

TAMING THE AFRICAN TRADITIONAL PERSPECTIVE IN THE FIGHT AGAINST CORRUPTION*

Abstract

An understanding of the underlying root cause of corruption and probably the best way to combat corruption in Africa must require an appreciation of the conceptual issues and frameworks from purely African perspective, cumulatively acting in concert to produce a mental disposition, accommodating or not, a psychological predisposition to whether or not the fact that corruption should be criminalized, provided that the accused is properly so identified only if, the accused is located outside the ethnic hegemony of the perceived law enforcement agency or perhaps, the host society. These often times peculiar perspectives were systematically trapped and itemised as: convergences bordering on corruption of principles (ontic/spiritual/axiological corruption), corruption of moral behaviour, corruption of people (social corruption), corruption of organisations (institutional corruption), corruption of states (national/societal/cultural corruption), the social influence of the individual in the society which ultimately leads to the social and economic dualism, moral economy or economy of affection, Africa's alien state disposition as well as the effect of division or schism in African state. It was against this backdrop that the author argued that a combination of the above identified African disposition to fight corruption will produce an impactful understanding of the rationale behind Africa's tendency to fail in the fight against corruption. The paper therefore maintained that not until these factors are addressed, the fight against corruption will continue to be a herculean task.

Keywords: Africa, frameworks, Corruption, Society, secular, morality, ethics, ethnic, heterogeneous, challenge, legislations, government, social, economic, governance.

1. Introduction

There is in existence numerous instruments, both local and international seeking to compartmentalize the scope and generally the constituents of the offence of corruption. Arguments have been put forward maintaining that corruption is a social menace and hence, there is need to combat corruption through concerted international and domestic efforts. Consequent on the above, Dion adopted the definition of Waldman on corruption as including the following components:¹

- I. A public official,
- II. Who misuses his authority, position, or power, and as a result,
- III. [Who] violates some existing, legal norm in his or her particular country.
- IV. The corrupt act is usually done in secret, and
- V. Is for personal gain in wealth or status or in preferment of family, friends, ethnic or religious groups.
- VI. In collusive forms of corruption, an outside party is involved (e.g. foreign businessmen).

Flowing from this definition, it is evident that the main agent of corruption goes beyond a public official, but extending to three possible combinations of actors. Okogbule in his work recognized that corruption is a universal phenomenon and therefore analysed the Nigerian situation as implying an amoral perspective towards any corrupt practice. The learned writer presented corruption as a social construct. That is to say that the perception can vary over time and place. This viewpoint indicates and evidences why the fight against corruption has proved to be among the most theoretically difficult and practically controversial issues facing governments. There is the need to understand the associated conceptual issues and theoretical frameworks which operates to either help in the fight against corruption or intrinsically militates against whatever progress that should be achieved in fighting corruption.

Corruption has many negative consequences for societies, among them high economic and social costs. However, this phenomenon is difficult to define or measure. Despite their

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¹Dion Michael, 'What is Corruption Corrupting? A Philosophical Viewpoint [2010] *Journal of Money Laundering*, 30

various limitations, indicators based on citizens' and experts' perception of corruption have become the most widely used measurement tool.²

Notwithstanding the impactful devise of the above researchers, there is ample need to relate the fight against corruption within the conceptual trappings of happenings and idiosyncrasies of African States. To this end, we may conveniently tend towards achieving a robust understanding of the heuristic but sociological factors informing and accommodating such theoretical frameworks appertaining to the psychology of Africans in the fight against corruption. Significantly, there are other identified convergences bordering on corruption of principles (ontic/spiritual/axiological corruption), corruption of moral behaviour, corruption of people (social corruption), corruption of organisations (institutional corruption), corruption of states (national/societal/cultural corruption), the social influence of the individual in the society which ultimately leads to the social and economic dualism, moral economy or economy of affection, Africa's alien state disposition as well as the effect of division or schism in African state. An understanding of these psychological factors will redound vigorously in appreciating the root cause of corruption as well as the need for a concerted effort in the fight against corruption. The paper will examine the underpinning theory upon which 'corruption' is and has been associated with man and society. An understanding of the frameworks will assist in further exploring the objective as well as proffering schemes for combating the menace of corruption in Nigeria, more particularly, taking into consideration the implicated notions of secularity and heterogeneous complications. This will progressively assist in locating the root cause which has been approximated to 'psychological dispositions of the participants in the context of a studied African society inclusive of Nigeria.'

