

*Review*

## Archiving in Nigeria: Relevance for legal education

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Received 27 November, 2016; Accepted 24 March, 2017

**This paper looks at the relevance of archiving to legal education; especially in the area of case laws, differentiation of issues in a case, legal precedents and critiquing skills. It addresses the method of imparting legal knowledge which teaches law without including the indigenous background surrounding issues and principles of law; for a proper connection between the past and the present. It shows that legal education can never be complete if there is no recourse to indigenous historical background that connects legal precedents, using it to explain and differentiate legal principles; thereby portraying the essence of Archives as evidential by-products that provides precedents that could show when an issue in the past has re occurred; and thus provide information on legal steps to follow in the present. This, in effect, show that archives has the prospects of providing a new paradigm to legal education in the area of legal precedence, review of laws, foreknowledge of effects of laws and societal norms. Thereby producing a well educated lawyer who is able to handle confidently issues in any case and challenge extant laws based on its effect on the indigenous society. This paper shows how the principles of provenance, original order, access and appraisal of information could be applied in Nigerian legal education.**

**Key words:** Archives, Law archives, Nigerian Law Library, legal records, legal services, legal education and legal precedent.

### INTRODUCTION

Archives have been evident, right from the period of Stone Age when people used materials found around its environment to express its activities. Such activities have served as source of evidences for societies (Berard, 2009; Yusuf, 2013). The archived resources provided pieces of evidence for generations on past events that influenced right decisions, and so provided pieces of evidence to influence right decisions for the present and future generations. They, as well, provided explanations to applied norms and laws of societies. Therefore,

archives have continued, and well attached to societies; up till the present time. This could be seen in the national archives of different countries including private archives of organisations (The National Archives, 2013; National Archives Decree, 1992).

The national archive of Nigeria was initiated in 1954 as a "National Records Office" (Yusuf, 2013). It consists of stocks, records of the federal, local governments, private bodies and individuals who give voluntary legal deposits. Therefore, the contents of Nigerian archives contain

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records of evidential value affecting individuals, organisations and countries.

This is also the same thing with the contents of Council of Legal education.

The archive of the Council of Legal Education, Nigeria was established in 1930 with its contents, which focussed on student's records, correspondences with the Council, reports to the inn, past question papers and Council of Legal Education certificates (Institute of Advanced Legal Studies, 2013). These archived contents did not represent scholarship with regards to legal research, but did only represent evidential records to activities of the Council. This, however, is not unusual since archived stocks contain the activities of organisations, individuals and countries (National archives, 2016; United Nations Archives and Records Management Section, 2016). Therefore, the application of archives is a norm in the area of scholarship; especially legal education in Nigeria.

This study intends to show the relevancy of archives for Nigerian legal education. It starts by looking at the principles of archives and how they could help legal research and education, this is done with some practical examples. It goes on to show materials with archival values for legal education, and then analytically shows how archival materials could benefit teaching and learning.

## PRINCIPLES OF ARCHIVE AND LAW MATERIALS

Archive is defined as the by-products of the activities of an organisation (Internal Council on Archives, 2016). It is the vital concentrator of knowledge and preserves the history of organisations or groups (United Nations Archives and Records Management Section, 2016) and considered to be of evidential value worth protecting. According to The National Archives (2011), an archive must have provenance, original order, be accessible, and its information must be usable. United Nations Archives and Records Management Section (2016) also assert that research value is one of the criteria to use in selecting a document for archival purposes. Thus, in deciding to appraise a material to be kept in an academic archive, such material must be seen to fit for research purposes. In the same vein, it must fall into an area of law for the purpose of accessibility. According to Rules for Archival Description [RAD] (2008), every archival material must be described in such a way that it is accessible. This means that they would have to be given terms or subject headings that align with the type acceptable by members of such profession. As a result, Moy's classification scheme can be used for the subject description or heading for members of the legal profession. This is not to be seen as against the doctrine of provenance, which states that materials from a creator must not be mixed up with other materials from other creators. For the rule of provenance can still be followed

while also providing access through subject descriptive terms, including course titles. This is shown in Tables 1 and 2.

Materials to be appraised as fit for archives are those that have significance to different facets of law; like land mark cases, decisions that deviates from normal principles of law or precedence, traditional practises that portrays a rule of law or is inimical to it. As a result, appraisal of legal materials needs legal expertise that is beyond that of a librarian or an archivist; it then means that it is only a law librarian that would be able to appraise materials of law. Such law librarian should be able to ascertain materials deemed fit for legal research and education. Thus, such materials might not be legal per-se but could be used to explain legal issues and principles of law.

