

**THE IDEOLOGY AND POLITICS OF ANTI-CORRUPTION:
REFRAMING THE DEBATE**

by

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MASTER OF LAWS (RESEARCH)**

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THE IDEOLOGY AND POLITICS OF ANTI-CORRUPTION: REFRAMING THE DEBATE by OTENG MOGOENG 15021247 Submitted in fulfilment of the requirements for the degree LLM MASTER OF LAWS (RESEARCH) in the Faculty of Law University of Pretoria 7 September 2020 Prepared under the supervision of DR JOEL M MODIRI University of Pretoria Declaration of originality Full names of student: Oteng Mogoeng Student number: u15021247 Title: The ideology and politics of anti-corruption: reframing the debate Declaration: 1. I understand what plagiarism is and am aware of the University's policy in this regard. 2. I declare that this dissertation is my own original work. Where other people's work has been used (either from a printed source, Internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements. 3. I have not used work previously produced by another student or any other person to hand in as my own. 4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work. Signature of student: O.Mogoeng SUMMARY This study is based on anti-corruption discourse in South Africa and the legalistic way in which it is dominantly perceived. A qualitative methodology has been adopted to interrogate and problematize this legalistic perspective for being instrumental to the maintenance of corruption in South Africa. The study contends that the Western ideological and cultural background of South Africa's legal system contributes to the continued subjugation of the indigenous African population. The researcher argues that the dominant perspective of anti-corruption discourse has misdiagnosed the problem, thereby making the discourse unprogressive and stagnant. Legalism focuses on the corrupt behaviour of individuals and fails to understand corruption as an institutional problem owing its roots to South Africa's history of colonialism and apartheid. A political-ideological perspective is then suggested as an alternative approach that can be used

SUMMARY

This study is based on anti-corruption discourse in South Africa and the legalistic way in which it is dominantly perceived. A qualitative methodology has been adopted to interrogate and problematize this legalistic perspective for being instrumental to the maintenance of corruption in South Africa. The study contends that the Western ideological and cultural background of South Africa's legal system contributes to the continued subjugation of the indigenous African population.

The researcher argues that the dominant perspective of anti-corruption discourse has misdiagnosed the problem, thereby making the discourse unprogressive and stagnant. Legalism focuses on the corrupt behaviour of individuals and fails to understand corruption as an institutional problem owing its roots to South Africa's history of colonialism and apartheid. A political-ideological perspective is then suggested as an alternative approach that can be used to shift the dominant perception of corruption into one that is more historically responsive. This perspective understands that corruption in South Africa is a system of governance that was established during the colonial order, one that is still operative in South Africa today. It sees corrupt individual activities as simply a by-product of a problematic system and therefore, not the root cause of the problem.

In conclusion, the researcher contends that reframing the current anti-corruption discourse into one that centres South Africa's history and politics enables us to address the problem at its roots.

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CHAPTER 1: INTRODUCTION

BACKGROUND

There is a general and widespread perception of South Africa as a country that is riddled with corruption.¹ This narrative was exacerbated under the Jacob Zuma administration, which created the impression that his departure would lead to a quick turnaround of the country's socio-political and economic challenges.² Before the most recent elections in 2019, there was a general sense of confidence bestowed upon President Cyril Ramaphosa who was then a candidate. According to the 2019 South African Citizens Survey, Ramaphosa was a major factor in the ANC's victory in the 2019 general elections.³ The statistics indicate that shortly after the elections, optimism about the future of the economy rose to 61%, making Ramaphosa the most popular politician in South Africa.⁴

The reason behind this optimism was the idea that, because the President is himself a billionaire and enjoys the support of labour and business partners, he had no reason to dabble in corrupt activities.⁵ It was also believed that he would instead utilise his resources to uplift the South African economy.⁶ However, one year later public optimism in the Ramaphosa administration went to 47% after economic and social indicators showed a downward trajectory.⁷ Trust in the criminal legal system under institutions such as the National Prosecuting Authority (NPA), the South African Police Services (SAPS), and the Public Protector is also not high, though it is being met with a very slow and slight

1 Krsteski NG "Corruption in South Africa: Genesis and Outlook" (2017) *JPMNT* 5(4): 49 52.
2 Runji N "Citizens have confidence in Ramaphosa but he has to show courage in Sona" (2020) *Sowetan Live*.
3 South African Citizens Survey: core report-quarter one (January- March) (2019) 10.
4 South African Citizens Survey (2019) 10.
5 Runji (2020) *Sowetan Live*.
6 Runji (2020) *Sowetan Live*.
7 South African Citizens Survey (2019) 9.

increase.⁸ Added to this is the fact that Ramaphosa himself has since been exposed for alleged involvement in corrupt dealings.⁹

To quote Nompumelelo Runji “[T]he most significant take away from these survey results is that South Africans somehow distinguish Ramaphosa from his party and the mismanagement and corruption that have ensued under the ANC’s watch”.¹⁰ This indicates that the general way in which we understand corruption in South Africa has to do with the actions of deviant individuals. Corruption is an act associated with individuals who lack a moral compass. An act that can be resolved by replacing “immoral” individuals with people who are devoted to executing their official duties in a just and ethical manner. In this context, Ramaphosa has been perceived as a moral individual who has the capacity to transform the society. Runji warns that we need to “disabuse ourselves of the idea of a Messiah president” because Ramaphosa might be a new president, but the ANC he leads is not a new party.¹¹ Added to this is the fact that he was the Deputy President under Zuma and a high ranking member of the ANC National Executive since 1994.

This brief example supports a key assertion of this study, namely that the way the problem of corruption is understood and approached in our national discourse has been misplaced. If we are serious about wanting to address corruption, its historical roots and political dynamics, South Africa needs to reevaluate its commonsense and dominant perceptions about what corruption is and how it can be eradicated. It must also work towards reframing the current perspective on corruption.

RESEARCH PROBLEM

This study interrogates the legalistic approach that dominates anti-corruption discourse by problematizing its focus on individual acts of criminality. How it chooses to understand corruption as a problem of the law and government without considering corruption’s

⁸ South African Citizens Survey (2019) 51.

⁹ “Ramaphosa campaign funds: Mkhwebane goes for a R400m KO” (2019, June 23) *news24*. Available: <https://aus.libguides.com/apa/apa-newspaper-web> [Accessed 29 June 2020].

¹⁰ Runji (2020) *Sowetan Live*.

¹¹ Runji (2020) *Sowetan Live*.

economic, social and political power. The aim of the research is to reframe how corruption is understood by moving away from the dominant legalistic approach in order to explore a more political-ideological approach to the discourse. This political-ideological perspective situates corruption within a broader historical, political and ideological context. It argues that, though corruption may have legalistic characteristics, it cannot be exclusively or predominantly understood through this lens.

Despite making corruption a national priority in South Africa and establishing different institutions and mechanisms to resolve the problem, we have yet to see a significant decline in corrupt activities.¹² My assertion is that the dominant legalistic approach to corruption is one of the main contributing factors to both its obfuscation and its perpetuation.¹³ The problem with the current anti-corruption discourse is that it is limited in its understanding of the root cause of corruption.¹⁴ By failing to interrogate corruption's historical underpinnings and assuming that the transition to democracy offered a substantive and symbolic break from the past, the deeply entrenched system of colonial corruption remains untouched.¹⁵ Adopting a political-ideological perspective allows us to look into the historical effects of how settler-colonialism and apartheid entrenched corrupt institutions that continue to function in South Africa today. Therefore, the main problem of this study is that the dominant legalistic perspective is itself a hindrance to productive and progressive anti-corruption discourse,¹⁶ because it refuses to address the problem at its historically colonial roots.¹⁷

¹² Ojo JS "Anti-corruption War and the Ambivalence of Legalism in Nigeria" in Farazmand A (eds) *Global Encyclopedia of Public Administration, Public Policy, and Governance* (2019) 2.

¹³ Ojo (2019) 2.

¹⁴ Levin R "Ethics, Accountability and Developmental Publics Administration: Key Challenges for South Africa in Addressing Corruption" in Plaatjies, D. *Protecting the Inheritance: Governance and Public Accountability in Democratic South Africa*. (2013) 124.

¹⁵ Ojo (2019) 4; Levin (2013) 124.

¹⁶ Ojo (2019) 2.

¹⁷ Hudson P "The state and the colonial unconscious" (2013) *Social Dynamics* 39(2): 274.

RESEARCH QUESTIONS

The main question of my study is, given that the countless anti-corruption legal remedies and mechanisms that already exist have failed to bring about a fundamental change in society and that the problem has clearly been misdiagnosed, can we continue to rely on the dominant legalistic approach to resolve corruption?

This main question will be addressed in the following three sub-questions which also serve as a guide for the three substantive chapters:

1. What is the dominant approach to corruption in South Africa and what are its limitations?
2. How does a political-ideological perspective on corruption, which centres racial capitalism and neo-colonialism, disrupt an overly legalistic view of corruption?
3. What is revolutionary humanism and how could it generate an alternative understanding and ultimately reframe anti-corruption discourse in South Africa?

RESEARCH OBJECTIVES

The study seeks to achieve the following objectives:

- To problematize the dominant legalistic perspective on corruption.
- To identify the limitations of legalism and its ability to promote constructive and progressive anti-corruption discourse.
- To reframe anti-corruption discourse from the dominant legalistic perspective to a more politically and historically grounded framework.
- To posit the intellectual and political tradition of revolutionary humanism as an ideological framework that can be used to reframe anti-corruption discourse.

MOTIVATION

The motivation to undertake this study arises from the fact that the dominant discourse around corruption in South Africa is limited in what it chooses to address. The current dialogue mainly offers a narrative which has a particular focus on individual aberrational

acts of criminality and maladministration.¹⁸ Because of this focus, corruption has become a problem that is mainly resolved through the law and government and overlooks the political and historical factors that contribute to this social ill.¹⁹ The focus on individual behaviour has inspired a depoliticised version of corruption, which fails to interrogate the root cause of the problem.²⁰ Even the progressive dialogue which acknowledges corruption's political elements and points out that it is in fact, rooted in the structural relationships embedded in the political economic interface, is unwilling to consider these important elements as being a central part of the problem.²¹

Progressive discussions that acknowledge corruption's political elements, do point out the role of multinational corporations and globalization in contributing to corruption by taking advantage of vulnerable States and eroding their value systems.²² They do also point out contributions made by the inherently corrupt systems of colonialism and apartheid and how that corrupt culture has infused into South Africa's current democratic dispensation.²³ But then it ends there as though it is something one should merely take into consideration and not necessarily take the effort to problematize. This is seen in how most of the recommendations that often follow, focus on the importance of achieving good governance through the creation of more corruption-combatting mechanisms and legal policies.²⁴ There is also an assumption that if we elect leaders with good morals, then this will effect social transformation. However, despite its best efforts, the legalistic approach has failed to bring about effective change, given that the problem still persists. This study

¹⁸ Kalombo G "Understanding Political Corruption in Post-Apartheid South Africa: The Gauteng Experience (1994- 2004)" PhD Thesis (2005) University of Witwatersrand 71.

¹⁹ Angeles L and Neanidis KC "The Persistent Effect of Colonialism on Corruption" (2015) *Economica* 82: 320.

²⁰ Mulinge MM and Lesetedi GN "Interrogating Our Past: Colonialism and Corruption in Sub-Saharan Africa" (1998) *African Journal of Political Science* 3(2): 17.

²¹ Fraser-Moleketi G "Towards a common understanding of corruption in Africa" (2008) *International Journal of African Renaissance Studies- Multi-, Inter- and Transdisciplinary*. 2(2): 240. Interesting to note here is that the author of the article was the Minister for Public Service and Administration at the time. The Minister points out the political elements of corruption, but in the end concludes by offering legalistic and depoliticized remedies as a solution to corruption.

²² Fraser-Moleketi (2008) 240.

²³ Fraser-Moleketi (2008) 241.

²⁴ Fraser-Moleketi (2008) 242.

proposes a politically and historically grounded approach as an alternative response which aims to disrupt the hollowness of the current anti-corruption discourse.²⁵

METHODOLOGY

The methodology I will be using for this research is a desktop methodology. Specifically, a critical legal theory methodology used to explore the link between South Africa's legal culture and its colonial history through the ideology of revolutionary humanism. Critique according to Wendy Brown and Janet Halley is a practice that affords us the opportunity to scrutinize our political choices in form and content and to possibly rework them.²⁶ It analyses how the problem we want to resolve is produced, which helps to avoid entrenching or reproducing the problem in the solutions we come up with (i.e. creating an extensive yet ineffective regulatory framework for corruption).²⁷ They do caution that critique does not necessarily guarantee political outcomes or resolutions.²⁸ Rather, it unpacks the discourses that organize our lives while being conscious of the fact that the outcome is unknown.²⁹ Critique has a genuine interest and desire to understand how and why things work the way they do, as opposed to merely observing principles that we are told to uphold.³⁰ In agreement with Brown and Halley, my approach takes a politically and historically grounded lens which offers a decolonial critique to anti-corruption discourse and attempts to contribute to the advancement of critical historiography.

OVERVIEW OF CHAPTERS

In chapter two, I begin with developing a definition of corruption that is most suitable for the study. I will then use this definition to explore how corruption is generally understood in South Africa. This is important because how we understand a problem is just as important as its solution. My assertion here is that the general understanding places too

²⁵ Angeles and Neandis (2015) 320.

²⁶ Brown W and Halley J *Left Legalism/ Left Critique* (2002) 27.

²⁷ Brown and Halley (2002) 27.

²⁸ Brown and Halley (2002) 27.

²⁹ Brown and Halley (2002) 27.

³⁰ Brown and Halley (2002) 27.

much confidence on the ability of the law to resolve the problem of corruption. I also offer examples of how this dominant legalistic understanding of corruption is practically applied through court decisions, together with the extensive local and international corruption-combatting regulatory framework which currently serves as the main solution to the problem. I then offer a critique of the limitations of a primarily legalistic approach to anti-corruption. At the end of this chapter, my aim is to have established that a crucial element is missing in the way corruption is generally approached in South Africa, which will then bridge into the next chapter.

Chapter three suggests an alternative way of understanding the problem of corruption in South Africa. Picking up from the argument that the dominant perspective is limited, this chapter offers a political-ideological approach as an alternative. It first expands more on the limitations of the dominant approach so as to suggest that the overreliance on the law to combat corruption actually perpetuates the problem. The main argument here is that adopting a dominant legalistic approach fails to assess the historical effect of settler-colonialism and apartheid in entrenching corruption in South Africa's political, social and economic order. I elaborate further on this point through an exposition of the concepts of racial capitalism and neo-colonialism to illustrate that the problem of corruption has its roots in colonialism. In sum, I aim to show how the continuation of corruption from colonialism and apartheid is based on the fact that South Africa refuses to acknowledge the constitutive and enduring effects that the past continues to have on the present. At the end of the chapter I suggest that one way of reframing anti-corruption discourse from the dominant legalistic approach to a political-ideological one is through a return to the radical political tradition of revolutionary humanism. This tradition can be used to shift the consciousness and ordering of society, as a way to inspire a struggle towards a genuinely liberated society, which I then discuss in chapter four.

Chapter four elaborates on revolutionary humanism as a framework that can be used to reframe the way we generally understand corruption in South Africa. After problematizing the dominant legalistic approach and pointing out its limitations in the previous chapters, the focus here is on adopting an alternative framework that can be used to change the

national perspective and ultimately transform society. Revolutionary humanism has three elements that can be used as the foundation of ideological and social transformation in South Africa. The first element focuses on how society currently functions, the second element interrogates the historical foundations of the society, and the last element uses the lived experiences of the African majority as a critical tool for authentic liberation. These elements essentially focus on having an honest understanding of the reality of our social ills by centring history in all socio-economic and political discourse. In this chapter I introduce a gendered lens to anti-corruption discourse as a response to the historically masculinist character of the South African system in colonialism and apartheid and the perpetuation thereof. Revolutionary humanism speaks on the importance of adopting a national culture that focuses on the lived experiences, knowledge and ideology of the African majority. Lastly, because revolutionary humanism can potentially effect social transformation, I use this political tradition to imagine what an authentically liberated and corruption-free society could look like.

Chapter five then concludes the study with a brief summary of all the chapters and also closes off the study by reemphasising its core argument.

CHAPTER 2: ANTI-CORRUPTION LEGALISM AND ITS LIMITATIONS

INTRODUCTION

Discussions around corruption in South Africa tend to focus on the role that the law plays in addressing the issue. Anti-corruption discourse and practice might be too quick to turn to the law as its main solution. Close attention to the problem of corruption reveals that it is a problem that relates more broadly to social change. Which then compels us to question whether official State law has the capacity to steer or change a society in a particular way.¹ The law can indeed be used as an effective tool for social regulation and the criminal legal system does discourage criminal behaviour. However, even though it has a notable impact on society, “law’s transformatory potential is often overestimated”.² This might be because there is often a gap between what society needs and what the law can provide. The law tends to shy away from understanding the political implications of social issues thus rendering it limited in its capacity to meet the needs of the people. South Africa has adopted a primarily legalistic approach to interrogating the problem of corruption which relies on the law and the State as the main solution to corruption.³ As a consequence, this perspective overlooks and ignores the inherently political nature of corruption by narrowing the discourse into a depoliticised legal framework.⁴ In other words, the legalistic approach ‘seems to operate through quite a narrow and selective determination of what counts as [corruption] and what does not.’⁵

The focus of this chapter is the dominant legalistic approach to corruption in South Africa. It problematizes how heavily reliant anti-corruption discourse is on the law to effect social

¹ Kok A “Is The Law Able to Transform Society?” (2010) *SALJ* 127(1): 59.

² Kok (2010) 61.

³ Brown and Halley (2002) 19.

⁴ Brown and Halley (2002) 19.

⁵ Modiri J “Captured states, captured imaginations” (2017) *Daily Maverick*.

change. One of the aims of this chapter is to demonstrate that regardless of the widespread claims of legalism being neutral or objective, it has its own political agenda that is not necessarily to the benefit of the South African society as a whole. To begin, I will first provide a working definition of corruption, one that is most appropriate to this study. I will then look into political corruption as a form of corruption that is specific to this study and also provide a series of examples for clarity. From there, my focus will be on corruption as a prevailing issue in South Africa. I will interrogate the dominant legalistic understanding of corruption in South Africa and the implications of adopting this perspective. I then end the chapter by suggesting that part of the reason why corruption persists despite all the measures put in place is that the dominant approach is limited, even deficient, in its understanding of the problem and therefore lacks the capacity to bring about substantial social change.

DEFINING CORRUPTION

There is an extensive body of literature that is solely dedicated to defining the term corruption. Very often in the literature concerning corruption, authors begin first by pointing out the challenges of defining the term.⁶ Apart from the different forms it takes in each society, corruption also means different things in different time periods and languages. Not only does one have to ensure that corruption is being defined appropriately with regards to a specific society, one also needs to make sure that it is translated properly from the language in which it took its form.⁷ It then also becomes important to track whether the meaning of corruption in that specific society has changed over time.

Yet surprisingly, instead of there being wide-ranging and significantly diverse definitions for the term corruption, there appears to be an ideological monopoly around the term. More often than not, Western ideology and terminology gets used to interpret issues that do not relate to the West. For example, the epistemicide in Africa that came with colonial

⁶ Kalombo (2005) 44.

⁷ Kalombo (2005) 44.

rule created a dominant Eurocentric ideology. This ideology made every African who received Western education to look at their own people and culture from the point of view of the European.⁸ Western ideology creates problems when Africans are expected to give an account that is true to their lived experience, as it is now tarnished by the white gaze. More of this will be explored in later chapters. As we go through various definitions of corruption, it is important to be aware of the ways in which Western perspective dominates the discourse.

INTRODUCING POLITICAL CORRUPTION

In his thesis, Gaston Kalombo points out that part of what makes corruption hard to define and measure is its covert nature.⁹ Most analysts have found it difficult to agree upon a concrete universal definition for corruption. This is because of the ways in which its form differs from one society to another.¹⁰ Though there are multiple ways of defining the term, when the word corruption comes to mind it evokes a very specific imagery.¹¹ We often imagine immorality, criminality and underhanded dealings such as bribery. This study focuses on the form of corruption that has a direct effect on the socio-political and economic status of a country. It therefore targets public and private institutions and individuals that have direct political and economic power in society. What this describes is political corruption. Despite the “definitional ambiguity”, a general definition for political corruption that most scholars have agreed upon with regards to public sector corruption is the “*use of public office for private gain*”.¹²

Much like Kalombo, this study focuses more on “the public office-centred approach, related to public duties, and deviations from norms and regulations binding office holders, in a much broader sense”.¹³ This is generally understood as political corruption. There is

⁸ Ekeh P “Colonialism and the Two Publics in Africa: A Theoretical Statement” (1975) *Comparative Studies in Society and History* 17(1):91-97.

⁹ Kalombo (2005) 44.

¹⁰ Kalombo (2005) 44.

¹¹ Kalombo (2005) 46.

¹² Kalombo (2005) 46.

¹³ Kalombo (2005) 48.

however, a difference between bureaucratic corruption and political corruption. Both are located in institutions of government, however the difference is that one relates to grand corruption and the other to petty corruption.¹⁴ Political corruption is the abuse of State resources and entrusted power by political leaders for private benefit, usually in the form of political legitimation and/or increase of power or wealth.¹⁵ Political corruption relates to grand corruption which has to do with high-ranking public officials who are usually responsible for policy-making and implementing laws.¹⁶ These are highly placed public figures who abuse their positions for personal gain. An example of grand corruption is the 'floor-crossing policy' that allowed legislators to "swap" parties, for personal benefits.¹⁷ This policy was specifically enacted to cater to the personal interests of legislators.¹⁸

Another example of grand corruption is the Arms Deal. The Arms Deal is actually a nickname for the Strategic Defence Package of 1999 which involved the procurement of warships and warplanes amounting to R30 billion by the South African government.¹⁹ It was a collusion between South Africa and the British, German, Swedish, French and Italian governments involving large-scale bribery and corruption that cost South Africa billions of Rands in taxpayer's money.²⁰ This deal put South Africa into two decades of insurmountable debt in the form of loan repayments and interest fees. It has been speculated that this year (2020), the twenty-year-old debt caused by the Arms Deal will finally be paid off.²¹ Because of this, the Arm's Deal is often described as one of the biggest corruption scandals in the history of post-1994 South Africa.

