pay some attention. In this regard, the article uses Nigeria as a case study by examining its approach to the regulation of MDP vis-à-vis the policy considerations that ought to inform regulation in this area. The examination is comparative, juxtaposing the Nigerian circumstances to those in some other jurisdictions, notably England, the United States and France. The article contends that in order to achieve optimal regulation in the context of Nigeria's stage of social and economic development, the regulators of its legal profession need to adopt a more pragmatic and less dogmatic approach to regulation in this area. In particular, they need to conceive of the profession in strategic terms as an engine of growth and as a proper candidate for cross-border infusion of know-how. Such a conception of the profession brings into relief the unique and considerable potentials of MDP in providing broad access to relevant sources of know-how, capital and technology—a veritable engine of professional evolution in appropriate context.

II.

THE STATUS OF MULTIDISCIPLINARY PRACTICE

MDP is prohibited in Nigeria, as it is in several other jurisdictions, particularly the United States⁹ and England.¹⁰ In Nigeria the prohibition flows from the

veritable mega-site on the subject. Other collections of material include Gary A. Munneke, *A Nightmare on Main Street (Part MXL): Freddie Joins an Accounting Firm*, 20 PACE L. REV. 1 (1999); Geoffrey C. Hazard, Jr. *Foreword: The Future of the Profession*, 84 MINN. L. REV. 1083 (2000); Sydney M. Cone, III, *Views on Multidisciplinary Practice with Particular Reference to Law and Economics, New York, and North Carolina*, 36 WAKE FOREST L. REV. 1 (2001). For a collection of material on specific European jurisdictions, see *Preserving the Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers, being the Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation (The MacCrate Report)* (2000) [hereinafter *Report of the New York State Bar*], obtainable from the New York State Bar Association. (A non-paginated version is available at <http://www.law.cornell.edu/ethics/mdp.htm>. Reference herein is however to the paginated original version.)

8. After extensive search the author has yet to locate any law journal article focusing on the subject as it relates to a specific developing country.

9. In the United States, the Model Rules of Professional Conduct prohibit MDP by banning partnerships and the sharing of fees between lawyers and non-lawyers. MODEL RULES OF PROF'L CONDUCT R. 5.4 (1983).

10. Rule 205 of The Code of Conduct of the Bar of England and Wales (2000) prohibits barristers from supplying services through and on behalf of any person, except under the limited exceptions for employed barristers under Rule 502. Rule 7 of the Solicitors' Practice Rules embodied in Chapter 3.03 of The Guide to the Professional Conduct of Solicitors similarly prohibits fee sharing and partnerships with non-lawyers. See Allison Crawley, *The Law Society of England and Wales*, testimony before the ABA's MDP commission (Nov. 12, 1998), available at

Rules of Professional Conduct in the Legal Profession 1967 as amended¹¹ and the law of agency. The latter underlie both the relationship of the lawyer to his client and the relationship of partners *inter se*. Lawyers as agents of their clients are fiduciaries and should not serve or be swayed by interests inimical to their clients. A non-lawyer partner who is not bound by the same rules of professional conduct as the lawyer potentially exposes the lawyer to conflicts of interest, that is to situations in which the lawyer's obligations to his client would conflict with the non-lawyer's professional or other obligations, thereby constraining the lawyer to make a choice between unalloyed loyalty to his client and loyalty to the non-lawyer partner or associated interests. The prohibition against MDP also flows from the rule against lawyers aiding the lay practice of law,¹² since to the extent that MDPs may involve the actual provision of legal services to the public by the non-lawyer (lay) partners, a lawyer involved in a MDP can be said to be aiding the lay practice of law by such non-lawyers. It should be noted, however, that MDPs need not involve the actual provision of legal services to the public by non-lawyers, since the non-lawyers can restrict themselves to administrative oversight and broad policy directions of the partnership or firm, rather than the details of legal services rendered to particular clients. This reality does not, however, remove the problems surrounding MDP. Indeed it could worsen such problems if it effectively results in the non-lawyer partners being mere passive investors in the law practice carried on within the MDP.

Since MDP is prohibited in England—just as in Nigeria—and since English precedents and practices retain a certain persuasiveness in Nigerian legal circles due to abiding post-colonial ties, it is worthwhile to briefly point out the contours of the English approach in this area. Notwithstanding the ostensible leeway for MDP in section 66 of the Courts and Legal Services Act of 1990, the current position in England is that MDPs are prohibited, whether they involve barristers or solicitors. Section 66 of the Courts and Legal Services Act repealed the erstwhile prohibition against solicitors entering into partnerships with non-solicitors, but left the Law Society of England and Wales (the umbrella organization of solicitors) with the discretion to prohibit such partnership. It similarly declared that no common law rule prevents barristers from forming unincorporated associations with non-barristers, but left the General Council of the Bar with the discretion to prohibit such association. Both the Law Society and the

<http://www.abanet.org/cpr/crawley.html>.

11. The Rules of Professional Conduct in the Legal Profession were made by the General Council of the Bar on December 25, 1967, and amended in Lagos on January 15, 1979. Rule 50(a) of these rules prohibits partnerships between lawyers and non-lawyers, where any part of the partnership's employment consists of the practice of law. Rule 48 prohibits lawyers from sharing legal fees with non-lawyers.

12. *See id.*, Rule 37. This Rule prohibits a lawyer from permitting his professional services or name from being used in aid of unauthorized practice of law by any lay agency, personal or corporate.

General Council of the Bar have consequently retained such prohibitions.¹³

In England the absence of a monopoly for lawyers in the practice of law has sometimes led to the mistaken belief that MDP is permitted there. In particular, this has been the case with regard to the establishment there in the last few decades of legal branches of major international accounting firms, through which branches the accounting firms have sought to offer legal services to the public. The legality of such offer of legal services by accounting firms cannot be gainsaid, since in England, and indeed the United Kingdom in general, the offer of legal services to the public is not reserved to lawyers, with the exception of the (perhaps vanishing) monopoly granted to lawyers for litigation, conveyancing and probate work.¹⁴ Apart from these areas of practice, lawyers have no monopoly over legal work. Rather, they have only a monopoly of titles, especially the titles “barrister” and “solicitor.” The effect is that there is no monopoly for lawyers in England over solicitors’ work—the area of law work in which accounting firms and many other non-lawyers seem primarily interested. As such, while a non-lawyer (for example an accountant) may not hold himself out as a lawyer to the public, a non-lawyer is nevertheless free to offer legal services to the public.¹⁵ However, this freedom should not be equated with the freedom of a non-lawyer to form joint professional associations with lawyers for the purpose of offering legal services to the public, that is an MDP. Such joint professional association is not permitted in England.¹⁶

In countries like Nigeria or the United States, where lawyers have a more robust (but by no means complete) monopoly over the offer of legal services to the public,¹⁷ the existence of this monopoly often beclouds the MDP issue. This

13. See *supra* note 10 (citing regulations).

14. See *Crawley, supra* note 10, ¶¶ 2, 3.

15. See *Crawley, supra* note 10, ¶¶ 2.1-2.3; see also HAMISH ADAMSON, FREE MOVEMENT OF LAWYERS 28 (1998).

16. See The Code of Conduct of the Bar of England and Wales, *supra* note 10, Rule 205; The Solicitors’ Practice Rules, *supra* note 10, Rule 7.

17. In Nigeria, the monopoly flows from Sections 2 and 22 of the Legal Practitioners Act 1962 (LPA) now embodied in Chapter L11 of the Laws of the Federation of Nigeria (LFN) 2004. In the United States, the monopoly flows from the laws (statutes, court rules and judicial decisions) of the various states which make it unlawful for any person other than a duly licensed attorney at law to practice law. See for instance the unauthorized practice of law statute of the state of Texas, Texas Government Code §§ 81.101– .106. This statute was in issue in the celebrated case of *Unauthorized Practice of Law Committee v. Parsons Technology Inc.*, 1999 WL 47235 (N.D. Tex. 1999), in which the U.S. District Court for the Northern District of Texas, Dallas Division found the defendant software company liable for unauthorized practice of law for offering by way of sale the Quicken Family Lawyer, a computer software that instructs users on how to complete over 100 legal forms ranging from employment agreements to wills, for which the software had templates. The injunction against the sale of the software was subsequently vacated by the Fifth Circuit Court of Appeal following an amendment of the unauthorized practice statute by the Texas legislature to allow the sale of such software with appropriate caveats. See *Unauthorized Practice of Law Committee v. Parsons Technology Inc.*, 179 F.3d 956 (5th Cir. 1999). Unauthorized practice of law is a crime in most states of the Union. For a collection of state statutes on the unauthorized practice of law, see Deborah L. Rhode, *Policing the Professional Monopoly*, 34 STANFORD L. REV. 1, 11 n.39 (1981). Note

is because, faced with a situation involving joint practice by lawyers and non-lawyers, lawyers instinctively respond to the situation as one involving the breach by the non-lawyers of the lawyers' professional monopoly, that is one involving the unauthorized practice of law by a lay person.¹⁸ While unauthorized practice of law may indeed be implicated, the broader and more fundamental issue—the issue always present irrespective of the availability or non-availability of a monopoly of legal work for lawyers—is whether the joint offer of legal services is permissible; in essence whether it is sound doctrinally and as a matter of policy for a lawyer to collaborate with a non-lawyer professionally as members of the same firm, where the provision of legal services to third parties is the aim or result of such collaboration. This is indeed the core of the MDP question, and it has little to do with whether lawyers have a monopoly or not, since it can arise in the presence or absence of such a monopoly.

III.

THE CASE FOR AND AGAINST MULTIDISCIPLINARY PRACTICE

What accounts for the sharp division noticeable in the debate over MDP? Why do some constituencies so earnestly support MDP while others rail against it? It is necessary to examine these questions generally as a prelude to an examination of the necessity of maintaining the prohibition in the specific context of Nigeria.

Those who support MDP rely on two arguments, one of which is primary while the other is secondary. The primary argument is that MDP derives immense benefits by permitting one-stop-shopping for professional services.¹⁹ The secondary argument is that even if some of the criticisms directed at MDP are correct, there are ways of managing and mitigating the dangers involved. Regarding one-stop-shopping, the argument is that there are synergies to be obtained from the joint offering of professional services by groups of different professionals working seamlessly on a client's problems without the limitations imposed by the specific boundaries of each profession. This is particularly so for the multinational corporate client with sophisticated needs that require the concurrent application of multiple skills. The primary argument is one that emphasizes the economic efficiency of MDP. The argument is captured in the words of

that Rule 5.4 of the Model Rules of Professional Conduct is not relevant here because it merely prohibits lawyers from jointly practicing law with non-lawyers but does not—and perhaps cannot—extend to prohibiting non-lawyers from practicing law by themselves.

18. See, e.g., Olisa Agbakoba, *Incursions into the Legal Profession the Way Out* (conference paper delivered circa 1995; on file with the present author). Here, Mr. Agbakoba, dealing with encroachments into the lawyer's turf by other professions, notably accountants and chartered secretaries, conceived of the problem exclusively in terms of these other professionals' usurpation of legal work. He showed no specific concern about those situations involving the offer of legal services by a firm of lawyers and other professionals (that is MDP) and the peculiar issues attendant thereto.