According to Ajetunmobi (2003), Berard (2009), Chinwuba (2014) and Oba (2008), legal education goes beyond teaching law in strict terms. It includes exposing students to indigenous historical undertones behind laws; including cultures, norms, practises and diversities in people whom laws are meant for. Therefore any information in social science which has a legal undertone and legal research value becomes a material to be first kept as a record and subsequently as archival material. These types of materials as differentiated from materials of law; in strict terms; can be selected and kept for current use with the intention to move them to archives after specified number of years. But this is not to be supposed as the same practise for materials of law like case laws, gazettes. These ones can be taken from the shelves, appraised, selected and case clipped (as is being proposed in this paper). Their backwardness in years makes them materials of archive while the contents they contain make each of the contents selectable for archival purposes.

In this way, the study of law is attached to the norms and values of the indigenous community, therefore precedents on every legal issue is linked from the past to the present in order to show what caused a differentiation in court holding. Mark Tushnet (as cited in Rules for Archival Description [RAD], 2008) opined that they help understand the gap between the predictability of legal decisions and their indeterminacy. This means that every case is unique on its own and no matter how much trust is placed on precedents, a well educated lawyer can always distinguish the issues in a case from another r; thereby providing a new precedent. However this can only be done by deeply studying connections in precedents on any issue of law, including facts that surrounded them. Precedent is "any court decision that is cited as an example or analogy to resolve similar questions of law in later cases" (Legal Dictionary, 2016).

According to Chinwuba (2014), Daily Trust (2015) and Oba (2008), legal education should go beyond principles of law adopted from common law countries to understanding of the synergy between law and the

**Table 1.** Rule of provenance and original order demonstrated through Nigerian case laws.

Creator	Year	Vol	Pt	Description	Series
NWLR	1990	5	1	Rape cases	Multi-courts
NSCQLR	2002	6	2	Financial cases	Strictly "Supreme Court Holdings"

**Table 2.** Rule of provenance and original order demonstrated through Nigerian Dailies.

Creator	Year	Month(s)	Course Title	Subject description	Series
THE GUARDIAN	2000	April May	Criminal law	Child abuse Gender issues	None
THE GUARDIAN	2000 – 2006	April May June	Humanitarian Law	Genocide War prisoners	Law

society. This is because the principles that emerged from common law countries reflected their ideology. Therefore law undergraduates who are been trained to practise in Nigeria should be trained with every requisite material that would prepare them for practise in Nigeria, taking cognizance of the peculiar people, cultures and behaviours found in Nigeria. In this light, they should be trained using indigenous facts to explain principles of law, in addition to common law materials which is already been applied in their training. However, where requisite materials are not intentionally kept for legal education, then much reliance would likely be laid on common law materials. It is suggested that an empirical study be carried out to ascertain the volume of indigenous materials, with authoritative value, in academic law libraries, in comparison with common law materials.

Therefore archiving law resources makes it easy to monitor case laws; emerging issues from society, clash of morality and norms with laid down laws. Furthermore, archiving legal materials could provide students on training with inquisition into indigenous facts surrounding their course outlines in order to understand them better, thereby developing research skills in them while providing predictability of cases in legal decisions. Thus students of law are able to develop critiquing skills through their ability to connect the present with the past; including facts from non legal environment in which a law is made. They are also able to be autonomous in their legal reasoning and so able to stand independently after call to bar. Table 1 provides practical examples of this, including the applicability of "Respect Des Fonds" to legal archiving.

According to Rules for Archival Description [RAD] (2008), "Respect des fonds" means that records of archival materials must be provided access through the creators of such archived materials and organised through the original order applied by such creator. Thus respect must be given to every piece of intellectual property both in aligning documents to their creators and in arranging them the same way they came. For case

laws, it would mean arranging materials first through the name of law report and subsequently respecting original order of: year, volume, and part; while providing access through: description and series. This is shown in Table 1.

Table 1 uses Nigerian law reports to show examples of provenance and original order. The same example can be used for foreign case laws like "The All England law Reports". This procedure can also be carried out for statutes of both local and foreign. However their original order must follow; meaning that information of citatory would direct organisation of material. The essence of this is that the authoritative information found in archived materials can be used as authority in support of any issue both for research purposes and in court. To do this, the full citation of an authority must be shown. The arrangement in Table 1 can be used as both index and for arrangement. For arrangement, the outer box or cover would bear the description of the creator, the second box provides resources by year and within each year would be arrangements by volumes; and within each volume would be arrangements by parts. The description and the series would only be useful for purposes of access. This aligns well with the principles of archival arrangement that states that access must be given but not at the detriment of rules of provenance and original order (Rules for Archival Description [RAD], 2008; The National Archives, 2011).