2. Theoretical Framework³

The theoretical framework for this paper is built on positive law as well as being confined to ethical philosophy. With respect to the latter, there is this moral expectation that man in his transaction or while acting as agent of state or a private concern is and should observe good faith in all his dealings. Therefore, acts leading to personal gain in wealth at the expense of the principal should be avoided and deprecated in strong terms. While acting as an agent, there is a duty of trust laden on him. Consequently, failure to observe the duty or any form of breach should attract or activate the machinery of the state in redressing the wrong. There should be a well-established machinery of the state charged with elevating competing and contending values to effective laws.⁴ It is the contention of the learned writer that once a piece of ethical value has been transmuted to law, ultimately the goodness or badness becomes irrelevant. Reference to the law is made to its characteristic as a positive law and no longer as something dug up from the regime of morality-ethical value.⁵ In the light of the above, corruption is deductively a menace which is criminalised through the instrumentality of known subsisting multifarious legislations in the country.⁶

Corruption defies a precise definition. Therefore, efforts to conceptualise corruption is bound to have some jurisprudential problems. Corruption is a term strewn in socio-economic and political conditions.⁷ Against this backdrop, corruption has become a huge challenge to natural (ethics) and positive laws. The menace of corruption is an affront to normative philosophy. Normative philosophy, as a matter of fact, contemplates formulating general ethical principles capable of rational justification and utilization in the process of deciding issues of rights and wrongs as well as lawful and unlawful in the regime of

² Piotr Bąkowski and Sofija Voronova, 'Corruption in the European Union: Prevalence of Corruption, and Anti-Corruption Efforts in Selected EU Member States, [2017] European Parliamentary Research Service, Members' Research Service, 1<[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/608687/EPRS_STU\(2017\)608687-EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/608687/EPRS_STU(2017)608687-EN.pdf)> accessed 24 November, 2020

³This is focused on the philosophical origin as well as the nature and scope of the theory of corruption.

⁴Anya, K .A., 'Moral Rules, Effective Laws and the Nigerian Society,' [2009] (8) *Igbinedion University College of Law Journal*, 68-83

⁵Ibid.

⁶See legislations such as: criminal code, penal code, the economic and financial crimes codes, the independent corrupt practices Act-all Nigerian legislations aimed at combating corruption as well as criminalizing it.

⁷Igbinedion N, 'Corruption and the Anti-Corruption Legislations in Nigeria-A Critique' [2004] (7) *University of Benin Law Journal*, 139, 144, 146. See also Ubeku, A.K., '*Socio-economic Foundations of Corruption and Crimes in Nigeria*, in Kalu, A.U & Osinbajo, Y., (eds.) *Perspectives on Corruption and other Economic Crimes in Nigeria*, p. 9

law.⁸ Incidental to natural law cum normative philosophy is the ‘right-duty’ correlative and the ‘others regarding duty’ in juxtaposition to ‘self-regarding duty,’ which the regime of corruption is burdened with-especially the parties; ‘corrupter’ and ‘corruptee,’ considered holistically, in an effort to ensure a corruption free legal regime. Furthermore, the positive law school acknowledges as rights or duty, such positive rights and/or duty, duly recognised by law. Szabo argues that rights are either incorporated in the national or municipal laws as citizens’ rights.⁹ Fundamentally, corruption is a negation of duty imposed by law for breach or abuse of trust in preference for personal gain in wealth. Corruption as earlier observed is strewn in socio-economic realms. Consequently, laws appertaining to combating corruption are situate in the regime of criminal, finance and economic, company and banking laws.

There is a growing jurisprudence that the centrality of corruption to facilitating money laundering related threats such as drug trafficking, prostitution, small arms trafficking, illegal currency trafficking ‘has destroyed the myth that corruption is a domestic political issue to be left for individual states.’ There is this perception that corruption is a third world problem, this is far from the truth. According to Carr, corruption is indeed a global problem and its effect is felt in both the developed and developing countries.¹⁰ Corrupt practices as indicated by the World Bank Institute tend to economically harm the nation’s wealth and the prosperity of its citizens. Furthermore, there are instances where corruption is committed for personal gain, and again where corruption is committed for the benefit of the organisation itself.¹¹

Following the preceding illuminations there are observed three types of organisational corruption.

Procedural Corruption

This is when employees at all or some levels of the organisation do not follow or are not mandated to follow (ethical) procedures of business conduct, the corrupt outcome is defined as procedural corruption.¹²

Schematic Corruption

[Assuming]¹³ If the organisational environment requires frequent bribery and pay-offs to politicians and bureaucrats for conducting daily business, corruption will become part of the *modus operandi*.¹⁴

Categorical Corruption

Assuming it is observed, a large multinational corporation consisting of several subsidiaries that are highly diversified and geographically spread in a given country. In this case, subsidiaries located in countries with an expectation that unethical or corrupt means will be used to survive, portends evil, in the sense that corruption is likely to be concentrated in only those particular subsidiaries. Therefore, one observes concentrated or categorical acts of corruption in such multinational corporations.¹⁵

3. Subsisting African Psychology Hampering combat of Corruption

There is the desired need to address the philosophical question of corruption. There are diverse connections identified in the process of considering the perspectives of some philosophers over corruption, especially in the 21st century. A proper perspective of corruption must accommodate the impact of globalisation in this 21st century.¹⁶ It is therefore possible to harness the components of corruption in order to reflect pre-21st century and post 21st century philosophies.

