

The Mass Media, the Law and National Security: The Nigerian Perspective

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ABSTRACT The issue of national security is a fundamental issue in national and international discourses. It is in recognition of this fact that this paper explores the Nigerian perspective of how the operations of the mass media and the law may encroach into each other's domain as well as the implication of such encroachment to national security. The paper employs the analytical method to examine the set out issues against the backdrop of the feeling that one views the mass media and law as complementary sectors that could impinge on each other in the facilitation of the operations of other sectors of the polity. The operation of law affects and influences the way the mass media functions. In the same vein, the operations of the mass media equally affect and influence the operation of law in certain fundamental ways. Having examined the issue in focus, it argues that there is no notable conflict between the operation of the mass media and the law. It concludes by recommending that if recourses are made to the *grundnorm* of the country (that is the constitution), it would be discovered that the media would operate without any conflict or hindrance and any gatekeeper who violates the law can be punished.

INTRODUCTION

The mass media, by their pre-eminent position in national life, affect other sectors in national development. They are also affected and influenced in their functions by the operations of other sectors. It is against the backdrop of this feeling that one views the mass media and law as complementary sectors that impinge on each other in the facilitation of the operations of other sectors of the polity. The operation of law affects and influences the way the mass media function. In the same vein, the operations of the mass media equally affect and influence the operation of law in certain fundamental ways.

The concern of this paper is the issue of national security – a very fundamental issue in national discourse. The question is, how do the mass media function towards enhancing national security? It is the assumption *a priori* that both sectors function to ensure national security. But in carrying out their respective functions, they encroach into each other's domain and cause hiccups or dislocation to the system of the other. This paper, therefore, intends to examine this encroachment as well as the resultant dislocations, for the purpose of better understanding of how both sectors function. It may also be necessary to proffer solutions to the problem of interference, with the aim of ensuring better functioning in order for the realization of national

security. However, it would also be necessary to, first, establish what is meant by the mass media, how they function as well as what the law is and how it affects the functions of the mass media.

THE MASS MEDIA

Several scholars have variously described the mass media as gadgets used to effect mass communication. For example, Defleur and Dennis (1981) define the mass media as “devices for moving messages across distance or time to accomplish mass communication.” The issue of application of the term “mass media” to technical devices is crucial to the understanding of the concept. In fact, the general acknowledgment of this conceptual fact of the mass media has resulted in the terse submission of Uyo (1987) that the mass media, being gadgets used to effect mass communication cannot be practiced. According to him, it amounts to sheer “verbicide” to refer to anyone as a “media practitioner”, because one cannot practice gadgets. He likens the pejorative use of this term to such unthinkable expressions as a “teacher practicing blackboard” or “a doctor practicing stethoscope.” Thus, those involved in the operations of the mass media are gatekeepers who are responsible for the purveyance of information in the mass communication process. They are, therefore part of the mass media.

THE LAW

The law has been conceived in several ways, depending on each scholar's perspective. Aigbovo (2000), list some of these definitions as follows:

Carl Liewellyn: What officials do about disputes.

John Austin: A command from a political superior to a political inferior backed up with sanctions for its violations.

Oliver Wendel Holmes: The prophecies of what the courts will do.

Sir Edward Coke: Perfection of reasoning.

Hans Kelsen: The primary norm which stipulates the sanctions.

These definitions somewhat show the practical aspects of law in the sense that they focus on the operation of law. This has culminated in the emergence of various schools of thought representing the different groups of scholars who view law from the same perspective. Thus, we have positive law school, natural law school and utilitarian law school.

However, whether any particular definition falls within a particular school does not fall within the purview of this paper. The concern is how law operates within the confines of a civilized environment. Generally, the common definition of law which encompasses the various definitions so enumerated is that it is a body of rules enacted to guide human conduct in any particular society. By this definition, the various bye-laws in the states, the various codes guiding professional practices of professional bodies including the National Broadcasting Code and even the Mass Communication Policy are all parts of the law, because they are all made to regulate conduct at different levels. But a close look at the various definition by scholars as stated above would reveal a kind of conformity with how the law has operated in Nigeria at various times. For example, the law under military regimes conforms to John Austin's definition.