Interestingly, both former Presidents Thabo Mbeki and Jacob Zuma were implicated in the Arms Deal for corruption and fraud. This is worth mentioning because at the time of the deal, Mbeki was the Deputy President to President Nelson Mandela and when

14 Kalombo (2005) 54.

15 Kalombo (2005) 54.

16 Kalombo (2005) 54.

17 Kalombo (2005) 55.

18 Kalombo (2005) 55.

19 Open Secrets "Jacob Zuma – Comrade in Arms" (2020) *Daily Maverick*.

20 Open Secrets (2020) *Daily Maverick*.

21 Open Secrets (2020) *Daily Maverick*.

Mandela's term ended, he became President, with Zuma as his Deputy. And when Mbeki left office, Zuma became President. Added to this is the fact that Zuma was portrayed as the personification of corruption under his presidential term with many scandals involving him being exposed. The ones most popularly referred to are his home in Nkandla which involved using taxpayer's money to build his homestead costing nearly R250 million.²² And his relationship with the notorious Guptas – a wealthy family whose ties with both Zuma and other ANC executives led to widespread claims of corruption.²³ All of this then informed the Zondo Commission of Inquiry into allegations of 'State capture' by the Gupta family under the Zuma Administration. These are only a few of the many examples of 'grand corruption' in South Africa.

On the other hand, bureaucratic corruption relates to corrupt practices between citizens and public officials.²⁴ It relates more to lower ranking public officials and their daily interactions with citizens.²⁵ This is in relation to things such as paying bribes for license issuing, jumping queues and bribing traffic officers to avoid a speeding ticket. It is also referred to as routine or petty corruption.²⁶ Kalombo observes that the popular term used for bribing public officials in South Africa is *cool drink*.²⁷ It is derived from a common scenario where a citizen gets pulled over by a traffic officer for exceeding the speed limit. The officer proposes that the driver can either receive a speeding ticket or give the officer *cool drink* money which is less than the speeding fine but is in no way the price of an actual cool drink. The term is however not limited to traffic officers and applies to any corrupt exchanges between lower ranking public officials and citizens.²⁸

INTERNATIONAL PERSPECTIVES ON CORRUPTION

²² Krsteski (2017) 52.

²³ Krsteski (2017) 52.

²⁴ Kalombo (2005) 55.

²⁵ Kalombo (2005) 55.

²⁶ Kalombo (2005) 55.

²⁷ Kalombo (2005) 52.

²⁸ Kalombo (2005) 53.

As mentioned earlier, there are countless definitions of corruption that differ according to the society or even the institutions it operates in. Some of the most influential definitions of corruption are those given by international organizations. Below I will explore some definitions provided by prominent international organisations and Non-Governmental Organizations (NGOs). It is important here to pay attention to the area of corruption that these organisations choose to focus on.

Transparency International

Transparency International is currently the leading international organisation for combatting corruption. Its general definition of corruption is “the abuse of entrusted power for private gain”.²⁹ Corruption here, can be classified as grand, petty and political, depending on the amount of money lost and the sector where it occurs. Grand corruption is explained as acts committed at a high level of government that distorts policies or the central functioning of the State, enabling leaders to benefit at the expense of the public good. Petty corruption refers to the everyday abuse of entrusted power by low-level and mid-level public officials in their interactions with ordinary citizens, who are often trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. Lastly, political corruption is defined by the organisation as the manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth.³⁰

OECD

The definition provided by the Organization for Economic Co-operation and Development (OECD) describes corruption as it relates to criminal law. It mentions that the OECD, the Council of Europe and the UN Conventions do not define “corruption”. Instead, they establish the offences for a range of corrupt behaviour. So, the OECD Convention establishes the offence of bribery of foreign public officials, while the Council of Europe Convention establishes offences such as trading in influence, and bribing domestic and

²⁹ Viewed 7 November 2019. Available: <https://www.transparency.org/what-is-corruption#define>.

³⁰ Viewed 7 November 2019. Available: <https://www.transparency.org/what-is-corruption#define>.

foreign public officials. In addition to these types of conduct, the mandatory provisions of the UN Convention also include embezzlement, misappropriation, diversions of property by a public official and other forms of obstruction of justice. The conventions therefore define international standards on the criminalisation of corruption by prescribing specific offences, rather than relying on a generic definition or offence of corruption. Some Istanbul Action Plan countries take a different approach by defining corruption as a specific crime in their anti-corruption and criminal laws. In practice, these definitions of corruption are often too general or vague from a criminal law perspective. As a result, there have been very few prosecutions or convictions for these offences.³¹

United Nations (UN)

As mentioned above the United Nations (UN) does not provide a definition for corruption. However, on its website it describes corruption as a “serious impediment to the rule of law”, obstructing economic growth and development, eroding public confidence, legitimacy and transparency. It hinders the making of fair and effective laws, as well as their administration, enforcement and adjudication. The UN also mentions the rule of law as an essential element in addressing and preventing corruption.³²

International Monetary Fund (IMF)

According to the International Monetary Fund (IMF), corruption is “the abuse of public office for private gain”, it distorts the activities of the State and ultimately takes a toll on economic growth and quality of life. It weakens key functions of the public sector which includes the ability to collect taxes or to make expenditure choices in a fair and efficient way. The quality of public service and infrastructure suffers when project selection reflects opportunities for kickbacks or nepotism. Bribery of foreign officials by multinationals and the use of opaque financial centres, or secrecy jurisdictions, to hide corrupt gains or to evade taxes add a global dimension to the challenge. Against this backdrop, and by

³¹ Viewed 7 November 2019. Available: <http://www.oecd.org/corruption/anti-bribery/39532693.pdf>

³² Viewed 7 November 2019. Available: <https://www.un.org/ruleoflaw/thematic-areas/governance/corruption/>.

contributing to the growing inequality, corruption undermines trust in government and can lead to social and political instability.³³

World Bank

Corruption according to the World Bank is “the abuse of public office for private gain,” This definition is explained as the acceptance, solicitation or extortion of bribes by officials. It also relates to private agents actively offering bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of State assets, or the diversion of State revenues. This definition is both simple and sufficiently broad to cover most of the corruption that the Bank encounters. Bribery occurs in the private sector, but bribery in the public sector, offered or extracted, is the Bank's main concern, since the Bank lends primarily to governments and supports government policies, programs, and projects.³⁴

Corruption Watch

Lastly, Corruption Watch is a non-profit organisation in South Africa that focuses on fighting against corruption. It defines corruption as “the abuse of public resources or public power for personal gain. Corruption Watch is concerned with any such abuse by anyone at any level of government or in business.”³⁵

All of the organisations discussed above have chosen a particular element of corruption to focus on. Transparency International focuses on government officials and the different forms corruption takes in different levels of government. It even mentions the difference between grand and petty corruption. The OECD is more focused on corruption as it relates to criminal law. It looks more into the acts of corruption that can be criminalised

³³ Viewed 7 November 2019. Available: : <https://www.imf.org/~media/Files/Publications/fiscal-monitor/2019/April/English/ch2.ashx?la=en>.

³⁴ Viewed 7 November 2019. Available: <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1>.

³⁵ Viewed 7 November 2019. Available: <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/>.

and mentions that the decision not to give a definition was done so in order to avoid ambiguity. The UN has a strong focus on the rule of law and mentions that it must be an essential element of anti-corruption measures and initiatives. The IMF focuses mainly on the ways in which corruption negatively affects the institutions of a State, its economy, its people and society. The World Bank focuses mainly on bribery in the public sector and mentions that it focuses on governments because it mainly lends money to governments and supports government policies, programs and projects. Finally, Corruption Watch does not necessarily focus on a specific element. It chooses to tackle corruption committed by anyone, in any sector and at every level.

Therefore, the definition of corruption takes different directions depending on what one chooses to focus on. As mentioned earlier, this study will focus more on political corruption, which I will now turn to.

CAUSES OF POLITICAL CORRUPTION

Tom Lodge in his article *Political Corruption in South Africa*, states that a general definition for political corruption is the “unsanctioned or unscheduled use of public resources for private ends”.³⁶ Scholars often measure the degree of severity of corruption by looking both at where it occurs and how pervasive it is.³⁷ For corruption to become systematic, it must appear at all levels of a political system. It must be repetitive behaviour and have a “parallel set of procedures to those which properly constitute the formal functions of the bureaucracy”.³⁸ A good example of systemic corruption is ‘routine’ or ‘petty corruption’,³⁹ where for example, the bribing of traffic officers in order to avoid a speeding ticket is a normal practice. Usually, administrations where systematic corruption is present have large scale misappropriation which substantially reduces public expenditure on development and services.

³⁶ Lodge T “Political Corruption in South Africa” (1998) *African Affairs* 97(387): 157.

³⁷ Lodge (1998) 157.

³⁸ Lodge (1998) 159.

³⁹ Lodge (1998) 159.

However, it is worth mentioning that some scholars have taken into consideration the fact that corruption might have beneficial developmental effects.⁴⁰ This position looks at situations where formal bureaucratic controls obstruct entrepreneurial growth.⁴¹ The argument here is that corrupt exchanges may result in better economic decisions and that by-passing bureaucratic controls can promote efficiency and channel capital into investment as opposed to consumption.⁴² For example, a study conducted in Japan suggested that political corruption may even at times enhance political stability.⁴³ The study showed that constituency-based patronage systems have led to high levels of public investment in rural areas.⁴⁴ Another point made regarding the developmental benefits is that “corruption works like piece-rate pay for bureaucrats which induces efficient provision of services by circumventing inefficient regulation of the government.”⁴⁵ Lodge warns however that “such instances usually involve the grandiose corruption of senior officials in exchange for subverting tender procedures rather than routine petty venality which is generally agreed to be developmentally harmful.”⁴⁶ Though corruption may stimulate innovative activities it also contributes to the smooth operations of an inefficient economy which in the end only weakens national economic progress.⁴⁷

Political corruption is often perceived as being specific to governments in developing countries.⁴⁸ Some reasons given are that it is often found where rapid social and economic modernisation is taking place.⁴⁹ Another reason is that most countries that decide to centralise bureaucratic administration are influenced or pressured by external forces. There is then a gap between these new policies and methods of government in

⁴⁰ Lodge (1998) 159.

⁴¹ Lodge (1998) 159.

⁴² Lodge (1998) 159.

⁴³ Lodge (1998) 159.

⁴⁴ Lodge (1998) 159.

⁴⁵ Manamela MG, Mulaudzi KM, Selelo ME and Hussein M “Corrosiveness of corruption and the quest for good governance in South Africa and Malawi” (2020) *Journal of Public Administration and Development Alternative* 5(1): 112.

⁴⁶ Lodge (1998) 159.

⁴⁷ Manamela, Mulaudzi, Selelo and Hussein (2020) 112.

⁴⁸ Lodge (1998) 160.

⁴⁹ Lodge (1998) 160.

relation to the society they operate in.⁵⁰ Another reason, one specific to South Africa was the pressure to recruit large amounts of civil servants during the transition to democracy.⁵¹ There were also replacements of experienced officials with junior functionaries.⁵² Senior officials were replaced with political party members that had strong struggle credentials, regardless of their skill or qualification.⁵³ As a result, newly appointed ministers and public managers were often inexperienced and ignorant of tender procedures.⁵⁴ The spokesperson of one MEC said admittedly, “[w]e never even knew what a tender board was before we came to power”.⁵⁵ This resulted in a decline in government efficiency.

Another major contributing factor of political corruption in developing countries is that the State receives most of its revenue from foreign donors.⁵⁶ These donors often have a say in the country’s economic and developmental policies. That being said, the disclosure of a series of political scandals in first world industrial democracies have shifted (though not completely) the narrative of political corruption being a developing world phenomenon.⁵⁷ Some examples are the arrest of former French President Nicholas Sarkozy over claims that his 2007 presidential campaign received funding from Libyan dictator Muammar Gaddafi.⁵⁸ Another former French President Jacques Chirac was found guilty for embezzling public funds to illegally finance the party he led.⁵⁹ In South Korea, President Park Geun-hye was impeached from office in 2017.⁶⁰ Also in South Korea, former President Lee Myung-bak was sentenced to 15 years for corruption.⁶¹ In February 2010 the British multinational defence, security and aerospace company BAE Systems pleaded

50 Lodge (1998) 160.

51 Lodge (1998) 160.

52 Lodge (1998) 160.

53 Lodge (1998) 183.

54 Lodge (1998) 183.

55 Lodge (1998) 183.

56 Lodge (1998) 160.

57 Lodge (1998) 183.

58 Chrisafis A “Nicholas Sarkozy in police custody over Gaddafi allegations” (2018) *The Guardian*.

59 Associated Press in Paris “Jacques Chirac found guilty of corruption” (2011) *The Guardian*.

60 Manamela, Mulaudzi, Selelo and Hussein (2020) 110.

61 Manamela, Mulaudzi, Selelo and Hussein (2020) 110.

guilty to charges of false accounting and misleading statements regarding its arms deals, following claims on corrupt activity within the company.⁶²

Lodge mentions that there are three main political developments that are believed to promote corruption. The first is the decentralization of administration, together with the delegation of financial authority. Secondly, the introduction of market values into public administration.⁶³ And thirdly, the growing extent to which political organisations are dependent on external sources for finance because of the growing costs of political competition in party systems.⁶⁴ Other reasons mentioned are “bureaucratic secrecy and the absence of mutual surveillance procedures by government agencies; protracted rule by one political party or an ageing one party dominant system; administrative inefficiency and complicated hierarchical decision-making procedures which create lengthy delays; and extensive patterns of political appointment in the civil service”.⁶⁵ The article *Corrosiveness of corruption and the quest for good governance in South Africa and Malawi*, also points to the fact that the inadequate resources of South African institutions both in “quality and quantity of staff and skills; material, financial resources and physical facilities is another factor which undermines the fight against corruption”.⁶⁶

POLITICAL CORRUPTION UNDER APARTHEID AND THE EARLY STAGES OF DEMOCRACY

One of the major factors contributing to political corruption in contemporary South Africa is that it reflects historically entrenched habits.⁶⁷ My focus here will be on the habits established under the apartheid regime and early stages of democracy in South Africa. Important to note here is that though the current problem reflects historically entrenched habits, corruption has also assumed new nuances that have been layered on the old

⁶² Leigh A and Evans R “BAE admits guilt over corrupt arms deals” (2010) *The Guardian*.

⁶³ Lodge (1998) 161.

⁶⁴ Lodge (1998) 161.

⁶⁵ Lodge (1998) 161.

⁶⁶ Manamela, Mulaudzi, Selelo and Hussein (2020) 117.

⁶⁷ Lodge (1998) 178.

ones.⁶⁸ As Jonathan Hyslop asserts, the difference in the two orders accounts for the differences in their corruption, they are not exactly the same.⁶⁹ According to Lodge, there is plenty of evidence demonstrating that by 1980, political corruption was quite common in government departments and homeland administrations.⁷⁰ Some of which are the 1978 Information Department scandal which involved senior officials using State funds to pay for properties registered in their own names, family holidays and receiving tax-free supplementary allowances.⁷¹ During the 1980s there was also an increase in the secret funding that was channelled to the Defence Department and by 1994, R3.7 billion had been transferred to the Defence Department's secret account.⁷² Land transfers by the South African Development Trust had for decades been dishonestly and incompetently managed.⁷³ Between 1976 and 1994, thousands of people were removed from about 45,000 State-owned houses to make room for prospective tenants who paid bribes to government officials.⁷⁴

During apartheid in the 1970s and 1990s, economic crime in South Africa effectively became State policy.⁷⁵ Corruption was a necessity for the survival of the apartheid State.⁷⁶ Van Vuuren mentions five ways in which the apartheid government succeeded in avoiding international sanctions imposed on the country.⁷⁷ First, State security was heightened and any journalist who exposed the corrupt activities of the apartheid government was criminalised.⁷⁸ Second, for the anti-sanctions campaign to run smoothly, the State together with many corporations created a secret economy.⁷⁹

⁶⁸ Hyslop J "Political Corruption: Before and After Apartheid" (2005) *Journal of Southern African Studies* 31(4): 774.

⁶⁹ Hyslop (2005) 774.

⁷⁰ Lodge (1998) 164.

⁷¹ Lodge (1998) 164.

⁷² Lodge (1998) 165.

⁷³ Lodge (1998) 167.

⁷⁴ Lodge (1998) 170.

⁷⁵ Van Vuuren H *Apartheid Guns and Money: A Tale of Profit* (2017) 8.

⁷⁶ Van Vuuren (2017) 8.

⁷⁷ Van Vuuren (2017) 9.

⁷⁸ Van Vuuren (2017) 9.

⁷⁹ Van Vuuren (2017) 10.

Third, national and international banks were also allies in the anti-sanctions campaign. These banks continued to “keep the lines flowing” despite calls to impose sanctions in order to stop apartheid by frustrating the economy.⁸⁰ Laws such as the Special Defence Account Act, were created to ensure that these secret accounts were not looked into.⁸¹ To quote Van Vuuren, “the apartheid government could rely on complicit banks that had made it their business to provide secretive banking services to the rich and criminal around the world.”⁸² With the help of international banks, money through the apartheid government could move seamlessly between people through electronic transactions.⁸³ One of the things that made these transactions smooth was the Armaments Corporation of South Africa (ARMSCOR). ARMSCOR was an arms procurement company in South Africa put in place, for front companies across the world to act as a camouflage for the corrupt transactions, with its main fronts in Panama and Liberia.⁸⁴ It still exists today in post-apartheid South Africa, as an acquisition agency for the Department of Defence.

The Swiss commercial banks were prominent and had a long-standing relationship with the apartheid State.⁸⁵ The banks provided South Africa with loans for public entities such as Eskom and the government.⁸⁶ They even funded the Bantustans or homelands and in 1982, Bophuthatswana raised ten million Dollars under the Swiss bank named Kreditbank.⁸⁷ Former Bophuthatswana President, Kgosi Lucas Mangope, was also known for issuing irregular tenders and appropriating State-owned property.⁸⁸ President Mangope also established private businesses with public funds.⁸⁹ Homelands built under the apartheid regime played a significant role in the government’s corrupt activities.⁹⁰

⁸⁰ Van Vuuren (2017) 10.

⁸¹ Van Vuuren (2017) 173.

⁸² Van Vuuren (2017) 175.

⁸³ Van Vuuren (2017) 174.

⁸⁴ Van Vuuren (2017) 174.

⁸⁵ Van Vuuren (2017) 129.

⁸⁶ Van Vuuren (2017) 142.

⁸⁷ Van Vuuren (2017) 158.

⁸⁸ Lodge (1998) 169.

⁸⁹ Lodge (1998) 169.

⁹⁰ Hyslop (2005) 783.

Homeland leaders or traditional chiefs were used by the apartheid government for official extortion including the issuing of illegal trading permits.⁹¹ Hyslop points out that further opportunities for official rent-seeking under apartheid were made possible by the legal fiction of homeland independence. One example is the Sun Hotel group that actually moved into the homelands.⁹² On one occasion, the hotel executives allegedly bribed the Transkei president's brother George Matanzima, offering him seven million Rands in cash, in exchange of gambling rights.⁹³ Hyslop described the homelands as a "happy hunting ground for shady entrepreneurs from South Africa and abroad".⁹⁴ More importantly, after the transition to democracy there was a clear correlation between the level of systemic corruption and the degree of administrative continuity with the old homeland administrations.⁹⁵ The corruption of the homelands was simply carried over to the new era.⁹⁶ This was seen in how corruption was most prominent in the provinces that had regional civil services that were drawn from the old Bantustan structures.⁹⁷ These provinces were the Eastern Cape, Mpumalanga and Limpopo.⁹⁸

A fourth element of the anti-sanctions campaign relates to the allies that were called to secretly lend a hand to the apartheid State.⁹⁹ These included all five permanent members of the UN Security Council that is, China, France, Russia, the United Kingdom and the United States of America.¹⁰⁰ Russia and China being allies of the apartheid government is interesting given the fact that they were also traditional supporters of the liberation movement fighting *against* apartheid.¹⁰¹ The last factor of the campaign was that at least

⁹¹ Hyslop (2005) 783.

⁹² Hyslop (2005) 783.

⁹³ Hyslop (2005) 783.

⁹⁴ Hyslop (2005) 783.

⁹⁵ Hyslop (2005) 785.

⁹⁶ Hyslop (2005) 785.

⁹⁷ Hyslop (2005) 785.

⁹⁸ Hyslop (2005) 785.

⁹⁹ Van Vuuren (2017) 11.

¹⁰⁰ Van Vuuren (2017) 11.

¹⁰¹ Van Vuuren (2017) 11.

48 countries acted as proxies for the UN 'Big Five' in providing weapons to the apartheid State.¹⁰² These proxies were located in Africa, Asia, Europe and the Americas.¹⁰³ Pariah States such as Israel, Argentina and Chile were also involved.¹⁰⁴ Though there are no anti-apartheid sanctions to be evaded in South Africa today, features relating to historically entrenched habits of corruption are the appropriation of State resources, the establishment of personal businesses with public funds and loans still given to Eskom and other government entities. What has also continued is the use of State funds to go on family holidays, bribery and the mismanagement of resources by public officials.

