

The Yoruba Philosophy of Law and the Challenge of Corruption in Nigeria

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ABSTRACT

One of the challenges confronting nation-building in Africa today is the incessant, destructive social forces and corruption in particular. The mechanism of accountability and transparency has been perverted not only by managers of governance, but by anti-corruption agencies. For example, the penal codes in Nigeria have become inertial as anti-corruption agencies cannot match word with evolving criminality, and the judiciary who is supposed to be the last hope of the masses, has become unreliable. The article adopts conceptual, analytic and evaluative methods to examine corruption in the Nigeria system of government and how the Yoruba philosophy of law can resolve some of the impending problems associated with it. The Yoruba philosophy of law is enriched with moral rectitude (*iwa*) and integrity (*omoluwabi*); it provokes reformative mind sets from time to time in order to achieve and maintain social equilibrium. The article concludes that the embellished moral content of the Yoruba philosophy of law outwit the Western mainstream legal system; hence, adopting it will go a long way in solving the perennial problem of corruption in Africa and Nigeria in particular.

Key words: *Africa, Corruption, Governance, Morality, Philosophy of law, Yoruba*

INTRODUCTION

There is no gainsaying the fact that the problem of bad leadership and the damaging effect of corruption engulfing the socio-economic and political situation in Nigeria as a nation have attracted public attention and it have become a household discussion day-in-day-out. The recommendations of Western models by international agencies and other promising initiatives to solve this impending problem have failed to nip the scourge on the bud and have proved to be foreign and not in tandem with the reality of the African people.

It is unfortunate that the post-independent institutional structures imposed by the former British colonial masters, could not sustain the enormity of the corruption phantom in the structure. However, there is need to reflect and redirect our thought to arrest the widespread cancerous corruption biting hard on nation-building process in Nigeria. It is suggested in this article that the Yoruba philosophy of law could stand the chance to solving the challenge of bad leadership and corruption headlong through its moral rectitude (*iwa*) and integrity (*omoluabi*). These two moral values directly appeal to human mind-set and are embellished with goodness capable of re-orientating and transforming the conscience of the people availing them off corruption.

In addressing this problem, this article is subdivided into two sections: the clarification of concepts of Yoruba philosophy of law and corruption, and how Yoruba Philosophy of law resolves corruption.

The Yoruba Philosophy of Law and Corruption

The definition of law is herculean with multifarious interpretations given to it by different scholars. In the past, it was strictly confined to the domain of maintaining peace and order in the society. This understanding of the term is not in tandem with contemporary usage and application of the word but it has become an instrument with a shrewd appreciation of social circumstances. Therefore, the law aims not only at regulating human conduct and relations but also takes into cognisance the dynamism of value-changes and fundamental human rights that goes along with it contemporaneously in the society (Ayua, 1986: 72-74). Law is not the same thing as ethics and social policy: while law rather emphasizes the identification of justice with legality, ethics is concerned with moral norms (the concept of right and wrong). On the other hand, social policies deal with governmental decisions. The Yoruba philosophy of law is diametric to the tenet of legal positivism designed in conformity with their norms and culture and particularly their traditional legal experiences based on their ontological discourse (Olaoba, 2008).

Okafor (1984) explicates the philosophy behind the Yoruba philosophy of law through a comparative analysis between Western legal positivism and the traditional African practice using the separability thesis and the non-separability thesis, respectively. He posits that legal positivism is “a theory which recognizes as valid enforceable laws only enacted or established by the instrument of the state” (1984:157). This implies that only representational “command” of a recognized authority is the law. “Command”, according to Okafor (1984: 159) quoting the Austinian imperativist’s school of thought, involves: i) A wish or desire conceived by a rational being, that another rational being shall do or forebear ii) An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the wish, and iii) An expression or information of the wish by words or other signs. Therefore, a “command” is an order by a sovereign to be obeyed by his/her subjects, and if not obeyed, certain punishments are attached to it. Commands exclude “positive morality”, “divine laws” and “laws laid down by private individuals and institutions” (Okafor, 1984: 159).