⁸Anya, K.A., *Normative Ethics in the Nigerian Law*, (Berkings Educational Research Center, 2010) 1, 3.

⁹Szabo J, *Theoretical Foundations of Human Rights*, (New York: Isle Books, 1999) 23

¹⁰Carr Indira, ‘Corruption in Africa: Is the African Union Convention on Combating Corruption the Answer?’ (2007) (1)(2) *Journal of Business Law*, 1-23; See generally, Bąkowski and Voronova (n2)

¹¹Aguilera, R.V. and Vadard A. K., ‘The Dark Side of Authority: Antecedents, Mechanism and Outcomes of Organizational Corruption,’ [2008](77) *Journal of Business Ethics*, 431-439

¹² Ibid, at p. 441

¹³ This is a window to understanding the raised question.

¹⁴ Aguilera and Vadard (n1) 442

¹⁵ Ibid, at p. 443.

¹⁶Dion Michael, (n1) 2

Corruption of Principles (Ontic/Spiritual/Axiological corruption)

The corruption of principles is expressed through a corruption of soul, a corruption of human nature or a corruption of political principles.¹⁷ With respect to corruption of soul, Lucillus in his letter to Seneca emphasised on corruption of language throughout history.¹⁸ He reasoned that the language used during a given era is reproducing the collective and historical moral rules and values which were enhanced in those years.¹⁹ According to him corruption of 'ways of life' is sometimes very well accepted in the society, particularly among the wealthiest.²⁰ He therefore criticised the ways rich people welcome various human vices as different forms of blessing...and added that wrong ways of life will be disastrous for a given soul which is not in a state of equilibrium.²¹ Significantly and by implication, a weak soul will be much hurt by wrong ways of life than a strong spirit. Consequently, corruption in a society operates to weaken the weak, poor and deprived usually much more than the effect on the strong, rich and privileged. Therefore, it is in the overall interest of the society to form solidarity to combat corruption and by so doing, invariably check the harmful effect of corruption on her citizenry, who remains at all material times in the large percentage of the total population of the given society.²² With respect to the corruption of human nature-'spiritual corruption'²³ Plato argued that evil is what corrupts and destroys, while good is what benefits and preserves. Furthermore, Aristotle employed the term corruption when he discussed a given state of things or bodies.²⁴ According to him, generation is a corruption of non-being, while corruption is a generation of non-being.²⁵ A given thing is corrupted when it is transformed in non-being. The term corruption is then used in order to explain change in living and sensitive beings.²⁶ He therefore maintained that: corruption is only possible for beings which could 'not to be.' Generation, as well as corruption, is only available to those beings which are able to be and not to be.²⁷ Scholars such as Augustine also commented on the negative quality of corruption by observing that what is subjected to corruption can never be good. Only God is incorruptible.²⁸ Consequent on this, Dion quipped:

Every nature can become less good is good, and every nature becomes less good when it is corrupted. For either corruption does it no harm, in which case it is not being corrupted, or else it is indeed corrupted, in which case the corruption does in fact harm it. And if corruption harms it, it diminishes its goodness to some extent and thus makes it less good. If corruption leaves it bereft of any good at all, then whatever is left cannot be corrupted. For corruption can inflict no further harm, since there is no goodness left for it to take away. But if corruption cannot harm a nature, that nature cannot be corrupted, and if a nature cannot be corrupted, it is incorruptible. This leads to the absurd conclusion that a nature becomes incorruptible by undergoing corruption. Therefore, we must say that every nature is good insofar it is a nature. It is better than a corruptible nature, and if is a corruptible nature, it is undoubtedly good, since corruption makes it less good. Therefore, every nature is good.²⁹

Similarly, Pascal draws his divine nexus to corruption of man in the following term:

...That the nature of human beings is corrupted from God, because of the fall. Fall is then symbolizing that human being has lost God's presence. Owing to the fall, human beings have a corrupted nature, that is, an imperfect nature which is the direct consequence of God's absence. Fall then represents the universal corruption of humanity.³⁰

¹⁷Ibid

¹⁸ Seneca (1954), *Lettres a Lucillus*, 'vol III, eds. Garnier Freres, Paris. Cited in Dion, note 10 at p. 2

¹⁹ Ibid, at p. 227.

²⁰ Ibid.

²¹ Ibid.

²² Cf. the utilitarian school, the greatest benefit to the largest population in the society.

