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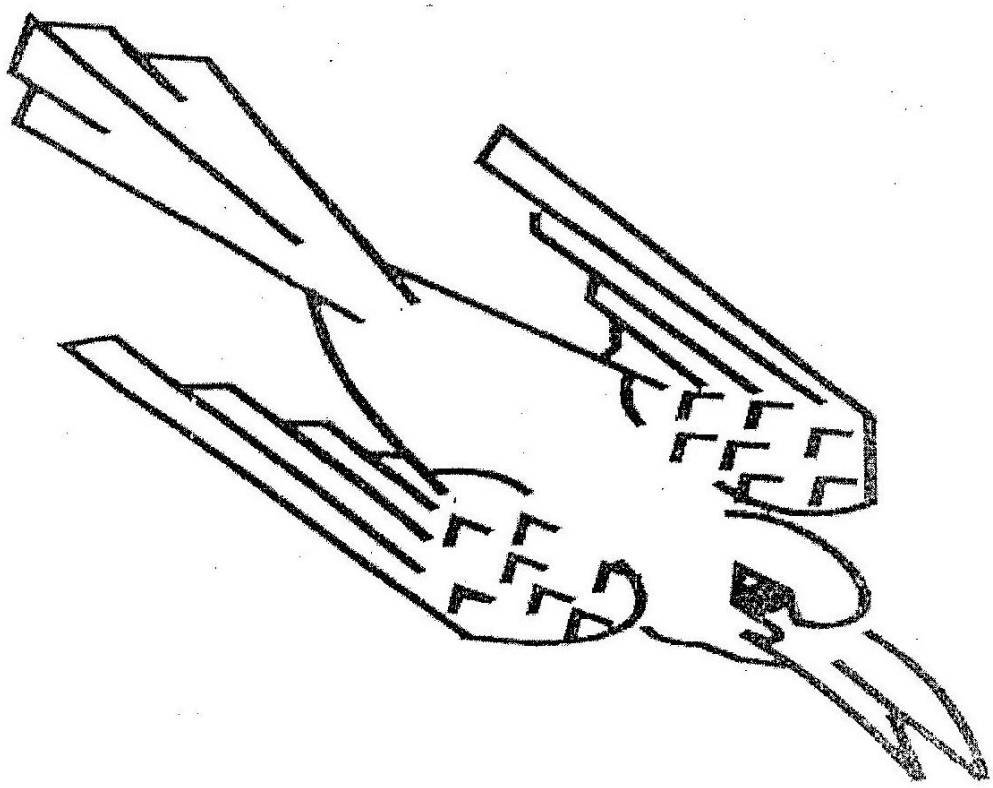

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Freedom of Speech: A Comparative Study of the United States of America & Nigeria

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The paper is an in-depth study of freedom of speech in the United States of America and Nigeria on a comparative basis. The paper begins with the basic advantages of comparative study, bringing out the existential realities of the United States of America and Nigeria's position on the observance of freedom of speech in a democratic dispensation. The paper continues with conceptualization of freedom of speech without necessarily being judgmental or definitional. As a comparative study, the third part dwells on freedom of speech in the U.S. The fourth part is on press freedom. Part five analyses freedom of speech and the press in Nigeria; bringing out the inherent problems.

Introduction

This study is basically a comparative analysis of freedom of speech in the United States of America (U.S.A.) and Nigeria. Comparative method is as old as political science itself. One way of looking at comparative politics is to see it as that branch of political science that deals with the differences and similarities in the way political systems conduct their political life (Blondel, 1969). Comparative politics as well as its method of inquiry is known to be the 'queen' of the broad field of political science (Wiarda, 1998:935). The reason for this is that comparison is the foundation of any systematic branch of knowledge. Scientists cannot work out how quickly smoking kills people first by looking at the life expectancy of smokers. They have to compare this with the life expectancy for an otherwise similar group of non-smokers. As the American political scientist – James Coleman – used to tell his students, 'you can't be scientific if you're not comparing' (Hague, Harrop and Breslin, 1993:23). It is within that perspective that this paper studies both the U.S. and Nigeria.