19. One-stop-shopping denotes the idea of having multiple services offered at one point (firm) in order to provide clients the convenience and savings of integrated services.

several commentators. Testifying in support of MDP before the MDP Commission established in 1988 by the American Bar Association (ABA) to chart the legal profession's response to the question of MDP, Stefan Tucker, Chair of the ABA section of taxation, spoke of "sophisticated clients seeking advice on increasingly complex matters often involving an inextricable mix of finance, accounting, law and other disciplines' and of such clients' belief that that they benefit from 'one-stop-shopping, from looking to one source."²⁰ He insisted further that we "recognize that there is often little, if any, real distinction or variance between business or financial advice and legal advice, and, in fact the two are inextricably intertwined."²¹ Finally, he declared that MDP has evolved in response to an increasingly consumer-driven global economy, which presents fewer and fewer "pure legal issues."²²

In case the foregoing gives the impression that one-stop-shopping is of interest to only major corporations and big businesses, the testimony of small businesses and individual consumers before the ABA's MDP Commission indicates otherwise. In a letter to the Commission, Mr. Haydee Vellazquez Tillotson, owner of Tillotson Enterprises, a small real estate business, spoke of the advantage of obtaining "several [types of] services 'under one roof' instead of spending a great deal of time 'consultant shopping' and then bringing each of these consultants up to speed on my particular needs at the time."²³ He added that, "in addition to the obvious cost savings of MDPs, there would be the added benefit of a seamless flow of information among professionals who are all familiar with my business."²⁴ The MDP Commission subsequently cited Stefan Tucker and Haydee Vellazquez Tillotson, among others, as evidence of the demand and need for MDP and the nature of the structures necessary to satisfy such demand. The commission noted in particular "the inefficiencies in attempting to satisfy that need through the coordinated advice of professionals in non-affiliated firms."²⁵ Regarding individuals as clients of MDP, some of the Commission's comments are instructive:

As the Baby Boomer generation ages, individual clients more than ever before need coordinated advice from lawyers, financial planners, accountants, social workers,

20. See Stefan F. Tucker, Chair, ABA Section of Taxation, Written Remarks Submitted to the Commission on Multidisciplinary Practice (Feb. 4, 1999), at §§ II and IV, <http://www.abanet.org/cpr/mdp/tucker1.html> (last visited November 18, 2006).

21. *Id.*

22. *Id.* at § V.

23. See Letter from Haydee Vellazquez Tillotson, Owner, Tillotson Enterprises (a small real estate business), to Arthur Garwin, Counsel, ABA Comm. on Multidisciplinary Practice (Feb. 19, 1999) <http://www.abanet.org/cpr/mdp/tillotson.html> (last visited November 18, 2006).

24. *Id.*

25. See Report to the House of Delegates, ABA Comm. on Multidisciplinary Practice, Appendix, Note 2, at <http://www.abanet.org/mdp/mdpfinalrep2000.html> (last visited June 5, 2004). Note that the Commission's recommendation in favor of MDP was ultimately rejected by the ABA's House of delegates by a resolution of July 11, 2000.

and psychologists. As the global economy expands, both Wall Street and Main Street business clients look to teams of professionals from different disciplines for consolidated advice on complex commercial and regulatory issues.²⁶

MDP opponents deploy a group of interrelated arguments which are unified by their focus on the capacity of MDP to erode the ethical fabrics of the legal profession, especially with regard to the lawyer's stature as an independent professional beholden to no one other than his client. In this regard, the two fundamental arguments they make pertain to confidentiality and conflicts of interest.

A. Confidentiality

The basic postulate of those who oppose MDP on confidentiality grounds is that the lawyer's obligation to maintain clients' confidences is diametrically opposed to the obligation of other groups of professionals—notably accountants in their capacity as auditors—to disclose information. The accountant as auditor owes obligations to the public, who are the ultimate beneficiaries of the opinion statement that results from the accountant's examination of financial statements. These obligations include the obligation to disclose material information, which would often conflict with the lawyer's primary obligation to maintain the confidences of the same client.²⁷ Imagine, for instance, a situation involving a lawyer and an accountant practicing as partners in an MDP. Imagine also that a corporate client retains their firm for both audit and legal services, and that in the course of providing legal rather than audit services, the firm receives confidential information from the client showing potential defects in the client's title to its real estate. Specifically, the firm receives confidential information indicating that the property on which the client's factory is located—property that the client has occupied for about two decades—does not legally belong to the client. This is because there were formal defects in title documentation at the time the client purchased and came into possession of the property. Imagine further that an additional year or two of undisturbed possession by the client would vest legal title in the client by operation of law through adverse possession or prescription. In this situation, the lawyer is under an obligation not to disclose the delicate facts of the situation. By contrast the accountant is obliged in conducting the year-end audit of the same client to disclose or compel the disclosure of the same facts in the client's financial statement in order to show a true and fair view of the client's financial affairs. Yet, by disclosing the facts in the financial statements, the likelihood is that the client's delicate position will be revealed to the public and that third parties would take steps to prevent the client from successfully obtaining title to the real estate by adverse possession.

26. See Background Paper on Multidisciplinary Practices: Issues and Developments (Jan. 1999), <http://www.abanet.org/mdp/multicomreport0119.html> (last visited Nov. 7, 2003).

27. See, e.g., James C. Moore, *Lawyers and Accountants: Is the Delivery of Legal Services Through the Multidisciplinary Practice in the Best Interests of Clients and the Public?* 20 PACE L. REV. 33, 37-38 (1999).

The question of confidentiality is often discussed alongside that of lawyers' evidentiary privilege, under which lawyer-client communications are privileged from compelled testimony in judicial proceedings. Though a basic aspect of the law governing lawyers, this rule is embodied in statutes governing evidence and court decisions developing the doctrine.²⁸ This privilege is implicitly waived if the privileged communication is disclosed to someone outside the lawyer-client relationship. As with confidentiality, the argument is that in an MDP, the involvement of non-lawyers impairs this privilege.

Constituencies in favor of MDP respond to this claim by arguing that appropriate structures can be deployed to contain such threats to confidentiality or evidentiary privilege. In particular, MDP supporters specifically point out that structures such as Chinese walls, that is ethical screens, can be adopted to mitigate or perhaps eliminate the problems involved. The validity of this line of thinking was tested by the English courts in the case of *Prince Jefri Bolkiah v KPMG*, with the House of Lords ultimately endorsing the view that Chinese Walls are not a complete panacea to the problem of confidentiality in a multidisciplinary setting.²⁹

B. Conflicts of Interest

The fundamental argument made by opponents of MDP in this vein is that the scope of the rules against conflicts of interest in the legal profession goes beyond that of other professions. As such, the legal profession's rules against conflicts of interest become jeopardized when lawyers are permitted to engage in MDP with non-lawyers, whose norms on conflicts of interest are far less extensive. Such non-lawyers may, for instance, undertake representation of interests adverse to a client's interests in situations in which a lawyer would not.³⁰

28. See, e.g., GEOFFREY C. HAZARD ET AL., *THE LAW AND ETHICS OF LAWYERING* 203-205 (1999). With regard to Nigeria, see Sections 170-173 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria 1990.

29. See *Bolkiah v. KPMG*, [1999] 2 A.C. 222. The case involved an application for breach of confidence brought by Prince Jefri Bolkiah, former KPMG client, against KPMG in connection with forensic accounting services sought to be offered by KPMG to Prince Jefri's former employer, Brunei Investment Agency (BIA). Prince Jefri successfully restrained KPMG from acting for BIA and any other person who has an interest adverse to that of Prince Jefri. The House of Lords in granting Jefri's appeal effectively discountenanced KPMG's argument that the Chinese Wall it put in place was adequate to insulate the sensitive information they obtained while working for Prince Jefri, and prevent its use by the firm in the adverse work of investigating Prince Jefri for the BIA. *Id.* at *passim*.

30. It may be the case that there are nuances to the basic principle that a lawyer cannot represent a party whose interests are antagonistic to the interests of a former client. See *Onigbongbo Community. v. Minister of Lagos Affairs* [1971] N.S.C.C. 136, 138-140. See also *Rakusen v. Ellis, Munday & Clarke*, [1912] 1 Ch 831. There is, however, little room for equivocation regarding the basic principle that a lawyer may not concurrently represent parties with adverse interests. See *Minister v. Azikiwe* [1969] suit No. SC.39/69, unreported decision of April 11, 1969, noted in GANI FAWEHINMI (ed) 9 DIGEST OF THE SUP. CT. CASES 1956-1984, 769-770 (1986). Indeed, the rule against concurrent representation of parties with adverse interests is one of ancient vintage, previ-

This is more so because, to the extent that the obligation to avoid conflicts of interest flows from basic agency principles and the related fiduciary concept, the obligation can ordinarily be modified and watered down by contract in the absence of additional professional strictures constraining such modification and dilution. Thus a real estate agent, though an agent bound by the general principles of agency, is permitted by the norms of the estate agency business to modify the basic agency rule against divided loyalties and conflicts of interest. As a result, the agent can simultaneously receive remuneration from an individual client for whom the agent is helping to lease an apartment, and the landlord from whom the apartment is being leased. Sometimes this takes the form of a splitting of the agency fee between the landlord and the lessee. It is also within the industry norms for the estate agent to undertake to serve the lessee's best interests in leasing a property, while receiving a fee calculated as a percentage of the lessee's rent, thereby leaving the agent with an incentive to make the lessee pay a higher rent. The apparent conflict inherent in this situation is no problem under the peculiar norms of the estate agency business. As previously indicated, MDP opponents emphasize the necessity of protecting the lawyer, and hence his client, from the risk of divided loyalties inherent in a situation in which the lawyer practices jointly with a non-lawyer, the ethics of whose profession may require or permit him to take actions or make omissions inimical to the lawyer's client, and who is likely therefore to exert pressure on the lawyer to act in a manner consistent with that other profession's more liberal rules.

A variant of the conflict of interest argument does not emphasize the pressure that another professional can exert on the lawyer to weaken the lawyer's more stringent rules on conflicts. Rather, it emphasizes the diminution of the lawyer's pool of clients resulting from the lawyer's obligation to avoid representing interests adverse to those of clients for whom he has not provided legal services, but for whom the MDP firm provides accounting or other services.³¹ Accountants have, for instance, a liberal approach to the treatment and resolution of conflicts of interests. Thus the same accounting firm can simultaneously serve as an auditor to Cadbury Nigeria Plc and Nestle Nigeria Plc, notwithstanding that both companies are competitors with adverse interests. In this situation, the auditor is by virtue of his position privy to important trade secrets belonging to each company, with the attendant risk of advertent as well inadvertent disclosure of one entity's secrets to the other; yet he is at liberty to undertake both clients' audit work simultaneously. The standards for lawyers are stricter and several possibilities flow from these heightened standards. First, a lawyer in this situation may be obliged to refrain from taking on the representation of a client whose interests are adverse to the interests of a client for whom the firm already

ously punishable as a crime by imprisonment of an offending lawyer for a year and a day. This offence (known in medieval England as the offence of ambidexterity, that is dealing with two parties concurrently, each with one hand) has always been widely criticized and punished. *See generally* PAUL BRAND, *THE ORIGINS OF THE ENGLISH LEGAL PROFESSION* (1992).

31. Moore, *supra* note 27.

provides audit services. Second, a lawyer's existing representation of a client may become tainted by the firm's acceptance of a new audit client, where the new audit client's interests are adverse to those of the client for whom the lawyer is already providing legal representation. The third and broader possibility is that the lawyer and other professionals, given the workaday realities of professional practice, could ignore the applicable rules of lawyer conduct, with the result that the stricter rules which prohibits lawyers and law firms from undertaking concurrent representation of clients with interests adverse to each other would effectively become imperiled, if not subverted, by the activities of the auditor in the MDP. The odds that these possibilities will become realities are multiplied exponentially in the context of the average multinational MDP firm providing a multiplicity of services across diverse cities and continents using tens of thousands of employees at both the partner and non-partner levels.