Another thing to consider regarding the historical entrenchment of corruption in South Africa is the fact that during the early stages of democracy, much of the new administration was still run by the same people from the apartheid administration.¹⁰⁵ Hyslop writes that a surprisingly high proportion of the old Afrikaner bureaucracy accepted the new dispensation and conscientiously served the new state.¹⁰⁶ It should then come as no surprise that political corruption did not come to an end in 1994.¹⁰⁷ Some examples of political corruption during the early stages of democracy were the high levels of official self-enrichment mainly in the Departments of Social Welfare, Safety and Security, and the Department of Justice.¹⁰⁸ One reason for this was the appointment of former apartheid ministers who were involved in fraudulent schemes.¹⁰⁹ Abe Williams was a major culprit of a pension fraud scandal during apartheid which affected the old pension department.¹¹⁰ Williams was forced to resign after an investigation by the Western Cape MEC for the Department of Health and Social Services was held. This was after Williams was already suspected for bribery.¹¹¹

102 Van Vuuren (2017) 11.

103 Van Vuuren (2017) 11.

104 Van Vuuren (2017) 11.

105 Hyslop (2005) 785.

106 Hyslop (2005) 785.

107 Lodge (1998) 171.

108 Lodge (1998) 177.

109 Lodge (1998) 177.

110 Lodge (1998) 177.

111 Lodge (1998) 177.

The police department is also another example. In just 1995 and 1996, there were 8,000 reports of crimes committed by police officials in Gauteng alone.¹¹² In 1996, four police officers were suspended for corruption every week.¹¹³ In 1995, a station commander in Rustenburg was discovered to be running a car theft syndicate together with professional criminals.¹¹⁴ Police officials extorted thousands of Rands from people they illegally held in cells, mainly on suspicion that they were illegal immigrants.¹¹⁵ They were also caught conspiring with members of the Department of Justice by assisting magistrates and prosecutors in theft and the deliberate loss of dockets in exchange for bribes from charged criminals.¹¹⁶ Millions of Rands have been wasted because of the countless cases that did not reach court.¹¹⁷ Between 1995 and 1998, corruption cost the tax payer around R13.5 billion to R20 billion.¹¹⁸ Again, this behaviour is also historically entrenched.

Makau wa Mutua brings attention to the process that was adopted for reforming the police force during the transition to democracy, in an attempt to transform the department's unjust nature.¹¹⁹ Under the apartheid regime, the police force took on repressive policing functions especially against the black majority.¹²⁰ The police used coercion as an instrument to propagate "virulent forms of racism and a culture of death and destruction, secrecy and unaccountability".¹²¹ One of the decisions taken during the reforming process, was that the police would keep their position of power and influence.¹²² In addition to this, 65% of the "newly reformed" police force was made up of former apartheid

112 Lodge (1998) 177.

113 Lodge (1998) 177.

114 Lodge (1998) 178.

115 Lodge (1998) 178.

116 Lodge (1998) 178.

117 Lodge (1998) 178.

118 Lodge (1998) 180.

119 Mutua, M. Hope and Despair for a New South Africa: The Limits of the Rights Discourse. *Harvard Human Rights*. (1997) 63 109.

120 Mutua (1997) 109.

121 Mutua (1997) 109.

122 Mutua (1997) 110.

police officers.¹²³ Mutua asserts here that the “mentality and training of repression is deeply ingrained” and forces of repression cannot be easily transformed.¹²⁴ Retaining the bulk of old apartheid officials and their power and influence contributed to the lack of substantive transformation within the police force. It has also perpetuated corruption and police brutality in the democratic dispensation. Perhaps, massive layoffs and the compulsory early retirement of former apartheid officials would have yielded better transformative results.¹²⁵

Very often the narrative that plays out is one that suggests that the public sector should emulate the private sector in its managerial practices.¹²⁶ Lodge rightly points out that implementing this would probably be unhealthy. This is because the South African private managers are paid very generously, given the wage differentials which characterize most companies.¹²⁷ Also, the South African private sector is believed to be one of the most fraudulent in the world.¹²⁸ Therefore, in order to find an effective solution to this issue, we must first look into the kind of approach South Africa has adopted with regards to combatting corruption and the ways in which this approach has fallen short.

LEGALISM AS THE DOMINANT APPROACH TO CORRUPTION IN SOUTH AFRICA

UNDERSTANDING LEGALISM AND ITS EUROCENTRIC BACKGROUND

To begin, it must be mentioned, that the general approach to corruption adopted by countries worldwide is that of legalism.¹²⁹ This approach to combating corruption involves the formulation of a legal and policy framework which involves laws, policies, rules and

¹²³ Mutua (1997) 110.

¹²⁴ Mutua (1997) 110.

¹²⁵ Mutua (1997) 110.

¹²⁶ Lodge (1998) 186.

¹²⁷ Lodge (1998) 186.

¹²⁸ Lodge (1998) 186.

¹²⁹ Manamela, Mulaudzi, Selelo and Hussein (2020) 113.

regulations, codes of conduct, together with institutional and administrative reforms.¹³⁰ Legalism can be defined as an extreme or excessive adherence to the law,¹³¹ another definition refers to it as obeying the law too strictly.¹³² This is already indicative of the kind of the relationship legalism expects to have with its subjects. The language of the post-1994 South Africa has been described as the language of legalism.¹³³ Jean and John Comaroff explain that at the heart of the modern State, is the spirit of the law.¹³⁴ This is because South Africa has democracy and constitutionalism as its core values and uses the rule of law as the main tool for social regulation. However, even as a “postcolonial” State, the colonial nature of South Africa’s legal system remains unchanged.

South Africa’s common law, civil law and criminal law are all derivatives of European law.¹³⁵ This means that a significant part of the current language of South Africa’s legal system comes from its tremendously unjust past. To describe the legal culture of our colonial past, the Comaroffs observe that the colonial State was heavily reliant on “legal instruments-proclamations, decrees, orders-in-council, statutory acts, commissions of enquiry” to impose their will on their “native” subjects.¹³⁶ This was described by the Setswana-speaking South Africans as “warfare with paper”.¹³⁷ On this point, Gloria Sauti asserts that the “apartheid mission to assign racial categories to Black South Africans” by forcing upon them identities they did not choose, has contributed to the current post-apartheid identity crisis.¹³⁸ The filling in of documents that gave Black South Africans identities that were not theirs and forcing them to carry those documents as a representation of their identity was “warfare with paper”. To quote Sauti:¹³⁹

130 Manamela, Mulaudzi, Selelo and Hussein (2020) 113.

131 I take this definition from Lexico’s Dictionary.

132 This definition is derived from the Oxford Learner’s Dictionary.

133 Comaroff J and Comaroff J “Policing Culture and Cultural Policing: Law and Social Order in Postcolonial South Africa” (2004) *Law and Social Inquiry* 29(3): 513 539.

134 Comaroff and Comaroff (2004) 539.

135 Nunn K “Law as Eurocentric Enterprise” (1997) *Law and Inequality: A Journal of Theory and Practice* 15(2): 323 327.

136 Comaroff and Comaroff (2004) 539.

137 Comaroff and Comaroff (2004) 539.

138 Sauti G “The Limitations of Legalism and Identity Labels in Post-apartheid South Africa” (2019) *African Journal of Development Studies* 49(2): 2.

139 Sauti (2019) 2.

the fact that Black people's names were changed because they were difficult for the officers to pronounce, the racial classifications by which individuals were supposed to self-identify when filling out application forms were flawed. Post-apartheid, it remains a legal requirement for individuals to identify themselves in terms of race, gender and nationality. Consequently, this classification continues to promote racial hierarchies between the superior minority and the disadvantaged majority, who face exclusions in terms of employment and other benefits.

The fact that apartheid classifications are still “evident in legal application forms more than two decades into South Africa’s democracy” indicates that divisions that should have been abolished post-apartheid are still promoted legally.¹⁴⁰ Again this illustrates how law was deployed as a means to inflict violence upon the indigenous majority and their property, by indirect means.¹⁴¹ Because of its colonial and suppressive roots, law today continues to “extend control over space and time, cultures and identities of their subjects”.¹⁴²

To give a bit more context on legalism’s current Eurocentric form, Kenneth Nunn asserts that what is often overlooked is the fact that law has a cultural base.¹⁴³ In other words, the law concerns itself with creating a particular type of culture.¹⁴⁴ What this means for South Africa is that because it essentially adheres to European law, its system embodies institutions that have been formed in the European historical and cultural context.¹⁴⁵ This is extremely important to take note of, particularly because the institutional culture of South Africa is often overlooked in anti-corruption discourse. John Ojo explains that corruption is actually “embedded in the country’s administrative machinery”.¹⁴⁶ Through Western legal structures, part of the law’s cultural endeavour is to promote European

¹⁴⁰ Sauti (2019) 2.

¹⁴¹ Comaroff and Comaroff (2004) 540.

¹⁴² Comaroff and Comaroff (2004) 539.

¹⁴³ Nunn (1997) 324.

¹⁴⁴ Nunn (1997) 324.

¹⁴⁵ Nunn (1997) 327.

¹⁴⁶ Ojo JS “Politics of Corruption in Africa” in Farazmand A (eds) *Global Encyclopedia of Public Administration, Public Policy, and Governance* (2018) 8.

values and interests at the expense of others.¹⁴⁷ It aims to organise and direct culture by reinforcing a Eurocentric way of thinking. It affirms Eurocentric values and its cultural experiences.¹⁴⁸ Some definitive characteristics of Western European culture are that it is individualistic and narcissistic.¹⁴⁹ Narcissistic because Western culture sees itself as superior and thus, the standard for humanity. Individualistic because it concerns itself more about the interests of the individual than it does about the needs of the community as a whole, which is in direct contrast with the collectivist culture of African societies.

The cultural contrast between Western and African societies is also worth taking note of. According to Ojo, “contemporary political nomenclature in Africa cannot be well understood without the instrumentality of precolonial political structure and the mechanical application of [the] modern political arrangement devised by colonial authorities”.¹⁵⁰ Traditional African political systems embody the spirit of oneness and are based on “communal panache” with the specific element of collective participation in local affairs.¹⁵¹ Democracy was thus embedded in African precolonial administrations, which were governed on traditional models where values and principles were adhered to by both the indigenous community and their traditional chiefs.¹⁵² Ojo observes that one of the cultural contrasts between Africa and the West is that, with colonial and postcolonial systems came the exclusion of citizens from democratic governance.¹⁵³ Through this lens we can view modernization as a tool used to “[trample] on indigenous political institutions” and also gave little room for public participation in governmental affairs.¹⁵⁴ According to Ojo, modernization is the cause of Africa’s poverty, weak institutions and the global pressure to adopt Western democratic frameworks which have endangered independence and post-independence developmental efforts.¹⁵⁵ Evidently, South Africa

147 Nunn (1997) 328.

148 Nunn (1997) 328.

149 Nunn (1997) 325.

150 Ojo (2018) 1.

151 Ojo (2018) 1.

152 Ojo (2018) 2.

153 Ojo (2018) 1.

154 Ojo (2018) 2.

155 Ojo (2018) 2.

is controlled by a culture that is foreign, detrimental and directly opposed to its African values.¹⁵⁶ As Hyslop puts it, “[in] a certain sense, the prevalence of corruption in South African politics is a sign of the health of its democracy.”¹⁵⁷ The decision to keep a Western legal culture in post-1994 South Africa accounts for the adoption of legalism as the dominant approach to addressing socio-political and economic issues.

THE EFFECTS OF LEGALISM IN ANTI-CORRUPTION DISCOURSE

Because of its inherently Eurocentric roots, the individualistic nature of legalism in South Africa inevitably affects the ways in which the problem of corruption is approached. It is limited to understanding corruption only as it relates to the behaviour of individuals and fails to recognise that corruption could in fact be an institutional problem.¹⁵⁸ Anti-corruption discourse in South Africa holds a highly bureaucratic process as ideal. It places much of its confidence in the law’s punitive culture of exposing, prosecuting and making an example of individuals. Corruption in South Africa is therefore characterised by the failure of individual morality. It is rooted in the idea that the “decision to engage in corruption may be influenced by the individual’s personality, career history, rank, education, motivation and experience with corruption and self-control.”¹⁵⁹ This approach has been described as the personalistic or behavioural explanation of corruption.¹⁶⁰ Kalombo describes corruption’s personalistic explanation as:¹⁶¹

the work of people, and when individuals or small groups are found to have broken the rules governing public roles, it is tempting to search for causes in the personal qualities (real or imagined) of those involved. [A personal] or individual level analysis of corruption holds that corruption is simply a consequence of human nature as human beings are all subject to greed and can behave corruptly to rationally maximize their gain.

¹⁵⁶ Ojo (2018) 2.

¹⁵⁷ Hyslop (2005) 775.

¹⁵⁸ Manamela, Mulaudzi, Selelo and Hussein (2020) 113.

¹⁵⁹ Manamela, Mulaudzi, Selelo and Hussein (2020) 113.

¹⁶⁰ Kalombo (2005) 71.

¹⁶¹ Kalombo (2005) 71.

The most common examples regarding the personalistic explanation are bribery and extortion.¹⁶²

Legalism holds the law and the State as the single most important remedy for corruption.¹⁶³ One of legalism's limitations is that it carries a very specific politics and translates wide-ranging political questions into more narrowly framed legal questions.¹⁶⁴ Notably, this dominant legalistic approach in South Africa coincides with the ways the UN and the OECD approach corruption. They all prioritise the rule of law as the single most important mechanism to combat corruption and focus on the criminalisation of individual behaviour particularly in the public sector.

South Africa's political life is so immersed in legalism that to find alternative ways of pursuing justice becomes a challenge. To quote Robert Unger, "[t]he world suffers under a dictatorship of no alternatives. Although ideas all by themselves are powerless to overthrow this dictatorship we cannot overthrow it without ideas".¹⁶⁵ Politics practiced legalistically creates barriers for critical discourse around the limitations of legalism.¹⁶⁶ The underhandedness of norms and political power in legal spaces "repeatedly divests political questions of the most crucial concerns".¹⁶⁷ Legalism imposes its own standards of what is fair and just.¹⁶⁸ It likes to depict the law as an objective instrument, a tool having no content of its own and deployed of goals external to it.¹⁶⁹ When in actual fact, legalism has "nearly saturated the entire political culture".¹⁷⁰ It masks the historical embeddedness of corruption's political nature by always looking for deontological grounds.¹⁷¹ Legalism essentially depoliticises corruption as it 'reduces and technicalises [it's] complexity'.¹⁷²

¹⁶² Kalombo (2005) 71.

¹⁶³ Brown and Halley (2002) 19.

¹⁶⁴ Brown and Halley (2002) 19.

¹⁶⁵ Unger R *What Should the left propose?* (2005) 1.

¹⁶⁶ Brown and Halley (2002) 19.

¹⁶⁷ Brown and Halley (2002) 19.

¹⁶⁸ Brown and Halley (2002) 19.

¹⁶⁹ Brown and Halley (2002) 24.

¹⁷⁰ Brown and Halley (2002) 31.

¹⁷¹ Brown and Halley (2002) 19.

¹⁷² Modiri (2017) *Daily Maverick*.

Despite the widespread public hegemony of legalism more so as a means to discourage alternative discourse around corruption, there is in fact an alternative. Kalombo suggests that there are actually two ways to approach corruption.¹⁷³ One is the personalistic approach discussed above and the other is its alternative, the institutional approach.¹⁷⁴ To quote Kalombo:¹⁷⁵

[The institutional approach is a useful] framework to help describe corruption as a deep-seated problem, rather than merely as the workings of a few bad individuals. [I]nstitutional corruption can be attributed to structural problems - ordinary matters of administration such as inefficient auditing procedures or uncertain communications among sections of large organizations. Institutional fraud occurs when a pattern of private gain (in goods and funds) operates in a particular institution.

This institutional explanation has also been referred to as the “structural” or “systematic” dimension of corruption.¹⁷⁶ It relates to the socio-economic structures and processes underlying corruption.¹⁷⁷ This approach goes beyond individual attributes and focuses on the “interplay of political, economic, socio-cultural norms and organisational bottlenecks” that contribute to corruption in an institutional setting.¹⁷⁸ It pays attention to the culture of corruption and how a system can actually produce corrupt outcomes, “be that by design or by default”.¹⁷⁹ The institutional explanation has a more wide ranging approach to corruption as opposed to its legalistic counterpart. Rather than focusing on the behaviour of the individual, it interrogates whether the environment of that individual might have been conducive to that behaviour. Unlike the legalistic approach which limits its solutions to the strict adherence to the rule of law, the institutional explanation embraces a vast array of solutions. One advantage of this alternative explanation, is its ability to question the law itself and problematize its dominant Eurocentric nature in South Africa. The

173 Kalombo (2005) 71.

174 Kalombo (2005) 71.

175 Kalombo (2005) 71.

176 Kalombo (2005) 71.

177 Kalombo (2005) 71.

178 Manamela, Mulaudzi, Selelo and Hussein (2020) 113.

179 Kalombo (2005) 71.

institutional explanation appreciates the importance of addressing both the History of South Africa and its effects on the current socio-political and economic issues. It understands these issues as integral to resolving the problem of corruption. This approach is also aware that corruption is inseparable from South African politics and disputes legalism's idea of a depoliticised anti-corruption discourse.

Evidently, the focus of the legalistic approach and the institutional approach are contradictory which means that the two cannot co-exist. This is because the institutional approach exposes what the legalistic perspective attempts to conceal. That is, the idea that corruption has nothing to do with South Africa's colonial past and that the current behaviour of public officials is a new and unprecedented phenomenon. This mentality ensures the survival of legalism and Eurocentric dominance in South Africa. The two explanations or ideologies are then incompatible because the institutional approach aims to undermine the legitimacy of the legalistic approach by revisiting and problematizing the history of its colonial nature. By so doing, the institutional approach unveils the corrupt nature of legalism and brings attention to the reality that South Africa is being governed by foreign and oppressive ideologies and institutions that must in fact, be vehemently opposed.

SOUTH AFRICA'S LEGAL AND POLICY INSTRUMENTS ON CORRUPTION

To get a clear understanding of the prominence of legalism in South Africa, we must look at the ways in which it formulates and approaches corruption. The main statute dealing with corruption in South Africa is the Prevention and Combating of Corrupt Activities Act 12 of 2004.¹⁸⁰ The Act states in its preamble that it aims to “unbundle corruption in terms of which, in addition to the creation of a general, broad, all-encompassing offence of corruption, various specific corrupt activities are criminalized.”¹⁸¹ The Act does not provide a specific definition or interpretation of corruption. However, in chapter two it provides a description of the general offence of corruption. To paraphrase, a general offence of

¹⁸⁰ Hereinafter, 'The Act'.

¹⁸¹ Act 12 of 2004, preamble.

corruption involves anyone who gives or receives a bribe (even indirectly) thus acting illegally for their personal benefit or the benefit of another. This includes the misuse of information and material, acting ultra vires, violating rules and legal duties because of improper inducement to act or abstain.¹⁸² The description focuses on corruption as it relates to the behaviour of an individual.

The long title mentions that the Act aims to strengthen and investigate measures to combat corruption *and* corrupt activities.¹⁸³ Chapter 2 of the Act deals with “Offences in respect of corrupt activities”. Chapter 3 is titled “Investigations regarding possession of property relating to corrupt activities”. Lastly, chapters 4 to 7 cover other issues such as defences, related and miscellaneous matters and tender defaulters. Throughout the Act there is a directed focus on the activities or conduct of a person – what it looks like and how it should be dealt with. What is also interesting is that the preamble mentions the importance of having “a comprehensive, integrated and multidisciplinary approach”,¹⁸⁴ but then goes on to focus solely on the behavioural aspect. What is also curious about the preamble is that it makes claims on aspiring to “unbundle corruption” by interrogating it as a “a general, broad, all-encompassing offence” but then only pays attention to corruption as it relates to individual behaviour.

The application of the Act in case law illustrates the dominance of the behavioural model of anti-corruption in South Africa. For example, the case of *S v Dawjee* involved one Mr Dawjee, a businessman who had close relations with three high ranking police officers. He provided them with gratifications for the purpose of obtaining preferential treatment in the police department.¹⁸⁵ Because of his close relationship with the co-accused (the police officials), Mr Dawjee knew information about the SAPS that ought not to be within the knowledge of a civilian.¹⁸⁶ He was also known for threatening, humiliating and bullying lower ranking officers to get what he wants and was empowered to do so because his co-

182 Act 12 of 2004, s3.

183 Act 12 of 2004, long title.

184 Act 12 of 2004, preamble.

185 *S v Dawjee and Others* [2018] 3 All SA 816 (WCC).

186 *Dawjee* at para 17.

accused condoned his behaviour.¹⁸⁷ Sections 4(1)(a) and 4(1)(b) of the Act were identified as the most relevant to this case because they deal with corrupt activities relating to police officers and the misconduct of the corruptor.

The behavioural approach of the South African system can be identified in the court's approach to sentencing. In this case a detailed account on the personal circumstances of each of the accused was given in order to provide different sentences based on the behaviour and personal situation of each individual.¹⁸⁸ The court was also willing to consider as a mitigating factor, whether the accused were remorseful.¹⁸⁹ Focusing on the type of corrupt activity, personal background and on whether the individuals are actually remorseful is a way of projecting corruption as something deviant and outside of the norm. This is a curious approach to adopt because as mentioned earlier, corruption particularly within the SAPS is not a rare incident, it happens on a regular basis. By approaching corruption mainly from a legalistic lens, both the Act and the court fails to consider the possibility that corruption in the police department is a deeply entrenched system, making public officials the product and not the cause of it. The institutional approach to corruption would therefore also investigate the circumstances that have normalised corrupt activities within the SAPS as a whole. Given that corruption is an ongoing phenomenon within the institution, this approach addresses both the root cause and its effects. Through this we are also able to recognise practically, the difference between the behavioural and institutional approach to corruption.

Another example of this is *S v Kgantsi*.¹⁹⁰ In this case it was a senior member of the prosecuting authority who initiated the request for bribes and in return promised to illegally obtain certain benefits for the briber. The court referred to section 9(1)(a) and (b)(i) of the Act which deals with corrupt activities relating to members of the prosecuting authority. The accused was a Senior State Advocate, who also worked in the Directorate of Special

¹⁸⁷ *Dawjee* at para 17.

¹⁸⁸ *Dawjee* at para 5.

¹⁸⁹ *Dawjee* at para 182.

¹⁹⁰ *S v Kgantsi* [2007] JOL 20705 (W).