²³ Plato, *The Republic* (Oxford University Press 1967) 342

²⁴ Aristotle, *Politics*, (The Modern Library, 1943) 58, 59

²⁵ Aristotle, *De la generation et de la corruption*, Paris, Librairie Philosophique J. Vrin, (1951) Pp. 35, 36

²⁶ Ibid.

²⁷ Aristotle (n 24) 139

²⁸ Augustine, *Les confessions*, (Garnier Flammarion,1964) 134

²⁹ Dion Michael (n1)14

³⁰ Pascal B, *Pensees Coll*, 'Livre de vie,' Paris No. 24 Seuli, (1962) 221, 324

There is also the corruption of political principles-axiological corruption. This perspective is of thought is represented by the French scholar Montesquieu, who argued that when the principles are corrupted, honour is lost. Even the moral quality of citizens is decreasing, so that the political system is entering into a phase of progressive self- destruction.³¹ Most of the time, the corruption of a given state was preceded by the corruption of political principles.³² Those principles are presented as principles of government. Indeed, they reflected basic values such as equality, mutual respect, and social justice.³³ Consequent on this, we could conveniently refer to this phenomenon the ‘axiological corruption.’³⁴ Flowing from the above are certain relevant variables: The principle of democracy-such principle is corrupted when we lose the spirit of equality between all human beings, but also when followers claim the same privileges that their leaders actually hold.³⁵ Again there is the principle of aristocracy: it is corrupted when the power of nobility becomes arbitrary.³⁶ There is equally the principle of monarchy. It is corrupted when monarchs lose the respect of their people, or when they become much less concerned by social justice than by their own political power. This is also corrupted when people no longer feel their connexion towards their nation, that is to say loss of patriotism.³⁷ It has also been argued that the principle of a despotic government is continuously corrupted since it is corrupted by its own nature. Based on this Montesquieu maintained that when the principles of government are corrupted, even the best laws become the worst ones. Such laws are negating the integrity of the state, so that the state itself is subjected to corruption.³⁸

In summation, there is a thin thread which runs across the identified corruption of principles inclusive of a corruption of the soul, a corruption of human nature, or a corruption of political principles. The three regimes remain of corruption remains the basis for any further corrupt behaviour, whether or not, in business or in public administration. Therefore, the origin of any act of corruption is the fact some basic principles have become corrupt.

Corruption of Moral Behaviour

It has been argued that moral corruption includes the corruption of practices and customs. The corruption of morality is basically due to the corruption of the reason and the perversion of the heart.³⁹ This is also expressed in the various forms of perverted government. Pascal opined that the corruption of the reason creates unethical parameters, so that any unethical behaviour is then perceived as quite normal or unavoidable.⁴⁰

In the light of the above, when morality is corrupt, government is usually perverted. Aristotle indeed used the term perversion to reflect given forms of government in which community is no longer a society of free persons.⁴¹ In fact, those forms of government focusing on the interests of the ruler and/or his friends and relatives (or any specific social group) are perverted forms of government.⁴² Based on this, Aristotle referred to it as a despotic form of government, while perverted forms of government have unjust laws.⁴³ Furthermore, Zekos maintains that the harmonisation of ethical principles in business could contribute to stop the use of corruption related words; the corruption of principles could only be annihilated through the introduction of universal ethical principles.⁴⁴ Thus according to Zekos, this scenario involves a consideration of the ethical dilemma associated with business corporations, that is to say, business leaders as well as their employees are choosing the most profitable course of action,

³¹ Montesquieu, *De L'Esprit des lois, les grands themes*, Paris, Collidees, No. 211 Gallimard (1970) 116, 117

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Dion Michael (n1) 4

³⁶ Ibid.

³⁷ Ibid.

³⁸ Montesquieu, *De L'Esprit des lois, les grands themes*, Paris, Collidees, No. 211 Gallimard (1970), Pp; 116, 117 at 133-148

³⁹ Dion Michael (n1) 5

⁴⁰ Pascal B, *Pensees Coll.*, 'Livre de vie,' Paris No. 24 Seuli, (1962) 221, at 280.

⁴¹ Aristotle (n24) 138-139.

⁴² Dion Michael (n1)

⁴³ Aristotle (n24) 149

⁴⁴ Zekos, G.I, 'Ethics Versus Corruption in Gloabalization,' [2004] (23) (7) *Journal of Management Development*, 11

although it implies unethical behaviour, or they conform themselves to their personal and organisational ethical norms. In both cases, there is a high risk that their choice could ‘drive their company out of business.’⁴⁵ In the first case because of the legal pursuits against the economy, while in the second case, apparently because of the loss of its competitiveness on the globalised markets.⁴⁶

Corruption of People (otherwise called Social Corruption)

The corruption of people is manifested in a threefold manner: either through crimes, or through greed, or even through the love of power.⁴⁷

Emergence of Crimes

Plato considered emergence of criminal conducts and argued that:

The highest form of injustice is actualised ‘when we seem just while we are not.’ There should never be any case where someone has apparently pure or virtuous reputation, while committing the worst crimes. When most of people are law abiding in a given country, there could be a small number of people who commit low-scale crimes, such as thieves, pickpockets and kidnappers.... Such crimes, are not a very important matter until the number of criminals remains quite low. As soon as their number is growing, even small-scale crimes become a deep social concern.⁴⁸

Furthermore, Aristotle examined the nexus between a state and the duty of preventing criminal acts. According to him, ‘a state is established in order to prevent crimes and to favour social and economic exchanges. That rich people own many goods and advantages, so that they have high propensity to protect them by all means, including crimes.’⁴⁹ Based on this, he concluded that a good ruler is incorruptible.⁵⁰ In the same vein, Montesquieu remarked that:

Crimes destroy all virtues, however when some individuals do not have an exemplary conduct, or when they neglect to accomplish their duties, or undertake some illicit action, they actually represent ‘seeds of corruption,’ so that virtues are continuously destroyed by their actions.⁵¹

Montesquieu invariably shared the viewpoint of Augustine that virtues dwell incorruptibly in the common truth and wisdom.⁵² Again, Hegel stated that a ‘crime is the first constraint exerted as violence by a free being who concretely hurts the existence of freedom. It is then a violation of law.’⁵³ In fact he concluded by saying that: ‘some actions are morally and universally wrong, so that those who undertake them actually know (must know) that what they are doing is morally wrong and universally considered as illicit. Such actions are indeed violating inner principles or external conducts of piety or justice.’⁵⁴

Greed

Rousseau opines that luxury corrupts both rich and poor: the rich are corrupted by possession, while the poor are corrupted by covetousness.⁵⁵ Furthermore, Tian maintained that very often in Asian countries, bribery is linked to a ‘gift-giving-ethos,’ so that bribery is not really perceived as a wrong, unethical behaviour. Bribes are then no longer a phenomenon of corruption, but rather the way friendship and social harmony are developed.⁵⁶ According to Tian:

It is particularly the case in China. The lines between gifts and bribes are often blurred. It has been argued that gift giving is not to blame because it is only part of a big picture of

⁴⁵Ibid, 644.

⁴⁶ Ibid, 645.

⁴⁷Dion Michael (n1)

⁴⁸Plato (n23) 46, 300

⁴⁹Aristotle (n24) 143, 185.

⁵⁰Ibid, 161

⁵¹Montesquieu, *De L'Esprit des lois, les grands themes*, Paris, Collidees, No. 211 Gallimard (1970), Pp; 116, 117 at 133-148

⁵²Augustine, ‘*On Free Choice of the Will*’ (Indianapolis, Hackett, 1993) 68.

⁵³Hegel GWF, *Principes de la philosophie du droit*, Gallimard-Paris, Coll. Ideas No. 28 (1940) 135

⁵⁴Ibid, at p. 180

⁵⁵Rousseau JJ, *The Social Contract and Discourses* (London, J.M. Dent & Sons/EP Dutton, 1977) 217

⁵⁶Tian Q, ‘Perception of Business Bribery in China: Impact of Moral Philosophy,’[2008] (80) *Journal of Business Ethics*, 443

Gaunxi [belonging to network of relationships] in China. In Chinese culture, gift giving is a natural dynamic of any relationship: it shows that a relationship is valued and is a means of expressing respect and honour for the other person. Chinese are very socially and situationally dependent and this may result in their special way of gift giving. As social principle, reciprocity consists of permanent relations of interdependence between persons, families, and clans. These relationships are binding and (if formed between families or clans) potentially eternal. Reciprocity is often described in terms of gift giving, and reciprocal relationships are ideally friendships comprised of exchanges of gifts and favours. This is mainly because Chinese consider that it follows the principles of Li, that is, Confucian ritual action.⁵⁷

In a nutshell, the Chinese culture accommodates gift giving in order to preserve and exchange goodwill. Perhaps what matters most now is the need to draw a distinction between gifts outside culture and bribery aimed at inducing one to abuse trust reposed in the individual in the course of discharge of duty. In this wise, Montesquieu argued that people could be corrupted when they are too strongly attached to money and material goods.⁵⁸ They are then no longer deeply involved in their business or profession.⁵⁹ They have even very few social or political concerns. Money has become the origin of their meaning of life.⁶⁰

Finally social corruption according to Dion can be observed in the way people focused on the power they actually hold.⁶¹ It has been argued that the exercise of power actually corrupt some individuals, while it can improve the personality of some others.⁶² Rousseau therefore contends that the problem is that power is on one side, and knowledge/understanding on the other.⁶³ He later emphasised that:

In other words, princes, (political authorities) hold power and do not deepen their knowledge and understanding of reality. Learned people do not have any political or social power. As long as that situation remains the same, people will continue to be ‘mean, corrupt and miserable.’ The problem is that in the long run, the corruption of people will progressively extend to the government.⁶⁴

Once there is conciliation, between both sides, corruption will begin to evaporate from the society.