It has been stated that the concern of this paper is how the operation of the mass media and the law encroach into each other's domain as well as the implication of such encroachment to national security. It was also stated that national security is a fundamental issue in national discourse. For a proper understanding, then, of the focus of this paper, it becomes expedient to briefly define the term national security.

National Security

There is the erroneous equation of national security with territorial security. Nigeria today can boast of territorial security in the sense that it is fully protected against its neighbours who cannot dream of attacking Nigeria on their own. Such a move would be suicidal. But the country cannot place its national security on the same pedestal as its territorial security. Ekoko (2004) has classified the definitions of national security into two broad groups. "The first is the military / strategic concept of security and the second (is), non-strategic socio-economic" Quoting the Encyclopaedia of the Social Sciences, he eventually defines security as "the ability of a nation to protect its internal values from external threat" (13). It is in the light of this definition that AI-Mashat (1985) in Ekoko (2000) submits that national security transcends territorial defence and should focus on the physical, social and psychological quality of life of a society and its members, both in the domestic setting and within the larger regional and global setting.

From the foregoing, it is clear that the main index of national security is the maintenance of values within territorial boundaries. This is more meaningful in view of the current emphasis on global security whereby it is virtually impossible for one nation to attack another just to satisfy an expansionist tendency. Thus, today, national security functions to safeguard the internal working systems of a nation. This does not mean disregard for military security. National security may involve and include the military strategies. But that has to do more with external aggression. We are more concerned here with socio-economic indices as more relevant to our existence. The pertinent question then is: what are those values which should be protected to ensure national security? Values are in close affinity with norms, since values dictate the norms that ensure such values. Norms are guided by rules which determine human conduct.

In the quest to control human conduct within the bounds of civilization, nations have made constitutions. A constitution, therefore, is the *grundnorm* of a country, because it is the supreme law. And any law enacted which is inconsistent with any provision of the constitution becomes null and void to the extent of its inconsistency. But the constitution may not fully cover every aspect of life. Hence, there are other sources of

law made to guide citizens. Other sources of law in Nigeria include legislations, customary law, received English law, judicial precedents and so on. From time to time, policies are enacted and various bodies established to continuously remind us to fall into line in the protection of values. For example, the first attempt at a conscious and organized social change took place in 1984 during the General Muhammadu Buhari's regime, with the establishment of the War Against Indiscipline (WAI). Various practices which were inimical to civilized conduct were classified as acts of indiscipline. There was therefore, the establishment of values which every Nigerian was expected to cherish. Some of these are queuing, rather than rushing, patriotism, fairness and justice. The Babangida regime replaced WAI with the Mass Mobilization for Social and Economic Recovery (MAMSER), with virtually the same focus as WAI. If the values of WAI and MAMSER can be religiously protected, then there would be a measure of national security. It must be noted that national security depends on the country's leadership. The lesson from Africa indicates that the greatest threat to national security emanates from the various countries' rulers, who have constituted themselves into a band of brigands inexorably focused on the wanton plunder of the continent's vast natural wealth. Soyinka (2007) rightly notes: The theme of power is one that remains too pertinent to a continent which having freed itself from colonial tyranny still finds itself obliged to contend with a renewed colonization from within.

New leaders have colonized the populace they are expected to lead. This has resulted in the systematic impoverishment of the populace by those who seize power through the barrel of the gun or massive electoral fraud backed by full-scale thuggery. This lamentable plunder of Africa by its profligate leaders is aptly captured by Wilmot (2007) who notes that politicians, the higher military and police and their cronies have taken hold of the wealth of their nations and divided it among themselves. Using Nigeria as an example, Wilmot continues, "you can always tell when rich Nigerians land in a European airport" (2007).