Proponents of MDP do not have a good response to the opponents' argument about conflicts of interest, except perhaps the argument that the legal professions rules on conflicts of interest are too wide to begin with.

IV.

CRITICAL CONSIDERATIONS IN THE REGULATION OF MULTIDISCIPLINARY PRACTICE IN NIGERIA

Since MDP is prohibited in Nigeria, it is necessary at this juncture to explore the reasons for this prohibition and test them against the imperatives of a sound regulatory framework for the legal profession in Nigeria, a developing country with needs distinct from those of the United States or England.

It is worth mentioning that the arguments for and against MDP as outlined above hold some relevance in Nigeria, especially given the common law roots of Nigeria's received legal system. While the arguments in support of MDP retain some attraction generally, they seem to apply with less vigor to the Nigerian situation. The medical profession aside, the proportion of Nigerians attracted to the services of the major professions at a sophisticated level is very limited. Those who do seek the services of the legal profession tend to require these services for relatively straightforward purposes, such as representation in criminal litigation or basic conveyancing for metropolitan real estate.³² The need for teams of professionals such as accountants, psychologists and lawyers, working in an MDP across structural boundaries to meet sophisticated client needs, is, in the Nigeria context, rather far-fetched. Even with regard to corporate consumers of legal services, where the demand for a multidisciplinary approach to solving legal and business problems should be stronger and the urge to provide such services by large MDP firms equally stronger, the Nigerian scenario is different

32. Real estate transactions outside the major metropolitan areas are still conducted in line with customary practices or an amalgam of customary and received practices, and in any case do not often require or admit the involvement of lawyers.

from that in England, the United States and similar jurisdictions where the MDP debate has attracted the most attention. Specifically, the Nigerian corporate sector is not as vibrant or globalized as the corporate sector in these jurisdictions. Many of the indigenous businesses that would pass as large businesses in Nigeria would be small businesses in most of Europe or North America. Aside from acting as agents for foreign multinationals, indigenous Nigerian businesses themselves have little presence abroad in their own right. They are essentially local rather than multinational enterprises and are thus shielded from a major factor driving the quest for MDP—the need to receive integrated professional services not just within one locale but uniformly across international boundaries.

In comparison to the arguments for MDP, the dominant arguments against MDP seem to fare better in the Nigerian context. A case can be made in Nigeria for an independent legal profession adequately adapted to the defense of individual liberties and the facilitation of social and economic interaction. The arguments against MDP therefore hold some water to the extent that these arguments canvass the maintenance of the rules of proper professional conduct, such as confidentiality and avoidance of conflicts of interest, that provide the foundation for a robust and independent legal profession. Of course some opponents of MDP in Nigeria openly or implicitly premise their opposition on the need to protect the professional turf of lawyers from encroachment by other professions, rather than on the implications of MDP for the welfare of consumers of legal services. Such reasoning lacks social legitimacy.³³

The aforementioned notwithstanding, this section of the article canvases a set of key considerations in the regulation of MDP that is premised on the conviction that the MDP debate as conducted so far, and as exemplified by the arguments for and against it, constitutes a tempest in a tea cup for the Nigerian regulator. The dominant reasons for and against MDP as explored above are rather marginal when applied to the general circumstances of Nigeria, and the Nigerian regulator must therefore look to other factors and reasoning to ground his stance on the issue. Aside from the fact mentioned above that a preponderant number of enterprises in Nigeria are indigenous with a national rather than international scope, another significant factor that informs this conviction about the marginality of arguments deployed in the debate as so far conducted is the position and stature of the legal profession in Nigeria.

The Nigerian legal system is bifurcated into the received rules of English or English-style law and the indigenous rules of customary law. The received law is administered exclusively by English-style courts and English-style Nigerian lawyers. The indigenous customary law is administered by the same English-style courts as well as by customary courts and traditional institutions, and is in practice far more extensive in its reach to Nigerians of all classes. Customary

33. Agbakoba, *supra* note 18. On the illegitimacy of reasons that focus on protecting the lawyer's turf from competitors, see Bernard L. Greer Jr., *Professional Services in the Global Economy: Implications of One-Stop Shopping*, INT'L BUS. LAWYER, Mar. 1996, at 133-34.

law consequently regulates key aspects of the daily life for a preponderant segment of society.³⁴ As a consequence of these traditional institutions that administer customary law, the impact of the legal profession on the life of the average Nigerian is relatively attenuated, given that advisory opinions and guidance in matters of customary law are dispensed to most Nigerians who seek it not by lawyers, but by the traditional oracles of customary law: elders. Lawyers are important to Nigerians, but this importance is attenuated by the parallel jurisprudence and structures of the indigenous customary law system. This situation is in sharp contrast, for instance, with the position of lawyers in America, regarding which the immortal words of Alexis de Tocqueville ring as true today as they did almost two centuries ago:

In America there are no nobles . . . and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society . . . The influence of legal habits extends beyond the precise limits I have pointed out. Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question. Hence all parties are obliged to borrow, in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings. As most public men are or have been legal practitioners, they introduce the customs and technicalities of the profession into the management of public affairs The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and tastes of the judicial magistrate. The lawyers of the United States form a party which . . . extends over the whole community and penetrates into all the classes which compose it; it acts upon the country imperceptibly, but finally fashions it to suit its own purposes.³⁵

The influence of lawyers and judicial habits in America remains as strong today as it was in 1835 when De Tocqueville published these words.³⁶ While the influence of lawyers and their craft may not be as extensive in England as it is in America, because of the peculiar realities of the English political situation to which De Tocqueville alluded,³⁷ the influence of lawyers and legal practice on the average Nigerian is far less than it is in England. While Nigerians crave law and order, lawyers and their practices are not key to the average Nigerian's experience of the law and its operation. Of more primary importance are the conceptions of right and wrong, fairness and justice, embodied in customary

34. While Islamic law (just like English law) is also received law, it is for purposes of the present article at par with customary law in its institutions and reach, notably in Northern Nigeria where it governs a significant segment of the population.

35. ALEXIS DE TOCQUEVILLE, *I DEMOCRACY IN AMERICA* 278-280 (Alfred A. Knopf ed., Everyman's Library 1994) (1835).

36. See generally MARY ANN GLENDON, *A NATION UNDER LAWYERS* 257-263 (1994); see also ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 4 (1993).

37. See DE TOCQUEVILLE, *supra* note 35, at 276 et seq. De Tocqueville mentions, for instance, the existence of an aristocracy in England as a factor mitigating the influence of lawyers on the polity.

norms and internalized in the average Nigerian from the earliest stages of childhood through socialization in society and the mediating influence of the institutions of customary law. If a Nigerian does not kill his neighbor, it is less because the received English-style criminal code prohibits it than because the customary norms treat it as a taboo and the community would extract penalties from an offender—penalties distinct from, even if complimentary to, the penalties due under the criminal statutes.³⁸ Likewise if a Nigerian man, subsequent to a statutory wedding, chooses to side-step the English-style Marriage Act and become simultaneously married to two or more wives, it is less because the Marriage Act does not bar such marriage than because customary law strongly approves of it. Indeed a marriage under customary law is, by definition, one that is potentially polygamous even if the man and woman involved actually choose to spend their lives together to the exclusion of all others, as is increasingly common with younger couples. Lawyers are not essential to the workday determination of the Nigerian's rights and responsibilities in many of these key areas, or at least not to the same degree as in the United States or England.

In summary, the interest of Nigeria in maintaining an independent legal profession, though important, is not so overwhelming as to crowd out other considerations peculiar to Nigeria's situation. The Nigerian regulator is therefore not under the same constraints as the American regulator, whose room for maneuvering is limited by the fundamental role of the legal profession in American life and polity. The regulatory approach to MDP in Nigeria should therefore be nuanced and original, unconstrained by many of the factors reflected in the dominant arguments deployed by both proponents and opponents of MDP—factors which themselves reflect the different roles and situations of lawyers and their craft in these other jurisdictions. The regulatory approach in Nigeria should be cognizant of a wider array of factors, and the regulator should take a stance reflective of the variety and novelty of factors so considered. The key factors and considerations of which the regulators should be cognizant are analyzed below.

A. Heightened Sophistication of the Professional Services Industry

The production of professional services is becoming more sophisticated and legal services are no exception. From basic finance to mass torts litigation, the practice of law is becoming increasingly complex.³⁹ Lawyers, whether prac-

38. Nigerian criminal law does not recognize any crime if it is not embodied in a criminal statute (that is the Criminal Code or Penal Code) or some other written law. *See* CONSTITUTION, Art. 36(12) (1999) (Nigeria). In this sense, it may be said that customary criminal law, which is not statutory, is without force of law. The sociological reality is different however, since many of the rules in the criminal statute reflect customary law. Besides, customary criminal law may be enforceable *per se* through customary means such as ostracism.

39. This sophistication or complexity in the production of legal services is without prejudice to the argument made above about the relatively straightforward character of the legal services con-

ticing as sole practitioners or in a firm with other lawyers, need new knowledge and new technologies to do their work professionally. Such technologies range from billing software and video simulations/reconstructions of relevant scenes to electronic imaging of sensitive documents and computer assisted screening of clients for ethical conflicts. To do work professionally implies not just following the hallowed canons of the profession, but also working for clients in a manner that is effective and efficient. The standards of effectiveness and efficiency are continuously advancing, and true professionalism demands that lawyers keep up with these advancing standards, especially so in an interconnected and globalized world. While a decade ago a baseline turn-around time of a day or two would have been accepted as prompt response to an inquiring client's needs, this is no longer so today. Developments in technology have raised the bar both within and outside Nigeria. To the extent that Nigerian standards are different, global standards continuously exert an upward pressure on it. Clients would always demand services in line with the standards to which they have become accustomed, and even clients not so accustomed would demand services in line with the same standards when they have been made aware of those standards by those in the know. A Nigerian living in the United States, for instance, having become accustomed to a certain style and level of efficiency in the services offered by his small-time probate or immigration lawyer in remote parts of California or Ohio, would no doubt expect (or at least wish for) standards approximating same when he consults a lawyer in Nigeria for similar services. The same argument can be made with even greater vigor for business persons seeking legal services in connection with transnational business transactions. In responding to the question of MDP, this reality is one that the Nigerian regulator ought to bear in mind and try to provide for.

B. The Rising Importance of Services in International Trade

Beyond the increasingly more sophisticated character of legal practice is the factor of the internationalization of the legal services industry in tandem with the broader globalization of the services sector generally. The rising profile of services generally in the new economy has been widely documented, with indications that in advanced economies services are assuming heightened impor-

sumed in Nigeria. *See supra* note 32 and associated text. The production method for simple items, from confectionery to basic clothing, can become complex without a corresponding increase in the complexity of the product itself. Such complexity in production method often arises from the need to achieve economies of scale and other efficiencies in the production of the items in question. Indeed, even an enhancement in the very nature of the product itself may be achieved without the item being thereby removed from the sphere of simple products. Skirts do not cease to be basic items of clothing because they are, for instance, items of haute couture, produced to the exacting standards of New York's Fifth Avenue. As with simple products, so it is also with straightforward legal services: sophistication or complexity in the methods of their production does not mean sophistication in the services themselves.

tance as comparative advantage shifts away from goods.⁴⁰ For developing countries the importance of services as an item of trade is increasing, though it has not attained the same level of importance as it has in advanced economies.⁴¹ Professional services constitute a major segment of the new service economy, with legal services a significant aspect of such professional services.⁴² Legal services are therefore bona fide items of international trade between nations who must strategize and actively position themselves for better and bigger slices of the market. This is a fact that merits consideration by regulators of the legal profession in developed and developing countries alike. The importance of professional services is reflected in the activities of the World Trade Organization since the inception of the General Agreement of Trade in Services (GATS) in 1994. GATS is aimed at liberalizing the international trade in services, in line with the liberalization already achieved for international trade in goods by the General Agreement on Tariff and Trade (GATT).

