

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 had become inertial as anti-corruption agencies could not match word with evolving criminality, and the judiciary who supposed to be the last hope of the masses, had become unreliable. The article shall adopt the conceptual, analytic and evaluative methods to examine corruption in the Nigeria system of government and see how the Yoruba philosophy of law could 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 mindsets 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.

Keywords: Africa, Corruption, Governance, Morality, Philosophy of law, Yoruba

1. 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 has 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 had failed to nip the scourge on the bud and had proved to be foreign and not in tandem to the reality of the African people. It is unfortunate that the post-independence institutional structures imposed by our colonial masters could not sustain the enormity of the corruption phantom into the structure. However, there is need to reflect and redirect our thought to arrest the widespread cancerous corruption biting hard on nation-building 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 (*omoluwabi*). 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 of corruption.

In addressing this problem, this article will be subdivided into two: the clarification of concepts of Yoruba philosophy of law and corruption, and

how Yoruba Philosophy of law resolves corruption.

2. The Yoruba Philosophy of Law and Corruption

The definition of law is herculean with its multifarious interpretations given to it by different scholars, but 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 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 take 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), and social policies deal 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, 2008:7).

Okafor (1984:157)) 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 recognises as valid enforceable laws only enacted or established by the instrument of the state”. This implies that only representational “command” of a recognised authority is the law. “Command”, according to Okafor (1984:159) quoting the Austinian imperativist’s school of thought, involves:

- A wish or desire conceived by a rational being, that another rational being shall do or forebear.
- An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the wish

- 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 lay 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 laws 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 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 recognises only “leaders and not rulers”, “seniors and not superiors” in ushering their laws. He explicates further 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 saves as 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 characterise legal practice in Africa. Okafor (1984: 161) espoused:

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”.

The above analysis implies that law and order are maintained without reference to any law enforcement agent in Africa. Often times, decisions on punishments are conscientiously taken and any attempt to contravene the laws is meted with the wrath of the ancestors. Okafor (1984: 163) stresses that “these are the lively consideration and conviction which binds 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”.

To this end, the reality of justice in African legal system is mainly promote and protect in the interest of the community. Nwakeze (1987: 103) cited in Holleman’s *Issues in African law*, says:

That 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 set back whenever offences are committed even by an individual.

So, looking at corruption, it 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, 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).

This 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; organised crimes; police brutality, and other nefarious activities in governance. The peak of corruption is to legalise and create immunity for criminals so that justice is placed on sale and the law becomes the interest of the highest bidder (Agbiboa, 2012:123).

Seven forms of corrupt practices had been identified in Nigeria. Sometimes, they are interwoven, and their perceived legitimacy purportedly justified. They include: commission for illicit services, unwarranted payment for public services, Gratuities, String pulling, Levies and tolls, Side-lining, and Misappropriation (Smith, 2007: 43).

3. How Yoruba Philosophy of law resolves Corruption

The steaming waves of corruption in Africa had 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, but there is still a lot to cover in solving the problem of incessant abject poverty in various failed nations. Some international initiatives such as Organisation for Economic Corporation and Development (OECD) at her convention against illicit payments in 1997; the 2005 UN Convention Against Corruption; the 2009 Global Principles on Business Ethics Program; 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, 2012: 21-28). 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 it degenerates from bad to worse. 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, 2012:123). No wonder Nigeria is facing 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 percent of Nigeria’s oil and natural gas revenues accrue to 1percent of the country’s population. The other 99 percent of the population receive the remaining 20 percent 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)

It is unfortunate that even the 1 percent is salted away as booty in billions of dollars to Swiss Banks and other Panama secret financial institutions by political juggernauts in Nigeria. Hardly can one see a political office holder in Nigeria since the last forty years that is not culpable of the embezzlement. While many corrupt leaders dared the Nigerians and use the stolen money to build mansions in the country, others stealthily purchase properties through a third party in Europe, UAE, Hong Kong, Malaysia, etc.

The Boko Haram menace could not be exempted from the act of corrupt practices in Nigeria. Funds meant to fight insurgency were diverted and used for political campaigns and other frivolities by some politicians in Nigeria. Transparency and proper accountability mechanism were perverted by corruption while constitutional laws became an exclusive preserve right of the rich and corrupt leaders; the commoners now live at the mercy of the rich and justice became ephemeral to the poor. Corruption further provokes elicit embezzlement of public funds, money laundering, false declaration of assets and corner cutting strategy to enhancing wealth in Nigeria. In short, institutional graft of this nature is like a cancer capable of morphing and attracting newly

malignant players, to the point where it infects entire societies (Cockcroft, 2012: 23).