In Nigeria, corruption, which has become a venerated way of life, continues to result in crises as people have become disenchanted with the socio-political system. This phenomenon includes reward of cronies with juicy appoint-

ments by politicians. These appointments are hardly on merit. This has resulted in inequitable distribution of resources with the populace developing a serious apathy to the electoral system. The inequitable distribution of resources has led to violent agitations, part of which has turned the Niger Delta region of the country into a cauldron of violence and kidnappings.

In all this, the mass media have the duty to function appropriately (yet within the confines of law). The media often find themselves in a dilemma regarding the performance of their duty as it should be performed as well as performing such duty in such a way that would not offend the law. So how does the operation of the mass media and the operation of law conflict with each other in pursuance of the attainment of national security. And what are the implications of such a clash, for national security? These questions can only be answered through an examination of the operations of both sectors.

THE MASS MEDIA AND THE LAW

The mass media function in various ways. However, the mass media's basic function has to do with what Harold Lasswell defines as communication. That is, to tell people, who says what in the society, to Whom, When and How. In carrying out this basic function, the mass media perform various tasks that have been classified into four functions by Wright (1960) and cited in Akindele and Lamidi (2001). These are:

- (1) surveillance,
- (2) correlation of facts of the environment,
- (3) transmission of heritage, and
- (4) entertainment.

The surveillance function involves mass media operators having to nose into the nooks and crannies of the society to fish out information that is of interest to the people. In correlation, the media act to mediate even the taste of the people because they interpret the information so gathered by sifting and discarding what may not be in the interest of the people before purveying such information to them. By such interpretation, they help to create values (for culture), which are then transmitted from generation to generation.

The three functions of the mass media, explained above, if closely examined, would reveal the role of the media in fostering national security. First, by effective surveillance of the environment, the mass media would unveil those areas,

individuals or entities that may likely constitute a breach of national security. Secondly, by correlation, the mass media assist other agencies to interpret the information so gathered about the environment and contribute in the utilization of such information to take steps to remedy any breach of national security or foster the perpetuation of practices that enhance national security. Thirdly, by transmission of culture, the media enhance the entrenchment of those norms, the defence of which constitutes national security.

On the other hand, the law contributes to the perpetration of national security by ensuring that values are respected and protected. This it does by the creation of norms which guide human conduct. It must seek to punish any breach of values that may threaten national security. It must be noted that national security is about people whose minds need to be geared towards the defence of values that enhance their collective dignity, that would make them secure from external aggression. The result of such a situation is development. The sacrosanct areas of law in this regard, are those that concern the dignity of man which, if fully protected, would enhance peace and progress in a nation. By this is meant chapter four of the Nigerian constitution (1999), which is on fundamental rights. The chapter encapsulates sections 33-46. The most relevant of these sections to this paper, is section 39 –the Right to Freedom of Expression and the Press. Sub – section I of this section states that: Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The operation of the mass media is provided for by this section. And it is in the performance of their functions that the media collide with the law. It should be noted that sub-section 3 of the section (39) provides for enactments that seek to punish aberrant use of the freedom so given in sub-section I.

It has already been stated that the law exists to regulate conduct. There are thus, laws guiding the conduct of mass media men in the course of their duties. At times the regulation of conduct might run counter to the diligent performance of the stated functions of the media, especially where the operation of law takes the form of the definition of John Austin. Mass media operators are expected to operate within the confines of the laws guiding their operations without prejudice

to section 39 of the 1999 constitution. Some of these laws include libel (encompassing seditious and blasphemous libel), breach of confidence, copyright, contempt of court, leaking of official secrets, invasion of privacy and so on.