Operations (DSO) which is an elite crime fighting unit of the State. She targeted a Nigerian prisoner named Afolabi and offered among many things to validate his illegal passport for a bribe of R10 000, to prevent his assets from being attached by the Asset Forfeit Unit (AFU) for a bribe of R30 000,¹⁹¹ and to have his case withdrawn or struck off the roll for R315 000. Eventually the prisoner realised that the accused aimed only to get money from him and had no intention to do any the things she promised to do. She did not validate his passport, protect his assets or get his case withdrawn. Moreover, the accused was also exposed for denying her previous conviction of theft for the purpose of obtaining a security clearance.¹⁹² To describe the situation, the court mentioned that “a major disturbing feature of this case is that each of the crimes... concerned with involves gross dishonesty”.¹⁹³ Again we see here a focus on the behavioural perspective of corruption, specifically the the gross dishonesty of a Senior State Advocate. It fails to consider corruption as a system which creates an environment conducive to the behaviour of the senior official. This is in no way to excuse the behaviour of anyone involved in corruption but rather to demonstrate that the current legalistic approach is limited in its understanding of the issue.

It is important to note here that the major problem is not the Act itself but rather, the dominant and limited understanding and ideology of corruption which translates itself in this way, through the Act. Therefore, the solution does not lie in amending the main statute, rather it is to see the entire legalistic ideology as problematic. By so doing, we begin to understand legalism itself as a hindrance to progressive anti-corruption discourse.

South Africa’s decision to adopt a dominant legalistic approach meant that all the anti-corruption policies and mechanisms put in place must be established through the law. This means, Members of Parliament (MPs) are responsible for the establishment of anti-corruption regulatory frameworks. One of the shortcomings of this process is that it can

¹⁹¹ *Kgantsi* at para 8.

¹⁹² *Kgantsi* at para 3.

¹⁹³ *Kgantsi* at para 8.

lead to policies being more politically inclined by favouring the preferences of the policy makers as opposed to focusing on corruption as a national agenda. A prominent example of this, is the case of *Glenister v President of the Republic of South Africa and Others*, often referred to as *Glenister 2*.¹⁹⁴ The case involved the enactment of legislation aimed at disbanding the Directorate of Special Operations (DSO), a specialised corruption fighting unit located within the National Prosecuting Authority (NPA), popularly known as the Scorpions. This came as a result of there being concerns that too much authority was vested in the Scorpions, which created an increasingly fractious relationship between it and the SAPS.¹⁹⁵ The decision was then taken to implement new legislation that would amend the National Prosecuting Authority Act 32 of 1998 (NPAA) and the South African Police Services Act 68 of 1995 (SAPSA) in order to dissolve the Scorpions and create another corruption fighting unit that could work harmoniously with the police department.¹⁹⁶

The laws were passed by Parliament, which then dissolved the Scorpions and established a new unit called the Directorate of Priority Crime Investigation (DPCI), popularly known as the Hawks.¹⁹⁷ The Hawks became South Africa's lead corruption fighting unit however, its location within the SAPS was brought to question. Chapter 6A of SAPSA raised concerns as it failed to ensure that an adequate degree of independence is afforded to the Hawks.¹⁹⁸ Some concerns were that Cabinet and the Minister of Police had way too much political control over the Hawks because the Head of the Hawks were chosen by them and they also determined what their duties are.¹⁹⁹ The Minister was also given the power to extend the tenure of the Head of the Hawks. Lastly, the provision also stated that a Ministerial Committee should be created with the mandate of providing guidelines

¹⁹⁴ *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) 2011 (3) SA 347 (CC).

¹⁹⁵ *Glenister* at para 6.

¹⁹⁶ *Glenister* at para 10.

¹⁹⁷ *Glenister* at para 11.

¹⁹⁸ *Glenister* at para 125.

¹⁹⁹ *Glenister* at para 125.

on how the Hawks should function and what offences should be considered as national priority.²⁰⁰

These provisions made the unit vulnerable to the political interference and influence of the Minister of Police and Cabinet. The court held that the Hawks were “insufficiently insulated from political influence in its structure and functioning”,²⁰¹ and declared Chapter 6A invalid. This indicates that the law-making power afforded to Members of Parliament can lead to problematic outcomes when they choose to place their political interests above the needs of society as a whole. This also indicates how easy it is for political leaders to hide corrupt motives behind the enactment of a law thereby legitimising unethical practices. Therefore, legalism is not only limited in its understanding of corruption, it is also easily susceptible to the perpetuation of institutionalised corruption. Also, the fact that laws in South Africa are created by politicians makes the assertion that the law is neutral and apolitical very questionable.

Be that as it may, South Africa has an extensive regulatory framework on combating corruption. The countless regulations put in place are indicative of just how much confidence has been placed on the law’s ability to effect social change. However, the continuous adoption of these regulatory frameworks as a solution for corruption should also be alarming. If the regulations were capable of eradicating the problem, we would not need so many. To get an idea of just how many policies there are, what will now follow is a list of some of them.

South Africa has adopted codes of conduct for all employees of public service found in Chapter 2 of the Public Service Regulations, 2001.²⁰² The Local Government: Municipal Systems Act provides codes of conduct binding municipal staff members. The Parliament of the Republic of South Africa Code of Conduct binds parliamentarians.²⁰³ The Executive

200 *Glenister* at para 250.

201 *Glenister* at para 208.

202 Bruce D “Corruption, discipline and punish? Addressing corruption in South Africa” (2014) *SA Crime Quarterly* 44: 49 50.

203 Bruce (2014) 50.

Members Ethics Act 82 of 1998 binds Cabinet members, deputy ministers and members of the Provincial Executive Councils.²⁰⁴ The Public Service Act 103 of 1994 provides for financial disclosure and prohibition of public officials securing public procurement outside their office without authorisation.²⁰⁵ The Public Finance Management Act 1 of 1999 aims to ensure financial accountability in government departments. The Prevention of Organised Crime Act 121 of 1998 also provides for the civil forfeiture of illegally obtained assets.²⁰⁶ We have the Financial Intelligence Centre Act 38 of 2001 to monitor high value transactions and the Protected Disclosure Act 26 of 2000 to protect whistle-blowers. The Promotion of Access to Information Act 2 of 2000 promotes transparency in the conduct of government affairs.²⁰⁷ Cabinet also approved a public service anti-corruption strategy in 2002. In 2006 a local government anti-corruption strategy was adopted.²⁰⁸

NGOs and international watchdogs that focus on corruption are Corruption Watch, the Organisation Undoing Tax Abuse (OUTA) in South Africa and Transparency International. South Africa also has a range of organisations geared at combating corruption which the National Development Plan calls “the multi-agency anti-corruption system”.²⁰⁹ These organisations include the South African Police Services (SAPS), the Directorate for Priority Crimes Investigation (DPCI), the Special Investigations Unit (SIU), the National Prosecuting Authority (NPA) and the Assets Forfeiture Unit (AFU) which falls under the NPA.²¹⁰ The courts, the Independent Police Investigative Directorate (IPIID), the South African Revenue Services (SARS), the National Intelligence Agency, the Office of the State Attorney, The Public Protector, the Anti-corruption Task Team and hotlines have been established to report corruption.²¹¹ Lastly, South Africa has also established government agencies to combat corruption. These include the Department of Public

204 Bruce (2014) 50.
205 Bruce (2014) 50.
206 Bruce (2014) 50.
207 Bruce (2014) 50.
208 Bruce (2014) 50.
209 Bruce (2014) 51.
210 Bruce (2014) 51.
211 Bruce (2014) 51.

Service and Administration (DPSA), the Public Service Commission (PSC), the Auditor General (AG) and the National Treasury.²¹²

It is quite an extensive framework, all established through parliament to monitor the behaviour of public officials. Yet, even with all these provisions, corruption still persists. A report was released by the Global Corruption Barometer, comparing acts of petty corruption in South Africa between public officials and citizens in 2015 and 2019.²¹³ The statistic in the report reveal that the percentage of people who paid a bribe to access essential services went from 7% in 2015 to 18% 2019, which is more than double.²¹⁴ In public schools the bribery rate has increased by 12%, public healthcare centres have had a 4% increase and bribes received by the police have also increased by 16%.²¹⁵ This clearly indicates that the adopted solutions aimed at combatting corruption are inadequate. It also shows that despite its persistence there is an unwillingness to seek out alternative ways of approaching and resolving the problem of corruption in South Africa.

LIMITATIONS OF THE DOMINANT APPROACH TO CORRUPTION

To recap, we have looked into legalism in South Africa as being organised by Eurocentric principles derived from our colonial past. We also touched on the idea that the effects of legalism include weaponising the law as a tool to entrench Western European culture in South Africa. The most important element of that culture for this context is its individualistic character, which is expressed even in how it approaches a socio-political issue such as corruption. Above, I have also made the assertion that legalism itself is part of the problem.

²¹² Bruce (2014) 52.

²¹³ Global Corruption Barometer 10th Edition Africa 2019. [Accessed 9 June 2020]
<https://www.corruptionwatch.org.za/wp-content/uploads/2019/07/South-Africa.pdf>

²¹⁴ Global Corruption Barometer 10th Edition Africa 2019.

²¹⁵ Global Corruption Barometer 10th Edition Africa 2019

As already mentioned, the dominant approach has framed corruption as an individual misdeed or a failure in individual morality. It gives the impression that corruption is deviant and outside the norm. This argument seems convincing because the legalistic approach is framed as being ahistorical. Without the historical background, corruption cannot be understood as a product of South Africa's corrupt colonial past. Legalism can then succeed at giving the impression that corruption is an unfamiliar occurrence found only in the postcolonial State. That corruption is specific to and as a result of the mainly black government. The very deliberate agenda of legalism to depoliticise anti-corruption discourse leaves it disarticulated from historical, economic, social structures and practices. In order to give the impression that corruption is a "new" problem, external to South Africa's institutional structure and created by the postcolonial government, legalism ignores the institutional, cultural and political effects of colonialism and apartheid. The focus of the legalistic approach on making corruption a problem specific to the current government inadvertently gives credence to perceptions that anti-corruption discourse in South Africa is underpinned by racism. It focuses on the mainly black government and not the powerful private interests and multinational corporations controlled mostly by white business and imperial interests. It reaffirms the idea that legalism is itself problematic given that its Eurocentric personality helps maintain the colonial, racist and exploitative culture still found in South Africa today.

Another issue regarding legalism is that, just as it fails to recognise the lived experiences of the black majority, they too do not entirely adhere to its authority. Meaning, in their day-to-day activities, they find themselves far removed from a legalistic mentality. This indicates that though legalism may successfully create institutions to ensure its structural dominance, its ideology and culture has still not found its way into the hearts of the people. That is to say, there is a significant ideological gap between South African law and its citizens. How then does the dominant approach aim to address the social issue of corruption when it remains disengaged from its society? The success of anti-corruption discourse depends on engaging with society. Addressing corruption has to be the collective effort of everyone. Below, I will give a critique on legalism's limited ability to

transform society by exploring the different ways in which legalism alienates the law from its subjects.

LEGALISM'S EXCLUSIONARY CHARACTER

One reason for the gap between law and society is the fact that the law-making process in South Africa involves an exclusive procedure involving an elite minority of the population. Only this elite minority has the legislative power to enact new laws in efforts to effect changes in social structure and culture.²¹⁶ One of the few ways in which an ordinary citizen is involved is when the Bill is published for all to read. This process of public participation in the law-making process involves informing the public that there is a Bill being drafted. After that, the public is provided with a Bill already created by Parliament, to the exclusion of the majority. The aim here is to afford citizens the opportunity to analyse the text and ensure that they are satisfied with its contents. If there is dissatisfaction, a submission can be made by the public to the Legislature and if viable the submission will be incorporated into the Bill. This is for the most part a perfunctory attempt to involve the majority, seeing that a large portion of the population is still illiterate.

The Parliamentary Document dealing with the “public participation model”, has a well articulated process which describes the efforts government aims to take in order to ensure that all citizens are well trained and capable of interacting with Bills given to them.²¹⁷ These government initiatives are yet to be realised which means that the South African majority still cannot engage in making the laws that are aimed at governing them. Added to this, is the fact that reading of some Acts can be quite confusing even for legal scholars. The law therefore, is largely autonomous, self-referential and not shaped by societal needs.²¹⁸ Official State law is relatively immune to society's impulses. It uses its own

²¹⁶ Kok (2010) 60.

²¹⁷ Parliament Public Participation Model.
https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019_ncop_planning_session/docs/Parliament_Public_Participation_Model.pdf [Accessed 23 May 2020].

²¹⁸ Kok (2010) 68.

criteria that does not depend on the environment it operates in.²¹⁹ Because of law's autonomous nature, citizens often feel alienated from legal processes.²²⁰

Many citizens do not understand much of the South African legislation and are not even aware of the existence of most laws.²²¹ Therefore, the over reliance on the law's ability to effect social change is very curious. To quote Gerald Rosenberg, "It is naïve to expect an institution seen as distant and unfamiliar, shrouded in mystery, and using arcane language and procedures to change people's views."²²² The Human Science Research Council conducted a 'South African Societal Attitudes Survey' which indicated that it is quite unlikely that the judiciary shapes public opinion.²²³ The study indicates that public attitudes in South Africa with regards to issues such as the death penalty, sexuality and abortion "are out of sync with government policies".²²⁴ Despite the numerous statutes and case law, the study indicates that South Africa is still racist, homophobic, sexist, xenophobic and hypocritical.²²⁵ For example, the South African Citizenship Amendment Act (Act no. 17 of 2010), which came into effect in 2012 allows foreign nationals to acquire permanent South African citizenship or a certificate of naturalisation.²²⁶ Though this law gives foreign nationals the legal right to be in the country, xenophobic attacks directed at them regardless of their citizenship seems to "threaten the very fabric of this law".²²⁷ Again this is indicative of the disconnect between the law and the people.

Anton Kok makes the observation that the numerous Constitutional Court judgments that have preached compassion and tolerance have clearly "not found their way into the hearts

²¹⁹ Kok (2010) 67.

²²⁰ Kok (2010) 68.

²²¹ Kok (2010) 68.

²²² Rosenberg GN "The irrelevant court: The Supreme Court's inability to influence popular beliefs about equality (or anything else)" in N Devins & D M Douglas (eds) *Redefining Equality* (1998) 172 187.

²²³ Kok (2010) 74.

²²⁴ Kok (2010) 74.

²²⁵ Kok (2010) 74.

²²⁶ Sauti (2019) 5.

²²⁷ Sauti (2019) 5.

of South Africans.”²²⁸ This leaves the law inaccessible and unresponsive to the society it regulates. For example, courts and the legislature assume that people will consider the law when “planning” their behaviour. However, law plays virtually no role in the personal decisions of people’s daily lives.²²⁹ In everyday conversations even with regards to social issues, commentators will very rarely use the law to discuss a problem.²³⁰ Even when the matter deals with discrimination and inequality, legal requirements will unlikely be referred to.²³¹ In South Africa, law is not in the day to day vocabulary of citizens.²³² Law owes its social irrelevance to its overall Western European and thus foreign roots shown here by South Africa’s elitist and exclusionary legislative process. Perhaps, if the legislative process sufficiently involved the public, legalistic terminology would become a part of social culture.

Another possible reason for the gap between the law and the society in which it operates is the paradoxical relationship between the rule of law and what is referred to as constituent power.²³³ Constituent power is the authority vested in all human beings both individually and collectively to govern themselves.²³⁴ Human beings can then come together as equals and use their authority to create general laws that govern them as a collective. These laws are then called the constitutional form.²³⁵ In any society, this would be the ideal approach to the law-making process, as it is inclusive and gives all citizens equal authority. Unfortunately, what most States globally have been subjected to instead, is a system of modern constitutional democracy. James Tully observes, as one of the issues of a modern constitutional democracy, its autonomy condition.²³⁶ This condition is responsible for the alienating nature of the law in modern States. The autonomy condition gives modern constitutions the power to create laws that are isolated or detached from

228 Kok (2010) 74.
229 Kok (2010) 75.
230 Kok (2010) 76.
231 Kok (2010) 76.
232 Kok (2010) 76.
233 Tully J “Modern Constitutional Democracy and Imperialism” (2008) *Osgoode Hall Law Journal* 46(3): 461 466.
234 Tully (2008) 466.
235 Tully (2008) 468.
236 Tully (2008) 466.

the cultural norms of the society it is supposed to govern.²³⁷ This means citizens are expected to follow laws that are detached from their day-to-day interactions and lived experiences.

Regrettably, this is the more familiar relationship that citizens have with the law. Modern constitutions are created by the State. In this case, the State assumes a position of sovereignty and is constantly in an agonistic relationship with the people.²³⁸ Though the 'sovereign State' derives its powers from the consent of the people it governs, it can still separate itself from them.²³⁹ The State can also exercise sovereignty over its people and the very constitution that is meant to limit its powers.²⁴⁰ It is in essence above the law, making it very difficult to hold State actors accountable for their problematic decisions and behaviour. Not only are citizens alienated from the law and the law-making process, they also cannot hold the legislature accountable for not following the very laws they create. Meaning, a member of the legislature can get away with violating anti-corruption legal policies, which undermines the legalistic approach to corruption discourse. Citizens are likely to lose confidence in the law's ability to resolve corruption when they come to realise that the law-makers themselves treat laws as suggestive and not absolute.

Lastly, Comaroff and Comaroff bring to light the tension between the Constitution and indigenous cultural values and practices of the black South African majority. One of the contrasts between the values in the Constitution and the cultural values of the black majority is that on the one hand, the Constitution puts individual rights above all else.²⁴¹ On the other hand, the South African majority prioritises the rights of the community before the rights of the individual.²⁴² The cultural practices of the South African majority "depart from Euro-modern liberal orthodoxy".²⁴³ Which makes the Constitution's decision

²³⁷ Tully (2008) 466.

²³⁸ Tully (2008) 471.

²³⁹ Tully (2008) 471.

²⁴⁰ Tully (2008) 471.

²⁴¹ Comaroff and Comaroff (2004) 516.

²⁴² Comaroff and Comaroff (2004) 541.

²⁴³ Comaroff and Comaroff (2004) 541.

to prioritise individual rights indicative of its “modernist, Eurocentric and liberal-individual” character.²⁴⁴ The clash between the two takes place when the Constitution is in direct confrontation with traditional issues. The example used by the Comaroffs deals with the rise of ritual murders that were taking place in the Northern Cape in the early years of democracy.²⁴⁵ When this traditional issue was handed to the State to handle, it found it hard to resolve the matter by legal means.²⁴⁶ Meaning, the alienated and Eurocentric nature of the legal system was (and still is) incapable of handling indigenous traditional matters. In a country where the majority adheres to traditional cultural norms, this poses a big problem. The Constitution promotes the idea of legal universalism in a society that values cultural relativism more.²⁴⁷ As a result, it finds itself in constant confrontation with issues it is incapable of understanding and ultimately unable to resolve.²⁴⁸

Therefore, legalism’s detachment from the majority of the South African society renders it incapable of adequately addressing the problem of corruption. It is far removed from its society and incapable to comprehend the complexities of South Africa’s socio-political climate. South Africa’s legalistic approach is outward-looking. It is in direct correlation with the ideological framework of international European norms and standards, while in simultaneous juxtaposition with its national culture. Though the Constitution acknowledges “traditional beliefs”, it is becoming more and more apparent that the two cannot co-exist harmoniously.

CONCLUSION

In this chapter I began by acknowledging the fact that there exists an extensive body of literature solely dedicated to defining corruption, which is due to its diverse nature when interrogated in different institutions and cultures. From this, I introduced political corruption and located it as the form of corruption most relevant to this study. I chose this

²⁴⁴ Comaroff and Comaroff (2004) 521.

²⁴⁵ Comaroff and Comaroff (2004) 514.

²⁴⁶ Comaroff and Comaroff (2004) 514.

²⁴⁷ Comaroff and Comaroff (2004) 515.

²⁴⁸ Comaroff and Comaroff (2004) 538.

particular description because it gives a better understanding of the major role players responsible for corruption ideology and its institutionalisation. Political corruption helps us understand that though corruption takes a public-office centred approach, it does involve the private sector. This has been demonstrated through the relationship between the corporate sector and the apartheid government, when they worked together to evade sanctions. Often, corporate companies that are involved in political corruption have a say in policy development and are thus actively involved in the perpetuation of this social ill.

I then looked into legalism as the dominant approach to anti-corruption discourse in South Africa. From the very definition of legalism there is a forceful and coercive implication. The expectation to have a strict and excessive adherence to the law reinforces the uncomfortable relationship that citizens are expected to have with the law. It is much like in the colonial era. Indeed, further analysis into legalism exposes its deeply colonial and Eurocentric roots. This has been illustrated through the unchanged European origins of South Africa's legal system and the continued exclusion of African ideology in the dominant social discourse. It maintains the suppressive and oppressive relationship that the legal system continues to have with the indigenous African majority. This then flows into the limitations of legalism as dominant discourse. Because of its intrinsically colonial and thus exclusionary nature, legalism is restricted in its ideological periphery to understanding the wide-ranging nature of the problem of corruption. This is firstly, because that it understands corruption only through the definition that the law provides. Secondly, it cannot extend itself to embrace a political approach that pays attention to corruption's historical and institutional character particularly as it relates to the lived experiences of the indigenous majority. This is because doing so requires legalism to be self-reflective and self-critical of its colonial nature. What this then indicates, is that legalism itself is an impediment to generative and authentic dialogue around corruption, aimed at resolving the issue at its core.

By understanding that something is fundamentally flawed with approaching corruption through the dominant legalistic approach, we realise the importance of finding an alternative way of interrogating corruption in South Africa. The following chapter will look

into a political-ideological perspective, which centres the history of colonialism and apartheid, their systems and institutions as the root cause of corruption in South Africa today. By adopting a political approach, this perspective also exposes the agenda of the legalistic approach in promoting and maintaining the colonial interests, ideology and culture of the white settler minority. What now follows is a political-ideological perspective of corruption in South Africa.

CHAPTER 3: TOWARDS A POLITICAL-IDEOLOGICAL READING OF CORRUPTION

INTRODUCTION

Anti-corruption discourse in South Africa for the most part remains hollow. As I discussed in the previous chapter, this is mainly due to the Western Eurocentric culture and ideology of the dominant legalistic approach. Specifically, its alienating values, the narrow focus on individuals and state power, the exclusionary nature of Western culture and its focus on form over substance. It is the realisation of legalism as ultimately detrimental to the socio-political and economic development of South Africa that necessitates an alternative perspective to the discourse. Such an alternative begins in the first place with a historical analysis of the foundations of South Africa's governing system and institutions. These foundations are rooted in colonialism and apartheid. In this chapter I propose a political-ideological reading of corruption as this alternative discourse.