Corruption of Organisations (Institutional Corruption)

Oftentimes, it follows that when people are corrupted, even the best social institutions can no longer be socially useful.⁶⁵ With respect to the attraction of corruption, Bentham foresaw the implications, and suggested a certain minimum wage public servants should receive, given that they are submitted to various temptations of corruption.⁶⁶ In the light of the above, Dion suggests:

In employments which expose the public functionary to peculiar temptations, the emoluments ought to be sufficient to preserve him from corruption. Setting aside all considerations of the happiness of the individual, the interest of the public requires that in all employments which afford the means of illicit gain, the individuals employed should be placed above want. If this important consideration be neglected, we ought not to be surprised that men urged on by perpetually recurring wants should abuse the powers they possess. Under such circumstances, if they are found guilty of extortion or peculation, they are less deserving of blame than government which has spread the snare into which it was

⁵⁷Ibid, at Pp. 437, 445

⁵⁸ Montesquieu, *De L’Esprit des lois*, les grands themes, Paris, Collidees, No. 211 Gallimard (1970) 116, 117 at 133-148

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Dion Michael, ‘What is Corruption Corrupting? A Philosophical Viewpoint [2010] *Journal of Money Laundering*, 7

⁶² Strauss L, *Droit naturel et histoire*, Coll No. 5, Paris, Librairie Plon (1954) p. 148.

⁶³ Rousseau (n55) 26

⁶⁴ Ibid, at p. 128

⁶⁵ Machiavelli N, *Discourssur la premiere decade de Tite-Live*, Coll, ‘Champs,’ No. 14, Paris Flammarion, 1985, p. 78

⁶⁶ Bentham J, *The Rationale of Reward*, in Bowring J. ed., *The Works of Jeremy Bentham*, New York, NY, Russell & Russell, Pp. 187, 266

scarcely possible that their probity should not fall. Placed between the necessity of providing the means of subsistence, and the impossibility of providing them honestly, they will naturally be led to regard peculation and extortion as a lawful supplement, tacitly authorised by the government.⁶⁷

He further maintains that:

A salary proportionate to the wants of the functionary operates as a kind of moral antiseptic or preservative. It fortifies a man's probity against the influence of sinister and seductive motives. The fear of losing it will in general be more than equivalent temptations held out by illicit gains.⁶⁸

In summation, Dion's antidote to corruption applies holistically to the public sector, more particularly. The idea of salary increase is suggested as capable of neutralizing the attraction or in his own words 'sinister or seductive motives' behind corruption.

Corruption of States (National/Societal/Cultural Corruption)

Dion recalls with great joy Machiavelli's lesson, that every ruler must keep religion, particularly religious rituals and ceremonies as 'pure' as possible.⁶⁹ They must safeguard such traditions if they want to be free of any corruption.⁷⁰ In fact he stated that:

When a state is basically corrupted, rulers can no longer exert their own political freedom. No law can stop a universal corruption, since laws require the respect of basic moral rules and norms. And those rules and norms also require laws to be reinforced. So, if corruption has become a universal phenomenon, then social morality is implicitly justifying it. Laws cannot stop corruption when social morality is universally justifying such phenomenon.⁷¹

In this scenario, it is important to note that political will and commitment constitute the final cause of any real social change. The most important factor against public corruption in any society, at least when development and commercial banks are concerned, remains the political will and commitment.⁷²

4. The Social Influence of the Individual in the Society

Furthermore, there is another theory focusing on social influence of individuals in the society. The pivot of the theory is the argument which claims that when a large number of individuals breaks the law without being caught and punished, and when punishment is erratic and mostly incommensurate with the crime, the law becomes ineffective as an instrument of social control. Social influence is strongly explanatory of the pervasiveness of corruption in Africa, just as the ridiculously mild punishment for corruption reflects the lack of clarity in the social meaning of corruption that the law projects. Consequently, an effort will be made hereafter to account for the nature of the African society with the aim of offering a complete explanation to the inability to combat corruption.

Africa's Social and Economic Dualism

Modern African society is divided in ways that make it virtually impossible to muster a moral consensus on almost any civic issue of importance. First, a typical African society is home to a multiplicity of ethnic groups, many of whom were forcibly amalgamated into a state in the colonial period.⁷³ Secondly, colonialism also created a dual moral regime in Africa. This has been depicted in the literature as the emergence and persistence of two 'publics' on the continent. Modern states, especially in the west, have

⁶⁷ Dion Michael (n1) 244

⁶⁸ Ibid, 245.