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 and corrupt leader has been brought to book. Even when corrupt victims were arrested, it is either they are been 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. The recent raid on the houses of some High Court Judges in Nigeria by the Department of State Services (DSS) where large sum of foreign and local currencies were discovered is a good testimony to the high degree of corruption and moral decadence in Nigeria.

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 Wande Abimbola, 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 paper shall understand *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 dáràdára 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 practise is referred to as *àkòògbà* (a child that is taught but refuses learn) rather than *àbùkó* (a child that is only born but never taught) (Awoniyi, 1975: 375). The latter individual is punished by divinities of the land unless he appeases the ancestors. The sacrifice will signify that he has repented else he will be continually afflicted and he will know no peace throughout his life and he might begin to experience strained relationship between him and his ancestors. Good character 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 *Ìfèràn* – love. *Ìfarabalè* – calmness- that is letting reason to control his emotion. The Yoruba maxim *bi ojufaf’araba ‘lè, yòò r’imú* literally means, “if the eye is relaxed, it will perceive the nose). The ethical implication of *ìfarabalè* 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 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. Segun Gbadegesin (Gbadegesin, 1991:61-62) 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.

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 (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 espoused:

"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, units in a village and town. Genealogically, all mankind belong 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, religious affiliation, etc. 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 protect

individuals in the fact of conflicting demands and promote 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 polity. A hand remains unclear 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 us can have a sense of purpose in our individual action, but the subjective desire is impossible to make a whole. Rather, some of these desires would have to be checked in order to make cooperation possible. In checking these excesses that the induced economic recess could be corrected., the illegal export of commonwealth at the Niger delta region of the country through cartel, rent seeking, militancy, etc. would be curtailed as the penalty may not only affect the individual concerned but their families. This conscientious drive stamped out conspicuous consumptions such as 419ers, drug traffickers, kidnappers, baby factories, among others, and reinvigorates the principle of productive public works. Indeed, it emphasises the relevance of hard work in life. The Nigeria situation today is the consequent of celebration of laziness and mediocrity on the altar of hard work and integrity, this will be fought through this philosophy. The current Buhari administration in Nigeria, with all sense of responsibility, deserves the people support as it tolls this line of thought thus far.

By and large, this philosophy of law recognises a feeling of family togetherness and of the extended family hood. Its practise 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 reformatory mind set will recognise the ideal making it possible for people to recognise the importance of showing compassion, generosity and hospitality. It signifies that one should always be open to the service of others' interest and welfare. Thus 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 in term 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.

4. Conclusion

The article has been able to draw out the effects of corruption in the polity which caused a legal gap and weakened institutions, among others, since the post-independence nation- building. Its 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 as well the foundation of criminal justice system where corruption is embedded in Nigeria through reconstructing the society for mutual well-being and social justice.

References

- Abimbola, Wande. 1975. *Sixteen Great Poems*. Lagos: UNESCO
- Agbiboa, D. E. (2012) ‘Serving the Few, Starving the Many: How Corruption underdevelops Nigeria and How There is an Alternative Perspective to Corruption Cleanups’ in *African Today*, 58(4): 114-123
- Akiwowo, A. (1983) ‘Ajobi and Ajogbe: Variations on the theme of Sociation’ in *Inaugural Lecture Series* 46. Ibadan: University of Ife press
- Ayua, I (1986) ‘Law and Development in Africa’ in *International Journal on World Peace*, 3(1): 72-74
- Awoniyi, Timothy. 1975. Omoluwabi: The Fundamental basis of Yoruba Traditional Education. *Yoruba Oral Tradition*. Abimbola, Wande. Ed. Ibadan: Ibadan University Press.
- Cockcroft, L. (2010) ‘Global Corruption: An Untamed Hydra’ in *World Policy Journal*, 27 (1): 21-28
- Gbadegesin, S. (1991) *African Philosophy: Traditional Yoruba Philosophy and contemporary African Realities*. New York: Peter Lang
- Hatti, N et.al. (2010) ‘The Corruption Bazaar: A Conceptual Discussion’ in *Sociological Bulletin*, 59(2): 217
- Nwakeze, P.C. (1987) ‘A critique of Olufemi Taiwo’s criticism of “Legal Positivism and African Legal Tradition”’, *International Philosophical Quarterly*. xxvii(1):103
- Olaoba, O. B. (2008) *Yoruba legal Culture*. Lagos: New Age Publishers ltd, 7
- Okafor, F.U. (1984) ‘Legal Positivism and the African legal tradition’, *International Philosophical Quarterly*. xxiv (2): 157-163
- Smith, D.J. (2007) *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria*. Oxford and Princeton: Princeton University Press