Legal positivism is enmeshed in the separability thesis where positive laws, moral, and teleological considerations are sheaved away. Okafor confines the traditional African laws to the non-separability thesis: laws here are sourced from the African ontological practice whereby both human and divine laws are established and collapsed together with the intent of a peaceful and harmonious human existence in the society. Divine law is an exclusive preserve of the supernatural being, and if breached, it is considered “an offence not against man or the human society but against the supreme Being” (Okafor, 1984: 160). Human laws, on the other hand, are laws relating to the socio-economic and political life of the people in a particular community. The breach of the human laws carries lesser severity than the divine laws, and its offender are liable to public obloquy.

Okafor further argues that the jurisprudence of the traditional African laws is grounded on the ontological framework of the belief-system and the collective decision-making method of the people. The concept of sovereign body (law court) issuing command is strange to the African culture. African culture recognizes only “leaders” and not “rulers”, “seniors” and not “superiors” in ushering their laws. Okafor explicates that laws are enacted by joint decisions of the people in the community or by their representatives who are usually elderly men of unquestionable moral character which they believe are next to God and took after the wisdom of their ancestors. Hence, laws made by the African people are ordinances of collective reasoning by the community and not mere command pronounced by an institution or body of persons (Okafor, 1984:162).

The role of the ancestors is not undermined in promulgating laws in the traditional African settings. Okafor showed that the African creeds are implicitly underwritten in the African positive laws and this does not in any way contradict the tradition left behind by the ancestors. The ancestors are responsible to transmitting “codes of moral conduct” which are handed down from generation to generation. This justifies the African positive law as valid, morally adequate and necessary for all and sundry to obey (Okafor, 1984:162). Nwakeze (1987:103) corroborates Okafor (1984) asserting that traditional African legal system duly takes into cognisance the survival of the community by making sure that disputes are settled amicably and that such settlement is acceptable to all parties concerned. Thus, the role which the African legal systems play is basically reconciliatory. It is worthy of note to say that collective responsibility and appeal to conscience

serves-as a basis for all juristic practice in Africa. So, the positivistic demand for enforceability mentioned earlier is a mirage in African jurisprudence. Rather, sanctions with less force characterize legal practice in Africa. As Okafor espouses:

The legal positivist's doctrine that only enforceable norms are laws indeed, a doctrine based on their concept of a sovereign with the absolute power to secure obedience to its command or law, is contrary to the African social and political reality "in which the principle of equality is respected; in which the use of force is minimal or absent; and in which there are leaders rather than rulers and political cohesion is achieved... by consensus rather than by dictation. (Okafor, 1984:161)

The above analysis implies that law and order is maintained without reference to any law enforcement agent in Africa. Often, decisions on punishments are conscientiously taken and any attempt to contravene the laws is meted with the wrath of the ancestors. Okafor stresses that "these are the lively consideration and conviction which bind the African's conscience and disposes him to obey the law whether or not there is a permanent or *ad hoc* power to enforce the law"(Okafor, 1984:163).

To this end, the reality of justice in African legal system is mainly to promote and protect in the interest of the community. Nwakeze (1987: 103) asserts:

The relations between man and his fellowmen are not governed by law alone, hence in the determination of a lawsuit law is not taken as the only determining factor. The whole social setting and relationship of the parties and their position in the community are taken into consideration; and in the interest of justice "legal rules" are sometimes thrown overboard.

Therefore, to upset the ontology of the social order is to invoke calamitous reprisals to fall, not only upon the culprit but the whole community of which one is a member. This shows that the African people will always experience a considerable setback whenever offences are committed even by an individual.

Corruption in the traditional African perspective simply entails "the very human characteristics of benefiting or reaping illegally from resources belonging to the collective masses of which we are at best only a member" (Hatti, *et al*, 2010: 217). Corruption is the will or desire to privately and selfishly gain from what does not belong to one or an abuse of position to acquire wealth illegally at the detriment of the public trust or interest. Transparency International (TI) defines corruption as "the misuse of entrusted power for private benefits" (Agbibo, 2012:114). Thus, corruption involves infringing on public interest or other related economic ventures or mismanagement of public office. Joseph Nye's classical definition captures the above definition. He defines corruption as the "behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain private-regarding influence" (Smith, 2007:43).