The major differences between a legalistic perspective and a political-ideological perspective is what elements of corruption they choose to focus on. As I argued in chapter 2, the dominant legalistic perspective on corruption focuses mainly on the aberrational activities of individuals holding public office. This perspective understands the source of corruption to be individuals who supposedly lack a moral compass, whereas the political-ideological perspective sees the corrupt activities of individuals merely as symptoms of an even deeper issue. From a political-ideological perspective, corruption is first and foremost a structural problem. Meaning, South Africa itself is viewed here, as an artefact of a founding colonial corruption. It has a governing system that is designed to produce corrupt outcomes. Individual behaviour is the result or reflection of a corrupt social and political structure, not the main cause of corruption. Therefore, to reframe anti-corruption discourse is to essentially broaden our understanding of what corruption actually entails. A political-ideological perspective problematizes the excessive focus on individual behaviour in the current South African anti-corruption discourse. But more than that, it

addresses legalism's inability to create progressive discourse because of its Eurocentric nature and its agenda to promote a society that is persistently dominated by fundamentally colonial institutions, culture and ideology.

I begin the chapter by exploring the different elements of a political-ideological understanding of corruption that I argue, might be more instructive to analyse, than the current singular focus on individual aberrational acts. The main aspect that will run throughout the chapter will be its focus on South Africa's history and the role of its endurance in the present South African society especially with regards to corruption. I will be addressing how the legalistic approach to corruption in South Africa carries a strong political agenda despite the ways in which it portrays itself to be objective or neutral. The impact of international actors in influencing the outcomes of a country's socio-economic policies is also an important factor when analysing the way in which African countries are generally perceived and depicted in relation to the international perspective of corruption.

After laying the foundation for what a political-ideological perspective entails, I will then use this perspective to illustrate how corruption can be understood differently. I aim to do so, by first giving a historical account of the institutionalisation of corruption during colonialism and apartheid. I will also interrogate the historically racial capitalist component of this system and unpack how the entrenchment of a culture of corruption became solidified through the laws of the coloniser. The aim here is to illustrate that the foundations of South Africa's system is still very Eurocentric and oppressive in nature especially towards the black majority. I further elaborate on this by giving an account of the neo-colonial character of the current South African system. All of this is to locate the legalistic perspective at its historical roots as a way to reveal its concealed agenda to maintain the ongoing colonial order. Lastly, I aim to disrupt the legalistic perspective by using the political-ideological perspective to centre corruption discourse in South Africa in the *longue durée* history of colonial conquest.¹ Corruption cannot then simply be

¹ Modiri J "Conquest and constitutionalism: first thoughts on an alternative jurisprudence" (2018) *South African Journal on Human Rights* 1.

understood as it relates to acts of bribery, extortion and nepotism. Through this perspective, it focuses more importantly and perhaps mainly on the inception of colonialism in South Africa, its brutal violence, land dispossession and the exploitation of indigenous people. Also, the legalised and sustained privileging of colonial and white interests, culture and ideology, to the exclusion and discrimination of others.

CORRUPTION IN POLITICAL-IDEOLOGICAL PERSPECTIVE

A political-ideological perspective on corruption situates as a starting point to the discourse, South Africa's history of colonial conquest, settler-colonialism and white supremacy. It has a specific focus on what the current discourse fails to interrogate. That being how South Africa's socio-economic and political problems are the direct result of its unwillingness to acknowledge and engage with the past. It highlights that the "installation of a regime of settler-colonial white supremacy constitutes not only a foundational violence, but also an ongoing structural dynamic of social organisation in South Africa and not a mere historical event".² This structural dynamic is not only limited to the political and legal domain, it infiltrates all elements of social life and significantly alters "the socio-economic, cultural, epistemic/ cognitive, psychic and ontological".³ Therefore, because colonial systems, structures and culture continue to operate and dominate the current South African society, the system is very aware that its survival is dependent on the encumbrance of any progressive discourse that envisions a radical-democratic, decolonised and liberated future.⁴

CORRUPTION AND 'COLONIAL UNKNOWING'

By centring the historical implications of colonialism into current social affairs, the political-ideological perspective contextualises the dominant Eurocentric colonial logic that plagues society. It renders the legalistic approach incapable of developing a reflexive

² Modiri (2018) 4.

³ Modiri (2018) 5.

⁴ Modiri (2018) 5.

politics. To use the words of Joel Modiri, legalism is “unable to appreciate how deeply the terrors and conflicts of colonial apartheid resulted in unstable conceptions of political community”.⁵ Its continuous negation of the past carries strong sentiments of the concept of ‘colonial unknowing’.

‘Colonial unknowing’ treats the perverse and corrupt history of settler-colonialism as irrelevant and inconsequential.⁶ As Modiri explains, it renders this immoral and unjust past “as an immutable, unproblematic and naturalised social fact”, and treats it as an excusable and irreversible “event”, one not worth challenging.⁷ It infiltrates the contemporary society by using its depoliticising ideology to perpetuate the colonial effects of inequality, poverty, violence and suffering while simultaneously committing to the disavowal and disassociation of the past.⁸ By so doing, colonial unknowing endorses white hegemony and enforces the idea that the indigenous colonised people’s demand for historical justice has expired.⁹ It creates the impression that any dialogue towards “substantive decolonisation is ‘unreasonable’ and ‘unrealistic’.”¹⁰ Modiri explains that “when ‘colonial unknowing’ is operative, the possibilities for reversing that colonial order are silenced even before they can be spoken, and the exigency of complete justice is undermined even before it can be demanded.”¹¹ That is to say, it automatically sabotages all efforts that could potentially lead to an alternative discourse. Therefore, through a political-ideological perspective, we become aware that the dominant legalistic approach to corruption has at its core, ‘colonial unknowing’ attributes. This perspective also forewarns that decentring colonial history and its effects from anti-corruption discourse allows the ongoing effects of South Africa’s traumatic past to go unchecked. Unlike in the legalistic perspective, resolving corruption is not just about finding ways to regulate the behaviour of public officials, it is about overturning an entire system.

⁵ Modiri (2018) 8.

⁶ Modiri (2018) 8.

⁷ Modiri (2018) 8.

⁸ Modiri (2018) 9.

⁹ Modiri (2018) 9.

¹⁰ Modiri (2018) 9.

¹¹ Modiri (2018) 8.

Legalism renders the past irrelevant while the political-ideological perspective renders history as essential to anti-corruption discourse. As discussed in the previous chapter, because legalism is rooted in Western colonial culture, it finds itself “out of sync with the cultural worldview of the majority of South Africans”.¹² The dominant perspective therefore reanimates the imposition of a foreign and domineering culture, upon the African indigenous majority. According to Mlada Bukavansky, imposing external standards on a society that is not afforded full participation in defining those standards, is an ethical problem.¹³ The onus is on the particular society to embrace a standard as right or fair before it can be considered a legitimate standard.¹⁴ Therefore even the legitimacy of a law should be determined by what that society deems just.¹⁵ In this context, the fact that the establishment of Western culture in South Africa involved suppressing the culture and lived experiences of the indigenous African majority, means that the current system is morally illegitimate. Colonial culture in South Africa can only survive by suppressing and overpowering indigenous culture, which makes the two cultures irreconcilable. By making the indigenous culture of the South African majority the dominant national culture, colonial culture will not survive and by upholding colonial culture (as is the case), the culture of the African majority remains subjugated. Therefore, by adopting the alternative political-ideological perspective to corruption, we begin the necessary assignment of dismantling the culture of colonialism and ultimately its prevailing (even if reformed) institutions, as opposed to merely policing the behaviour of individuals.

ANTI-CORRUPTION LEGALISM AS WESTERN DISCOURSE

Another thing worth noting is that corruption is “a word with distinctly Western origins”,¹⁶ which complicates its discourse in the African context. This is because it requires us to understand it according to its Western origins first before tackling it in the African context.

¹² Modiri (2018) 13.

¹³ Bukavansky M “The hollowness of anti-corruption discourse” (2006) *Review of International Political Economy* 13(2): 181 184.

¹⁴ Bukavansky (2006) 184.

¹⁵ Bukavansky (2006) 184.

¹⁶ Harrison E “Corruption” (2007) *Development in Practice* 17(4/5): 672 676.

Gabriel Apata also brings attention to the fact that certain African languages have no direct translation for the word corruption.¹⁷ As a consequence, Western ideology ends up monopolising what corruption means and how it should be interpreted. Apata elaborates on this problem by referring to the anecdote of a Western anthropologist who visited an African village to conduct a study, where:¹⁸

Each time he asked his interpreter the local meaning of a term, the interpreter would go into a hut and return to tell him the meaning in the native language. After a while of this happening, the anthropologist was moved to ask why the interpreter went into [the] hut before providing the answers to his questions. The interpreter replied that he had a dictionary in the hut, which he consulted for the meanings of these terms. Presumably he could find no direct equivalent meanings of these terms in the local language. Ironically, early missionaries, adventurers or anthropologists had compiled these dictionaries that purported to reflect the different worlds and their meanings but they had themselves interpreted or absorbed local meanings into their own language and worldview. Thus, local meaning became essentially Western meaning and whatever truth or difference there is in the local culture is subsumed under the sociology of Western knowledge or its categories of thought. This sociology of knowledge now frames the paradigm for local knowledge and culture. Hence, we end up with one world in terms of knowledge and culture: the legitimation of the Western world.

The problem here, is that by consulting Western interpretations to give meaning to words that have no direct translation in an African language, we learn to understand things through a Western cultural lens. As we have established, privileging Western culture in any way means subjugating African culture. Furthermore, using Western interpretation to give meaning to the word corruption favours a legalistic perspective over a political-ideological one. Western culture and ideology has infiltrated and displaced African culture. It has also transformed the imagery of African culture to suite the seemingly homogenised perspective of the West. To quote Charles Mills, “different political philosophies will have different stories about the past and present of the polity, its origins and its workings, and these divergences will have implications for its moral assessments also”.¹⁹ Therefore, it is important to always give meaning to account for the philosophical, linguistic and historical differences between dominant conceptions of law and justice rooted in Western culture and those from within the life-worlds of African communities.

¹⁷ Apata G “Corruption and the postcolonial state: how the west invented colonial corruption” (2019) *Journal of Contemporary African Studies*. 37(1): 43 53.

¹⁸ Apata (2019) 53.

¹⁹ Mills C *Blackness Visible: Essays on Philosophy and Race* (1998) 123.

This is because, even though facts and definitions appear objective, Apata asserts that facts “are not mind-independent objects that exist out there in the world whether someone sees them or not... waiting to be discovered”.²⁰ Facts are actually made up stories and constructions. The way the facts are selected and put together determines the kind of story that wants to be told.²¹ Therefore, even ‘facts’ have a particular agenda.

Crucially, Apata makes the claim that corruption in Africa is actually a Western invention rooted in Western colonial tradition and its exploitative form.²² The system of corruption as we know it, according to Apata did not exist in pre-colonial Africa, it was exported from the West and became Africanised by the West.²³ Through this process, corruption was re-described by Western ideology, as endemic to African political culture.²⁴ Meaning, the West exported corruption from its own society, into Africa and then changed the narrative of corruption into one that makes it look innately African. This reaffirms Apata’s assertion of facts being made up stories and constructions, given that the Africanisation of corruption by the West is an inaccurate interpretation of events. On the contrary, the Western colonial State has been described as being “conceived in sin and born of corruption”.²⁵ The idea here is not that the West is the cause of “African corruption”, but rather that through colonialism, it invented the framework and conditions that generated the practice and narrative of corruption.²⁶

It is worth noting that, though it was common practice, corruption had no formal social classification during colonialism.²⁷ No name was yet established for the very regular acts of corruption under colonialism. This is important especially when we look into when exactly the concept of corruption came into use. The term corruption in Africa was only

²⁰ Apata (2019) 53.

²¹ Apata (2019) 53.

²² Apata (2019) 48.

²³ Apata (2019) 48

²⁴ Apata (2019) 48- 49.

²⁵ Apata (2019) 50.

²⁶ Apata (2019) 51.

²⁷ Apata (2019) 51.

established in the post-colonial dispensation.²⁸ Before the Berlin Conference where European powers carved Africa among themselves, “African corruption” did not exist.²⁹ During colonial rule in 1945, though corrupt practices was an inherent part of the colonial system, the term “African corruption” still did not exist.³⁰ However, as many African States gained independence in the 1960s, the concept of African corruption suddenly became part of the political discourse.³¹ This new concept of corruption in the 1960s became part of the collective consciousness of African States and shaped the experiences and behaviour of African societies.³² The impact of redescribing this intrinsically Western phenomenon into an African trait, is that today the idea of “African corruption” is firmly established in popular and academic discourse as a specifically and predominantly African attribute.³³ What this illustrates, is that by virtue of it being the derivative of Western colonial culture, corruption dominated and subjugated the indigenous culture of the African people and situated itself as the most common trait of African societies. To clarify, although corruption was imported into Africa, Africans were in no way merely passive subjects “whose attitudes were shaped by foreign concepts”.³⁴ However, the relentless agency of the colonizer to incorporate corruption and perpetuate this imagery of Africa is what informed the lived experiences and identity of the indigenous people.³⁵

As mentioned earlier, corruption had no name when it was practiced during colonialism. It was only articulated when African States were gaining independence during the 1960s. The significance of this is that during the transition to independence, corruption was weaponised as a way to delegitimize the newly independent African States.³⁶ Unsurprisingly, the criticism came from the outgoing Western elite, liberal NGOs and civil societies, Western legal and political institutions and Occidentalists scholars among

28 Apata (2019) 50.
29 Apata (2019) 50.
30 Apata (2019) 50.
31 Apata (2019) 50.
32 Apata (2019) 50.
33 Apata (2019) 50.
34 Apata (2019) 54.
35 Apata (2019) 54.
36 Apata (2019) 49.

others. However, even though discussions around corruption in Africa began during the 1960s, anti-corruption discourse only entered the international agenda in the 1990s.³⁷ There were attempts prior to the 1990s to put corruption on the international agenda, first in 1975 by the UN General Assembly and again in 1979 by the UN Economic and Social Council.³⁸ This was met with resistance and officially rejected, December 1980 by the General Assembly because it was “too political”.³⁹ This simply meant that corruption had not yet been articulated in a manner which dissociated international bodies from their direct involvement in corrupting States. Before it could be accepted, the concept had to adopt “fixed characteristics and parameters” that would not hold corrupt international bodies accountable.⁴⁰ What then changed in the 1990s to make corruption more acceptable internationally, is that a depoliticization process began that transformed the meaning of corruption to one that is more palatable to the neo-liberal, capitalist paradigm.⁴¹

In addition to this the 1990s was also when the Cold War “ended”. The Cold War involved global superpowers mainly the United States of America (USA) and the Soviet Union, fighting through proxy States which involved these superpowers overthrowing many democratically elected regimes in Africa, and often replacing them with malleable, corruptible regimes that could serve their interests.⁴² Knowing just how much they had contributed to the corruption and underdevelopment of Africa, when the Cold War “ended” it was important for international anti-corruption discourse to first be depoliticized, for these superpowers to avoid accountability.⁴³

This is how the good governance paradigm was born, where the dominant perspective by international actors such as Transparency International and the World Bank, claimed

³⁷ Polzer T “Corruption: Deconstructing the World Bank Discourse” (2001) *LSE Department of International Development* 18:1 7.

³⁸ Polzer (2001) 7.

³⁹ Polzer (2001) 10.

⁴⁰ Polzer (2001) 10.

⁴¹ Polzer (2001) 10.

⁴² Fraser-Moleketi (2008) 240.

⁴³ Polzer (2001) 10.

that underdeveloped countries are the most corrupt because they “lack good governance”.⁴⁴ Mohamed Sesay mentions that through the good governance paradigm, global superpowers such as the United Kingdom (UK) and the USA have initiated development programmes in “war-torn countries” that claim to “deliver benign benefits but rather often have negative consequences that harm the very local constituents that peacemakers promise to help”.⁴⁵ Often, the main objective of these developed countries is to impose international standards of good governance on underdeveloped countries through rule of law norms which are ill-suited for that particular environment.⁴⁶ These norms then negatively affect pre-existing social and economic structures that “are vital for the survival and livelihood of those particular societies”.⁴⁷ Crucially, these “good governance” programmes actually promote and perpetuate the corrupt activities of global superpowers. Not only do they fail significantly to effect the good governance they speak of, they also benefit these developed States as they continue to take advantage of war-torn countries by maintaining their privileged position.⁴⁸ In essence, global superpowers hide behind good governance initiatives to reinforce unequal socio-legal and economic structures that are themselves responsible for the underlying issues that they aim to eradicate.⁴⁹

There are ample resources today that reveal corrupt activities in advanced industrialized States and within international NGOs themselves. One example that involved private sector firms in the USA, is Enron and Worldcom who were exposed in a series of scandals for corruption.⁵⁰ Added to this, a bribing culture of foreign public officials by multinational corporations has also been exposed.⁵¹ Even then, most anti-corruption campaigns driven by international organisations and aid donor governments continue to target developing

44 Polzer (2001) 8.

45 Sesay M “Hijacking the rule of law in postconflict environments” (2019) *European Journal of International Security* 4(1): 41.

46 Sesay (2019) 42.

47 Sesay (2019) 42.

48 Sesay (2019) 42.

49 Sesay (2019) 45.

50 Harrison (2007) 674.

51 Bukavansky (2006) 182.

countries.⁵² The false perspective that less developed countries are far more corrupt than industrialised States still dominates international discourse. It is perpetuated by indices such as the Corruption Perception Index (CPI) put out by Transparency International.⁵³ The CPI is “a composite measure which brings together the views of 'chief financial officers', 'executives in top and middle management', and 'US-resident country experts', as well as a number of other categories of 'business experts’”.⁵⁴ According to Harrison, the fact that the CPI only measures perceptions and has nothing to do with actual instances of corruption is curious. The fact that this perception element is seldom discussed is problematic.⁵⁵ International corruption discourse is an obvious derivative of Western ideology and culture, which indicates that the legalistic perspective of corruption does not only dominate South African discourse, it is a global phenomenon.

RACIAL CAPITALISM AND NEO-COLONIALISM

Up until now, I have explained that the dominant legalistic perspective of corruption has its roots in Western colonial culture without mentioning the specific countries that are responsible for its inception. I have also spoken about South Africa’s colonial history without giving an account of specific events. In this section, I will look into South Africa’s history of colonisation and apartheid mainly through the exploitation of the black majority through the system of racial capitalism. I will also give an account of how colonialism continues through the current neoliberal and neo-colonial paradigm. The aim here is to give a perspective on how corruption can be understood under colonialism and apartheid. Important to note here, is the role that European culture and ideology plays in making corruption an institutional artefact of the South African political, economic and social landscape.

⁵² Bukavansky (2006) 182.

⁵³ Bukavansky (2006) 182.

⁵⁴ Harrison (2007) 674.

⁵⁵ Harrison (2007) 674.

To be specific, settler-colonialism in South Africa involved the Dutch and then later the English. Then, during the years leading to “independence” the USA played a significant role in creating the current political and economic system. This happened through the adoption of a neo-liberal American ideology, which involved the “normative embrace of the virtue of capitalism”,⁵⁶ through the acceptance of the Washington Consensus.⁵⁷ Therefore, the historical account that follows will be focused on the involvement of these countries in the colonial and apartheid history and neo-colonial reality of South Africa. As a starting point, Kenneth Nunn explains that the character of Western European culture is “highly materialistic, competitive, individualistic, narcissistic and places great emphasis on the consumption of natural resources and material goods”.⁵⁸ European culture also tends to adopt a domineering stance towards any other culture that it is confronted with and as a result, “the driving force behind racism, colonialism and group-based oppression is European and European-derived culture”.⁵⁹ As we look into South Africa’s colonial history, it is important to pay attention to how these European cultural elements infiltrated the South African society and eventually got institutionalised. This is the essence of the political-ideological approach to anti-corruption discourse.

The established year which marks the beginning of settler-colonialism in South Africa is 1652. It all began with the arrival of the Dutch through the Dutch East Indian Company (*Vereenigde Oost-Indische Compagnie*, usually known as the VOC) at Table Bay.⁶⁰ The VOC was known for being one of the most profitable *and* corrupt multinational company of its time.⁶¹ By the time the Dutch arrived, a large part of the area had already been inherited by the Goringhaikona tribe an indigenous community often referred to as Khoikhoi, for at least 8000 years prior.⁶² Initially, the aim of the VOC was to establish a provision station at Table Bay where they would acquire what they needed through trade

⁵⁶ Bukavansky (2006) 187.

⁵⁷ Terreblanche S *Lost in Transformation* (2012) 28.

⁵⁸ Nunn (1997) 325.

⁵⁹ Nunn (1997) 326.

⁶⁰ Ross R “Settler Colonialism in South Africa, 1652- 1899” in Cavanagh E and Veracini L *The Routledge Handbook of the History of Settler Colonialism* (2017) 187.

⁶¹ Terreblanche S *A History of Inequality in South Africa* (2002) 153.

⁶² Terreblanche (2002) 154.

with the indigenous community.⁶³ Upon realising that they wanted more resources than what the Goringhaikonas were providing them with, the VOC through Jan van Riebeck, the company's first commander, took it upon themselves to station some employees in the area as independent farmers (*freeburghers*) in 1657.⁶⁴ Already we begin to see the Western European cultural elements of narcissism and that of placing great emphasis on the consumption of natural resources and material goods.

Gradually, the number of Dutch people in the Cape began to increase. Tension arose between the Goringhaikonas and the *freeburghers* as the Dutch increased in their land without any given consent. The Dutch began to develop a small town, which would eventually become known as Cape Town. Eventually, a brief war broke out between 1659 and 1660 among the indigenous people and the Dutch which ended with the eventual defeat of the indigenous community.⁶⁵ What then followed were peace negotiations which involved van Riebeck telling Autshumao, leader of the Goringhaikona tribe that the Dutch have "won" the country in a just manner through a defensive war and intend to keep the land, which is not big enough for the two groups.⁶⁶ Critically, the indigenous leader asked "If the country is too small, who has the greater right: the true owner, or the foreign intruder?"⁶⁷ What this indicates is the difference in the cultural values between the two sides. On the one hand, the indigenous African population understood land as property of the community, not individuals. It cannot be "won" or "controlled" by an individual because it is an essential part of daily life. In this context, the first unjust act of the Dutch, was the assumption that they could use the land in 1657 without consulting the indigenous people. In contrast to this, the Dutch perceived land as a commodity with monetary value which could be privately owned, exchanged, sold or won by inflicting violence upon the inhabitants of the land. The Dutch were simply acting according to their highly materialistic, competitive, individualistic and narcissistic, Western European and thus Dutch culture. Their decision to prioritise and uphold their cultural values against an

⁶³ Ross (2017) 188.