In this context the initiatives of the WTO Working Party on Domestic Regulation (formerly known as the Working Party on Professional Services) are noteworthy.⁴³ The March 1995 Decision establishing the working party mandated it to develop disciplines in the area of professional services in fulfillment of the broader mandate of the Council for Trade in Services under GATS Article VI(4) to ensure that measures relating to technical standards, licensing requirements, qualification requirements and procedures do not constitute unnecessary barriers to trade in professional services. Pursuant to this mandate, the Working Party on Professional Services produced "Guidelines for Recognition of Qualifications in the Accountancy Sector," adopted by the Council for Trade in Ser-

40. See MICHAEL TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 270-71 (1999); see also Pierre Sauve & Robert M. Stern, *New Directions in Services Trade Liberalization*, in *GATS 2000: NEW DIRECTIONS IN SERVICES TRADE LIBERALIZATION* 1-2 (Pierre Sauve & Robert M. Stern eds., 2000).

41. *Id.*

42. A broad picture of cross-border trade in legal services is provided by the World Trade Organization (WTO) Secretariat, which reports increases of several hundred percentage points in the export levels for major industrialized countries in the 1990s. It notes that in the 1990s trade in legal service appeared to grow at a faster rate than the overall economic performance of the sector, as a probable reflection of increased international trade and the emergence of new fields of legal practice having transnational implications. See Council for Trade in Services, *Legal Services: Background Note by the Secretariat*, §§ A(3), E(25), S/C/W/43 (July 6, 1998). In this document the Secretariat notes in Section D(20) that in the early 1990s the output of legal services represented 14% of all professional services and 1.1% of the economy in a "representative" industrialized economy. Interestingly, the United States Trade Representative (USTR) reports that for the United States, balance of payments receipts for legal services amounted to roughly \$3.2 billion annually. See Press Release, USTR, U.S. Proposals for Liberalizing Trade in Services: Executive Summary 6 (July 1, 2002), at http://www.ustr.gov/assests/Document_Library/Press_Releases/2002/July/asset_upload_file_file224_2009.pdf (last visited October 16, 2006).

43. Established by virtue of Council for Trade in Services, *Decision on Domestic Regulation*, S/L/70 (Apr. 26, 1999). Formerly Council for Trade in Services, *Decision on Professional Services*, S/L/3 (Mar. 1, 1995).

vices on May 29, 1997.⁴⁴ These non-binding guidelines are meant to assist governments in effecting negotiations in the accounting sector. Towards this end it provides for procedural standards (such as transparency) which should attend the making of agreements for recognition of professional qualifications between WTO member countries. More substantive than the Guidelines are the Disciplines Relating to the Accountancy Sector,⁴⁵ adopted by the Council for Trade in Services through its Decision on Disciplines Relating to the Accountancy Sector of December 14, 1998.⁴⁶ These disciplines are applicable only to those WTO members who have scheduled specific commitments in accountancy under GATS.⁴⁷ However, the Guidelines are expected to be extended to the legal services sub-sector in the course of current or future rounds of trade negotiations.⁴⁸ The GATS Working Party on Professional Services classifies legal services together with professional business services, and therefore broadly approaches its regulation like accountancy, consultancy and other business professional services. This is in line with the WTO Services Sectoral Classification List⁴⁹ under which legal services are listed as a sub-sector of "professional services," which in turn is a sub-sector of business services.⁵⁰

The above indicates that legal services can no longer be taken lightly in trade policy terms, and regulators of the profession in Nigeria or other developing countries have to be sensitive to the imperatives here as they chart a course for the profession's progress.

C. The Importance of Size

It should not be a surprise in light of the preceding discussion that legal practice, properly approached, is capital intensive. It requires time and money to develop a strategy and pursue it over an extended period. This fact has become

44. See Press Release, World Trade Organization, PRESS/73 (May 29, 1997), to which the Guidelines were attached.

45. Working Party on Professional Services, *Disciplines on Domestic Regulation in the Accountancy Sector*, S/WPPS/W/21 (Nov. 30, 1998).

46. Council for Trade in Services, *Decision on Disciplines Relating to the Accountancy Sector*, S/L/63 (Dec. 15, 1998). The text of the Disciplines is usually annexed to the text of the Decision.

47. They do not apply to any measures subject to scheduling by virtue of Articles XVI and XVII GATS, which measures are to be addressed through the negotiation of specific commitments. The disciplines thus restrict themselves to licensing and qualification requirements under Article VI GATS. See *supra* note 46, art. I.

48. *Id.* at ¶¶1-2.

49. WTO Secretariat, *Services Sectoral Classification List*, MTN.GNS/W/120, (July 10, 1991).

50. The GATS rejects the notion that legal services are so closely tied to the exercise of government functions that they should be excluded from trade talks altogether. This argument also failed with regards to such services in the European Union. See CHRISTOPHER ARUP, *THE NEW WORLD TRADE ORGANIZATION AGREEMENTS: GLOBALIZING LAW THROUGH SERVICES AND INTELLECTUAL PROPERTY* 158 (2000).

apparent to Nigerian lawyers, including those in non-specialized general practice, especially since the relative scarcity in earlier times of lawyers vis-à-vis available legal work has ceased to be the case.⁵¹ A career in legal practice now necessitates the financial means to weather the rough patch encountered at the outset of professional practice—the means to make the expenses and capital investments necessary for a robust, sustainable practice. With this reality in view, one problem that plagues Nigeria's legal services sector is the fractional nature of the service providers. There are only a handful of law partnerships in Nigeria. Even the few that exist are very small partnerships by global standards and are essentially unable to mobilize and deploy the resources necessary for a more vibrant and efficient legal services sector. Clearly there need to be strong firms if the country is to compete globally by exporting legal services, or at least satisfy local demand.

Currently, Nigeria imports significant amounts of legal services, notwithstanding the surfeit of lawyers in Nigeria. While it is not possible to eliminate completely the importation of such services, given the several modes that consumption of imported legal services can take, bigger and stronger Nigerian firms would ensure that other countries' legal services providers do not out-perform Nigerian lawyers and thereby shortchange the Nigerian economy. It is sometimes argued in defense of Nigerian legal practitioners that size is not as significant an issue as Nigerian lawyers' lack of connections to the major sources of international-scale legal work. There is some truth in this given that the rise of the American lawyer in international transactions was to a considerable extent occasioned and facilitated by the rise of American big business, especially American financial institutions. That being said, Nigerian lawyers are technically incapable of fully exploiting the opportunities for legal work available in the Nigerian market today, not to speak of exploiting similar opportunities available elsewhere.

Take the energy sector, for instance, where it is possible for Nigeria and Nigerian institutions to exert pressure on the operators to use Nigerian law firms, especially in oil industry operations.⁵² Such an approach would be suc-

51. In the early days of the legal profession (from the mid-19th century to the mid-20th century) there were few lawyers relative to the amount of legal work available. See OMONIYI ADEWOYE, *THE LEGAL PROFESSION IN NIGERIA: 1865-1962*, 28, 39 (1977). This meant generally that for a new law practice, the transition from start-up to strong cash-flow took but a short while as competition was not keen.

52. Nigeria is a major producer and exporter of crude oil and a stakeholder in one of the most powerful institutions in the global energy market, the Organization of Petroleum Exporting Countries (OPEC). On OPEC membership, see the OPEC website, <http://www.opec.org/aboutus/member%20countries/nigeria.htm> (last visited November 18, 2006.) See Dr. Obi Nwasike, *OPEC -It's Time to Say Goodbye*, *Oil, Gas & Energy Law Intelligence*, Vol. 1, Issue 2 (2003), available at http://www.gasandoil.com/ogel/samples/freearticles/article_10.htm (last visited Nov.18, 2006) (arguing the case for Nigeria's exit from OPEC, in light of OPEC's inability to accommodate in its quota assignments the increasing volume of Nigeria's oil production, and Nigeria's heightened importance in terms of the United States' strategic interest in diversifying its sources of crude oil).

cessful to the extent that the briefs involved are common briefs (say conveying) requiring the application of basic methods of legal practice, even if to a high-monetary-value transaction. Change the subject to a time-sensitive pre-merger due diligence conducted efficiently across multiple locations, and many Nigerian firms would falter from, among other things, paucity of personnel. In situations where English or even Dutch firms can deploy scores of fine-tuned and finance-literate lawyers to complete such assignments in record time, no Nigerian firm is currently able to respond similarly.

In summary, firms, especially large firms, are increasingly becoming necessary and dominant in the provision of legal services. Given the inability of Nigerian lawyers to respond to the critical need for such firms, the Nigerian regulator should take that need into consideration in fashioning a response to the regulatory debate over MDP.

V.

NIGERIAN REGULATORS' RESPONSE TO MULTIDISCIPLINARY PRACTICE

It was noted above that when faced with a situation involving joint practice between a lawyer and non-lawyers, lawyers as a group instinctively respond to the situation as though it were one involving a violation by the non-lawyers of the legal profession's professional monopoly—in other words, one involving the unauthorized practice of law by lay persons.⁵³ This response inevitably results in adverse action (or threats thereof) from the authorities of the legal profession against the parties challenging or believed to be challenging the profession's monopoly via such joint practice. The response of Nigerian authorities so far has thus been predictable, involving criticism of MDP as an invasion of lawyers' professional turf and threats against the parties thought to be involved in such invasions. Given that the Nigerian bar is self-regulatory, with lawyer-dominated bodies—especially the General Council of the Bar, the Nigerian Supreme Court, the Nigerian Body of Benchers and the Nigerian Bar Association—performing key regulatory roles, it is not difficult to deploy regulatory power in opposition to suspected turf invasions.⁵⁴ The major MDP firms—accounting and consulting—have consequently been cajoled into scaling down or adjusting their operations to avert the threat of adverse action from the Nigerian legal profession, even though it was never clear that MDP involved unauthorized practice of law by non-lawyers rather than lawyers' subjection of themselves to control by lay

53. See *supra* note 18 and the related text.

54. Without detracting from its character as a self-regulating profession, it may be said that in reality, regulatory oversight of the profession is disaggregated among several legal bodies that are formally united by little more than that they derive their power under the Legal Practitioners Act (LPA), *supra* note 17. These include the General Council of the Bar (LPA § 1); Body of Benchers (LPA § 3); Legal Practitioners Privileges Committee (LPA § 5); The Attorney-General of Nigeria (LPA § 8(3)); Legal Practitioners Disciplinary Committee (LPA § 10) and The Nigerian Supreme Court (LPA § 13).

persons.⁵⁵ If the former, the authorities of the bar could properly seek to stop such unauthorized practice by lay persons. But, if the latter is involved, they could seek to do little more than disbar the lawyer involved from practicing law and holding himself out as a lawyer. This is because the Rules of Professional Conduct in the Legal Profession which undergird the prohibition of MDP in Nigeria⁵⁶ are, properly understood, a set of rules addressed to lawyers and not lay persons. This is quite apart from its not being a general legislative enactment applicable to non-lawyers. It is therefore doubtful that a non-lawyer can be legally challenged and penalized for breach of its provisions.