⁶⁹ Machiavelli (n65) 66

⁷⁰ Dion Michael (n1)

⁷¹ Machiavelli (n65) 78

⁷² McCormick, J.T. and Paterson, N., 'The Threat Posed by Transnational Political Corruption to Global Commercial and Development Banking,' [2006] (13) (2) *Journal of Financial Crime*, 183, 191

⁷³ Daley P., Ethnicity and Political Violence in Africa: The Challenge to the Burundi State Political Geography [2006] (25)(16) *Journal of Political Thought* (Aug. 2006), 657-679; M. Mamdam, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

only one.⁷⁴ These two publics are the civic, referring to the modern sector of the state, and the primordial, referring to the traditional sector. Corruption is a phenomenon associated solely with the modern sector and its civic public. The civic public consists of the modern apparatus of government such as the military, the police, the civil service, the ministries and departments, the agencies, and so on. In short, the civic public refers to the face of modern government as introduced by the colonial authorities. The civic and primordial publics do not share a common moral foundation—rather, for the African the civil public is as a moral and venal as the primordial is moral and ethical. By its nature, the civic public incorporates the ordinary African only very loosely, most Africans have no emotional attachment to this public. The dialectic of the two publics translate into a reservoir of safety for corrupt public servants, creating a means for them to escape from the ‘alien’ morality embedded in the anticorruption laws. The existence of this dual morality allows even those who have been caught with their hands in the till to attack the law, not because they are innocent of the charges of theft, embezzlement or misappropriation, but on the parameters of a parallel morality. Third as already noted, the gap between the poor and the rich in most of Africa is extremely wide. The inability of most African countries to provide social amenities or to provide safety nets of any kind has exacerbated the inequality. Finally, the social and economic dualism of African Society is compounded by its legal dualism.⁷⁵ Modern law coexists with customary law throughout Africa. While the colonial authorities attempted to weaken customary law, the intention was not to leave it to wither on the vine. Thus, a bastardized form of the law exists side by side with modern law. Legal dualism reinforces, rather than mitigates, the many fault lines of the African Society.

Africa’s Moral Economy or Economy of Affection

As Goran Hyden observes, the moral economy or economy of affection refers to ‘situations in which cultivating personal relations is an important part of how individuals behave and make their choices.’⁷⁶ For example, Eward Banfield’s seminal study of a village in 1955 Italy revealed a self-interested family centric society whose notion of the public good did not go beyond the good of the immediate family. It described the ethos of elevating the interests of one’s family above those of the community as ‘amoral familism’ something that would likely be described in modern public administration as nepotism—the awarding of jobs on the basis of kinship ties as opposed to merit or corrupt behaviour. Such ethos is now an aberration in the rule-based administrative processes of the Western World, although it remains part and parcel of the informal politics of developing countries. There is much empirical evidence that the economy of affection determines much behaviour and choice in Africa.⁷⁷ The economy of affection has been extensively studied. One point on which there is almost unanimous agreement is that the persistence of fanatics and favouritism, both of which are integral to the village economy, is inimical to the emergence of effective state structures and economic systems. This persistence breeds weak solidarity and tends to inhibit state penetration and the reach of market force.⁷⁸

Africa’s Alien State

The modern African states remain an artifice. It is on record that European colonial authorities ‘created’ the African states merely by running a pencil over the map of the continent and carving it into separate states. The African state as a matter of fact, is not a product of any transcendental values, a consensus,

⁷⁴Nunn N, *The Legacy of Colonialism: A Model of Africa’s Underdevelopment* (June 20, 2003) (unpublished, Dept. of Economics and Institute for Policy Analysis University of Toronto.

⁷⁵See for example, Seidman A, and Seidman RB, *The Political Economy of Customary Law in the Former British Territories of Africa*, [1984] (28) *Journal of African Law*, 44-55; Taiwo O., *How Colonialism pre-empted Modernity in Africa*, (Bloomington, IN: Indiana University Press, 2010). Ch. 5; Ekeanyanwu L, Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria, [2002] *Transparency Information*, Lagos, Nigeria, 23, 24

⁷⁶Hyden G, ‘*Why Africa finds it so hard to Develop*,’ word-sudaktuell, THEMEN, 692-704 (4 Wuartent 2004), atp. 694.

⁷⁷Hyden G, *Beyond Ujamaa in Tanzania: Underdevelopment and An Un-captured Peasantry* (University of California Press, 1980) 667.