Unwholesome behaviour facilitates unscrupulous political decisions that sometimes lead to wrongful use of resources to benefit some faceless hands at the detriment of the law-abiding citizens. Sometimes also, it may snowball into moral decadence; ineffective governance; organized crimes; police brutality, and other nefarious activities in governance. The peak of corruption is to legalize and create immunity for criminals so that justice is placed on sale and the law becomes the interest of the highest bidder (Agbibo, 2012: 123).

Smith (2007) identifies seven forms of corrupt practices in Nigeria. Sometimes, they are interwoven, and their perceived legitimacy purportedly justified. The seven categories of corruption include: commission for illicit services, unwarranted payment for public services, gratuities, string pulling, levies and tolls, Side-lining, and misappropriation (Smith, 2007:43).

How Yoruba Philosophy of Law Deals with the Issue of Corruption

The steaming waves of corruption in Africa have over the years been addressed by international agencies, sponsored by both civil societies and watchdog groups. Though this has notably spurred tough anti-graft legislations on culprit and tries to change corporate behaviours, there is still a lot to cover in solving the problem of incessant abject poverty in various failed nations. Some international initiatives, such as the Organization for Economic Corporation and Development (OECD) at the Convention Convention against

Illicit Payments in 1997; the 2005 UN Convention against Corruption; the 2009 Global Principles on Business Ethics Programme; the Extractive Industries Transparency Initiatives (EITI) and others, have at one time or the other sanctioned corrupt nations and repatriated proceeds from looted funds to the native countries. But, some multinational corporations from Western democracies in Europe and North America have not yet refrained from the temptations of making illegitimate profits from culpable nations in Africa (Cockcroft, 2010). In fact, most of the promising ethical motives of these institutions have not yet translated into any success in curbing corrupt practices in Africa.

Cases of corruption in Nigeria are an apology and from day-to-day as it degenerates from bad to worse. The former Nigerian President, Olusegun Obasanjo aptly remarked that “I haven’t seen that the will of persistency and consistency in Nigeria to fight corruption, because the people that are involved in corruption are strongly entrenched and unless you are ready to confront them at the point of even giving your life for it, then you will give in, that is the end of it” (Agbiboa, 2012: 127). No wonder Nigeria is faced with a self-induced recession at this period not only because of her over reliance on oil rent but her prodigal and greedy leaders who exploit the economy every day. Statistics have shown that

About 80% of Nigeria’s oil and natural gas revenues accrue to 1% of the country’s population. The other 99% of the population receive the remaining 20% of the oil and gas revenues, leaving Nigeria with the lowest per capita oil export earning put at \$ 212 per person in 2004. (Agbiboa, 2012: 112)

The anti-graft agencies, Independence Corruption Practices and other related offences Commission (ICPC) and Economic and Financial Crime Commission (EFCC), and their penal codes, run short of their enormous responsibility and all that is heard are mere media propaganda such as news that a corrupt leader has been brought to book. Even when corrupt suspects are arrested, it is either they are melted with Judiciary frustration or freed on some legal technicalities raised by some corrupt legal counsels who are ready to pervert justice at all cost for their selfish interests.

This slippery slope of high level of corruption can be checked through a critical engagement of the Yoruba philosophy of law which aligned with the moral philosophy of the traditional southern Sahara African society. The philosophy engenders a standardized balance of social equilibrium where genuine reconciliation and compromise between disputing parties are settled harmoniously in the society through moral rectitude (*iwa*) and integrity (*Omoluwabi*). These two moral concepts enshrined in the philosophy of law of the Yoruba suffice to address the problem of corruption in Nigeria as a nation. The two concepts are used interchangeable to uphold reasonability of intention and action in the legal operations of the Yoruba cultural system. The concepts address mind-set directly and are reformatory in nature.

