

LAW AND NATIONAL SECURITY: AN ANALYSIS

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Abstract

This paper seeks to interrogate the law as instrument of National Security in Nigeria. The import here, is to point to the fact that all the laws are geared toward one goal, National Security; the security of life and property. With the aid of analytical research method the paper observed that all the categorized laws – Criminal Law, Civil Law and Regulatory Law – are all geared toward bringing about harmony and security in the society. The paper concludes that there is no security in the absence of rule of law.

Key Words: Law National Security, Categories

Introduction

Law as a rule of conduct permeates into every aspect of the society, be it security, politics, and social life, religion and other human endeavours. It does not matter the category or type of law in place, they are all designed to maintain harmony, promote peaceful relationship and keep society stable and intact.

The criminal law for instance, is aimed at checking acts detrimental to the existence of society. Offenders are punished in several ways, such as imprisonment, community service, or in severe cases death. Civil law on the other hand, offers citizens the opportunity to seek redress for the wrong done to their person or business. While Regulatory law, as the name implies, regulates business relations, labour relations, communication among many others.

In all, these laws impact heavily on National Security. National Security being the security and welfare of the people. The rule of law is an insurance for security in any democratic state.

The Nature and Purpose of Law

Law is a rule of conduct, generally found enacted in the form of a statute that proscribes or mandates certain forms of behavior. A society needs laws to uphold fairness and to prevent the victimization of innocents. In practical terms, law regulates relationships between people and also between parties, such as government agencies and individuals. Law directs as well as constrain human behavior and specifically empower individuals while contributing to public order. Law further ensure that the philosophical, moral and economic perspectives of their creators are protected and made credible. Under the rule of law values are maintained as well as upholding established patterns of social privilege.

Law support and sustain existing power relationships. Finally, law supports a system for the punishment and rehabilitation of offenders. Law also promotes orderly change in the entire society.

Law has been acknowledged as an instrument of social change. The reason advocated for this include the fact that:

- a. It enables the government to communicate the rules that will govern its relationship with the governed and between the citizens, *inter se*;
- b. It defines the scope and limit of the powers of the government, its institutions and officials, and any act or exercise of power not backed by law can be declared *ultra vires* null and void;
- c. A central theme of law is the doctrine of rule of law and not of men, to curb arbitrariness and abuse of power;

- d. The process for making laws involve the people through their representatives thereby providing an inclusive mechanism for addressing societal issues to achieve equity, justice and fairness to all segment of the society; and
- e. The dynamic nature of legal norms makes them most suitable to address changes in society, its values and ethos.¹

Categories of Law

For the purpose of this work, law in Nigeria can be divided into three general categories; criminal law, civil law, and regulatory or administrative law. By this division, possible forms of harm are classified into distinct categories according to the kinds of efforts the state will make to control them. The legislative and judicial decisions that have fashioned what kinds of harms will be controlled through criminal law and what kinds will be handled either as civil or regulatory matters is the product of a political state.

It is usual to further sub-divide each of the three categories of law mentioned – criminal, civil and regulatory, - into, substantive and procedural laws.

Substantive laws: - this refers to the body of law that defines criminal offences and their penalties. It designates specific acts or omissions, or specific classes of acts or omissions, as legitimate targets for legal intervention. Examples of substantive laws are those that prohibits and penalize murders, rape, robbery, and other crimes. Substantive laws are found in the Nigeria criminal code; penal code and any Act of the National Assemble having the force of law.

Procedural Laws: - This is the body of law that governs the ways substantive laws are administered. Infact, it specify how a legal intervention can take place. It takes care of such subjects as the way suspects can legally be arrested,² searched³, interrogated, tried and punished. Procedural law, it should be noted, constitute limitations on the power of the state. It is through the maintenance and expansion of procedural laws that state legitimacy, and in particular the promise of equality under the law has been maintained, procedural law is concerned with due process of law, or the rights of people suspected of or charged with crimes⁴. Besides, the categorization of law into criminal, civil and regulatory each encompasses both substantive and procedural law unique to their focus.