⁷⁸Marx K, *The 18th Brumaire of Louis Bonaparte* (Tucker RC ed.) (The Marx-Encyeb Reader (New York: W.W.Norton& Co, 1978) 608; Moore B, *Social Origins of Dictatorship and Democracy, Lord and Peasant in the making of the Modern World* (Boston: Beacon Press, 1966) 112

or a *modus vivendi*.⁷⁹ The study maintains that the diagnoses of corruption and its insidious tentacles (causes and effects) have become a favourite pastime for many, especially in the most hard-hit countries of Africa. Many bemoan the absence of a collective way of combating what they correctly depict as a serious social problem. This betrays a lack of trust between the state and the society.⁸⁰ The colonial state apparatus (its military, public, civil service and government agencies) was used to harassment, coercion and stealing from the colonized entity, and generally did exploit indigenous populations in Africa. This legacy of exploitation and oppression has been carried over to this day by independent African states. Thus the overwhelming survival instinct among Africans is not to entrust their destinies to an inscrutable, merciless, and amoral state, but to maintain close links with their primordial sources of security, namely the extended family of kith and kin.⁸¹ Clearly, the African state and the citizen make the communication of the law, not to speak of its effectiveness, a problematic proposition.

Africa's Divided Societies

Africa's divided societies pose serious difficulties to the fight against Corruption. First, it is very difficult to forge a consensus across these societies about what constitutes corruption and about whether it is a moral transgression, let alone a legal one. Second, corruption ultimately involves a transfer of wealth between classes and is an important factor in the growth of an indigenous owning class.⁸² There are two factors that may be responsible for the lack of consistency between anticorruption policy and its implementation: first, a very poor prosecutorial of corruption, and second, the ease with which persons convicted of corruption offences are reintegrated into mainstream society. Regarding the second factor, the government unfortunately sometimes leads the effort. Scholars of anti-corruption policies in Africa show the contradiction between the outward shows of determination to confront corruption and the reality of a lack of political will to do so. Therefore, the perception that the society is unable to act in concert against corruption makes it unlikely that public officials will adhere to the law. And also, some public officials, assuming that they wish to comply with the law, would have no incentive to do so because they perceive others as equivocal in their commitment to the law.

5. Conclusion

It has been demonstrated that the main agent of corruption goes beyond a public official, but extending to three possible combinations of actors. Learned writer Okogbule recognized that corruption is a universal phenomenon and therefore analysed the Nigerian situation as implying an amoral perspective towards any corrupt practice.⁸³ Corruption has been perceived as a social construct, with the implicated notion of varying over time and place. This viewpoint indicated with evidences that the fight against corruption was proved to be among the most theoretically difficult and practically controversial issues facing governments. Besides this approach, there is the African perspective to the fight against corruption which is utterly enmeshed in mental and psychological subjectivism, shrouded in pan sodality of overwhelming ethnic strength and support based on 'we feeling' sentiments of solidarity. Succinctly put, an accused of corrupt practices is constructively perceived by his ethnic group as a mere victim of state lawlessness, and should be discharged forthwith.⁸⁴ Notwithstanding the identified

⁷⁹ See for example, Poggi G, *The Development of the Modern State: An Introduction* (Stanford, Stanford University Press, 1978) 13; Sklar RL & Whitaker CS, *African Politics and Problems in Development* (Boulder & Co, Lynne Rienner Publishers, 1991) 45.

⁸⁰ All Africa.com. 'Nigeria: Anger, Frustration and Hope in War against Corruption,' 8 May 2009, available at: <<http://allafrica.com/stories/200905080949.html>? , accessed September 30, 2019; Leadership newspaper, 'Justice Ayoola's Frustration,' November 3, 2010, available at: <<http://www.leadershipechm.com/as/index.php?option?content&view=article&id=18590:justice-ayoolas-frustration&catid=31:leadership-editorial&itemid=957> accessed October 1st, 2019.

⁸¹ Ekeh, P.P., Social Anthropology and Two Contrasting uses of Tribalism in Africa, *Comparative Studies in Society and History* [1990] (32) (4) *Journal of Anthropological Thought*, 660-700

⁸² Szettel, M., Political Graft and the Spoils System in Zambia—The State as a Resource in itself [1982] (24) *Review of African Political Economy*; see also Iyayi Festus, The Primitive Accumulation of Capital in a New-Colony [1986] (13) (35) *Nigerian Review of African Political Economy*, 27-39.

⁸³ O. S. Nlerum, 'An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria,' [2006] *Journal of Financial Crime*, 2.

⁸⁴ See the present call for the investigation and trial of some key officials of the APC led government for allegations of corrupt practices, inclusive of Babachir Lawal-Secretary to the Federal Government; Maikanti Baru-Managing Director, Nigerian National Petroleum Corporation (NNPC); just to mention a few.

subsisting psychology of Africans in the fight against corruption, there is also the threat or challenge of secularity and heterogeneity commonly associated with multi-cultural societies inclusive of Nigeria, ordinarily typifying most African states.⁸⁵

⁸⁵ See generally, Nwadei H. Nally, *Rhetorics on Fight against Corruption: The Challenges of Secularity and Heterogeneity in Nigeria*, unpublished, 2017.