The quest of the Nigerian regulators to stop MDP has been helped in recent times by the Sarbanes-Oxley Act of 2002⁵⁷ passed by the United States Congress in the wake of the Enron Corporation crises and the conviction (now overturned)⁵⁸ of Arthur Andersen in the United States for obstruction of justice in connection with Enron. The Sarbanes-Oxley Act was designed to have overt or direct extraterritorial reach, quite apart from the de facto impact it has had on the affairs of multinational MDPs. Its reach and impact have been felt in Nigeria. In terms of its overt reach, the Act was designed with no specific exemptions for foreign companies, notwithstanding the obvious fact that a significant portion of the securities listed in the United States belong to foreign issuers, many of whom issued or listed their securities on securities exchanges in the United States in reliance on the several exemptions provided by United States securities law to facilitate such issuance and thereby enhance the market. Many of such exemptions pertain to corporate governance issues such as the composition of audit committees. Such foreign issuers have been surprised to discover, for instance, that the audit committee provisions of the Sarbanes-Oxley Act apply to them, mandating them, absent contingent exemptions by the United States Securities and Exchange Commission (SEC), to change the composition of their committees in the home country in order to meet the independence requirements embodied in S.301(3) of the Sarbanes-Oxley Act. A similar example of extraterritorial reach can be found in the definition of “person associated with a public accounting firm” in S.2(9) of the Act. This provision defines the term to mean “any individual proprietor, partner . . . accountant, or other professional employee of a public accounting firm, . . . that in connection with the preparation or issuance of any audit report . . . participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.” This clearly brings within the purview of the Act the international (non-U.S.) branches or affiliates of any United States accounting firm. Since such international branches or affiliates would qualify as persons “associated with a public accounting firm” with their

55. *See supra* notes 11 and 18.

56. *See supra* notes 11-12 (citing sources).

57. Officially known as the Public Company Accounting Reform and Investor Protection Act of 2002.

58. *See Arthur Andersen v. United States*, 544 U.S. 696 (2005).

activities and standards being imputed to the United States office of the firm, the oft-dominant United States office has little option than to get the foreign branches to conform to the standards mandated by the Act. This is evident with regard to S.201 of the Act, which prohibits an audit firm “and any associated person of that firm” from providing a variety of non-audit services contemporaneously with the provision of audit services to the same public company. This has meant that MDP is no longer feasible in a meaningful way in the foreign branches of these firms, even if the local laws permit such practices. In a jurisdiction like Nigeria where the local law disfavors MDP, the result is a predictable move away from practices bordering on MDP.

It should be noted as a background fact that even prior to the attack against MDPs brought about by the recent resurgence in lawyers’ enforcement of turf restrictions, the MDPs in Nigeria had rested themselves on a somewhat shaky legal pedestal. They could not claim and never claimed to be offering legal services, since this would have been impolitic and directly confrontational with the Nigerian bar authorities, quite apart from the fundamental question of legality. Rather, they had proceeded by categorizing their activities as “business consulting” or “tax consulting” services, which fall outside the ambit of the “legal services” or “legal practice” reserved for lawyers. They accordingly designated the lawyers employed by them as “legal consultants” or “regulatory consultants,” a designation that arguably removed such lawyers’ professional activities from the purview of the bar authorities.

Given the reality that the professional territory of lawyers is vast and unsettled at the edges, this approach provided succor for the MDPs: It is notoriously difficult, outside litigation practice, to define with precision the scope of work encompassed by “legal practice” and hence the activities from which non-lawyers are excluded. Inevitably there is an umbra of professional territory in which just about anyone can operate, even if operating there involves elements of legal advisory work. After all, given the pervasiveness of law as an instrument of social regulation, just about every activity involves or implicates some form of legal advice, from the pharmacist who, in line with the pharmaceutical codex or other regulation, counsels a client against the use of certain drugs, to the architect who counsels clients against the construction of a house that violates zoning restrictions. The settled situation engendered by this reality of jurisdictional imprecision has become disrupted in these new circumstances.

Even without the overtly extraterritorial provisions of the Sarbanes-Oxley Act, the effect of its enactment and implementation in the context of the business strategy of the major accounting firms would still have been to compel these multinational accounting firms to scale down their MDP practices in Nigeria and globally. As a practical matter the audit or attest function has been the backbone of the practices of such multinational firms. While it has not been the most profitable segment of their practices in comparison to business consulting or even legal services, it plays a major strategic role in marketing. The audit usually provides the entry point for such a firm when cultivating new clients.

Having once performed an audit for a client, it is easy in the course of that audit examination to notice other business, legal and financial problems that may need to be solved for the client. Armed with this knowledge and insight, other segments of the MDP are then able to make a case to the client for the provision of the high-margin services necessary for solving the observed problems. The net result of this situation is that where the audit function for global clients becomes imperiled due to regulatory realities in the United States, the multinational firms engaged in MDP would be under some pressure to scale down or abandon high-margin multidisciplinary services to the extent necessary to save the audit function. Were they to abandon the audit function in order to continue the lucrative multidisciplinary services they would risk atrophy, since they would in so doing lose the long-run strategic advantage in marketing which the audit function provides in its role as their gateway to their clients' other service needs. This dynamic has played out in Nigeria. Due to the fact that a significant number of the major audit clients in Nigeria are subsidiaries of major American corporations, or non-American corporations whose securities are listed or traded in the United States, and whose financial statements accordingly have to be acceptable directly or indirectly to the SEC or some other American parties, no international firm performing audits in Nigeria for such a company can in reality ignore the provisions of the Sarbanes-Oxley Act.

VI.

CHARTING THE OPTIMAL REGULATORY COURSE

Self-regulation seems to be the dominant approach to professional regulation, at least in common-law countries of which Nigeria is arguably one. Unlike countries of the civil law tradition where the state historically dominated the professions with long-term stultifying effect, common law professions are vibrant, in part from the practice of self-regulation.⁵⁹ Not only does this lift the cost of regulation off the shoulders of the state, but it also, as importantly, leaves regulation in the hands of those with the expertise to do so—the professionals themselves who understand the professional terrain and all the esoteric knowledge it embodies. Yet above the luster of self-regulation lurks the specter of blatant self-interest. The professionals engaged in self-regulation often regulate in the interest of themselves as a faction, disregarding the social compact implicit in the arrangement. In return for the privileges of self-regulation, the professions promise the state to uphold the public interest and to act in the overriding and

59. For an exploration of this idea especially as encapsulated in the notion that English professions, unlike continental European professions, are themselves lesser governments (both in terms of their self-regulation and the influence they have on government policy). See KEITH MACDONALD, *THE SOCIOLOGY OF THE PROFESSIONS*, 72-74, 76-78 and 97 (1995). Andrew Abbot, exploring this difference between Continental European and English professions, refers to the "quasi-free markets characteristic of Anglo-American Professions." See ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR*, *passim* (1988).

overarching interest of the people. In these circumstances the professions seemingly confirm George Bernard Shaw's pointed observation that all professions are indeed conspiracies against the laity.⁶⁰ In Nigeria, the compact underlying the professional privilege of self-regulation has been at the receiving end of lip-service generated by the relative marginality of lawyers and their craft to the average Nigerian's life,⁶¹ and by the general complicity of government in the duplicity practiced by the professions as a whole (not just the legal profession) on the Nigerian masses. The government continuously carves out portions of the commonwealth in the form of professional work and grants monopoly over them, *de facto* or *de jure*, to select cabals masquerading as professional groupings. Hardly any craft in Nigeria today, from equipment leasing to estate management, is without a group possessing or pursuing exclusive licensing rights granted or to be granted by government.⁶² The relationship of the expertise claimed by these groupings to the overall needs and capability of Nigerians is hardly ever the dominant consideration. Consequently, professional groups emerge with self-regulatory powers, but little or no conception of the cardinal responsibilities that attend such a privilege or the relationship of their powers to the welfare of the people. While the licensing and self-regulatory powers of the authorities running the legal profession in Nigeria did not originally conform to

60. "The effect of this state of things is to make the medical profession a conspiracy to hide its own shortcomings. No doubt the same may be said of all professions. They are all conspiracies against the laity." GEORGE BERNARD SHAW, *preface* to THE DOCTOR'S DILEMMA iv (Penguin 1946) (1911).

61. See *supra* note 37 and accompanying text. This relative marginality reduces the incentive for the masses to challenge the lawyers who abuse their professional privilege, since people can more readily forgo the use of legal services altogether.

62. Examples of this may be seen in the licensing or allied regimes introduced by several statutes. The Advertising Practitioners (Registration, Etc) Act, Cap A7, Laws of the Federation of Nigeria 2004 is, for instance, described in its Head Note as "An Act to establish a council for advertising practitioners and to make provisions for the control of the practice of the profession of advertising." Part IV of the Act embodies the privileges of registered advertising practitioners and establishes offences for unregistered persons who traduce those privileges. The net result of this statute is that an individual who has not obtained a professional license from the Advertising Practitioners Council cannot, without risking prosecution, set up a business to buy and sell advertisements or advise persons on advertising. A regime similar to the foregoing is established for estate surveyors and valuers—a pretentious appellation for estate managers that is not to be confused with surveyors properly so called. Section 16 of the Estate Surveyors and Valuers (Registration, Etc) Act, Cap E13 Laws of the Federation of Nigeria 2004, makes it an offence for anyone not being a registered estate surveyor to use the title or, for an expectation of reward, practice or hold himself out as practicing the profession of estate surveying and valuing. In so doing, it creates a regime under which the average Nigerian risks prosecution and conviction for nothing other than good old appraisal of real property or leasing of same. The number and range of statutes—passed largely in the last two decades—granting some form of government recognition to occupational groups seeking direct or implicit monopoly powers, is quite high. They include the following: Computer Professionals (Registration Council of Nigeria) Act Cap C, Chartered Institute of Administration Act Cap C7, Chartered Insurance Institute of Nigeria Act, Cap C11, Chartered Institute of Bankers of Nigeria Act Cap C8, Institute of Personnel Management of Nigeria Act Cap I15, Institute of Chartered Secretaries and Administrators Cap I13 and Quantity Surveyors (Registration) Act Cap Q; all in the volumes of the Laws of the Federation of Nigeria 2004.

this pattern, their recent configurations approximate it.

This background is necessary because the path suggested here as the optimal regulatory path for Nigeria assumes a heightened level of disinterestedness on the part of the regulator. It assumes a regulator whose motives are unencumbered by self-interest. It is not yet clear that the current regulators of the Nigerian legal profession, obsessed as they are with quelling competition against lawyers from other service providers, can rise up to the challenges of crafting such a regulatory framework.

This author has argued elsewhere in favor of the prohibition of MDP.⁶³ This was in the context of the United States' regulatory environment and the dynamics of the legal profession there. Here a different tack is taken and the opposite is argued: That the Nigerian regulator ought to legalize MDP at some (not all) levels, taking into consideration the factors discussed above in Part IV of this article.