Conceptualizing Freedom of Speech

One of the components of the "Four Freedoms" (The title of an address to Congress in which President Roosevelt outlines his goals for world civilization shortly after the United States entered World War II), in American history, is that of freedom of speech. Freedom, as a concept, however, can be used in two major senses: 'freedom to' and 'freedom from'. Franklin Delano Roosevelt used the word in both senses in a speech he made shortly after the United States entered the Second World War. He described four freedoms – freedom of religion, freedom of speech, freedom from fear, and freedom from want (Janda, K., Berry, J.M., and Goldman J., 1992:11-12). According to Roosevelt, 'freedom to' is the

absence of constraints on behaviour. In this sense, freedom is synonymous with liberty. In contemporary political context, however, 'freedom from' often symbolises the fight against exploitation and oppression (Janda, K., Berry, J.M., and Goldman J., 1992).

According to the first amendment of the U.S. Constitution, "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances" (U.S. Constitution, 4th edition). The first amendment is the crisis of the democratic process in the United States. The first amendment forbids congress to pass laws restricting freedom of speech, of the press, of peaceful assembly, or of petition. It is a common knowledge that many people consider freedom of speech the most important freedom and the foundation of all other freedoms. The first amendment also forbids congress to pass laws establishing a state religion or restricting religious freedom (see, *The World Book Encyclopaedia*, cited in AWAKE! Jan. 8, 2003). Interestingly, in Cantwell Vs. Connecticut, 310 U.S. 296 (1940), a landmark decision involving Jehovah's Witnesses, the U.S. Supreme Court ruled that the first amendment guarantees preclude not just "Congress" (the federal government) but also local authorities (state and municipal) from passing laws that would unconstitutionally infringe on First Amendment Rights (*Awake!* 2003:5). In Nigeria, the constitution equally guarantees freedom of speech and it is also justiceable. According to the 1999 Nigerian Constitution Section 47(1), "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impact ideas and information without interference (see *The 1999 Constitution of the Federal Republic of Nigeria*). It is against this antecedent that the United Nations Charter adopted the Universal Declaration of Human Rights in 1948 (see The Universal Declaration of Human Rights, 1948). We now proceed to the evolution of freedom of speech in the U.S.

Freedom of Speech in the United States

Freedom of thought is a fundamental right in any democratic society. Speech (along with press and assembly) is simply the practical expression of that thought. A lively public debate was the hallmark of the colonial era, and the revolutionary years as well. This continued into independence, and was strengthened by the doctrine that government was the servant of the people, not their master. As much as the press and free speech could be obnoxious, there was unequivocal commitment to their protection (Spalding, 1992:53-60). This commitment became the focal point of debate after the Sedition Act was passed in 1798. "This act made it a penal offence to publish any false, scandalous, and malicious writings against the government, the President, or either House of Congress with the intent to bring them into disrepute or stir up hatred against them (Rogge, 1960:21). One argument made in support of the law was that the First Amendment allowed Congress to punish abuses of the press, since it protected its freedom (Rogge, 1960). Madison (cited in Janda et. al., 1992), argued vehemently against this

interpretation, saying that the power Congress had to "suppress insurrections" did not mean that it could restrict speech which led to insurrections. The First Amendment is worded so that "The Congress shall make no law ... abridging the freedom of speech, or of the press..." and Madison argued that this prohibition included any law providing for either prior restraint or subsequent punishment speech. This is a logical interpretation of such unequivocal wording, and as reflected in the twentieth century by Justice Black who said, "when the constitution says that Congress shall make no law, it means that Congress shall make no law..." Madison argued forcefully that "the federal government is destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libelous attacks which may be made on those who administer it" (Rogge, 1960). The government has no right, in the words of John Nicholas, to "assume a general guardianship over the morals of the people of the United States". Another contemporary of the Act suggested that it set up a civil priesthood, enforcing political orthodoxy and punishing political heresy, in imitation of the inquisition. The Sedition Act did not help President Adams win re-election, nor did it hinder the campaign of his opponent in 1800, Thomas Jefferson. The Act further never received judicial review, and expired according to its own terms in 1801. However, it was widely argued at the time, and since, that it violated the First Amendment.