Notwithstanding this uniqueness, there exist some degree of overlap. In most cases, for instance, individuals charged with assault may also be sued by their victims for damages under civil law. Similarly certain actions by businesses that are held to be “in violation of financial regulation” may be handled solely within the confines of a regulatory agency or turned over to the Federal Department of justice or a specialized body such as the Economic and financial crimes commission for prosecution as a criminal offence. The observed overlap, notwithstanding, criminal, civil and regulatory law remain relatively distinct types of law, each with its own characteristics and functions.

Criminal Law

*A crime is an act or omission; proscribed by the state; and has punishment for its occurrence. Criminal law therefore, is the body of law that relates to crime. It proscribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety and moral welfare of people... It includes the punishment of people who violate these laws.*⁵

¹ O. Oyewo, “law, Democratisation and Social Change in Nigeria”, In: O. Oyewo and E. Ojomo)Eds), Law, Democratisation and Social changes (Lagos: Nigeria Association of Law Teachers< 2012), pp. 2-3

² Section 4 *Administration of Criminal Justice Act*, 2015

³ Section 143, *Ibid*.

⁴ R.M Bohm and K.N. Haley, *Introduction to Criminal Justice*, third edition (New York: Glencoe McGraw Hill, 2002), p.115

⁵ Wikipedia, *Criminal Law*, available in www.google.com.ng/search?q: accessed 27/4/2017

Substantive criminal laws designate specific acts or omissions as crimes while laws of criminal procedure delimit the legally appropriate methods for arresting prosecuting, and punishing those charged with crimes. It is imperative to note that acts are defined as crimes not simply because they cause injury or harm to specific individuals but because they are viewed as threatening the general social order, that is, as victimizing “society as a whole” in this sense does not exist as a tangible thing; it is a concept. According to Michalowski,⁶ the state is defined as representing, this intangible “society as a whole,” and it is the legal mechanisms of the state and not “society as a whole” that determines what specific behaviours represent general threats to social order. He equally added, that the view that the state is nothing more than the legal manifestation of the will of the people is the very heart of the liberal democracy’s claim to legitimacy.

People sometimes forget that criminal law is a political phenomenon, that it is created by human beings to regulate behavior of other human beings. Those incline to the worship of the supreme being, view the criminal law as divinely inspired something that should not be questioned or challenged. There is no doubt; this view point probably comes from a belief in the biblical story of Moses receiving the Ten Commandments from God on Mount Sinai. In truth it is generally acknowledged that criminal law frequently promotes the interest of some groups over the interests of other groups. However, regardless of the law’s source of inspiration, it is important to keep in mind that what gets defined as criminal or delinquent behavior is the result of a political process in which rules are created to prohibit or to require certain behaviours. Nothing is criminal or delinquent in and of itself, only the response of the state makes it so⁷.

Nonetheless, there is still the need to inquire into who should be creating the criminal law. In a presidential democracy, the duty of creating criminal law lies with the national Assembly.⁸ In Nigeria, criminal laws are a product of constitutional authority and the legislative bodies that enact them. They are also affected by common law or case law interpretation and by administrative or regulatory agency decisions.

Irrespective of who creates the criminal law, a good criminal law must possess certain characteristics. Legal scholars identify five features that all “good” criminal laws must possess:

1. **Politicality:** - this refers to its legitimate source only violation of rules made by the state, the political jurisdiction that enacted the laws, are crimes.
2. **Specificity:** - equally an ideal characteristics of criminal law, referring to its scope. Although civil law may be general in scope, criminal law should provide strict definitions of specific acts.
3. **Regularity:** - this denotes the applicability of the law to all persons, regardless of social status.
4. **Uniformity:** - This means that the laws must be enforced against anyone who violates them, regardless of social status.
5. **Penal sanction:** - refers to the principle that violators will be punished or at least threatened with punishment by the state where, the above features are absent in criminal laws, the laws can be considered “bad” laws, and indeed bad laws do exist.