There is a clear and present need to vitalize the Nigerian legal profession along several dimensions: training, technology, labor practices and overall competitiveness. The international accounting and consulting firms as well as the large multinational (mainly American and English) law firms are best positioned to do this and MDP presents an auspicious avenue for harnessing their input. The multinational law firms, though by no means as large or resourceful as the accounting and consulting firms, are able to contribute along these lines, given that their size and resources dwarf their Nigerian counterparts'.⁶⁴ The operation of these international law firms would indeed be accommodated by legalizing MDP because, just like the accountants and consultants, they would technically qualify as MDPs were they to practice law in Nigeria in conjunction with Nigerian lawyers, given that their partners would ordinarily not be admitted as law-

63. See generally Nnona, *supra* note 1; George C. Nnona, *Multidisciplinary Practice Under The World Trade Organization's Services Regime*, 16 IND. INT'L & COMP. L. REV. 73 (2005).

64. Only few of the multinational law firms such as Clifford Chance, Skadden Arps and Freshfields have annual revenues approaching or exceeding \$1 billion. On the other hand, the global accounting and consulting firms such as KPMG and Accenture each has annual revenues running into several billions. For instance in 2002 the U.S. revenue of each of the Big 4 accounting firms—Deloitte Touche, Ernst & Young, PricewaterhouseCoopers and KPMG—was respectively \$5.9 billion, \$4.5 billion, \$4.25 billion and \$3.2 billion. See UNITED STATES GENERAL ACCOUNTING OFFICE, PUBLIC ACCOUNTING FIRMS: MANDATED STUDY ON CONSOLIDATION AND COMPETITION 17, Table 1 (July 2003), available at <http://www.gao.gov/new.items/d03864.pdf> (visited December 3, 2006). From their United Kingdom practices alone, for years ending in mid-2005, these four firms had a total revenue of £5.5 billion., with each firm having at least £1.2 billion except Ernst & Young with £0.9 in revenues. See Accountancy Age, *Top 50 Accountancy Firms in 2006*, <http://www.accountancyage.com/resource/top50> (last visited December 3, 2006). By contrast, the four top United States law firms by gross revenue (from international and domestic operations) for 2002 were Skadden Arps (\$1.3 billion) Baker & Mackenzie (\$1.1 billion) Jones Day (\$0.9 billion) and Latham & Watkins (\$0.9 billion). See *Am Law 100*, AMERICAN LAWYER, July 2003 available at http://www.law.com/special/professionals/amlaw/2003/amlaw100/amlaw_100main.html (visited Nov. 3, 2006). This huge disparity in revenues between the global accounting firms and the global law firms has been the trend for decades.

yers in Nigeria and would thus technically be lay persons for purposes of law practice in Nigeria.⁶⁵

It is worthwhile to caution in this wise against a mind-frame that takes the modern practice of law to be a common service, in the sense of something that can be provided without much more than a shingle and the basic resources afforded by law school training. Legal practice properly viewed is becoming, both nationally and internationally, a technology driven-field to which the very same metrics applicable in other competitive industries necessarily apply. Failure to recognize this reality and regulate towards meeting its challenges would leave the Nigerian legal sector in the doldrums, unable to meet the challenges of its calling both locally and globally. Nigerian litigation practice is still plagued, for instance, by basic problems that can be readily eliminated by better training and equipment of practicing lawyers. These problems range from access to investigative expertise and testimony in various technical fields implicated in a trial, to excessive reliance on non-automated databases. In a nutshell, the legal field should be approached as one as much in need of technology transfer as other service fields such as banking and transportation. The best sources for such technology transfer are the global professional service firms and the best context is provided by MDP. MDP provides the best context because by definition it involves the joint, interactive collaboration of teams of professionals in the provision of legal and allied services to clients; an approach attended by immense advantages that will be highlighted in the sub-sections below. Suffice it to say here that true professional learning comes from immersion in the correct procedures, and exposure to proper technique in the course of collaboration with persons able to deploy such technique. Such learning thrives on interaction across notional professional boundaries. Not only does MDP allow Nigerians belonging to different professions to practice jointly and learn from one another across professional boundaries, it also makes it possible to introduce foreign expertise and technique into the mix by allowing non-Nigerians to participate without hindrance in that collaborative enterprise. It is a mistake to view law, whether as an academic discipline or professional field as self-contained.⁶⁶ Even if this was once true, it has long ceased to be so, and lawyers must be able to project themselves and their activities across multiple fields of learning and hold their own among other professionals. If this entails some blending in with these other professionals in the context of an MDP, then so be it. It may well be that such exposure is ultimately the sure path to professional self-survival of lawyers as a group (assuming that such group survival is the most legitimate of the policy in-

65. Of course, unlike accountants and consultants, such practice by foreign law firms in Nigeria would, quite apart from the issue of MDP, implicate more directly the question of unauthorized practice of law, since the foreign lawyers are less likely to be able to argue that their activities do not amount to "practice of law" but rather "consulting."

66. On the law's decline as a distinct, autonomous intellectual field, see RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 374, 424 (1990), or his earlier work, Richard A. Posner, *The Decline of Law as An Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761 (1987).

terests at stake). The debate over MDP may properly be viewed as a contest among different professions regarding who would be the controlling force—the team captain in soccer parlance—in an emerging world in which joint collaboration across professional boundaries is ultimately inevitable. When this author argues against MDP in the United States, it is implicitly an acknowledgement that in that context, lawyers as a group are so advanced in the professional arts as to be the captain and directing mind of the joint endeavor with other professions without imperiling any national interests. When, on the other hand, an argument is made for the liberalization of MDP in the Nigerian context, it is an implicit admission that Nigerian lawyers are not up to speed yet in the professional arts, and that they need external assistance if their own group survival and key national interests in the legal services sector are to be spared long-term jeopardy.

A. Training

All lawyers admitted, in the regular way, to practice in Nigeria are trained in the rudiments of legal practice at the Nigerian Law School. The curriculum of the Nigerian Law School remains, however, in much the same shape as it has been from the inception of the school in April 1963. That curriculum reflects the recommendations of the Unsworth Committee set up by the Nigerian Government in 1959 to consider and make recommendations for the future of the legal profession in Nigeria.⁶⁷ The report of the Committee, which was largely accepted by the government, recommended *inter alia* a one-year-course of practical training including book-keeping and trust accounts, practical conveyancing, civil procedure, criminal procedure, interpretation and drafting of deeds and statutes, professional conduct and etiquette.⁶⁸ Apart from the addition of a course on commercial law no major substantive improvement to this curriculum has since been effected. To put it mildly, this is a curriculum properly adapted to the Nigerian colonial, or at best immediate post-colonial, era. It does not reflect the needs of a modern economy or the realities of modern law practice. Indeed, it assumes a provincial, circumscribed practice in which lawyers are predominantly entangled in questions of land rights or basic litigation on behalf of local clients.

This shortcoming of the curriculum can, to a significant degree, be remedied through the activities of the international professional service firms. Many of them deploy significant resources in teaching their staff cutting-edge techniques in multiple areas of professional endeavor, even if this necessitates the adaptation of those techniques to local conditions in various parts of the world.

67. The committee headed by E.I.G. Unsworth, Q.C. then Attorney General of the Federation of Nigeria recommended among other things, that there be established a Nigerian Law School in Lagos “to provide practical training in the work of a barrister and of a solicitor.” See ADEWOYE, *supra* note 51, at 107-08.

68. See *id.* at 108.

Many of them run training institutes that compare in size, scope and resources to those of a university.⁶⁹ To give an example, it is a major handicap for a lawyer to provide advice on some aspects of structured finance without knowledge of the key accounting and tax issues implicated. Yet such accounting knowledge is not easy to come by. A course in accounting at the Nigerian Law School or a university is often insufficient to clarify, much less internalize, the essential principles. Yet by working jointly with accountants in the environment of an MDP and undertaking in-house training courses with them over a period of years, the lawyer is able to internalize the essential principles in a manner that makes them capable of ready deployment in the service of practical client problems—a manner not likely replicable if one were to attend only a course or two on the subject. The lesson here is that the training element of an MDP involves not just the formal courses provided at the various institutes operated by the international firms in question—as far-reaching and significant as those may be—but also the exposure obtained by a lawyer in the course of doing sophisticated collaborative work in such firms.

It may be argued that what is necessary in response to the training needs of the Nigerian legal profession is not the involvement of foreign firms, but a review of the curriculum and that efforts are already afoot to do so. While absolutely necessary, such a review does not, however, provide a long-term solution to some significant systemic needs of the profession. It serves a purpose related to, but different from, the purpose which training programs serve in a professional firm. Such training programs are on-going affairs and constitute an aspect of the continuing education program that is aimed at keeping professionals at the cutting edge of their game. The program of a university or law school, on the other hand, is supposed to provide the long-term basic infrastructure on which a professional's practice will run. Where such infrastructure is inadequate because it has become outdated (as the Nigerian Law School's program largely has) the training programs provided in-house by a firm can be valuable, even if in part, in curing the defect. However, the converse is not the case: irrespective of how good the basic university or law school education may be, it cannot replace ongoing professional development of the type that in-house training programs offer. A professional needs to constantly refurbish and indeed enhance his intellectual resources in order to remain competitive, and helping him achieve this ongoing objective is the domain of the in-house training program. The in-house training program or other forms of integrated, formal continuing education represents the ultimate manifestation of professional firms' appreciation of the strategic importance of knowledge and its improvement in the professional services arena. The professional service firm operates in an intellect industry and sells its clients little else besides intellect, thus necessitating constant replenish-

69. An example is the Andersen organization, which until 2002 ran training centers in St. Charles, Illinois and Veldhoven (Eindhoven) the Netherlands, these institutions equaled many universities in size and resources.

ment and improvement of the intellect—an endeavor to which the firm brings significant resources.

In the current environment of the legal profession, Nigerian lawyers need a system of intellect replenishment that is self-adjusting and therefore more dynamic; a system which can respond to the training needs of the profession as those needs evolve. Such a system is already in place with the major international firms, many of which spend a sizeable percentage of their enormous annual revenues on training. Many of these firms are very much attuned, by long-term experience, to the imperatives and dynamics of anticipating change and providing for it. With such firms, the country obtains access not only to top-notch systems and facilities, but does so at costs subsidized or completely borne by the international firms themselves, given that many of the firms' personnel, after their term at such firms, inevitably move on to other Nigerian employers or endeavors, bearing with them and replicating the expertise garnered.

MDP is the optimal vehicle for attaining the foregoing objectives as it facilitates seamless interaction between all the key elements in a firm.

B. Improvement in Labor Practices

Employment practices among Nigerian lawyers leave much to be desired, especially in relation to the remuneration of junior lawyers and the denial of partnership opportunities. Regarding partnership opportunities, the average Nigerian provider of legal services is a solo practitioner, who if successful would have a few junior lawyers as employees. These lawyers are typically never offered partnership opportunities, irrespective of how long and hard they work with the solo practitioner. While partnership status is never easily attained in any firm, the approach of the international firms is more transparent and the obstacles more easily surmountable.

In relation to remuneration, when Nigerian senior lawyers employ other lawyers to work in their offices, the tendency is to remunerate these employees at the lowest rates possible. Indeed, some senior lawyers insist, based on a mangled and perverse application of the English rule on pupillage, that these employees are really not entitled to any pay since, being pupils in law chambers, they receive the benefit of learning essential skills from the senior lawyer as compensation for the efforts they expend in working as employees. Those who argue along these lines readily forget the several departures from English-style arrangements wrought on the Nigerian legal profession at least since the Unsworth Committee Reports of 1959. One such departure is the abandonment of the key distinction in England between the solicitor (attorney) and the barrister, a development that allows the lawyer admitted in Nigeria to function in both capacities and to presumably earn more than might otherwise have been the case.