Until the time of the Cold War and the fear of a socialist threat, speech and the press were not controversial issues; absolute protection was assumed. This can be seen, not only in objections to the Sedition Act, but also in the debate which raged over the promulgation of abolitionist (i.e. anti-slavery) literature. The proposal was made that the postal service would be forbidden to carry such materials, since they were instrumental in stirring up controversy and hostility between the north and the south, and might lead to a bitter insurrection (which of course occurred nearly thirty years after that debate). However, even southern Senators who were bitterly opposed to the abolitionist movement and its literature refused to allow federal restrictions of freedom of speech and the press, based on a supposed conflict with the First Amendment. So in the early history of the United States, attempts to limit speech were seen as unconstitutional and illegitimate.

The contemporary example of struggle for free speech in the US occurred in Stratton, Ohio (*Awake!* Jan. 8th 2003). This small community of fewer than 300 inhabitants suddenly became a centre of controversy in 1999 when the authorities there tried to obligate Jehovah's witnesses, among others, to obtain a permit before visiting the homes of the local people with their Bible-based message. The source of the latest conflict was a village ordinance "Regulating Uninvited Peddling Property", which required anyone willing to engage in door-to-door activity to obtain a permit, at no cost, from the Mayor Jehovah's Witnesses viewed this ordinance as an infringement of freedom of speech, free exercise of religion, and freedom of press. Therefore, they filed a law suit in a federal court after the village refused to modify their enforcement of this ordinance.

On July 27, 1999, a hearing was held before a US District Court Judge for the Southern District of Ohio. He upheld the constitutionality of the village's permit ordinance. Thereafter, on February 20, 2001, the U.S. Court of Appeals for the Sixth Circuit likewise affirmed the constitutionality of the ordinance. For the issue to be settled, the Watchtower Bible and Tract Society of New York along with the local Welesville congregation of Jehovah's Witnesses requested that the U.S. Supreme Court review the case. After a long drawn legal battle, the decisive day came on June 17, 2002, when the Supreme Court published its written opinion. The lower court decisions against Jehovah's Witnesses were reversed by a vote of 8 to 11. The opinion of the court stated: "for over 50 years, the court has invalidated restrictions on door-to-door canvassing and pamphleteering. It is more than historical accident that most of these cases involved First Amendment challenges brought by Jehovah's Witnesses, because door-to-door canvassing is mandated by their religion (*Awake!* Jan. 8th 2003). As we noted in Murdock vs. Pennsylvania (1943) (see Spalding, 1992). This has shown that in the U.S. freedom is still being fought for.

Press Freedom: A Comparative Perspective

Freedom of speech is an essential component of the inalienable rights of man. Therefore, freedom of the Press is the right or the ability of practitioners to express their views, opinions or report events as they are without necessarily seeking approval from any person(s) and without being subjected to any form of intimidation, molestation, persecution or harassment. This is given credence to by Section 36(1) of the 1979 Constitution of the Federal Republic of Nigeria, which stipulates 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.

Article 19 of the United Nations Universal Declaration of Human Rights 1948, similarly stipulates that:

> Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideals through any media and regardless of frontiers (cited in *Awake!* Nov. 22, 1998:10).

Be that as it is, there are two types of press freedom. First, there is what is known as absolute press freedom and second, there is a qualified press freedom. The former is a situation whereby the press is wholly free and serves its audience without being subjected to any form of harassment and intimidation. It needs be emphasized that there is no polity in the world that enjoys this kind of utopia freedom of an absolute. Advanced democracies are only close to it.