The state is obliged to superintend over its criminal laws to check and bring violators to book. This is done via police and policing functions. In Nigeria as in most jurisdictions, the key functions of police are, to dramatise state power; legitimizing state power; maintaining order, controlling crime; and labeling criminality. As the legal embodiment of society, the state pursues and prosecutes criminal offenders in its own name, court actions taken under criminal law list the state as the plaintiff (the alleged injured party), for example *The State v. Nwankwo*. Likewise, under criminal law, the convicted offender generally makes satisfaction not directly to the person harmed but to the state by participating in some correctional or rehabilitation programme or by paying a time to the state, “for where crime is concerned it is society as represented by the state and not the individual that is defined as the principal victim”⁹ Finally, the primary object of criminal law is punishment of violators of the law.

⁶ R.J. Michalowski, *Order, Law and Crime*, op.cit p. 139

⁷ R.M. Bohm and K.N. Haley, *Introduction to Criminal Justice* third edition, op.cit p. 117

⁸ Section 4, *1999 constitution of the Federal Republic of Nigeria*

⁹ R.J. Michalowski *Order, Law, and Crime*, op.cit p. 139

Punishment under the law is the imposition of some suffering or deprivation upon an individual or group of individuals by delegated agents of the state in response to some violation of state law. It is through the imposition of punishment upon lawbreakers that political States dramatise their authority to govern the behavior of individual citizens and demonstrate the limits of acceptable behavior. When it appears however, to occur without justification, punishment tends to be seen as arbitrary and tyrannical.

Civil Law

Civil law refers to a large body of substantive and procedural rules for determining the legal duties of each member of society to others and for litigating claimed violations of those duties. Civil law includes tort law, the law of corporations, contract law, and a variety of laws governing other aspects of business, property, family and interpersonal relations. There is a recognizable interface between tort law and crime. Torts are acts that cause injury to the financial, physical, emotional or psychological well-beings of some individual. Nearly all forms of injury other than those resulting from contract violations can be litigated under the law of torts. Tort law takes care of violation of legally recognized interest of others. Nearly all crimes could also be litigated as torts since criminal acts, like torts, interfere with the “legally recognized interests of others” the major difference between tort law and criminal law is that under the law of torts the state is not actively concerned with arresting and punishing offenders. Tort law provides a person claiming injury a legal framework which to seek redress but such legal actions under tort law occur only when the injured party initiates a suit for damages. Tort laws are defined as harms to individuals rather than society and as such state neither initiates nor prosecutes torts as it does crimes. Consequently, legal actions under tort law (as well as most other civil actions) list the person claiming injury, rather than the state as the plaintiff for example *Idika v. Chukwu*. A further contrast to criminal law, is in the area of reparation assessed. Under tort law, reparation assessed is usually paid to the plaintiff rather than the state. Besides, tort law tends to be more general in character than criminal law. Instead of prohibiting specific acts, the law of torts identifies broad categories of conduct that are below acceptable standards and therefore as basis for suit. These general categories include interference with personal rights, interference with property rights, and acts of negligence resulting in harm.

Under tort law interference with personal rights covers such things as assault and battery, false imprisonment, defamation, malicious prosecution, violation of rights to due process, interference with rights of privacy, and infliction of mental distress. While violations of property rights under torts law covers trespass to land, trespass to other property, fraud, and certain business rights. In addition, tort law recognizes suits for negligence in those instances where injury results from action that a person of ordinary prudence would have recognized as potentially harmful to others.

Michalowski,¹⁰ asserts that the real distinction between criminal acts and civil wrongs under torts law is not the actual amount of injury caused but the legal definition of who is the primary victim. For instance, the failure to maintain adequate safety standards at a building site may lead to the death of several workmen. In the absence of any law specifically defining the lack of safety as criminal, however, these deaths remain only harms to individuals, not threats to the social order. In contrast, the theft of a television set that causes an actual loss of N100, 000 is a criminal offence, not because the loss is great but because the victim has been defined as “society as a whole” and not simply as the owner of the television. The kinds of harms a state chooses to socialize and the kinds it does not socialize are an important expression of social policy and that State’s vision of the ideal social order

Regulatory Law

Regulatory law anchors its force on legislation granting broad rule-making and rule enforcing powers to government agencies charged with overseeing the conduct of particular sectors of economic life such as business relations, labour relations, communication, transportation, and so forth. Regulatory law encompasses both the initial legislation creating these various regulatory bodies and the rules subsequently

¹⁰ R.J. Michalowski, 5

established by them. Actions taken under regulatory law occur most often not in courts but in the agencies, commissions and boards established by legislation.