A predictable result is the impoverishment of junior lawyers even when they are employed in law offices with sizeable fee incomes. These lawyers are remunerated at rates that often cannot afford them the basic comfort of cheap

tenement housing. The employer usually proceeds on the assumption that the junior lawyer, were he to resign, would be readily replaceable at little or no extra cost, given the surfeit of young law graduates in the market. The whole relationship is undergirded by the warped assumption that a lawyer-employee has no entitlement to a baseline living wage—a wage that should minimally meet certain basic needs irrespective of the labor market situation. This approach is in sharp contrast to that adopted in Nigeria by the international professional firms established either as MDPs or simply practicing within their discrete professional areas. They pay significantly more than indigenous law firms and provide health benefits and other perquisites.⁷⁰ In this regard, they reflect a culture internalized globally about the intrinsic worth of an employee. Relative to Nigerian lawyer-employers these firms are model institutions, with an embedded culture of fair labor practices. To save the Nigerian legal profession from the exploitative relationship between lawyer-employers and their lawyer-employees and the attendant negative consequences, this culture of fair labor practices ought to be propagated. Legalizing MDP in Nigeria will clearly advance this purpose by facilitating the establishment of international firms whose labor culture would act as a counterpoise to the deplorable labor practices currently adopted.

C. Strategic Positioning of the Legal Services Sector

There are several ways in which a nation's legal-services sector can be understood, and hence several ways in which it might be approached or treated by the regulator. At one extreme, it can be viewed along classical lines as a source of public service, an intellectual endeavor informed primarily by an ethos of public service, indeed one embodying a cultural ideal, and which thus merits protection from the economic and other forces to which other areas of endeavor are amenable.⁷¹ At the other extreme, the profession can be viewed as an economic activity like any other which should be open to all such forces. Between these two extremes lies a middle course which recognizes the multiple characters of the profession.

70. It is arguable that they pay more only because they have deeper pockets. Anyone with some experience of the Nigerian industry would attest that this is not the case. The best law practitioners in Nigeria command fees that match those of any international firm providing professional services in Nigeria. Indeed, compared to audit services for instance—a mainstay of international accounting firms in Nigeria—the profit margins for legal services are significantly higher. Yet, in 1993 for instance, the annual income of a fresh lawyer-employee in Nigeria's most lucrative law firms in Lagos, Nigeria was in the neighborhood of ₦24,000, a far cry from the annual income of about ₦50,000 payable to a fresh lawyer working at the same level in an international accounting firm in Lagos. If one moved a little down the rung of lawyers/law firms in Nigeria, the disparity between the remuneration of the international firms and the Nigerian employers increased exponentially. This pattern continues to be the case, with international firms paying new lawyers at rates exceeding three times the pay in an above-average Nigerian law firm.

71. It seems that the position of the United States legal profession approximates this, though its regulators have nevertheless not shielded it completely from these forces on that account.

It would seem that the Nigerian government has taken the classical view that treats the profession as a service devoid of economic implications—a view that reflects Roscoe Pound’s definition of a profession as “a group of men pursuing a learned art as a common calling in the spirit of a public service—no less a public service because it may incidentally be a means of livelihood.”⁷² However, this governmental attitude is not reflected in the stance adopted by the profession’s regulatory authorities, nor is it reflected even in the daily rhetoric of Nigerian lawyers or their various local associations, who constantly articulate their rights and obligations in blatantly commercial terms. Nigerian lawyers no longer pay the classical view even the lip-service that it might have elicited in earlier times. Since the profession is self-regulated, the regulators are themselves lawyers (or lawyer-dominated bodies) who clearly recognize the economic dimensions of the profession and take steps to maximize the aggregate economic benefits of lawyers as a group. As such the tacit or implicit government policy that treats the profession as one with limited economic potential is at variance with the overt initiatives of the regulators who recognize the economic potential, albeit in a self-interested way. The government ought to recognize and adjust to the realities, not just in terms of reconciling its perception with that of the lawyer-regulators themselves, but more importantly in terms of fully exploiting the potentials of the sector for the Nigerian people.

The fact that government has an overly sedate and classical perception of the profession is also reflected in its approach to the sector in the context of the WTO General Agreement on Trade in Services (GATS). The GATS is an effort at liberalizing the international trade in services generally. The structure of the GATS is such that for any country, the bulk of the obligations therein are activated in respect of any particular service sector if that sector is positively added to the country’s schedule of commitments. Furthermore, it depends on the extent to which the country takes any derogations from the broadly applicable disciplines (that is obligations to liberalize) in respect of the service sectors it has chosen to add to its schedule. Reflecting its sedate view of the profession is the fact that Nigeria was one of the countries that never took any commitments in the area of legal services.⁷³ This often reflects a perception in the non-committing country that legal services in their various forms constitute an aspect of public administration, that ought to be shielded in its entirety from market imperatives. Yet legal services constitute a significant item of international trade, both in their own right and in relation to their relevance to the development of other sectors. The dynamics which make free trade desirable in many other sectors are to a significant extent applicable to legal services. It has been

72. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

73. In the Uruguay Rounds of trade negotiations, 43 countries included their legal services sectors in their schedules. See SYDNEY M. CONE, *INTERNATIONAL TRADE IN LEGAL SERVICES* 2:17 (1996) (the number subsequently increased). See *id.* at 2:20–2:22 (listing fifty-five countries that included their legal sectors in their schedules).

noted that some countries favor international trade in legal services as the establishment of foreign lawyers is seen as a catalyst for foreign investment, contributing to the security and predictability of the local business environment.⁷⁴

Liberalizing the legal services sector by legalizing MDP would help Nigeria better explore and realize its potential in this connection. If structured with adequate attention to the benefits accruable to the country, MDP can improve the country's competitiveness in the services sector. The relative smallness and financial weakness of Nigerian law firms and professional firms generally are problems that can be addressed by permitting the establishment of MDPs involving the major multinational professional firms. There is a need for strong firms if the country is to compete globally by exporting legal services or by at least satisfying local demand. (Currently, Nigeria imports a significant amount of legal services in high end areas of practice, notwithstanding the current surfeit of Nigerian lawyers.)⁷⁵ The need for capital infusion and technology transfer in this regard can readily be met by the international professional service firms.⁷⁶

It is arguable that allowing foreign firms to operate as MDPs in Nigeria would not facilitate the cultivation of a stronger legal services sector, since these MDPs would only be out-posts of other countries' firms through which those other countries seek to export legal and allied services to Nigeria and otherwise exploit the Nigerian market. There is some merit in such an argument, but the argument can readily be met by viewing the international firms as what they really are—foreign investors in Nigeria. When these firms are properly viewed as foreign investors in the Nigerian services sector, the problem of exploitation without meaningful contributions to the sector's development dissolves, or at least gets reduced to a point where no higher risks are presented by them than would be the case if such firms were, for instance, foreign investors in the banking or telecommunications sectors. The problem is that the legal services sector has never been considered, not to speak of being accepted, as a bonafide sector for foreign investors' input, so that the parameters used for assessing the performance of putative operators in the sector are anything but regular. If regular

74. See *Legal Services: Background Note by the Secretariat*, *supra* note 42, § A(3).

75. As an indication of such importation, the Bureau of Public Enterprises, a Nigerian agency vested with the function of privatizing public enterprises, formally requires Nigerian Lawyers applying to provide legal services for some key projects overseen by the agency to associate themselves with foreign consultants. Such foreign consultants ultimately provide legal advice to Nigeria in conjunction with the associated Nigerian lawyers, for which advice they have to be paid, thus completing the importation of their services.

76. It is noteworthy that the need to obtain capital beyond what is ordinarily available to them via traditional means has been a source of pressure towards the liberalization of MDP for English law firms. (In this regard, see *Crawley*, *supra* note 10, ¶ 6.5.) While the Law Society did not ultimately permit MDP, the absence of a lawyers' monopoly over legal work in England has meant that in practice, a solicitor who is willing to abandon his title and cease holding himself out as a solicitor can combine with members of other professions in the offer of legal services to the public. This is not equally possible in Nigeria in view of lawyers' monopoly over legal services. On the sources of the monopoly, see *supra* note 17.

parameters were used, it will be seen that the Nigerian regime for the regulation of foreign investments already provides a basically sound framework for checking possible abuses of the system by foreign lawyers or firms. It would not be far-fetched for government to insist, for instance, on a minimum threshold of imported capital (say \$10 million) for any firm desiring to establish in Nigeria as an MDP, so as to pre-empt the relocation to Nigeria of pip-squeak foreign firms. Nor would it be out of place for the government to insist on the employment of only a limited number or ratio of foreign personnel in the Nigerian offices, so as to facilitate the optimal employment therein of Nigerian lawyers and their consequent exposure to the necessary techniques. It is not inconceivable that foreign MDPs would establish in Nigeria in these circumstances, not for nefarious reasons, but rather to tap the abundant labor pool in processing legal work originating from other countries or simply to get a strategic foothold in the region.⁷⁷ Guidelines of the sort able to meet the challenges of policing foreign investors already exist in Nigeria's foreign investment laws administered by the Nigerian Investments Promotion Commission (NIPC)⁷⁸ National Office of Technology Acquisition and Promotion (NOTAP)⁷⁹ and allied regulatory agencies. With a bit of fresh thinking, these can readily be adapted and extended to foreign investors in the legal services sector. The big problem, however, is taking the first step—a conceptual revolution of sorts—of recognizing and accepting that legal services constitute also an economic sub-sector.

VII.

COUNTERVAILING CONSIDERATIONS

Perhaps a sensitive point to be raised against the regulatory path suggested above is that such an approach goes against the current of efforts made over the

77. Something akin to this is already happening in India, where in order to benefit from the lower labor costs there United States lawyers outsource some of the paperwork and background analyses involved in United States patent applications, divorce proceedings and other forms of legal research, so Indian lawyers can perform them. See Eric Bellman & Nathan Koppel, *More U.S. Legal Work Moves to India's Low-cost Lawyers*, WALL ST. J., Sept. 28, 2005, at B1. Nigerian lawyers possess some of the basic attributes that make India attractive to American lawyers who outsource work, especially a common-law based jurisprudence and the dominance of English language in formal practice.

78. The NIPC was established by the Nigerian Investment Promotion Commission Act No. 16 of 1995, which gave it its basic functions and powers. It is one in a series of legislation promulgated by the Nigerian government in 1995 towards the liberalization of foreign investments in Nigeria. These statutes—which included the Foreign Exchange (Monitoring & Miscellaneous Provisions) Act No. 17 of 1995—repealed previous legislation that sought to fetter foreign investment and cross-border capital flows in Nigeria and positively removed the restrictions that had existed under various predecessor legislation.