⁶⁴ Ross (2017) 188.

⁶⁵ Terreblanche (2002) 154.

⁶⁶ Terreblanche (2002) 154.

⁶⁷ Terreblanche (2002) 154.

indigenous community with a vastly different culture, was an act of corruption. That is to say, to inject your own culture into a society that is not yours, is to corrupt the lived experiences of that society.

For example, the Dutch farmers continued to expand their territory through the steady destruction of the indigenous community and this colonial pressure eventually led to the impoverishment and collapse of their political system.⁶⁸ The domineering stance of Dutch culture thus necessitated the destruction of indigenous lived experience. This makes Dutch and subsequently Western European colonial culture in South Africa fundamentally corrupt. Perhaps, what gives this claim more substance is the fact that even before its arrival in South Africa, the VOC was already notorious for corruption. By subjugating the culture of the indigenous people, Dutch colonial culture corrupted the entire African society. Colonial history helps us understand that the system of corruption in South Africa was established through Western European colonial culture. That corruption takes place when colonial culture situates itself by annihilating and obliterating the lived experiences of the indigenous people. It also replaces indigenous lived experiences and knowledge with its own Eurocentric and unilateral meaning of experience, knowledge and truth.⁶⁹ This is in essence what the political-ideological perspective is trying to communicate. Therefore, for as long as Western European culture remains dominant in South Africa, corruption will persist despite even the best efforts of the extensive regulatory framework.

RACIAL CAPITALISM

Though the nature of corruption in South Africa initially took its form from Dutch colonial culture, the institutionalisation of corruption through racial capitalism was mainly due to the British. Bernard Magubane cautions that any analysis failing to recognise the significant role of British imperialism in creating conditions for black subordination in order to entrench racial capitalism in South Africa, is inadequate.⁷⁰ To give some background,

⁶⁸ Ross (2017) 188.

⁶⁹ Ramose MB "In Memoriam: Sovereignty and the "New" South Africa" (2007) *Griffith Law Review* 310 313.

⁷⁰ Magubane B "The Political Economy of the South African Revolution" (1986) *African Journal of Political Economy* 1 14.

during the early nineteenth century the rise of industrial capitalism in England led to the displacement of many small scale farmers.⁷¹ The “growing contradictions of capitalism” in 1840s Britain led to massive unemployment and subsequently a disgruntled society with a growing desire to find a “new homeland”.⁷² The British Government then organised an emigration scheme as a way to alleviate poverty and also to “buy off radical protests” emerging within the English society.⁷³ The scheme according to Robert Ross led to the “most significant wave of immigration in the colonial history of South Africa” with the arrival of just over 4,000 Britons.⁷⁴ This meant that South Africa as a British colony played a significant role in relieving Britain of its internal socio-political issues, of which capitalism played a major role.⁷⁵

The discovery of diamonds in 1866 and later, gold in 1884 is what truly birthed racial capitalism in South Africa.⁷⁶ The idea that Africans could be exploited was first entertained when diamonds were discovered in what became known as Kimberly. The African majority was used as cheap black labour for the mining industry and by 1875, racial capitalism was emerging, with exploitative measures put in place to subjugate the African population.⁷⁷ The African population was expected to work from six in the morning until six in the evening. This formed the basis of South Africa’s capitalist system, founded and retained by British imperialism mainly for the benefit of the British economy through the exploitation of the black majority.⁷⁸ The racial character of South Africa’s capitalism was “designed to produce unlimited supplies” of cheap black labour with a legitimating ideology of white supremacy.⁷⁹ This legitimating ideology was then entrenched through the Union Act of 1910 which ‘handed’ political power to the white settlers and established

71 Magubane (1986) 6.

72 Magubane (1986) 6.

73 Ross (2017) 191.

74 Ross (2017) 188.

75 Magubane (1986) 7.

76 Magubane (1986) 6.

77 Magubane (1986) 10.

78 Magubane (1986) 9.

79 Magubane (1986) 13.

a pattern of race relations where Africans were forced to serve white interests in every respect.⁸⁰

To get an idea of the ultra-exploitation of Africans, in 1986, South Africa supplied almost seventy-four percent (74%) of the gold in the international market all through cheap black labour.⁸¹ The world's biggest mining finance empire was the Anglo-American Corporation of South Africa.⁸² Gold mining was the most prioritised sector in the South African economy and its "uniquely racist features" became law.⁸³ This made the mining industry "the domain of exploitation par excellence, produc[ing] violence, plunder and enslavement of the work force, which in the history of the primitive accumulation of capital is unequalled".⁸⁴ Britain had to give approval for all political decisions taken and was therefore mainly responsible for creating a political and judicial environment suitable for these exploitative activities.⁸⁵ Magubane importantly points out that, had the gold reefs been situated anywhere else in the world, they probably would not have been worked.⁸⁶ What made the location of South Africa important for gold mining is the abundant access to cheap black African labour.⁸⁷ The gold mining industry has been described as the "most reckless use of African labour" and a "shameless use of racial exploitation".⁸⁸ British imperialism had "power without responsibility".⁸⁹ Treating the black majority as a subject race became policy mainly because of its economic benefit to both Britain and the interests of the expatriate white settlers.⁹⁰ These laws and policies are what led to the institutionalisation of racial capitalism in South Africa and till today these structures, where the white minority are the perpetual accumulators of wealth and power while the

⁸⁰ Magubane (1986) 13.

⁸¹ Magubane (1986) 17.

⁸² Magubane (1986) 16.

⁸³ Magubane (1986) 17.

⁸⁴ Magubane (1986) 18.

⁸⁵ Magubane (1986) 15.

⁸⁶ Magubane (1986) 19.

⁸⁷ Magubane (1986) 19.

⁸⁸ Magubane (1986) 17.

⁸⁹ Magubane (1986) 19.

⁹⁰ Magubane (1986) 11.

indigenous majority are the perpetually exploited, impoverished and powerless, are sustained.⁹¹

Therefore, in addition to the entrenchment of European colonial culture initiated by Dutch white settlement, the British took corruption in South Africa even further. Again because of its highly materialistic, individualistic Western European culture which also places great emphasis on the consumption of natural resources and material goods, Britain saw nothing wrong with extracting mineral resources belonging to the indigenous population. Much like the Dutch, it valued the economic benefit of the land more than it did its inhabitants, the indigenous population. Corruption through Britain happened first when they discovered and assumed that gold and diamonds can be extracted by them, for their exclusive benefit. Secondly, exploiting the indigenous majority by forcing them to mine *their* resources for the benefit of the British economy was a corrupt act. Lastly, by legalising this, corruption became officially institutionalised in South Africa. Essentially, the socio-political and economic health of Britain was dependent on the corruption of South Africa through the subjugation and exploitation of the African majority and their resources. Added to that, the survival of the large British settler population was also dependent on African servitude. So the maintenance of racial capitalism in South Africa was also a matter of class survival for the white settler.⁹² The elite status of the white settlers in South Africa is dependant on the subjugation of the indigenous African population. The independence of the African majority threatens the survival of white vested interests. Meaning, the struggle for liberation brought about a lot of anxiety not only to the white settlers in South Africa, but it also threatened the status of the global economy.

THE POST-1994 NEOLIBERAL TURN

A historical overview of racial capitalism in South Africa gives better context to the country's transition to democracy. It allows us to come to terms with the fact that the white

⁹¹ Magubane (1986) 13.

⁹² Magubane (1986) 23.

minority was well aware of the political implications of living in a democratic South Africa where the African majority are truly liberated from oppression. The negotiations were a crucial element to ensuring that white vested interests remain untouched and uncontested in the “new” South Africa. The corporate sector, backed by international corporations exerted immense pressure upon the ANC to ensure that the system of racial capitalism was not compromised during the transition.⁹³ South Africa’s transformation catered more to global and local capitalist interests than it did to the demands of the black majority.⁹⁴ Because the socio-economic, cultural, epistemic, psychic and spatial historical results of settler-colonialism have survived the transition, the unfreedom and inequality of the black majority also persists.⁹⁵ However, Modiri warns that though the ANC was under pressure to appease the corporate sector, it was not and cannot be considered the main contributing factor of the incomplete transition.⁹⁶ We must also consider that there was a “lack of philosophically rigorous and radical humanist ideology” that could be used to underpin the concept of a new society.⁹⁷ Consequently, not having a visionary revolutionary ideology, meant that ideological and institutionalised corruption from the colonial and apartheid order was sustained.

As mentioned earlier, the United States of America (USA) was an important actor in the creation of South Africa’s current neo-liberal capitalist system. An important event in 1980s America was the launch of a neoliberal counter revolution by President Ronald Reagan.⁹⁸ Through this initiative, transnational corporations were given more power to aggressively infiltrate Southern countries.⁹⁹ Reagan used this neoliberal counter revolution to abolish nearly all regulations, which meant that transnational corporations could act as they pleased and not be held accountable for malpractice.¹⁰⁰ One of the main mandates for these corporations was to establish partnership industrialisation with local

⁹³ Terreblanche (2012) 128.

⁹⁴ Modiri (2018) 21.

⁹⁵ Modiri (2018) 21.

⁹⁶ Modiri (2018) 20.

⁹⁷ Modiri (2018) 21.

⁹⁸ Terreblanche (2012) 26.

⁹⁹ Terreblanche (2012) 26.

¹⁰⁰ Terreblanche (2012) 26.

corporations in Southern countries to ensure that the USA maintains control over export-orientated industrialisation in these countries.¹⁰¹ These transnational corporations were not prepared to enter into partnership with heavily indebted Southern countries that did not have an already established labour force that exploited the indigenous majority.¹⁰² Instead, the corporations provided foreign direct investment into the heavily indebted countries mainly for mineral exploitative purposes.¹⁰³ In addition to this, the Bretton Woods Institutions created structural adjustment programs for these countries, but these programmes discouraged infrastructural development and the accumulation of social capital.¹⁰⁴

The Southern countries that did become industrialised through the support of transnational corporations experienced a higher economic growth rate.¹⁰⁵ South Africa was one of the Southern countries that experienced a great amount of Western support during its transitions to democracy. A relatively wealthy elite group emerged as a result of this Western influence.¹⁰⁶ The elite group consisted mostly of ANC leaders who are only a fraction of the South African population.¹⁰⁷ It is important to note here, that this elite group of African nationalists followed the ideology of Western liberalism. Modiri explains that the history of the ruling ANC is one of elite missionary liberalism.¹⁰⁸ Their politics and ideology was accepting of the “colonial sovereignty of the British Crown” and embraced Western colonial definitions of civilisation.¹⁰⁹ Therefore, ANC ideology is in alignment with Western European culture and is amenable to “white intellectual and political influence”.¹¹⁰ Acting out of this ideology, the elite group of African nationalists prioritised white interests and abandoned the struggle for the restoration of the land and sovereignty

101 Terreblanche (2012) 26.
102 Terreblanche (2012) 27.
103 Terreblanche (2012) 27.
104 Terreblanche (2012) 27.
105 Terreblanche (2012) 28.
106 Terreblanche (2012) 28.
107 Terreblanche (2012) 28.
108 Modiri (2018) 19.
109 Modiri (2018) 19.
110 Modiri (2018) 19.

of the indigenous people.¹¹¹ The ANC elite became comfortable with playing the role of collaborators and intermediaries for the American-led global empire.¹¹² Because of this collaboration, local income distribution became more and more unequal over the years as the neoliberal empire drained industrialised Southern countries of their wealth.¹¹³ To quote Terreblanche “the Americanisation of the South African politico-economic system during the transformation of 1994/1996 was based on the wrong *ideological premises*, on the wrong *power structures*, and put South Africa on the wrong *development path*” [emphasis in original].¹¹⁴ But, to get a better understanding of the “Americanization” of South Africa, we must take a look into what happened during the negotiations leading to the 1994 democratic “transformation”.

In 1990s South Africa, negotiations relating to the future of the State began. While formal negotiations on political issues took place publicly, the corporate sector and the ANC elite conducted informal negotiations behind closed doors, leaving no room for public scrutiny.¹¹⁵ These informal negotiations dealt mainly with South Africa’s future economic system and what it would look like under ANC rule.¹¹⁶ The corporate sector represented international beneficiaries of the racial capitalist economy, together with the interests of the local white minority. This group knew that any chance of their survival in the democratic State was all dependent on how much they could get out of the negotiations.¹¹⁷ The corporate sector wanted a high economic growth rate to be prioritised over all other objectives.¹¹⁸ They put pressure on the ANC to abandon their own priorities relating to the social and economic upliftment of the impoverished black majority and the ANC yielded.¹¹⁹

111 Modiri (2018) 19.
112 Terreblanche (2012) 28.
113 Terreblanche (2012) 28.
114 Terreblanche (2012) 35.
115 Terreblanche (2002) 95.
116 Terreblanche (2002) 95.
117 Terreblanche (2002) 95.
118 Terreblanche (2002) 96.
119 Terreblanche (2002) 96.

In 1993, the Americanisation of the future democratic South Africa began when the corporate sector and the ANC leaders reached an “elite compromise”.¹²⁰ These two sides signed a “secret protocol on economic policy”.¹²¹ In this agreement, the ANC essentially agreed, together with the IMF and the Transitional Executive Council (TEC) to commit itself to a “neo-liberal, export-orientated economic policy and a ‘redistribution through growth’ strategy”.¹²² By so doing, the ruling party abandoned its commitment to prioritise the needs of the poorest half of the population.¹²³ This new policy basically ignored the tax capacity of the white population that accumulated large sums of wealth through systemic exploitation in the colonial and apartheid era.¹²⁴ By prioritising the demands of the corporate sector, the ANC neglected its redistributive approach to social problems. It failed to hold the corporate sector and white taxpayers accountable for structural and economic inequalities in South Africa.¹²⁵

The policy that was agreed upon provided no solutions for the poor South African majority.¹²⁶ What then transpired was that the newly independent State took a liberal-capitalist version of democratic capitalism where the capitalist part of the system would be way more powerful than the democratic part.¹²⁷ In the end, while the ANC achieved its main objective of political control over South Africa, the corporate sector also succeeded in its agenda to control the State economy to an even greater and more detrimental extent than before.¹²⁸

The transition to democracy was evidently not that transformative for the black majority. Too much power and too many privileges were given to corporate South Africa during the

120 Terreblanche (2002) 96.
121 Terreblanche (2002) 96.
122 Terreblanche (2002) 96.
123 Terreblanche (2002) 97.
124 Terreblanche (2002) 97.
125 Terreblanche (2002) 97.
126 Terreblanche (2002) 98.
127 Terreblanche (2002) 98.
128 Terreblanche (2002) 102.

elite compromise.¹²⁹ A genuine transformation would require that the “wings of corporatism to be clipped”.¹³⁰ Currently we have the same Mining Energy Complex that dominated the politico-economic system during apartheid, still in control post-1994 to an even greater extent.¹³¹ Capitalism in South Africa is still very much detrimental to the impoverished majority whose economic status has never improved or been prioritised for that matter.¹³² Instead of prioritising real transformation, South Africa simply replaced the “immoral and inhumane system of apartheid with [the] immoral and inhumane politico-economic system” of democratic capitalism.¹³³ The lack of adequate transformation particularly for the black majority has sustained corrupt Western European culture which currently presents itself as neo-colonialism.

NEO-COLONIALISM I: NKRUMAH

The term neo-colonialism was coined by philosopher, revolutionary and former Ghanaian president, Kwame Nkrumah. In *Neo-colonialism: The Last Stage of Imperialism*, Nkrumah explains neo-colonialism as a system where State independence has only been achieved in theory by possessing the “outward trappings of international sovereignty”.¹³⁴ Meanwhile, the political and economic system is being controlled externally.¹³⁵ The external control exerted on the neo-colonial State often comes from the country that formerly ruled the territory, but this is not always the case.¹³⁶ In South Africa for instance, external control mainly comes from two imperialist States, the first being Britain – its former colonial ruler and the other being the United States, a new master. This external control is usually exercised through economic or monetary means.¹³⁷ These external actors often have the power to choose civil servants who can be used to dictate and

129 Terreblanche (2012) 127.

130 Terreblanche (2012) 126.

131 Terreblanche (2012) 126.

132 Terreblanche (2012) 126.

133 Terreblanche (2012) 124.

134 Nkrumah K *Neo-colonialism: The Last Stage of Imperialism* (1965) ix.

135 Nkrumah (1965) ix.

136 Nkrumah (1965) x.

137 Nkrumah (1965) ix.

control government policy.¹³⁸ The ultimate goal of neo-colonialism is to exploit, rather than develop the less developed parts of the world which exacerbates the already worrisome gap between “rich” and “poor” countries.¹³⁹ Nkrumah warns that if a State is under the control of neo-colonialism, it can never be the master of its own destiny.¹⁴⁰ Imperial powers have no one to hold them accountable for their exploitative actions under neo-colonialism. It is power without responsibility for the masters, and exploitation without redress for its victims.¹⁴¹

Imperialist powers have maintained the culture of exporting their internal social conflicts to neo-colonial States.¹⁴² During the post-war period, social conflict in imperialist States worsened and there was pressure on those governments to maintain the quality of life that the citizens had grown accustomed to.¹⁴³ Imperialist leaders realised that the only way this could happen was if their countries became Welfare States. The idea here was that the country would be maintained by the colonised states which they understood to be the source of their wealth.¹⁴⁴ However, the success of the Welfare State was short-lived as the profits of colonial possession ended up with the elite and not the working class.¹⁴⁵ What then happened was that the working class of the capitalist State began to identify with the struggles and interests of the indigenous people in the neo-colonial States.¹⁴⁶ Imperialist leaders then had to deal with two conflicts, the workers at home and the workers abroad who were growing in their struggle against neo-colonialism.¹⁴⁷ This also illustrates that, exporting socio-economic issues to neo-colonial States will not necessarily alleviate the problems of the imperialist State. Nkrumah asserts that the internal contradiction of the neo-colonial system indicates how unlikely it is to succeed as

138 Nkrumah (1965) x.
139 Nkrumah (1965) x.
140 Nkrumah (1965) x.
141 Nkrumah (1965) xi.
142 Nkrumah (1965) xii.
143 Nkrumah (1965) xii.
144 Nkrumah (1965) xii.
145 Nkrumah (1965) xii.
146 Nkrumah (1965) xiii.
147 Nkrumah (1965) xiii.

a permanent world policy.¹⁴⁸ It is the capitalist nations who will be impacted most by the ultimate failure of neo-colonialism because it is an integral and foundational part of their social and economic system.¹⁴⁹

One of the strategies implemented by imperial powers was to break up former large colonial territories into smaller non-viable States, incapable of developing independently.¹⁵⁰ The aim here, was to make these States dependent on imperial powers, giving them the power to force small States into selling resource materials on a price decided by them. Neo-colonialism deliberately maintains the depressed state of small countries because preventing political and economic development allows imperialist powers to control their market. This is also why “aid” programmes in developing countries continue to fail. Nkrumah describes foreign aid in neo-colonial States as “revolving credit, paid by the neo-colonial master, passing through the neo-colonial State and returning to the neo-colonial master in the form of increased profits”.¹⁵¹ They are designed to keep underdeveloped States indebted and dependent on external actors.

Lastly, according to Nkrumah, political leaders of the newly independent State do not derive their authority to govern, from the people.¹⁵² The authority to govern is conferred upon them by their colonial masters. As a result, the newly elected political leaders have little interest in the development and improvement of State affairs such as education and strengthening the bargaining power of workers employed by expatriate firms.¹⁵³ It is important to remember here, that these political leaders follow a Western liberal ideology. They are in no way against the unchanged colonial form of commerce and industry, which is the very thing that neo-colonialism aims to preserve.¹⁵⁴

148 Nkrumah (1965) xii.

149 Nkrumah (1965) xii.

150 Nkrumah (1965) xiii.

151 Nkrumah (1965) xv.

152 Nkrumah (1965) xv.

153 Nkrumah (1965) xv.

154 Nkrumah (1965) xv.

NEO-COLONIALISM II: FANON

In his explanation of neo-colonialism, Frantz Fanon focuses mainly on the role of the political leaders in the newly independent State.¹⁵⁵ In *The Wretched of the Earth*, Fanon states that though the underdevelopment of newly independent States can be largely attributed to the impact of the colonial regime and the hold that imperialist powers still have on them, the national bourgeoisie have also played a significant role in perpetuating neo-colonialism.¹⁵⁶ Both Fanon and Nkrumah understand neo-colonialism as a newly democratic and formally independent State replicating the ways of the old colonial system. Neo-colonialism is an extension of the colonial State under black rule. Fanon's approach focuses more on how the black nationalist bourgeoisie and its defective revolutionary ideology contributed to replicating the colonial system in the newly independent State.

Crucially, even though the national bourgeoisie situated themselves as leaders during the liberation struggle, their intentions were not in alignment with the vision of the indigenous conquered majority.¹⁵⁷ While the black majority wanted true liberation and a dignified life, the national bourgeois focused on obtaining the privileges that the colonial regime would leave behind.¹⁵⁸ The national bourgeois thus erroneously equated freedom to two things, political power and wealth accumulation for personal gain.¹⁵⁹ Fanon refers to them as an 'underdeveloped bourgeoisie', unprepared to govern and lacking practical ties with the indigenous masses.¹⁶⁰ The underdeveloped bourgeoisie lack an in-depth understanding of the country's socio-economic issues. They have no solid plan for the economic agenda of the country because it has always been developed by external powers.¹⁶¹ Shortly after independence when they prove incapable of managing State affairs, the national

155 Fanon F *The Wretched of the Earth* (1961) 159.

156 Fanon (1961) 160.

157 Fanon (1961) 159.

158 Fanon (1961) 165.

159 Fanon (1961) 165.

160 Fanon (1961) 159.

161 Fanon (1961) 161.

bourgeois quickly run to their former colonial rulers for assistance.¹⁶² These colonial rulers then pick up from where the left off and exert even more control over what then becomes the neo-colonial State.