According to Abimbola (1975), there are two senses of *Ìwà* in Yoruba belief system. Firstly, etymologically, *Ìwà* is composed of two words: *i* (being) and *wà* (to be or to exist). *Ìwà* then means “the fact of being, living or existing” (Abimbola, 1975: 393). Secondly, *Ìwà* represents character which means “the essence of being” (Abimbola, 1975:394). This article applies *Ìwà* in the second sense. The essence and existence of a man’s life is determined by *Ìwà* in the Yoruba belief system and their ethical practices revolve around it. *Ìwà* is noted either for good or bad character. For example, to a man with a good character, it is said *Oní ‘wà dára dára Okùnrin*, while to a person with a bad character, it is said that *Oní ‘wà burúkú okùnrin*. The Yoruba frown at a bad character. They believe that such a moral disposition would lead a person to destruction. So, in Yoruba belief system, character-building mechanism manifests in its entirety with the aim of fostering good *Ìwà* in the individual and to make him a responsible member of the community. That is why any individual who ignores this social practice is referred to as *àkóògbà* (a child that is taught but refuses to learn) rather than *àbùkó* (a child that is only born but never taught) (Abimbola, 1975: 375). The latter individual is punished by divinities of the land unless he appeases the ancestors. The sacrifice will signify that he or she has repented or else he or she will be continually afflicted and he or she will know no peace throughout his or her life and he or she might begin to experience strained relationship between him and her and his or her ancestors. Good character is espoused as:

Respect for old age, loyalty to one’s parents and local traditions, honesty in all public and private dealings, devotion to duty, readiness to assist the needy and the infirm, sympathy, sociability, courage and itching desire for work and many other desirable qualities. (Abimbola, 1975:364)

The qualities of good character include: *Ìfarabalè* – calmness, *Ìlutí* – good hearing, *Òtító* – truth-telling, *Ìtéríba* – respect, and *Ìferàn* – love. *Ìfarabalè* – calmness - that is, letting reason to control his or her emotion. The Yoruba maxim *bi ojubaf'araba 'lè, yòò r'ímú* literally means, “if the eye is relaxed, it will perceive the nose”. The ethical implication of *ifarabalè* here means patience. Practically, it is somehow difficult to perceive the tip of the nose (*imú*) without relaxing the eyes and exercise some mental concentration. Every man is expected to imbibe this attitude in his or her every day dealings and thus inculcate it as a moral virtue.

The social morality in the Yoruba belief system encapsulates the social reverberation of an individual's conduct of *iwapele* (good character) in the society. In Yoruba thought system, every individual is necessarily part of a social order and he should always act in the vein. No individual exists alone; hence he must always live in accordance with the social norms. Gbadegesin adumbrated this as:

The new baby arrives into the waiting hands of the elders of the household. Experienced elderly wives in the household serve as mid-wives, they see that the new baby is delivered safely, and the mother is in no danger after delivery. They introduce the baby into the family with cheerfulness, joy and prayer: “*Ayo abaratintin*” (This is a little thing of joy). From then on, the new mother may not touch the child except for breast feeding. The baby is safe in the hands of others: co-wives, husband's mother and step-mothers and a whole lot of others, including senior sisters, nieces and cousins. On the seventh or eighth day, the baby gets his/her names, a ceremony performed by the adult members of the household The meaning of this is that child, as an extension of the family tree, should be given a name that reflects his/her membership therein, and it is expected that the name so given will guide and control the child by being a constant reminder for him/her of his/her membership in the family and the circumstance of his/her birth. (Gbadegesin, 1991: 61-62)

The above excerpt implies that an individual cannot run adrift from the community that nurtures him/her. Rather, the individual through socialization, love and concern which the community extends to him/her cannot then see him isolated from it. This social character is intrinsic in the notion of morality in Yoruba culture and belief system.

Akiwowo (1983: 12) reflects this philosophy in his sociological viewpoint claiming that a human being is an *asuwa* (a physiological organism) which is enhanced by forming and evolving through *asuwada* (social organism). According to him, *asuwada* propels basic conscious network of human beings in the society. He espouses:

The *isesi* (pattern of doing things) of an individual is directed toward other individuals to a group of individuals who act under the same manner in concert or under a given rule or set of standards. An initiator of an *isesi* is in turn, the object toward whom other individual's *isesi* are directed. The result is, among human beings, a complex network of *isesi* bond which unites every man, woman, or child to another. (Akiwowo, 1983: 13)