Newspapers and Gazettes are other materials that provide information of value for archival purposes and therefore worth archiving. Newspapers are a set of large sheets of paper that have news stories and information about local events, advertisements; folded together and sold every day (Merriam Websters, 2016). While Gazette is the official publication and evidence of acts of government usually containing additional orders of adjudication, orders, promotions, confirmations and appointments of government officers (Black's Law Dictionary for Mobile, 2016). In archiving newspapers, each page would be appraised and areas of research

**Table 3.** Typical list of courses in Law Faculties [Public Law], Nigeria.

1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year	5 <sup>th</sup> Year
Legal Methods I	Constitutional Law I	Criminal Law I	Law of Evidence I	Jurisprudence and Legal Theory I
Legal Methods II	Constitutional Law II	Criminal Law II	Law of Evidence II	Jurisprudence and Legal Theory II
	Nigerian Legal System I	Islamic Law I	Environmental Law I	
	Nigerian Legal System II	Islamic Law II	Environmental Law II	
	Administrative Law I			Oil and Gas Law I
	Administrative Law II	Humanitarian Law I	Conflict of Laws I	Oil and Gas Law II
		Humanitarian Law II	Conflict of Laws II	
	Human Rights Law I			
	Human Rights Law II		Public International Law I	
			Public International Law II	
	Criminology I			
	Criminology II			

Source: Faculty of Law, University of Ibadan (2017).

value clipped out and organised as shown in Table 2. Under Table 2, the creator is the name of the newspaper, the years covered are provided including the months within each year. The description show subject areas covered, the course title provides the course areas they fall into while the series would show subject series on the news papers or dailies. This is shown in Table 2: In the same way, areas that have been appraised and found of research, and historical value can be clipped out and organised if there are other copies of such gazettes for reference purposes. This means that in a law library, gazettes, law reports can be clipped and arranged for easy access; however there should be a location where complete publication of such materials can be found. This could pose a problem of space. It is suggested that complete citation details of archival materials also be clipped from their sources and included in the archived material. Example is the Federal Republic of Nigeria Official Gazette. To archive this publication which is arranged by numbers, each number or chapter of research value should be clipped out. This would provide citatory information, and then the particular page of research or historical interest should be clipped out while the front cover of the complete publication would be clipped out too. This could also pose another problem since there could be other pages of research interest with different descriptions that might need to be archived. However, it should be noted that if the rules of "Respect des fonds" is applied, then the areas of interest from each Gazette or volume would be organised in the same place through their facets and sub facets. Besides, areas of citatory information can be photocopied and attached to archived material they belong to.

The essence of this access provision points or metadata is that arrangement of law materials would follow after this order and any researcher would also have immediate information on the contents of an

archived material. Furthermore, it would create space for recent purchase especially since Nigerian law faculties have not totally shifted to electronic materials. The essence of including course title under Table 2 is for it to act as access point as well as a guide for a novice who is not so sure of a right subject term for his or her search. Furthermore, it shows that all the courses offered in law degree program can be included in archiving services. Tables 3 and 4 provide typical list of courses provided in Nigerian Law faculties, the subject terms to be aligned with them would depend on the context of information archived.

Tables 3 and 4 show the typical courses taught in law faculties, Nigeria; however they are not exhaustive. The courses under Table 3 could be placed into other departments like: Commercial, Jurisprudence and International law or any other (Faculty of Law, Adekunle Ajasin University, Akumgba- Akoko [AAUA], 2017). A law librarian in selecting information of archival value for these courses makes teaching and learning easier; especially when the information being provided is background, historical information of indigenous type. However information of archival value must be subjected to appraisal as it is not all information that has archival value.