The mentality of the newly elected leadership is what Fanon describes as “deeply cosmopolitan”.¹⁶³ They aspire to be like the Western bourgeoisie by going as far as mimicking their decadent lifestyle, individualistic behaviour and their materialistic value system.¹⁶⁴ They invest in prestigious cars, villas and all kinds of ostentatious assets that benefit only them.¹⁶⁵ Terreblanche describes the ANC bourgeoisie as being “culturally Americanised and aspire to attain high levels of consumerism maintained by Western countries”.¹⁶⁶ They are inward-looking, lacking in ideas, unambitious about national development, cut-off from the people and unable to evaluate issues that affect the entire nation.¹⁶⁷ The national bourgeoisie came into power understanding that their role is simply to act as intermediaries for the imperial State. They have the “psychology of a businessman not that of the captain of the industry” and are not geared towards the production, invention or creation of anything.¹⁶⁸ Because of their Western liberal mentality, they come to embody the “highly materialistic, competitive, individualistic and narcissistic” traits of Western European culture and are far removed from the core values of the African society.

Under the leadership of the national bourgeoisie, industries remain underdeveloped. The shipping of raw materials and the growing of produce for Europe continues, which maintains the country’s undermining status of “specialists of unfinished products”.¹⁶⁹ Nationalisation for the national bourgeoisie only means that the privileges accumulated

162 Fanon (1961) 160.
163 Fanon (1961) 160.
164 Fanon (1961) 163.
165 Fanon (1961) 165.
166 Terreblanche (2012) 28.
167 Fanon (1961) 163.
168 Fanon (1961) 160.
169 Fanon (1961) 162.

by the colonial regime become theirs.¹⁷⁰ Their claims of wanting dominion over their own country were limited to occupying businesses and firms previously held by the elite white minority.¹⁷¹ The underdeveloped bourgeoisie does not aim to transform or decolonise the nation, rather it acts as a “conveyer belt for capitalism” that imperialist powers can hide behind in order to disguise their neo-colonial agenda.¹⁷² They take great pride in their role as managers of Western companies and agents for imperial powers.¹⁷³ They use State resources to build holiday resorts and different avenues of entertainment for the West.¹⁷⁴ This is established under the ‘tourism sector’ that was created specifically for the interests of the Western bourgeois who now go by the term “tourists”.¹⁷⁵ This elite group of African nationalists quickly acquire the farms previously owned by the colonial bourgeoisie. They make claims that this acquisition is for the interest of the nation, only for them to fail at modernizing the agricultural sector and do nothing to integrate produce into the national economy.¹⁷⁶ They also fail to diversify and increase production and lack the capacity to implement a developmental plan that will benefit the nation as a whole.¹⁷⁷

According to Fanon, the black majority eventually becomes increasingly and impatiently dissatisfied with the lack of transformation and the empty promises of the national bourgeoisie. During the liberation struggle, the leaders assured the masses of radical transformation and a better life for all.¹⁷⁸ Today the bourgeoisie have changed the message to that of looking back at the past as a way of celebrating “how far we have come”.¹⁷⁹ The masses are however incapable of appreciating the “distance covered” because despite the new flags and public holidays, their circumstances remain unchanged.¹⁸⁰ The bourgeoisie cannot succeed in convincing the masses that meaningful

170 Fanon (1961) 162.
171 Fanon (1961) 162.
172 Fanon (1961) 162.
173 Fanon (1961) 162.
174 Fanon (1961) 163.
175 Fanon (1961) 163.
176 Fanon (1961) 164.
177 Fanon (1961) 164.
178 Fanon (1961) 176.
179 Fanon (1961) 176.
180 Fanon (1961) 176.

transformation has taken place because the masses are still hungry, still unemployed and still live in unchanged, impoverished conditions.¹⁸¹ Unlike in the neo-colonial society, the party made the masses feel involved during the struggle for liberation.¹⁸² This relationship has now disintegrated. The masses have turned their backs and lost interest in the ruling party because they have intentionally ignored their dehumanising circumstances.¹⁸³

NEOLIBERALISM AND NEO-COLONIALISM IN THE TRANSITION TO THE POST-APARTHEID ORDER

As previously mentioned, the elite national bourgeoisie responsible for perpetuating neo-colonialism in South Africa centres around the African National Congress (ANC). In addition to following a Western liberal ideology, John Saul importantly points out that the ANC was never a mass-based political party.¹⁸⁴ It owes its distant attitude towards the majority, to its very nature as a “small, elite-led, top-down hierarchical party with neither a significant working class nor a rural base”.¹⁸⁵ According to John Daniel, the ANC embraced notions of democracy but was not particularly democratic in practice.¹⁸⁶ It devised its policy “behind closed doors and then passed it down to the lower ranks”, meeting any form of opposition with expulsion and relegation.¹⁸⁷ As a consequence, anyone in the movement who was opposed to the capitalist route taken by the very top leadership was made to feel as though capitalism was the only “realistic” option.¹⁸⁸ What we now have as a result, in contemporary South Africa is a huge gap between the rich minority and the impoverished majority.

According to Fanon, the greatest threat to authentic independence in African States, even more than the colonial regime was the liberation movement’s lack of revolutionary political

181 Fanon (1961) 176.

182 Fanon (1961) 176.

183 Fanon (1961) 176.

184 Saul J “On Taming a Revolution: The South African Case” (2013) *Socialist Register* 49: 212 224.

185 Saul (2013) 224.

186 Saul (2013) 224.

187 Saul (2013) 224.

188 Saul (2013) 224.

ideology.¹⁸⁹ Part of developing ideology for the liberation struggle involves having open philosophical discussions about “how to put a working humanist program into practice”.¹⁹⁰ Instead, the elitist approach of the ANC which involved handing down policy and silencing opposition was a major contributor to the current neo-colonial State.¹⁹¹ The Eurocentric and moderate character of the ruling party’s ideology meant that by design, it automatically puts the interests of the white minority first.¹⁹² As a result, the ANC’s lack of authentic, revolutionary and transformative ideology failed to address deep-seated economic and social inequalities.¹⁹³ Instead, it put at ease, the very perpetrators of these social ills by promoting liberal capitalism and consequently, protecting white colonial interests.¹⁹⁴ The political leaders adopted this policy with the idea that they too would be beneficiaries, as a black elite class with similar entitlements to the white settler population. This meant that the transition would take “a class character”.¹⁹⁵ Essentially, the ideological similarities of the outgoing colonial rulers and the incoming national bourgeois led to the preservation of colonial institutions and systems in South Africa. The ruling party leads the nation with the same mentality as the colonial master. Therefore, even after the transition, corruption was maintained. Fanon warned that “if the master furnishes the ground of the nation, it is already corrupt”.¹⁹⁶

Under the colonial regime, the space you were allocated determined your social relationship and social status.¹⁹⁷ Therefore, one way of determining whether the “post-apartheid” State is truly transformed is by examining whether South Africa has been spatially reorganised.¹⁹⁸ Inevitably, the unchanged colonial ordering of South Africa’s geographical layout serves as a visual representation of the afterlife of colonial-apartheid

189 Gibson N “Upright and free Fanon in South Africa from Biko to the shackdwellers’ movement (Abahlali baseMjondolo)” (2008) *Social Identities* 14(6): 683 699.

190 Gibson (2008) 699.

191 Gibson (2008) 700.

192 Gibson (2008) 700.

193 Gibson (2008) 700.

194 Gibson (2008) 700.

195 Gibson (2008) 700.

196 Gibson (2008) 699.

197 Gibson (2012) 55.

198 Gibson (2012) 55.

in contemporary South Africa.¹⁹⁹ The only change South Africa has seen with regards to its colonial spatial order is that the emerging black elite have access to “white” spaces.²⁰⁰ These spaces are mostly South Africa’s cities which can now be accessed through money.²⁰¹ It is a form of “class apartheid” that plays out in things such as the “slum eradication” Bill. This Bill created urban policy which claims to “upgrade” informal settlements when it is really aimed at removing poor Black people from urban areas.²⁰² Under these housing policies, the government has erected quite a number of poorly built, tiny structures as “new housing for the poor”. The houses are conveniently located far away from the city centres and the government has even forcefully removed poor black city dwellers by police force.²⁰³ The current geographical layout of South Africa thus reinforces spatial segregation which remaps apartheid.²⁰⁴

The city of Johannesburg is a good example that illustrates how the creation of suburban areas for the white minority, and the creation of townships for the black majority under the apartheid regime, has undergone little racial change in neo-apartheid South Africa.²⁰⁵ Sandton, is still very much home to a rich, white minority living in widely spread, luxurious mansions.²⁰⁶ Right next to Sandton (literally a road apart) is Alexandra, a township where an overcrowded African population resides in a space so congested, the buildings are almost on top of each other.²⁰⁷ There are of course many instances of similar scenarios all over South Africa. Another obvious example being the city of Cape Town and the Khayelitsha township, home to many Black South Africans who have never been beneficiaries of the South African system.

199 Gibson N “What Happened to the Promised Land?” A Fanonian Perspective on Post-Apartheid South Africa” (2012) *Antipode* 44: 51 55.
200 Gibson (2012) 55.
201 Gibson (2012) 55.
202 Gibson (2012) 55.
203 Gibson (2012) 55.
204 Gibson (2012) 55.
205 Gibson N “The Pitfalls of South Africa’s “Liberation” (2001) *New Political Science*. 3: 371 372.
206 Gibson (2001) 372.
207 Gibson (2001) 372.

Tshepo Madlingozi states that the implementation of the Growth, Employment and Redistribution Program (GEAR) in 1996 legitimised the ANC's decision to embrace a neoliberal macroeconomic policy.²⁰⁸ To quote Madlingozi:²⁰⁹

GEAR promised to 'increase annual growth by an average of 4.2 per cent, create 1.35 million jobs by the year 2000, boost exports by an average [of] 8.4 per cent per annum through an array of supply-side measures, and drastically improve social infrastructure.' In order to achieve these targets, the plan hinged on massive increases in private sector investment. This would be achieved by, amongst other things: cutting government spending; keeping inflation in single digits; encouraging 'wage restraint'; speeding up privatization of 'non-essential' government assets; provision of tax breaks for corporate capital; and creation of a flexible labour market.

Again, these policies are contrary to ANC's initial commitment to participatory democracy.²¹⁰ Through GEAR, unemployment, wage disparities, landlessness and poverty plummeted.²¹¹ The decision of the ANC to privatize and commodify municipal services made basic services such as health care, water provision and electricity inaccessible to the impoverished South African majority.²¹²

The decision of the ANC to abandon its initial priority to the impoverished black majority and to rather embrace neoliberal policies, meant that it lost significant control over how the State would be governed. The party chose to adopt a policy it is unfamiliar with, which meant that it would have to yield to the command of those who introduced the policy in order to run the country. Therefore, even in post-apartheid South Africa, the white minority continues to shape the politics of the 'new' South Africa. For instance, in 1985 apartheid South Africa, the National Party (NP) established a company called Projek Republiek (ProRep).²¹³ It allowed 'donors' to send money to the company in order to avoid the donors having to directly fund the political party.²¹⁴ In 1994 when the ANC won the majority seats in parliament, former NP Members of Parliament (MPs) Gerhardus

208 Madlingozi T "Post-Apartheid Social Movements and the Quest for the Elusive 'New' South Africa" (2007) *Journal of Law and Society*. 34(1): 77 78.

209 Madlingozi (2007) 79.

210 Madlingozi (2007) 80.

211 Madlingozi (2007) 80.

212 Madlingozi (2007) 80.

213 Van Vuuren (2017) 84.

214 Van Vuuren (2017) 84.

Koornhof and Gerhardus Oosthuizen got elected as ANC MPs.²¹⁵ Added to this, the former apartheid President FW De Klerk became deputy President of the newly independent State. What followed in 2006, was the ANC's creation of their own company with the same intention as the NP's ProRep, it was called Chancellor House.²¹⁶ This indicates the ease at which institutionalised corruption continues to operate in neo-colonial/ neo-apartheid South Africa as a result of the defective ideology of the ruling elite.

DISRUPTING THE LEGALISTIC APPROACH

The political-ideological perspective treats colonial conquest as the “framework and basis for a historically grounded analysis” of corruption in South Africa today.²¹⁷ This perspective centres corruption around the foundational violence of the settler-colonial, white supremacist regime.²¹⁸ More importantly, it understands these violent colonial effects as an ongoing system of social organisation and not just a past historical event with no implications to the current state of affairs.²¹⁹ By interrogating corruption through this historical lens, the legitimacy of the current dominant legal approach gets disrupted. Legalism as previously established holds at its core, the principles of the colonial regime. To reiterate, legalism works to preserve Eurocentric relations of power and knowledge by suppressing Afrocentric relations of power and knowledge.²²⁰ By negating the voice of the black majority and ignoring the ways in which colonialism has negatively affected them mainly through the depoliticised claims of corruption, legalism presents itself as a major inhibitor to the adoption of a progressive and transformative anti-corruption discourse. This is because, to use Modiri's words, it is grounded “upon a set of faulty political conceptual and ideological predicates that not only violate the principle of historical justice but also stand in the way of a radical-democratic, decolonised and

215 Van Vuuren (2017) 84.

216 Van Vuuren (2017) 84.

217 Modiri (2018) 4.

218 Modiri (2018) 4.

219 Modiri (2018) 4.

220 Modiri (2018) 6.

liberated future”.²²¹ Legalism’s colonial logic aims to promote the false idea that South Africa has had a “substantive and symbolic break with the past”.²²² To approach legalism as one of the sources through which colonialism and its corrupt features become normalised in South Africa, is to understand that the legalistic perspective is itself corrupted.

The attitude of treating the colonial historical effects of South Africa as being inconsequential is a popular narrative particularly among the settler population. To quote Terreblanche:²²³

“Although most whites benefitted from a rather advantageous ‘deal’ during the transformation, many of them are – curiously enough – not prepared to acknowledge the multiple injustices that were committed by them or on their behalf towards blacks during ‘the century of injustice’. Many whites lament that they are ‘sick and tired’ of being reminded of their apartheid debt, but what they apparently do not realise is that it will still be justifiable for decades to come, to remind them of what is still unpaid.”

This narrative illustrates the great impact that legalistic, colonial ideology has had on South Africa’s national culture. Though there are views like the political-ideological perspective that challenge the very nature of the legalistic perspective, legalism is still currently the dominant framework used to address socio-political and economic issues. This is problematic because using Western ideology to resolve a problem created by Western ideology is futile given that it aims to protect colonial vested interests. Therefore, the only way to adequately resolve a socio-political issue in South Africa is to adopt an alternative approach.

One of the main ways through which the corrupted, ahistorical legalistic narrative is maintained, is through the media. In many ways, the media is the lived expression of colonial dominion in South Africa and plays an influential role on how corruption is understood. Though it does occasionally cover one or two incidents of corruption in the

221 Modiri (2018) 5.

222 Modiri (2018) 7.

223 Terreblanche (2012) 126.

private sector, the media focuses most of its energy on the the behaviour of individuals holding public office. It constantly portrays the idea that corruption is a post-1994 'epidemic' that has been created by the ANC government.²²⁴ The media pays little to no attention to the past. It aims to conceal the historically colonial roots of corruption by shifting the focus to public officials. Moreover, the history of racial capitalism in South Africa exposes the inherently corrupt nature of the private sector. If the media had a genuine concern for the problem of corruption in South Africa, more private sector incidents would be covered.²²⁵ Instead, the choice to intentionally cover way less incidents of corruption in the private sector as compared to the public sector brings to light, not only the bias of the media, but also its dedication to portray the mainly black government in a negative light. At some point, former President Jacob Zuma and the Gupta family became the personification of corruption.²²⁶ The constant focus on the government has inadvertently created and nurtured the stereotype that corruption is more likely to be committed by Black South Africans. Therefore, the media's limited and narrow focus on public officials suggests that its agenda is actually underpinned by racism.

This is not to say that the ANC has played no role in exacerbating the situation. Rather, it is to point out that even though corruption is a problem emanating from South Africa's colonial past, the media focuses on the ANC government, as a distraction from the root cause.²²⁷ Therefore, the political-ideological perspective helps disrupt the legalistic approach by problematizing its Western European and colonial culture and illustrating the detrimental effects it continues to have on the society particularly to the black majority. The fact that the lived experiences and standard of living of the black majority are constantly ignored or underplayed by the legalistic perspective is both a crisis in social and historical literacy but also a crisis of the imagination – a sign of “a society that refuses to be honest with itself”.²²⁸

224 Levin R “Ethics, Accountability and Developmental Publics Administration: Key Challenges for South Africa in Addressing Corruption” in Plaatjies, D. *Protecting the Inheritance: Governance and Public Accountability in Democratic South Africa*. (2013) 123.

225 Levin (2013) 125.

226 Modiri (2017) *Daily Maverick*.

227 Levin (2013) 124.

228 Modiri (2017) *Daily Maverick*.

CONCLUSION

In this chapter I have looked at the historical background of corruption in South Africa. Addressing the fact that corruption has its roots in colonialism and was entrenched by institutions created by white settlers already lifts the veil that disguises the legalistic approach as a neutral theory. By being plugged into and defending the status quo, the authors of the legalistic approach are de facto defenders of a corrupt system. The political-ideological approach questions the agenda behind limiting the scope of what corruption can and cannot be under the legalistic approach. It exposes the fact that imperialist powers continue to hide behind this limited, ahistorical approach so as to exempt themselves from accountability. Through a political-ideological approach, corruption is understood mainly from what the historical roots that the legalistic approach aims to ignore. I have looked into racial capitalism and its effects on the neo-colonial situation of South Africa today. Added to this, is the role of the national bourgeoisie as an instrumental player in ensuring that colonial structures remain intact. Today, South Africa's socio-economic system remains fundamentally unchanged, the only difference being that a minority black elite has been included.²²⁹ The ruling elite is thus actively involved in perpetuating the exploitation of the impoverished black majority. This situation has been referred to as "class apartheid". Nigel Gibson expresses that "the betrayal of South Africa's liberation is realising the ubiquitous fact that exploitation can wear a black mask... the people awaken to the unutterable treason of their leaders".²³⁰

The major difference between the dominant legalistic approach and the political-ideological approach is the historical potency of the latter. The history of corruption relates to legitimising the spectacular violence and subjugation inflicted upon the indigenous African majority, coupled with exploiting their resources and corrupting their lived experience. This was legitimised and institutionalised through the creation of colonial laws and later became the political system of the colonial regime. This colonial political system

²²⁹ Gibson (2012) 54.

²³⁰ Gibson (2012) 60.

depended on the annihilation of the sovereignty of the African population and the destruction of their knowledge to help advance and maintain white vested interests. Because the political-ideological perspective recognises corruption as an institutional problem, it understands that criminalising the corrupt activities of individuals can never lead to the eradication of this deeply institutional problem. Meaning, the current dominant discourse has misdiagnosed the problem. The continued systematic exclusion of the black majority cannot be resolved by enacting laws that monitor the individual activities of public officials.

Re-politicising anti-corruption discourse involves addressing the systematic exclusion of the black majority, as it is rooted in the corrupt nature of South Africa's historical colonial foundations. In order to ensure that the reframing of anti-corruption discourse can actually effect social, ideological and cultural change, we must take responsibility for how we remember our past.²³¹ In the words of Collin Bundy, "to understand the present conjuncture in South Africa, it is essential to have a sense of its history, to reflect on constraints and the possibilities created by that history".²³² The political-ideological perspective can help reframe the discourse into one that emphasises the importance of historical remembrance. It also brings to light the selective nature of the dominant perspective in its decision to overlook the detrimental effects of colonialism. It chooses rather to focus on the activities of the current government.

I also mentioned that because legalism neutralises the unjust historical foundations of colonialism and normalises white colonial hegemony, it undermines any alternative discourse. It perceives any dialogue around substantive decolonisation as "unreasonable and unrealistic".²³³ Legalism is thus anti-transformation and must therefore be opposed in its entirety in order to work towards social transformation. One way of doing this is by adopting a national decolonial ideology that reframes anti-corruption discourse from a legalistic approach to the political-ideological perspective. An ideology that can help effect

²³¹ Terreblanche (2002) 3.

²³² Terreblanche (2002) 3.

²³³ Modiri (2018) 9.

social change. In the following chapter I suggest revolutionary humanism as a radical political tradition with a decolonial ideology and agenda that can help reframe anti-corruption discourse and dismantle the neo-colonial reality of South Africa. Revolutionary humanism works towards the holistic transformation of society and its individuals by first pointing out the impediments that are currently obstructing that transformation. It pays attention to why the current perspective of corruption has not led to significant change by drawing from the past and analysing its effect on the present. Revolutionary humanism recognises the deeply entrenched colonial culture within South African institutions and the ways in which it influences all socio-political discourse. It uses a political-ideological understanding of the status quo to work towards creating a corruption-free society. How exactly this looks will now be discussed in Chapter 4.

CHAPTER 4: REVOLUTIONARY HUMANISM AS ANTI-CORRUPTION DISCOURSE

INTRODUCTION

The political-ideological perspective that I have been developing in the previous chapters prompts an alternative approach to corruption that could disclose a more radical and historically grounded response. It recognises corruption as an institutional and systematic problem that perpetuates the subjugation, exploitation and unwarranted injustice of the indigenous black majority. Social transformation thus requires dismantling and restructuring the entire political, systematic and cultural landscape of South Africa. This is not a matter of simply improving or reforming the current system, but dismantling its constitutive operations at the core.

The focus of this chapter is on revolutionary humanism and how it can be used to shift anti-corruption discourse into a more political-ideological understanding. First, I will provide some background by unpacking three elements of revolutionary humanism that can be used for anti-corruption theory and practice. From there, I will analyse how revolutionary humanism can catalyse or open possibilities for social, ideological and political change. This involves dismantling the current socio-political structures and ideologies that enable corruption and taking seriously, African culture, history and experiences as the foundations of understanding corruption through a political-ideological lens in South Africa. Through revolutionary humanism, African values and ideology are understood as tools for liberation. Liberation here entails freedom from the exploitative and suppressive nature of the current neo-colonial system both psychologically and physically.