The operators of the mass media, including journalists, producers, newscasters, editors and so on, are expected to know their limitations in order to avoid offending the law. The areas of most conflict between the media and the law are libel, invasion of privacy and disclosure of official secrets. At times gatekeepers experience a situation where they are between the call of duty and the need for “national security”. This is the kind of security equated with the safety of the interests of a political superior. The dilemma here is whether to publish or broadcast information that is detrimental to the interest of the superior and jeopardize his job and personal security, or falsify the information or ignore it and keep his job. This becomes crucial by virtue of the kind of leadership this country has had. National security appears to be the protection of government officials. And in pursuance of the realization of this security, media men are forbidden from purveying information that is at variance with the interests of those in power. This colonial view informed the colonial enactment entitled: The Seditious Offences Bill of 1909, which aimed at punishing “publications that were designed to inflame an excitable and ignorant populace” (Mytton 1983 in Ibagere 1996). This was sequel to the comment of a colonial official that, press liberty was a “dangerous instrument in the hands of semi-civilized negroes” (Adeseye and Ibagere 1999).

But there have not been many significant cases of libel. Nor have there been cases of invasion of privacy or breach of confidence because the codes of practice also regulate the conduct of gatekeepers in specific terms. This indicates that the mass media have been working in partnership with the law to ensure national security, peace and progress. However, the rule of law continues to be abused by those in power. Here a schism exists between the law and the mass media. If the rule of law is allowed to prevail, cases involving any breach of the law should proceed to the court where the judiciary performs its function of interpreting the law. By the rule of law we mean the three principles enunciated by A.V. Dicey (cited in Atsegbua 1997). These are:

1) The absolute supremacy or predominance of regular law as opposed to the influence of wide

uncontrolled discretionary powers ... A man may be punished for a breach of the law and nothing else.

2) It means equality before the law or the equal subjection of all classes of persons to the ordinary law of the land as administered by ordinary courts.

3) The rule of law may be used as a formula for expressing the fact that laws of the constitution, the rules which in foreign countries naturally form part of a constitution code are not the source but consequences or the right of the individual as defined and enforced by the regular courts.

It is pertinent to note that the mass media have somewhat operated against the background of these principles. And within this context, bearing cognizance of the separation of powers, any breach of the law by any person should be a matter before the judiciary. It is also necessary to state that any abuse of the rule of law is itself, not just detrimental but also a serious threat to national security in the sense that it violates one of the cardinal values constituting national security. When there is any publication or broadcast of any material which is calculated to embarrass or injure another or the government, then such media personnel constitute themselves into an entity that is detrimental to national security. However, in a zealous pursuance of the need for effective surveillance, media operators might inadvertently venture into areas whereby so doing would constitute a breach of the law. This was the case in 1984 when Tunde Thompson and Nduka Irabor, both of *The Guardian* were arrested and charged for publishing facts regarded by government as official secrets. Despite the brilliant argument by their lawyer, Chief Rotimi Williams as to the validity of their action, the government was not convinced and they were jailed for one year.

Media men can also compromise national security when they become unduly protective of those who own such media. Of course, it should be noted that most private media organizations are owned by politicians who use such media to enhance their political fortunes. In a bid to protect their owners' interests, the mass media could engage in acts that are inimical to national security. Such was the case in the years after independence. According to Omu (1996), in Popoola (2002), "the Action Group crisis of 1962, the census crisis of 1963-04 and the Federal

Election of 1964 and its aftermath – the newspaper press provided a remarkable example of over-zealous and irresponsible partisanship and recklessness." Today, media organizations with affiliation to some politicians go down to despicable depths in defence of these politicians, no matter their excesses. This is why Herbert J. Altschull (1984) in Severin and Tankard (1988) concludes that "the news media are agents of the people who exercise political and economic power." To him, then, an independent press cannot exist. Thus, the media do not serve the people's interest. For example, Benin City, the capital of Edo State remains the best planned city in the country by virtue of its network of roads. But there was virtually no road in Benin between 1999 and 2007 when Lucky Igbinedion ruled the state as the roads remained neglected. Despite the deplorable state of Benin roads, one keeps being buffeted daily on Independent Television (ITV) with the purported billions of naira the government continued to spend on road maintenance in the city. It is instructive to note that ITV is owned by the Edo State Governor's father who is a stalwart of the Governor's party – the Peoples Democratic Party (PDP). In such a situation the media cannot be said to be enhancing national security, having abandoned the ethics of gate-keeping. Rather they are seen as contributing to the security adversity of the state.