The latter, (qualified press) however, is a system where the press is not all that free to perform its functions. Nigeria appears to be a model of qualified press freedom. The existence of the official Secret Act of 1962 is indeed a clog. It stipulates some 'no go areas' for the press access to vital information which may not be in the best interest of the government to release, Akinfeleye, observes that conflicting argument on the amount of freedom, the press in Nigeria should enjoy continues to mount. According to him:

> ... the Nigerian press has argued in favour of total freedom of the press, the Nigerian government, on the other hand, has told the press that it is asking too much ...(cited in Sadeeq, 1993).

There are other laws like those of defamation of character, libel and sedition, all of which, in one way or the other, serve to tame the media or to completely cow them. Several other factors that do truncate media effectiveness in developing countries generally and Nigeria in particular will be well analyzed while commenting on constraints of the media in Nigeria vis-à-vis its potency. But it needs be emphasized that the media in Nigeria requires to be strengthened for it to do its job of watchdog more effectively. So, the challenge before mass media organizations including the Nigeria Union of Journalists (NUJ) and the Guild of Editors among others is to fight for the inclusion of specific provisions in the constitution guaranteeing press freedom. The argument that the press does not need such specific provisions guaranteeing its freedom, apart from that providing for freedom of speech is no longer tenable. A lot has been written about the invidious implications of the mass media commission provision in the Abacha Constitution of 1995 on the press. For instance, Igiebor (1998) argued that the commission will at best go a long way to cow the press rather than strengthen it.

Unlike the three other arms of government which have constitutional provisions establishing and protecting them and well enshrined in the constitution of the Federal Republic of Nigeria (1999), giving each and every one of them liberty and freedom to operate independent of the other(s). The constitutional provisions relating to the press or press freedom are very omnibus, if not nebulous. Section 39 of the Constitution provides thus:

> 39(1) every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideals and information without interference.
> (2) Without prejudice to the generality of sub-section (1) of this section every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideals and opinions, provided that no person, other than the government of the federation or of a state or any other person or body authorized by president on the fulfillment of conditions laid down by an act of the National Assembly, shall own,

establish or operate a television or wireless broadcasting station for any purpose whatever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society. For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulation telephony, wireless broadcasting, television or the exhibition of cinematography films; or (b) imposing restrictions upon persons holding office under the government of the federation or of a state, members of the Armed Forces of the federation or members of the Nigeria Police Force or other government security of agencies established by law (see *The Constitutions of the Federal Republic of Nigeria, 1999*).

In order to appreciate the inconsequential nature and texture of section 39 of the constitution, it is necessary to refer to the constitutional provisions of other nations or democracies relating to press freedom. We refer to the first amendment to the United States constitution which provides as follows: "congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the government for a redress of grievances" (Janda, et. al., 1992) Section 162(4) of the constitution of Ghana reads thus: 'Editors and Publishers of Newspapers and other institutions of the mass media shall not be subject to control or interference by government nor shall they be penalized or harassed for their editorial opinions and views, or the contents of their publication". Section 36 of the Constitution of Malawi enacts thus: "the press shall have the right to report and publish freely, within Malawi and abroad and to be accorded the fullest possible facilities for access to public information.

We have deliberately juxtaposed the constitutional provision relating to the press in the U.S.A. which is a foremost democratic country in the world with those of Nigeria, Ghana and Malawi, three developing countries in Africa in order to prick the conscience and question the intelligence or debunk the rationale behind the argument of those who belong to the school of thought that the Nigerian press has been imbued with sufficiency of freedom under our constitution and, as such, there is no need to amend the constitution to specifically provide for the independence of the press (Olanipekun, 2000:18).

It needs be added that there is virtually no system with unfettered Press freedom, no matter how mild. It is no wonder, there is the consensus that some restraints should be placed on the mass media for the benefit of the society. In explaining the reasons for placing limitations on freedom of the press in all societies, Sawant (2000:21) has this to say:

> The well organized and commonly accepted grounds on the basis of which restrictions are placed on free speech and press freedom are the need to safeguard the sovereignty, integrity and security of the state, to

promote friendly relations with foreign states, to maintain public order, to preserve decency and morality, to uphold the dignity of the courts, to protect the privacy of the individual's life and to prevent crime and violence.