Though regulatory law reflects certain characteristics akin to both civil and criminal law. It is like neither. Regulatory agencies, on their own initiative may actively investigate and adjudicate violators, just as police and courts seek to enforce criminal law. Like civil courts, regulatory agencies may serve as forums for the resolution of disputes between conflicting parties. Regulatory agencies also have at their disposal a number of options for regulating business behavior drawn from both criminal and civil law. For example, regulatory agencies, as is the case in criminal courts, may levy a penal sanction in the form of a fine paid to the state, but like civil courts, may arrange for the payment of damages to injured parties or order the individual or business to refrain from a particular practice. We conclude by, stating that regulatory law resembles criminal law in its concern for protecting the overall operation of a larger system rather than simply providing a forum for the resolution of individual disputes.

National Security

The goal of any government, irrespective of the type of government is to provide for the welfare and security of its citizens¹¹. The two words, welfare and security are not far removed from each other while welfare means “exemption from pain or discomfort”, security connotes the state of “being secure, specifically freedom from danger, risk, care, poverty or apprehension”¹². Therefore, as welfare seeks to exempt one, group of person or community from pain, security secures same class of people from danger, including pain and other similar discomforts. For the purpose of this work, the term security will encompass welfare.

However, the provision of the 1999 constitution indicates that National security should be seen as the security and welfare of the people¹³. In other words, national security is not security consigned to political elites or the upper-class but security for all citizens irrespective of class or creed. In this wise National Security is synonymous with peace and order, resource scarcity; threat to health; general well being of citizens; and most importantly development. It is the protection of life, property and well being of all citizens and the Nations territory from internal and external aggression and negative influence¹⁴. It has been argued that where security has been replaced by insecurity, development is stalled, life is threatened and anarchy becomes the prevailing norm. Kofi Annan anchored the need for security when, he asserted: “we will not enjoy development, without security. We will not enjoy security without development and we will not enjoy either without respect for human rights, unless all these causes are advance none will succeed”¹⁵.

The Rule of Law

For the goal of National Security to be realized there must be in place the rule of law. The rule of law technically refers to the maxim that an orderly society must be governed by established principles and known codes that are applied uniformly and fairly to all of its members. The social economic, and political stability of any society depends largely on the development and institutionalization of a predictable system of laws. The rule of law presupposes that no one is above the law, and those who make or enforce the law must also abide by it. For it is a government of laws not of men.

The rule of law envisages the following elements:-

- ❖ Freedom from private lawlessness provided by the legal system of a politically organized society.

¹¹ See section 14 (2)(b)

¹² The New *International Webster's Dictionary and Thesaurus of the English Language International Encyclopedia* Edition, (Canada: Typhoon International corporation, 2011), p. 2011

¹³ C.C. Ekweku, *Civilian And Security Agencies coexistence for sustainable Development*, In: S.L Mohammed *civilian and security Agencies Relationship: Role of the police Towards Building An Equitable and Democratic society*. (Nigeria: Friedrich Ebert Stiftung, 2006), p. 24

¹⁴ Kofi Annan, former secretary General of the United Nations.

¹⁵ K. Annan, In: S.L. Mohammed (ed) *Ibid*.

- ❖ A relatively high degree of objectivity in the formulation of legal norms and a like degree of evenhandedness in their application.
- ❖ Legal ideas and juristic devices for the attainment of individual and group objective within the bounds of ordered liberty.
- ❖ Substantive and procedural limitations on governmental power in the interest of the individual for the enforcement of which there are appropriate legal institutions and machinery.

Conclusion

Arising from the foregoing this paper concludes that law is a vital instrument in giving vent to National Security. Noting that security cannot thrive where there is absence of rule of law.