But it is not this unethical abdication of responsibility by the media or their contravention of the law that constitutes the most serious threat to national security. Rather, it is the corrupt minds of leaders whose acts negate all that should enhance national security. Having engaged in socio-political transgressions, they seek to protect their interests. And depending on the extent of their power, they punish such media men who may be unfortunate to venture into revealing such transgressions. Such punishment is usually to deter and scare away any other recalcitrant gatekeeper who may want to engage in such a venture. And such punishment is usually severe and without recourse to the rule of law. During the regime of General Sani Abacha, the Judiciary was emasculated. In 1994, the State Security (Detention of Persons) (Amendment) Decree, 14 was promulgated. This decree which was a carry-over of Decree 2 of 1984 from the Buhari regime through Babangida to Abacha was amended to include a clause ousting the power of any court of law to issue a writ of *Hebeas Corpus*. "Thus no court of law in the country could ask that a

person detained under Decree 2 of 1984 should be produced in court nor could the lawfulness of such detention be questioned" (Ibagere 2002). The promulgation of the decree could have been informed by the Minere Amakiri Saga of 1973. Amakiri, then the *Nigerian Observer* correspondent in Port Harcourt was flogged and locked up in a disused toilet by the Aide de Camp to the then Military governor of Rivers State, Diette-Spiff, for daring to publish the ultimatum by Rivers State teachers to the governor that they would go on strike if their demands were not met. Amakiri had, thereafter, gone to court where he was awarded the sum of N10, 000 as damages. The Abacha regime, perhaps to forestall legal victory for anybody so dehumanized, had to amend Decree 2 which had already empowered the government to detain anybody without charge, to include an ouster clause that emasculated the judiciary.

Failure to compromise standards and work in the selfish interests of politicians could be fatal to the mass media gatekeeper as could be revealed by what happened to Vincent Maduka during the Shagari regime. The then ruling party had determined to use the mass media to further its selfish interests. To concretize the plan, Vincent Maduka, then career Director General of the Nigerian Television Authority (NTA), was relieved of his position and replaced with, Walter Ofonagoro, a History lecturer and party loyalist. The action of the Shagari government had negated section 21 of the 1979 constitution which he (Shagari) had sworn to defend. The section states that: the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the Government to the people.

It is therefore not much the mass media that violate the law as those who are expected to protect and execute it. During the military administration of General Abacha, a Decree 43 setting up a Newspapers Registration Board was enacted. It specified that each newspaper must register with the Board with the sum of N250, 000 and this registration must be renewed every year. *The Guardian* challenged the legality of this decree at a Lagos High Court. The court ruled in the newspaper's favour. According to Babatunde Olugboji (1997):

Government appeared to have conceded defeat when it did not appeal against the ruling. But about a year later, the Board advised news

organizations to register with it or face sanctions as spelt out in the decree. In 1996, the Board published a "last reminder" warning newspapers to comply "in their own interest."

It is clear from the above that the court is usually relegated to an inconsequential back seat as those who are expected to uphold the rule of law turn apostates and become violators of it. The above is a clear case of insolent display of contempt for the court. There are other cases of violations. For example, there is no provision in law for surrogate arrest. But in 1997, when the editorial staff of *Tell* magazine were being hunted by men of the State Security Services (SSS), the siblings of those staff were arrested in their place when they were not found at home. This culminated in an action by the family of Nosa Igiebor whose wife and child were arrested when he could not be found. Yet the government cherished this development, just so that interests of highly-placed officials of government would be protected.