There are two broad categories of media control acceptance in a democratic society. The first category comprises legal restraints. In this regard, the consensus is that "Freedom of the Press may be restricted by law for a social objective acceptable under universally accepted provisions of international law, in particular Article XIX of the Universal Declaration of Human Rights and Article XIX of the International Convention on Civil and Political Rights". Probably the most tenious restrictions of a legal character arise from such concepts as 'official secrets', 'classified information', and 'security' ... such vague wordings as 'forbidden areas', as 'any matter relating to the security of the republic can be open to very broad or narrow interpretations the very indefiniteness of which often forces journalists and editors to apply self-censorship constrictions on their work" (Sawant, 2000). The second category of restraints on the mass media is journalistic ethics, which is self legislation as opposed to official or government legislation through outside compulsion, which is characteristic of law. Though, one serious problem with self-regulation through codes of ethics lies in the enforcement of such codes (Sawant, 2000).

Freedom of Speech and Press in Nigeria

The 1979 Constitution that provided for freedom of speech and of the press remained suspended during the first five months of the year 1998 before the death of General Sani Abacha. However, under Gen. Abdulsalam Abubakar the Government significantly relaxed the restrictions on freedom of speech and of the press that had been instituted during the regime of Sani Abacha. The new Constitution promulgated in May 1999 restored these freedoms, and under the regimes of both Abubakar and Obasanjo, the Government generally respected these rights except a few exceptions.

Although there is a large and vibrant private domestic press that is frequently critical of the Government the Government also owns or controls many publications. Under General Abubakar, all newspapers and magazines legally, were required to register with the Government in accordance with the Newspaper Registration Board Decree 43 of 1993. However, most newspapers (for example *The Punch, Nigerian Tribune and Daily Sketch* among others) refused to register and were not punished for doing so. Shortly before Abubakar transferred the Government to the civilian administration in May, he abrogated Decree 43 and its registration requirements, based on his conviction that the press would fare better if it were monitored by its own control mechanism. This mechanism was the Nigerian Press Council, which was saddled with the responsibility of enforcement of professional ethics and the sanctioning of journalists who violated these ethics.

However, the Press Council soon became a subject of controversy, with most journalists describing it as a subtle means of censorship (Young Jr., 2000:28-31).

The decrees creating the Nigerian Press Council (Decree 60) was signed into law in the last days of the Abubakar regime and immediately was criticized by the media as undisguised instrument of censorship and an unacceptable interference with the freedom of the press." Decree 60 replaced the abrogated Decree 43 and attempted to put control of the practice of journalism into the hands of a body of journalists who received payment from the Government. The NUJ, the professional association of all Nigerian journalists and the Newspaper Proprietors Association of Nigeria (NPAN), rejected the creation of the Press Council. Claiming that the Decree establishing the Press Council contained similar provisions to the abrogated Decree 43 (Young Jr., 2000). The NPAN called the Decree unconstitutional and a violation of press freedom, as there already were enough laws concerning the operation of the press. The Decree, which virtually made members of the council employees of the Government, also contained a number of provisions inimical to the operation of a free press. It gave the Press Council the power to accredit and register journalists and the power to suspend journalists from practicing. Like the abrogated Decree 43, Decree 60 required that publications be registered by the council annually through a system entitled "Documentation of Newspapers". In applying for registration, publishers were expected to submit their mission statements and objectives and could be denied registration if their objectives failed to satisfy the Council. The penalties for practicing without meeting the Council's standard were a fine of $2,500 (250,000 naira) or imprisonment for a term not exceeding three years. The Decree also empowered the Council to approve a code of professional and ethnical conduct to guide the press and to ensure compliance by journalists. Under the Decree, publishers were expected to send a report of the performance of their publications to the council; failure to do so was an offence that carried a fine of $1,000 (140,000 naira). The Nigerian Press Council continued after Obasanjo's inauguration. In fact, the former Information Minister Dapo Sarumi, expressed the view of the new civilian government that the Council would continue to operate, by saying that "it is in line with journalists' demand." At year's end, that is 1998, the Council had not yet begun operating, but remained on the books in principle. The new Constitution also removed the Mass Media Commission (included in the 1995 Draft Constitution), which aimed at regulating the conduct of journalists and restricting the circulation of newspapers and magazines to their states of operation (Young Jr., 2001).