Akiwowo further explains that human conduct in traditional Yoruba culture directly translates into the practice through *alajobi* (ties of consanguinity). *Alajobi* signifies the common ties of lineal and collateral relationship in the family (Akiwowo, 1983: 18). *Ajobi* means a family or a group of related families co-habiting the same compound or units in a village and town. Genealogically, all mankind belongs to this tree of *alajobi* because we all share in the *homo sapiens* traits. This however cannot hold sway anymore due to the complex nature of man in relation to culture, colour, race and religious affiliation, among others. Nevertheless, the *alajobi* bond counts whenever the cord of unity is threatened. There and then, the Yoruba would say “I beg you in the name of *alajobi*”. But, the incursion of Western individualism has crippled the sustainability of *alajobi* in place for *alajogbe* (the co-relationship). The main thrust of this collapse is the unbridled lust for material wealth where the successful ones among blood relations acquired more wealth while the less successful ones were gingered into competition or envy (Akiwowo, 1983: 19).

Given this framework on the philosophy of law grounded in social practice of integrity and sufficient moral rectitude, first, cleavage among the leader and the led in the polity fissile out as everyone is informed on the need to consult before policy decisions are formed. Political legitimacy is certain as there will no longer be room for string pulling where positions are used to influence access to employment, education and other opportunities which are strictly for public interest. The idea here is that discussion and deliberation without

inclination in the polity on matters of public concern are always better and more fruitful. Decision of this nature protects individuals in the face of conflicting demands and promotes moderation in the exercise of political power. The exacerbated ethnic conflicts and interregional violence germinate over the years out of corrupt practices by African political leaders. Hence, this foundational approach will enhance individual interaction with others; by coming to know each other both as separate ethnic colorations with their unique capacities and as beings with whom one shares at least some experiences, problems and interests towards a common destiny. The destiny is to promote national integration toward strengthening viable political motivation.

Furthermore, this African philosophy of society promotes the principle of cooperation in the state. Basically, a hand cannot fully operate if it lacks the support of the other hand. Even where it attempts to clean itself, it may not succeed. In relating this to politics, though each of individual can have a sense of purpose in individual action, the subjective desire is impossible to make a whole. By and large, this philosophy of law recognizes a feeling of family togetherness and of the extended family hood. Its practice involves the belief that humanity is a creation of God. Hence there ought to be some intrinsic value in man worthy of dignity and respect. This constitutes the basis of the value of unity and humanness in the African society. The reformative mind set will recognize the ideal making it possible for people to recognize the importance of showing compassion, generosity and hospitality. It signifies that one should always be open to the service of others' interest and welfare.

As such, the use of position of authority to harass and collect illegal fees while on official services would be a thing of the past. In addition, this attitude further suggests that the worth of other human beings is equal to one's value in terms of basic value, ideals and sentiments. This supportive attitude will show spirit of brotherhood, which covers not only family relations, but also persons between whom there are no blood ties at all. Thus, the flexible and efficient greasing of the wheel of government through corrupt practices would be suspended. More so, there will no longer be opportunity for representational or unaccounted wealth in the mist of poverty. This is one of tragedy of public bureaucracy.

The philosophy of law will strengthen the principle of fairness in the dispensation of justice. Justice in this tradition is not what pleases one's relations, friends and colleague. Rather, in dispensing justice, the presiding Judge must be conscious of the implications of his pronouncement as being emphasized not only in the legal precedence but also the ethical and ontological considerations. The principle will constructively address the apportionment of justice in the quickest manner possible rather than the continual celebration of formal and cold nature of justice which gives room for bribery and corruption.

CONCLUSION

The article demonstrates the effects of corruption in the polity which has caused a legal gap and weakened institutions, among others, since the post-independence nation-building in Africa. The neglected African traditional institutions and value system need be revisited, as various promising international initiatives on corruption defiled solutions. Hence the African positive law would reform the African mind set to the extent that the managers of both human and material resources will not only inculcate the principles of integrity (*omoluwabi*) and moral rectitude (*Iwa*) but also take the society out of the wood of induced political and socio-economic recessions. Besides, this philosophy of society would help to redefine the foundation of criminal justice system as well where corruption is embedded in Nigeria through reconstructing the society for mutual well-being and social justice.

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