## **MATERIALS WITH ARCHIVAL VALUES FOR LEGAL EDUCATION**

Many materials normally have administrative values with little focus given to educational values. This is because of the descriptive term: documents, evidences: normally given to archival materials (Daniels, 1984). United Nations Archives and Records Management Section (2016), stated that administrative, fiscal, legal and research values are used as criteria for selection of archival

**Table 4.** Typical Course Curriculum for Private Law in Nigerian Law Faculties.

1.	Law of Tort I & II
2.	Family Law I & II
3.	Land Law I & II
4.	Principles of Equity
5.	Law of Trusts
6.	Law of Succession and Conveyancing I & II

Source: Faculty of Law, Adekunle Ajasin University, Akumgba-Akoko [AAUA] (2017).

resources necessary for their organisation. This means that in educational environment, librarians should also represent the academic interest of users whom they serve as well as select records of values for their organisation. Archiving law materials for educational purposes might not follow certain archival rules of privacy and confidentiality since it is academic resources already published that are being archived. Therefore, an archivist or law librarian uses his/her appraisal skills to select, reform, arrange, and make accessible some significant materials that would be important in the future for educational purposes. Thereby preserving such materials for current and future academic needs. This is because there is no limit to purchase of print materials, while there is limit to space that can contain them. Thus libraries might decide to weed off materials and in the process do away with materials of archival value.

This brings up the issue of appraising materials. This could be tricky as one material ascribed as not valuable could be to another, therefore it all depends on the judgement of an archivist or law librarian. However, United Nations Archives and Records management Section (2016) provides some tips; among which is the fact that any material with research value is valuable for archival purposes. Research value would be defined for the purpose of this study as materials with significant academic purposes. These are materials that provide information that deviates from normal principles of law while showing issues that could influence a deviation from legal precedent and new paradigm of thinking regarding any principle of law. These would be materials that bear evidence for research purposes. Thus, dailies (not newsletters), Gazettes, statutes and case laws would be relevant for this purpose. Dailies are relevant because they are assumed to contain undiluted facts and have citation values for legal research; however newsletters are merely promotional; facts from them are not normally trusted (Clark, 2011). Journals and reference materials are not included because they do not contain facts but research findings and explanations of terms; they do not have archival values in Law. Though this could be different if they were journals in sciences as they could contain results of experiments. These mentioned

materials have benefits for teaching and learning. Gazettes are authoritative because they are government newspapers. Therefore some information from them has evidential value. These materials when archived would benefit teaching and learning.

#### **HOW ARCHIVAL MATERIALS COULD BENEFIT TEACHING AND LEARNING**

According to Guth and Ashford (2014), Wilkins et al. (cited in Berard, 2009) and Lewis (1852), teaching of Law should go beyond strictly law to incorporate human behaviour and social science. This is because the doctrine and practise of law are enmeshed in non legal environment; which is social science. Lewis has defined social science to be any science that has interest in people, groups, society and their generally accepted norms and ways of living. Lewis believed that laws are entangled in people's ways of living; therefore contract laws, property laws and other facets of laws can only be understood through the society and not merely by teaching and reading textbooks. They cannot be understood without understanding how each group uniquely do this in their own environment, therefore indigenous facts that have emerged to challenge or affirm the principles of law on the subject areas of law become important training materials. Although this is where indigenous law reports come in; however if information on subject areas are not archived, if information from the locals, not found in law reports or textbooks are not clipped out from newspapers or dailies, then such information that would have assisted in training would have been lost. In the same way, such information in such law reports would have been forgotten. If the legal education of indigenous group of persons is to have effect on a society in which such students intend to practise, then information regarding how practical law is carried out among them must be known. In line with this, Del Mar (2016) has opined that encouraging law students to go beyond legal textbooks and specified case laws to self study of issues through different materials could lead to creativity in them and the ability to find connections

among issues and facts.

According to Wilkins, Mannings, Tushnet and Eisenmann (as cited in Berard, 2009), the understanding of human behaviour, social science, and non-legal aspects of law would assist in knowing the indeterminacy of law and predictability of legal outcomes. This means that effect of extant laws can be predicted while decisions of court cases can be known based on issues that have been built and connected. In line with this, principles of laws can also be questioned; thus making laws indeterminate. Despite the fact that case outcomes could be predicted by lawyers based on facts, precedents and legal provisions; however the effect of court decisions can be known based on study of the cultures and beliefs surrounding an issue of law. Besides, where a historical precedent which has divergent issues from that of the present is not pulled out to direct a present court decision, then justice might only be seen to have been done; whereas it is not actually done. This is where the relevance of archival materials to legal education lies. Newspaper clipping, case clipping and Gazettes clipping could be introduced for archival purposes. An example has been shown in Table 2. The essence of this is to provide evidence for scholars to see the phenomena around laws and legal doctrine; what Eisenmann termed: "an understanding of law in its entirety" (Berard, 2009). What this means is that even case laws can be critiqued based on facts surrounding actions. Besides, it would be difficult to consistently carry out research to find out issues surrounding extant laws when no record is being kept on them.