It is clear therefore, that the area of conflict between the media and the law is not interference but the abuse of the rule of law. This development threatens the existence of the media and is capable of rendering them ineffective.

Implications for National Security

From the foregoing, it is clear that it is not the encroachment of law into the domain of mass media that has grave implications for national security. Neither is the encroachment of the mass media into the precincts of law as epitomized in violation that is the problem. The actual problem in the relation of both sectors lies with the despotic use of power and in the unbridled manipulation of the law to protect selfish primordial interests. This is why laws have been made with individuals in mind. The Buhari, Babangida and Abacha regimes made laws specifically to punish media organizations which published information that was not favourable to them. This development known as *ad hominem* law is repugnant to natural justice and good conscience.

The consequences of this unhealthy development are grave for national security. When a nation's values no longer constitute the grounds for which norms are created, and aberrations become cherished norms, such a nation is sitting on a keg of gun powder with fire approaching. National security would experience the most

serious threat in such a despicable situation. The most serious threat of disintegration was noticed during the regimes of Babangida and Abacha. The threat was this immense because both regimes institutionalized corruption, crime and other aberrant conduct that supplanted cherished values necessary to enhance national security.

Today, the discontent in virtually all sectors and geopolitical areas in the country, leading to the dislocation of social life with the concomitant enthronement of various crimes such as kidnapping of foreign oil workers and robbery, vivifies the failure to effectively protect those values that should ensure our national security. It is therefore crucial now that the mass media and law should make concerted, coherent and focused effort towards ensuring national security. It is erroneous to believe that the operations of the mass media which may, at times, offend the law constitute the most serious threat to national security. The real threat is the unjust manipulation of the law to serve selfish sectional interests of a few corrupt individuals.

CONCLUSION AND RECOMMENDATION

The paper set out to explore the relationship between the mass media and the law. It focused on how the operation of the mass media impinges on the law and how the law is manipulated to encroach on media operations. These issues were examined including their implications for national security. Having examined the issue in focus, it is concluded that there is no notable conflict between the operation of the mass media and the law. If we have recourse to the *grundnorm* of the country (that is the constitution), it would be discovered that the media would operate without any conflict or hindrance and any gatekeeper who violates the law can be punished. But because those who hold and operate the apparatus of power sinfully manipulate the law to serve their interests, the mass media become seen as acting to negate national security which is equated with their personal safety. There can never be any threat to national security from the mass media if the country's leadership defend our national values and seek to establish an egalitarian society that is just and fair to everyone.

Based on the foregoing, it would be safe to recommend that mass media men should contribute to the enhancement of national security by carrying out their duties against the backdrop of law and ethics. The law must be upheld at all

times. Lawyers must defend the rule of law and uphold the integrity of the judiciary. They should not be part of the design to conduct a trial of those engaged in the legitimate performance of their duties. Those in the judiciary should refuse to adjudicate in matters that negate the rule of law. They should also repudiate laws that are inimical to human dignity. Mass media gatekeepers should carry out their duties with the following guidelines in mind:

1. Purvey information with respect for human dignity. Such respect connotes the defence of national values.
2. Information dissemination should be done without malice against a perceived enemy, such that the intention is to embarrass the person.
3. The major aim of information dissemination should be to inform the people better and improve their lot.
4. Gatekeepers must have a sense of national security and seek to improve on it at all times. Thus, whatever does not enhance the perpetration or perpetuation of our established values should be discarded.
5. Gatekeepers must abide by the rule of law as well as the established ethics guiding their profession.
6. All laws that hinder the performance of the duty of gatekeeper should be repudiated.

It is however fitting to end this piece by quoting the maxim of Pope Gringory XVI which says: but if the truth causes a scandal, then let a scandal arise than the truth is abandoned. So go ahead, publish and broadcast it if it is the truth.

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