79. On NOTAP and its functions under the enabling legislation, the National Office for Technology Acquisition and Promotion Act, see George C. Nnona, *Choice of Law in International Contracts for the Transfer of Technology: A Critique of the Nigerian Approach*, 44 J. OF AFR. L. 78 (2000).

last five decades to decolonize the Nigerian legal profession, which at some point was dominated by English and English-trained lawyers. These efforts have involved, in large part, the stringent enforcement of the requirement that those seeking to practice in Nigeria be trained in Nigeria (that is the Nigerian Law School) in order to qualify to sit for the final exams for admission to the bar. This is effectively a barrier in the form of non-recognition of legal qualifications from other countries. The approach seemingly has worked well, as the legal services sector is largely indigenized, except to the extent that Nigerian government corporations and a few private entities in their dealings with multinational enterprises or similar parties, sometimes find it necessary as a practical matter to use foreign counsel for complex transactions—yet another example of Nigerian importation of legal services. If legalizing MDP is seen as reversing the gains made in decolonizing the Nigerian legal profession, the political backlash may be far-reaching. As already indicated in the immediately preceding section of this paper, this can be forestalled if the necessary steps toward the legalization of MDP are properly choreographed and nuanced. In addition to the suggestions already made, one such step may be the concession of certain areas of legal practice to indigenous legal practitioners. Discrete areas such as probate work, conveyancing and non-corporate criminal litigation, can be left exclusively to such indigenous practitioners or firms.⁸⁰ Beyond the foregoing would be the need for a nuanced public relations campaign to meet the challenges of liberalization. The Nigerian government routinely does this in other sectors where fundamental change, such as privatization, is wrought and opposition is therefore expected from labor and other constituencies. Such a public relations campaign, if properly executed, should convey principles that are likely to prove persuasive in important quarters.

Ultimately, the need to decolonize the Nigerian legal profession can be met from a variety of other angles—for example, by jettisoning the Victorian-era wigs that are currently mandatory for barristers, and eliminating the worn requirement that candidates for admission to the bar eat a certain course of dinners. Given the broad advantages of an integrated multidisciplinary practice in Nigeria, exclusionary and anti-competitive rules seem inherently illegitimate as a tool for pursuing decolonization in the current context of the legal profession and the Nigerian polity.

80. The temptation to reserve litigation exclusively for indigenous lawyers should be resisted. Litigation as much as any other sphere of legal practice is technology, capital and skill intensive and would therefore benefit from liberalization. It may be politic to reserve some aspects of litigation pertaining to non-commercial litigation, for example criminal defense work for individuals, for indigenous lawyers.

VIII. CONCLUSION

Prognoses concerning MDP, its future and effect run the whole gamut, from the optimistic through the ambivalent to the apocalyptic. They uncannily reflect the range of emotions elicited and evoked by the law and lawyers through the ages.⁸¹ Perhaps one of the direst of these prognoses, encapsulating a parade of horrors, is that of Lawrence J. Fox, a legal practitioner and noted critic of MDP. In the course of his testimony before the ABA's Commission on MDP, he had the following to say:

I also had nightmares. It was five years from now, the ABA was in steep decline and I had fallen into the annual meeting of the National Association of Multi-Disciplinary Professional Firms. Well-dressed individuals with badges scurried about, and the hail-fellow-well-met greetings in the corridors had a familiar ring, but after an exhaustive search no programs on pro bono were to be found, the crisis in death penalty representation went unnoticed, free speech only referred to the charge for attending the programs, not the cherished civil liberty, and no one was worrying about the independence of the judiciary despite President Quayle's recent call for the impeachment of seventeen federal judges who granted habeas petitions in the last twelve months. In their place I found programs featuring "Medicine: the Next Multi-disciplinary Frontier," "Leveraging Your Audit Services into Profits in Legal Services" and "Eliminating Confidentiality: Improving Society." Then I woke up and realized I had to persuade you here and now why you should reaffirm our values and ethical commitments to our clients.⁸²

It has already been indicated in the preceding sections of this paper that sentiments of this sort have greater relevance in the United States context, given its political peculiarities and its near-excessive reliance on lawyers for social regulation. Many other societies with a perhaps more organically-developed system of social regulation rely less on lawyers and their craft. For instance, this is the case with Japan, an orderly society with relatively little appetite for the lawyer's craft.⁸³ This is not to say that elements of Mr. Fox's prognosis should not

81. On the cheerful, optimistic side is Alexis de Tocqueville's statement: "The people in democratic states do not mistrust the members of the legal profession, because it is known that they are interested to serve the popular cause; and the people listen to them without irritation, because they do not attribute to them any sinister designs." See DE TOCQUEVILLE, *supra* note 35, at 275-76. Extremely negative emotions are apparent in the biblical indictments: "Woe to you, teachers of the law and Pharisees, you hypocrites! You shut the kingdom of heaven in men's faces. You yourselves do not enter, nor will you let those enter who are trying to." *Matthew* 23:13 (New International Version); "Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered." *Luke* 11:52 (King James Version); "Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers." *Luke* 11:46 (King James Version).

82. Written Remarks of Lawrence J. Fox, *You've Got the Soul of the Profession in Your Hands*, a presentation before the ABA MDP Commission on Thursday, Feb. 4, 1999, available at: <http://www.abanet.org/cpr/mdp/fox1.html> (last visited Nov. 6, 2006).

83. See Joseph Sander, *Adversarial Legalism and Civil Litigation: Prospects For Change*, 28 *LAW & SOC. INQUIRY* 719, 733-37 (2003). See also Bruce E. Aronson, *Reconsidering the Importance of Law in Japanese Corporate Governance: Evidence from the Daiwa Bank Shareholder De-*

give pause to the Nigerian regulator intent on liberalizing the legal services sector by legalizing MDP. Rather it is to indicate that the dangers inherent in such regulatory adjustment are attenuated by the fact that lawyers (as distinct from law) are not as fundamental to social order in Nigeria as they are in America. Therefore, were there to be any regulatory fall-out, the Nigerian social system is better equipped to withstand it than the American system. This realization should leave Nigerian regulators relatively unfettered to explore novel approaches, taking other critical issues into consideration together with lawyers' independence.

France's regulatory response to developments in the legal services sector over the last few decades provides some lessons. On March 14, 1998 the National Bar Council in France formally permitted MDPs, such MDPs being restricted to members of other regulated professions.⁸⁴ The context of this decision was the fragmentation of the French legal profession into several branches and the repeated attempts of the French government to forge a strong unified legal profession over the preceding decades. Such a unified profession, it was felt, would be better situated to compete with foreign law firms in the French and global market places and would—perhaps more importantly—act as a bulwark against the steady erosion of French legal values by US and British law firms who have a considerable presence in France.⁸⁵

One of the moves towards a unified profession was the creation in 1971 as part of the 1970 reform, of a regulated profession of *conseil juridique*, roughly approximating the English solicitor. The *conseil juridique* had no right of audience in court, his activities being restricted to advisory work on legal aspects of business and related transactions. *Conseils Juridiques* (full name: *Conseils juridiques et fiduciaires* – translated as “legal and tax consultants”) had existed as a recent, unofficial profession prior to 1970. As such the title was not a protected one. Their activities covered transactional practice, an area long neglected by the more traditional branch of the legal profession—the *avocats*—which tended to

rivative Case, 36 CORNELL INT'L L.J. 11 (2003) (describing and challenging the pre-eminence of this communal and non-legalistic approach to social regulation in Japanese business settings, specifically in the context of corporate governance). Recent attempts by the Japanese government to “modernize” the judicial system by means of civil procedural reforms that enhance the capacity of parties to use litigation have met with mixed results for a variety of reasons, including abiding cultural realities. See Carl F. Goodman, *Japan's New Civil Procedure Code: Has it Fostered a Rule of Law Dispute Resolution Mechanism?*, 29 BROOK. J. INT'L L. 511, 513-16, 560-57, 609-12 (2004). It is instructive that the Japanese legal system has, just like the Nigerian legal system, experienced significant legal transplantation. It has borrowed from the French and German civil law systems as well as American common law. *Id.* at 513

84. See the examination of this and related aspects of the French scenario in the Report of the New York State Bar, *supra* note 7, at 208.

85. Exploiting these sentiments, Juri Avenir, the professional association of the Big 5 in France, called MDPs the most efficient vehicle for the development of French law internationally, designed to “reinforce the status of French Business Law against the threat of Common law hegemony.” See *id.* at 209-10, n.64, and the related text (referring to Juri Avenir, *L'exercice de la profession d'Avocat en Réseau Pluridisciplinaire 1998*, at 8 (a 1998 publication by Juri Avenir)).

focus on litigation to the exclusion of business advisory services. Such advisory work was not considered an aspect of legal practice, so that non-lawyers (which technically included the foreign lawyers and law firms in France) could practice in that area. Following the 1970 reform, the *conseil juridique* became a protected professional title by virtue of Law 71-1130 of December 31, 1971.⁸⁶

A subsequent reform, the 1990 reform, unified the *conseils juridiques* with the *avocats* into a single profession of *avocats*.⁸⁷ This, however, generated difficulties with MDP, since a great many of the *conseils juridiques* were members of the Big 5 multinational professional service firms and their integration into the *avocat* profession while they were still members of the Big 5 meant that MDPs had implicitly been sanctioned. Indeed, some accountants counted themselves among the former *conseils juridique*. The resulting debate put pressure on regulatory authorities, leading to the National Bar Council's (*Conseil National des Barreaux*) formal recognition of MDP in France in 1998, within specified parameters.⁸⁸ The terrain remained murky in some respects. For instance, the requirement that lawyers in an MDP not use the same name as the wider firm meant that the fully-integrated MDP was not permitted in France. Furthermore, the extent of the powers of the French Bar authorities to regulate MDPs involving other professions was not clear.

In the wake of the 1998 decision of the National Bar Council, the French Prime Minister commissioned the Nallet Report,⁸⁹ the purpose of which was to study how considerations of legal ethics would be reconciled with the demands of MDP as a union of several professions providing legal as well as other services. The report noted the presence of the Big 5 in the French legal market through their control of substantial law practices. It stated that prohibiting MDPs in France was out of the question, and made recommendations for their regulation. Salient aspects of the recommendations include the creation of a national commission with jurisdiction over matters of professional ethics, including the authority to prescribe ethical rules where there exist gaps or conflicts in the rules, and the ability to resolve particular cases where existing disciplinary bodies lack jurisdiction. The report also recommended improvements in the financing of law firms through the introduction of passive investments, so as to better enable French firms to obtain the means and attain the size necessary to compete

86. See *Report of the New York State Bar*, *supra* note 7, at 194-96, n20.

87. All persons who were *conseils juridiques* on December 31, 1991 became *avocats*, by operation of law, on January 1, 1992. *Report of the New York State Bar*, *supra* note 7, at 198.

88. By its decision of March 14, 1998, the National Bar Council officially allowed *avocats* to form partnerships with members of other regulated professions, including accountants. A major aspect of the decision was the requirement that lawyers in an MDP use a firm name distinct from the name of the MDP. See *id.* at 208. In its decision of March 26-27, 1999, the National Bar Council, among other things, affirmed the 1998 decision permitting MDPs and the requirement that lawyers in an MDP use a firm name distinct from the name of the MDP.

89. Named after Henri Nallet, the French legislator and ex-justice minister responsible for the report.

internationally.⁹⁰

The lesson from the French approach is that each jurisdiction has the capacity to use the regulatory opportunities presented by MDP and related issues in ways that meet its peculiar needs. There can be no hard and fast rules. In the immortal words of Justice Brandeis, “every legitimate occupation, be it profession or business or trade furnishes abundant opportunities for usefulness if pursued in what Matthew Arnold called ‘the grand manner.’”⁹¹ There remain great opportunities for the legal profession in Nigeria to be pressed into genuine, enhanced public service; opportunities which, if properly tapped, will provide a conducive regulatory context for lawyers with the right mindset to practice the profession in the grand manner. Whether such opportunities come to fruition depends in great measure on the regulatory approach taken and the regulators’ sensitivity to competing constituencies, issues and perspectives that merit attention in the governance of the legal profession.

90. See *id.* at 211-14 (containing a summary translation of the Nallet Report)

91. Louis D. Brandeis, *The Opportunity in the Law*, 39 AM. L. REV. 555 (1905).

Notes