Schmitz (2010) asserted that in solving cases that deal on tradition and culture, several rules and customs are to be reviewed. The same way, precedents of courts around such issues are also to be looked at. These rules and customs are not exhaustive as many of them might have been forgotten. Besides, each new case has its speciality which might call for a look at the past; however, if the past has not been well documented, then the court would only have to listen to oral evidence with their different contradictions. On this aspect, Nigerian Council of Legal Education has to review the *modus operandi* of legal education with respect to archiving of academic resources in Law faculties.

According to Schmitz, in reaching a decision or critiquing a decision, all opinions regarding issues in such decisions must be taken cognisance of. This is an aspect that law schools generally have not delved into: assessing the broad regions of legal knowledge (Berard, 2009). Examples are significant cases in Nigeria; like the historical case of Safiyyatu Husseini of Sokoto State and her daughter (Kalu, 2003). Decades to come, this case would have been forgotten and the issues surrounding them also forgotten. But it is a landmark case that could influence decisions in the future. Many law libraries would not at once know where to get materials on this case. If it is not archived or provided online, then the information

regarding it is totally lost and the assistance it would have given in deciding and understanding issues of law would be lost. It is one thing to teach legal doctrine based on current issues and case reports; and it is another thing to teach students broad knowledge surrounding legal doctrines and principles, sharpening their analytical skills to analyse and critique.

According to Blouin (1978) and Langdell (as cited in Blouin), dictating to students what materials to study with and not exposing them to understand issues of law is emphasising on the specifics instead of the general; while stuffing students with information that makes them cram instead of knowing the reality of laws. Therefore, a new paradigm on legal education in Nigeria should be based on discovery and autonomy in learning where archives would be included in legal education. However there could be a problem with regard to archiving case laws.

### **Problems with regards to archiving case laws for legal education**

Principles of archives states that subject terms are not to be recognised when it comes to access giving; the rule of provenance which focuses on creators and their original order is to be given attention to. The issue now becomes that if access is to be given to case laws, the rule of provenance might pose a difficulty. This is because:

1) Case laws are reported in volumes and parts; therefore they include many issues of law. This would make it difficult to archive since there would be a limit to the number of law reports to archive due to limited space. However appraisal could be used to select certain significant reported cases and organise them as shown in Table 1. Access to these materials would be provided under subject terms while the organisation would still follow the rule of provenance. Please Table 1.

2) In order to appraise and select, only unique and significant cases would have to be archived and not all the volume of law reports. This could only result to case clippings where significant pages are removed. This might not be acceptable by some organisations and libraries. However organisations or libraries with more than a copy of a report might use one for archival purposes.

### **CONCLUSION**

Laws and the society is transient, therefore, issues of law are also transient. This means that there is no particular case law that could teach legal education. As well there are no particular legal doctrines that could teach legal education. Legal education is to be taught in totality with the inclusion of the surrounding circumstances that led to decisions of court. Furthermore, if case laws on any issue are linked from the past to the present, a student of law

would be able to understand legal doctrines and how they work in reality. Furthermore, such students would be able to differentiate and critique decisions of court. However these would not be possible if Law Libraries in Nigeria are not providing archival services and law lecturers are not exposing students to environmental issues surrounding case laws. Environmental issues can be known through recourse to the past and a link to the present. Precedents of court on significant cases can also be lost if they are not preserved through archiving and students of law would only be aware of court decisions available on the library stacks and those they are referred to.

The uniqueness of law as something enmeshed in a society cannot be ignored. The fact that it rests on precedents and facts means that every significant case law is not only to be reported but archived. If Nigerian undergraduate law students are to be well grounded in the rudimentary of legal education, then the whole picture on legal principles has to be unravelled from the past to the present. This is where the relevance of archives lies in legal education.

## RECOMMENDATIONS

In view of the above, it is recommended as follows:

- 1) Council of Nigerian Legal Education should direct law librarians to commence archival services in Nigeria.
- 2) Staffs of Law Library should be provided with the necessary training for archival services.
- 3) Essay writing should be made to commence earlier in undergraduate training so that students can imbibe legal research skills before their final year.
- 4) Students should be given autonomy to search and link cases that treat any issue of law or principle.
- 5) Law reports in Law Libraries should have more than one copy and
- 6) Law librarians should have assistants from the legal professions for the purpose of appraising and selecting law materials for archival purposes.

## CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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