However, with the advent of democratic rule in May 1999, Nigerian press became more vibrant. A few examples of the exploit of the mass media vis-à-vis watchdog role has been commendable. For instance, barely a year into the nascent democracy, the Speaker of the Federal House of Representatives was exposed by *The News* magazine – an independent press – of certificate forgery and perjury. In his biography which he submitted for election, Alhaji Salisu Buhari purported to be 36 years of age and to have attended the University of Toronto, Canada.

whereas, he was younger and had never attended university. In an exclusive report entitled "The Face of a Liar". The magazine disclosed that the Speaker was a cheat. At the end of the day, the Speaker admitted that he forged his birth and academic certificates. He was removed as the speaker of the House, exposed by the press of lying about his age to surmount the 30 years minimum age requirement the constitution places in the way of candidates contesting election into the House of Representatives. He was eventually tried and convicted of forgery and perjury and sentenced to jail on August 5, 1999 by an Abuja Chief Magistrate Court (*The News*, August, 1999). Immediately after the removal of the former Speaker, another privately owned news magazine ran a story about the Senate President – Evan(s) Enwerem. He too was accused of having a questionable past, which ought not to have given him the privilege of becoming a number three man in the hierarchy of public office holders in the country (*Tell*, June 9, 2000:19) He too was impeached. As the vanguard of the nascent democracy and banking in the euphoria of the new found freedom of speech, the mass media equally discovered financial recklessness on the part of the successor of Ewerem as the Senate President, Dr. Chuba Okadigbo. In view of the persistent media 'war' against him (Okadigbo), the Senate set up a probe panel to investigate him. Off he went like his predecessors, having being found guilty of corrupt practices too (*Tell*, 9th June, 2000). In less than two years of democratic experiment, Nigerians had three Senate Presidents and two Speakers of the House of Representatives for no other reason than an expose of corrupt practices by the mass media (*Tell*, June 2000 and *The News*, May, 2000). No doubt, there is better liberty as regards freedom of speech in the current democratic era in Nigeria.

Concluding Remarks

This paper comparatively studied both the U.S. and Nigerian's systems as regards freedom of speech. We have noted that though America is an advanced democracy in all ramifications the struggle for freedom of speech in that society is still a recovering event. Perhaps, because there is no system that is perfect American society still needs to put in more effort. On the other hand, Nigeria's political system is really too far away to the American system in terms of observance of human rights most especially freedom of speech. Though there are no legal or constitutional inhibitant to press freedom in Nigeria from May 1999 when the military handed over the reigns of government to the civilians, but there are a number of informal ways by which the mass media is still being covered. In a number of states electronic media are directly under the control and supervision of the chief executives. For instance, in year 2000, in both Kwara and Oyo States, the management teams of the state-owned radio and television stations were sacked and women imposed as their General Managers.

Despite the current democratic dispensation opposition parties are still disallowed from the use of the state-owned radio and television station even if they are to pay for it which is a serious curtailment of their freedom of speech. In essence, the kind of political culture in Nigeria is not congruent to democracy.

This disposition is not unconnected with the political culture of Africans in pre-colonial era. The tradition is such that criticism of public office holders was regarded as a sort of disrespect. A typical example was an extensive report in the *Sunday Tribune* of 11th July, 2003 in respect of the arrest and incarceration of Kano State correspondent of the *Nigerian Tribune* on a report on the ethno-religious crisis in Kano. The hang over of this pre-colonial culture is still prevalent in Nigeria. Thus, we still have to borrow a leave from the American system where freedom of speech is extensively observed. However, from this study most especially the experiences of the Jehovah Witnesses, the American system too is yet to reach the much desired 'eldorado'. This is not unconnected with the fact that no system is wholly perfect.

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