Social, ideological and political change through revolutionary humanism is also a call for reflection. In addition to unlearning the Eurocentric culture and ideology perpetuated in

neo-colonial societies, we must also reflect on some of the limitations of past liberation struggles. The idea here is that critical reflection prevents repeating past mistakes when working towards evolving and progressive discourse around social transformation. On this issue, my focus will also turn specifically to the patriarchal nature of society and previous liberation struggles/ movements. My assertion is that the failure to adequately address and resolve the historical and systematic exclusion of women from socio-political and economic participation also maintains the corrupt colonial ideology that 'normalises' the abuse of power and the privileging of one group at the expense and to the detriment of another. In a way this also links to how conflict, violence and dominance are seen as masculine. This perception can be located in South Africa's history of colonialism because the value systems of the colonial order were also masculinist. In terms of anti-corruption discourse, a gendered lens to my analysis explores the ways in which unchecked masculinist values of the colonial order, perpetuate the corrupted lived experiences of Black women in South Africa. Pumla Gqola explains that Black women are then trapped in a limited representation of themselves by others.¹ This ultimately works to erase their authentic voices and lived experiences, which then "trap her in facile tropes".² A gendered perspective therefore interrogates conscious and unconscious patriarchal biases that are maintained in the current anti-corruption discourse. There are of course many other, equally important marginalised groups whose lived experiences continue to be subjugated and thus corrupted in the current social order.

Lastly, I unpack how exactly revolutionary humanism can be used as an alternative framing for anti-corruption discourse and what it envisions a corruption-free society to look like. I argue that ubuntu philosophy is a form of revolutionary humanism specific to the South African context. When we speak of African culture, history and lived experiences as political tools for the liberation of the black majority, ubuntu is an African philosophy that carries these liberatory tools. Addressing corruption through ubuntu involves centring and taking seriously, the life-worlds of Black people in South Africa. It

¹ Gqola P "'...As If This Burden Disguised As Honour Did Not Weigh Heavily On Her Heart': Blackwomen, Struggle Iconography and Nation In South African Literature" (2004) *Alternation* 44 45.

² Gqola (2004) 45.

begins with this reality and shifts the Eurocentric, cultural mind-set of corruption and eventually society as a whole.

WHAT IS REVOLUTIONARY HUMANISM?

Revolutionary humanism is a radical political tradition that values the importance of addressing any and all social problems from an ethical standpoint. Part of adopting an ethical perspective means that an honest, unfiltered account of history must always be conveyed. Revolutionary humanism honours and respects the lives all humans and understands the importance of amplifying the voices of those whose histories have been silenced, underrepresented and/or incorrectly depicted. For instance, the white supremacist foundations of South Africa ensure that the Black people in South Africa are surrounded by narratives and institutions that make them appear inferior. This happens at a physical and psychological level. Laws and regulations are put in place to police and restrict the activities and movements of Black people often in an undignified and unethical way. While the suppression their knowledge and history, through the ideological monopoly of European culture harms the psyche of the indigenous majority by conveying the message that African culture, history and knowledge is inferior to the one that dominates in society.

By understanding society from an ethical, political and historical lens, revolutionary humanism begins first by addressing the dehumanizing social reality of the indigenous African people. In other words, it has as its main concern the rehumanization of the lives of all conquered people. In the words of Fanon, an authentic revolution of the oppressed should not merely entail going from one way of life to another, but rather from one life to another.³ One way of life constitutes living differently, but still within the confines and structures of an oppressive system. For example, the elite nationalist bourgeoisie of a neo-colonial system have moved from one way of life to another. They simply took over the positions vacated by the colonial master, thereby leaving the oppressive colonial

³ Fanon (1952) 188.

systems and institutions in tact.⁴ Whereas one life to another involves, in Gibson's words "smashing the oppressive structures and beginning anew",⁵ that is creating a completely new and radically different society.

Because of the psychological and physical damage that colonialism has on the indigenous majority, the process of revolutionary humanism happens at two levels. It first takes place at a personal level, then at a national level. What this means is that, before the grand project of transforming society into a corruption-free one can begin, the individuals who make up the society must undergo a shift in consciousness and morality to see why and how the current neo-colonial, racial capitalist system is detrimental to them as human beings. By working towards their own psychological emancipation, the oppressed majority become conscious of the dehumanising nature of living in a systematically corrupt and oppressive society. Through revolutionary humanism the oppressed can achieve existential freedom, which refers to the consciousness of one's own freedom and free choice.⁶ The path of revolutionary humanism is driven by the shared collective goal of a community. One that embraces the values of service towards one other, a public-spirited society that understand the importance of communal ethics. This is in direct contrast with the current national culture of South Africa which carries an individualistic, Eurocentric value system. The community with a revolutionary humanist mind-set mobilises with the understanding that it is their collective responsibility to fundamentally transform society.⁷

Revolutionary humanism should do three things. First, it must not shy away from problematizing how society currently operates. Secondly, it requires us to learn about the historical foundation of our social problems which in this case, speaks to the colonial roots of institutional corruption in South Africa. Lastly, it takes seriously African culture, history and lived experiences as critical tools to dismantle and disrupt the current neo-colonial

⁴ Gibson (2008) 699.

⁵ Gibson (2008) 699.

⁶ Rabaka R *Africana Critical Theory: Reconstructing the Black Radical Tradition, from W.E.B. Du Bois and C.L.R. James to Frantz Fanon and Amilcar Cabral* (2009) 192.

⁷ Fanon (1961[2004]) 199.

and corrupt world. It also uses these tools as the main basis for imagining and building a new decolonised, corruption-free world. My explanation of revolutionary humanism will therefore take form through these three elements.

FIRST ELEMENT OF REVOLUTIONARY HUMANISM

Being aware of the current state of affairs can be achieved through what Fanon calls political education which he describes as a “historical necessity”.⁸ Political education of the masses according to Fanon involves “opening up the mind, awakening the mind, and introducing it to the world”.⁹ It is the birth or the coming to consciousness of the oppressed.¹⁰ To educate the masses is to reaffirm their value to them and to make them understand that social transformation depends on their efforts.¹¹ In this context, political education carries with it the principle that to work towards a corruption-free society requires the effort of every individual. There is no demiurge or famous person who can make corruption magically disappear.¹² Rather, “the demiurge is the people themselves and the magic hands are finally only the hands of the people”.¹³ Essentially, political education is about inventing new souls,¹⁴ with a strong political conscience and incorruptible spirit. These newly invented souls are well equipped and capable of reclaiming their sovereignty and creating an entirely different personal life and society.

In chapter 3, I explored the ways in which the national bourgeoisie contributes to the maintenance of a corrupt society. How their aspirations were to go from one way of life to another, by imitating the lives of the colonial bourgeoisie and shamelessly exploiting the black majority to advance their own personal interests. By deciding to embody Western culture and ideology in their lifestyle, the national elite committed themselves to a corrupt way of life. The problem currently, is not that the national bourgeoisie of the “post” colonial

⁸ Fanon (1961[2004]) 150.

⁹ Fanon (1961[2004]) 200.

¹⁰ Fanon (1961[1991]) 197.

¹¹ Fanon (1961[1991]) 197.

¹² Fanon (1961[1991]) 197.

¹³ Fanon (1961[1991]) 197.

¹⁴ Fanon (1961[1991]) 197.

State is unaware of what political education is. Instead, they have taken for granted the value of and duty to educate the masses.¹⁵ Political leaders treat political education only as a means to gain popular support from the masses and in no way intends to empower citizens to transform society.¹⁶ Another problem here, is that expecting a corrupted political leadership to educate the masses about how the structural function of corruption maintains their depressed living conditions and maintains the lifestyle of the elite is futile. Unfortunately, these political leaders lack the ideological and economic capacity to build a society with principles that are completely detached from those of its former colony.

For these leaders, political education is treated as a self-indulgent activity. It is a competition among themselves to see who has more influential power over the majority. This happens often during election season when the elite organise rallies to convince the masses to continue to support them.¹⁷ These leaders according to Fanon, have ‘simplistic minds’. Their form of political education is one that promotes the “need” to have a strong authority or even dictatorship, for the successful operation of State affairs.¹⁸ By this, the national bourgeois want to use their authority as a smokescreen between them and the majority so that they cannot be held accountable for their abuse of power. They initiate an intensified administration and police force tasked with controlling the masses.¹⁹ The control is there to constantly remind the masses that “the authorities expect them to be obedient and disciplined” like school children and uses brutal force to silence any form of opposition.²⁰ Therefore, instead of developing the consciousness of the masses, they stagnate and handicap national transformative agency. Another aim of the ruling elite’s form of political education is to give a nostalgic account of the past liberation struggle to deviate the masses from coming to terms with the reality of the country’s neo-colonial State. They intentionally deter the masses from understanding how the political system functions, knowing that doing so would expose their incompetence, given that they too

¹⁵ Fanon (1961[2004]) 186.

¹⁶ Fanon (1961[2004]) 186.

¹⁷ Fanon (1961[2004]) 186.

¹⁸ Fanon (1961[2004]) 187.

¹⁹ Fanon (1961[2004]) 187.

²⁰ Fanon (1961[2004]) 186.

rely on the ideological framework of the colonial master. Fanon admonishes that because the political leaders lack the capacity to adequately educate the masses, they must be resolutely opposed as they actually serve no purpose.²¹ An elite leadership simply will not provide the masses with an ideology on how to work towards eradicating a system that serves their personal interests.

Fortunately, the inability of ruling elite to initiate authentic political education does not necessarily mean that social transformation cannot take place. According to Fanon, there is a small number of “upstanding intellectuals” that have the potential to execute the task of political education.²² It is through their critical analysis of the status quo, backed by well-informed revolutionary ideology that they can be used to create what Reiland Rabaka refers to as “revolutionary intellectual activists”.²³ These upstanding intellectuals are well aware of the corrupt nature of the State and realise the importance of developing an anti-corruption critical consciousness together with the masses.²⁴ Gibson articulates the position of these intellectuals as follows:²⁵

[T]here must first be in practice a discussion of philosophies of liberation that is open to all, from the bottom up, not cut off behind closed doors. To aid this process, the intellectual has to undergo a double critique, first, against elitism and prejudice toward the damned, and second, against the complacency such internalized elitism and prejudice produces. For both points of view are products of alienation from the masses, who may turn to intellectuals, not for technocratic assistance or uncritical praise (as might be commonly assumed), but for practical help in understanding the political situation and for a genuine discussion about ideas of liberation.

This is crucial to understand because intellectuals are not to position themselves as perpetual teachers and should understand that national liberation and social transformation is a national project requiring the active involvement of the masses and not a dictatorship by a selected few or a “talented tenth”.²⁶ They must essentially “delve

21 Fanon (1961[2004]) 182.

22 Fanon (1961[2004]) 183.

23 Rabaka (2009) 179.

24 Rabaka (2009) 182.

25 Gibson (2008) 699.

26 I take this phrase from W.E.B Du Bois *The Talented Tenth* (1903).

into the body of the population” and engage in constructive dialogue.²⁷ Meaning, the “upstanding intellectuals” must approach political education as a dual exchange between them and the masses. Another important thing to note is that the political education process cannot simply be academic. It needs to go beyond academia and must be embodied in political and cultural spaces and institutions. Revolutionary humanism must therefore be all-encompassing and multidisciplinary in its approach to social transformation. Re-humanising a people requires cultural, historical, ideological and spiritual revival and cannot be confined to theory.

To limit the oppressed majority’s understanding of corruption by focusing only on its legalistic character, is to deprive them of developing a political-ideological conscience that can aid them in addressing their undesirable living conditions. The status quo of South Africa from a political-ideological lens has to do with the refusal or unwillingness of the governing system to fundamentally improve the living conditions of the black majority. A politically educated citizenry would understand that the majority’s dehumanising quality of life is systemic. Whereas, the legalistic approach would portray the situation as “tragic”, and would use the law to claim that everyone has the right to human dignity thereby distancing itself from the actual problem. An example of this is the vast difference in the quality of service delivery given to the rich minority and the impoverished majority. The rich minority who are the white settler population and the elite national bourgeoisie receive speedy and easily accessible municipal services. The impoverished black majority however, barely ever receive access to basic services such as health care, water provision and electricity. A political approach exposes the governing system for continuing to prioritise the interests of the elite minority and understands that South Africa’s neo-colonial situation means that the system is still designed to serve interest of the elite only. Put differently, the legalistic approach assumes that creating more laws that give the oppressed the right to basic services will resolve this deeply historical and systematic problem. It fails to understand that giving the masses the right to water does not give them

²⁷ Fanon (1961[2004]) 191.

the water itself.²⁸ Through political education, the masses can understand that the law is often used to pacify them, not to improve their lives.

Though legalism may focus on the corrupt behaviour of a particular Minister dealing with social development and environmental affairs, it is limited and fails to understand that the problem of corruption did not begin with Minister. The system itself is designed to prioritise the interests of the elite minority regardless of who the individual in office is. Therefore, political education helps to reframe corruption from its dominant legalistic framework to the political-ideological perspective by making its context relevant and relatable to the lived experiences of the black majority. To treat the living conditions of the majority as an issue isolated from corruption is to accept a depoliticised approach to anti-corruption discourse as unproblematic.

Political education pays attention to how the neo-colonial running of State affairs continues to stagnate the lived experiences of the oppressed. At its core, the South African system is designed to treat the majority as an inconvenience. Therefore, to remove a corrupt public official as the legalistic approach would propose, does absolutely nothing to adequately address the root cause. Eradicating corruption has never been dependent on monitoring the individual behaviour of public officials. Political education brings to the fore, the fact that the exuberant lifestyle of the elite depends on a governing system that maintains the depressed living conditions of the majority. Ultimately, political education addresses perhaps what the elite fear most, that the only way to completely rid ourselves of corruption, is to dismantle the entire system and by so doing, upend their lifestyle and privileges.

A politically educated and free sovereign citizenry understands that the only way to dismantle a system that is entirely corrupt, is to work together. In their solidarity lies their salvation.²⁹ Regardless of how long it takes for the entire nation to understand how exactly

²⁸ More M “Fanon and the Land Question” in (Post) Apartheid South Africa, in Gibson N.C. (eds) *Living Fanon: Global Perspectives*. (2011) 173 181.

²⁹ Fanon (1961[2004]) 194.

society currently functions, political education teaches that all citizens must develop this understanding in order for everyone to have equal authority to decide on an issue. The time “lost” in explaining and humanising the masses will be regained in the execution.³⁰

Fanon makes the following analogy:³¹

If the building of a bridge does not enrich the consciousness of those working on it, then don't build the bridge, and let the citizens continue to swim across the river or use a ferry. The bridge must not be pitchforked or foisted upon the social landscape by a deus ex machina, but, on the contrary, must be the product of the citizens' brains and muscles.

Part of why the dominant perspective around anti-corruption discourse remains hollow and unprogressive is because it is not the “product of the citizen's brains and muscles”. Current anti-corruption discourse fails to “enrich the consciousness” of the majority because it is not created by them or tailored for their lived experiences. This legalistic perspective relies on a foreign and oppressive colonial ideology. For as long as it dominates, corruption discourse will remain inadequate to address this social ill. The citizens must consciously work towards making anti-corruption discourse relevant to their lived experiences by using their own intellectual energy to reframe and re-politicise social issues. The political-ideological perspective encourages the black majority to understand corruption discourse through the lens of their lived experiences. Politically conscious citizens dictate the kind of power structures they want and strongly oppose all systems that are designed to exclude, subjugate and exploit them.³² Having reclaimed and embraced their sovereignty and dignity, these citizens understand that the government is made to serve them.³³ Through political education, the living expression of a nation becomes the collective consciousness of an enlightened people, coherent in praxis.³⁴

SECOND ELEMENT OF REVOLUTIONARY HUMANISM

³⁰ Fanon (1961[2004]) 197.

³¹ Fanon (1961[2004]) 203.

³² Fanon (1961[2004]) 201.

³³ Fanon (1961[2004]) 201.

³⁴ Fanon (1961[2004]) 206.

The second element of revolutionary humanism unpacks the historical foundations the current social and governing system. My focus is mainly on how colonialism obstructed and destructed the authentic historical process of the oppressed indigenous people and their cultures.³⁵ The idea here is that, had the culture of the indigenous majority not been substantially destructed, the foreign injection of corruption would have failed or at least had more difficulty at becoming the national culture. The robust culture of the indigenous people would have easily picked up on and resisted the infiltration of foreign ideology that completely contradicts their value system. To reiterate, the destruction of the historical experiences of the indigenous masses was a way for European culture to establish itself in African communities was in a sense an act of corruption on its own.

Amilcar Cabral asserts that people are to always, first know their reality, and second, “start from that reality to wage the struggle”.³⁶ He explains that culture plays an integral role in the resistance of foreign domination.³⁷ The success of foreign domination is dependant on the permanent destruction and organised repression of the indigenous people.³⁸ Ngugi wa Thiong’o describes colonialism as a “cultural bomb” that annihilates a people’s belief in their names, languages, environment, heritage, unity, their capacity and ultimately a belief in themselves.³⁹ Cultural preservation of an indigenous people threatens foreign domination’s aim to make itself permanent.⁴⁰ Again, the neo-colonial nature of South Africa’s system derives its power from the epistemicide of indigenous people.

Culture and history are an inseparable duo. History is concerned with lived experiences, it focuses on understanding the nature and causes of imbalance and conflict in a society.⁴¹ On the other hand, culture is the mind of that society, often seen by the solutions

³⁵ Cabral A “National Liberation and Culture” *Indiana University Press on behalf of Hutchins Centre for African and Africa American Research at Harvard University* (1974) 45:12 13.

³⁶ Cabral A *Unity and the Struggle* (1979) 44.

³⁷ Cabral (1974) 12.

³⁸ Cabral (1974) 12.

³⁹ wa Thiong’o N *Decolonizing the Mind: The Politics of Language in African Literature* (1986) 3.

⁴⁰ Cabral (1974) 12.

⁴¹ Cabral (1974) 13.

chosen to resolve societal conflicts.⁴² Meaning, an authentic understanding of South Africa's history would focus on the arrival of the coloniser and the spectacular violence inflicted upon the indigenous people. This is in direct contrast with the revised official South African history that chooses rather to focus on the transition to democracy and conveniently ignores the detrimental effects of colonialism. The destruction of indigenous culture becomes evident in the measures chosen to resolve societal problems and conflicts. The use of Western ideology and remedies paints the obvious picture of foreign domination and indigenous cultural repression and annihilation.

Cabral asserts, that just as a plant produces a flower, so does history produce culture.⁴³ Because imperialist domination is the negation of the true historical process of the oppressed people, it is therefore, also the negation of its cultural process.⁴⁴ It creates a system that ensures the repression of indigenous culture.⁴⁵ The liberation struggle is then the conscious effort to "assert the cultural personality" of the oppressed people as a way to reject imperialist culture.⁴⁶ For the cultural freedom of a colonised nation to be realised, the indigenous majority must adhere to the authority of their own culture.⁴⁷ It is of the utmost importance that the indigenous African people take seriously the fact that their culture forms the basis of their liberation against foreign domination. To quote Cabral, "if imperialist domination necessarily practices cultural oppression, national liberation is necessarily an act of culture."⁴⁸

The main weapon used by the oppressor to entrench their culture was violent force. By dominating by force of arms the coloniser aimed to neutralize and paralyze, if not destroy indigenous culture.⁴⁹ However, the oppressor's greatest mistake was underestimating the

⁴² Cabral (1974) 13.
⁴³ Cabral (1974) 13.
⁴⁴ Cabral (1974) 13.
⁴⁵ Cabral (1974) 14.
⁴⁶ Cabral (1974) 13.
⁴⁷ Cabral (1974) 13.
⁴⁸ Cabral (1974) 13.
⁴⁹ Cabral (1974) 12.

strength of African culture.⁵⁰ Though colonial forces worked hard to destroy African culture, it has survived. Cabral observes that African culture has sought refuge in villages, forests and in the “spirit of generations of victims of colonialism.”⁵¹ Cultural resistance of the African people has not been destroyed and for as long as indigenous cultural life continues to exist, foreign domination cannot be at ease, nor can it be confident of its protraction.⁵²

This is what necessitates centring African history, culture, knowledge and lived experiences as the main tools for the authentic liberation of the indigenous masses. Part of shifting the anti-corruption discourse to the more political-ideological view involves utilising indigenous culture and ideology to transform the foundational cultural mind-set of the nation.

However, Cabral suggests that once the oppressed have reclaimed their sovereignty and have rid themselves of any kind of inferiority complex, it would be beneficial for them to observe “positive contributions from the oppressors’ culture and of other cultures”.⁵³ The African society must be nourished first by a strong Afrocentric ideology and environment in order to consider which elements of foreign culture could be beneficial, and which possess harmful influences.⁵⁴ We must allow ourselves to learn from the lived experiences and experiments of others.⁵⁵ Cabral observes that “[t]he experience of others is highly significant for someone undergoing any experience. The reality of others is highly significant for one’s own reality”.⁵⁶ Cabral warns that the failure to consider the lived experiences of others is a sign of ignorance for the following reason:⁵⁷

If we want to do something in reality, we must see who has already done the same, who

50 Cabral (1974) 15.
51 Cabral (1974) 15.
52 Cabral (1974) 12.
53 Cabral (1974) 13.
54 Cabral (1979) 143.
55 Rabaka (2009) 270.
56 Cabral (1979) 49.
57 Cabral (1979) 49.

has done something similar, and who has done the opposite, so that we can learn something from their experience. It is not to copy completely, because every reality has its own questions and its own answers for these questions. But there are things which belong to many realities jointly. It is essential that the experience of others benefit us. We must be able to derive from everyone's experience what we can adapt to our conditions, to avoid unnecessary efforts and sacrifices. This is very important. Obviously it is the same thing with our struggle.

If the experiences of others can add value to our lives or help us avoid things that would otherwise impact us negatively, we should not reject them. Again, we are to keep in mind that none of these experiences should be adopted if they are to undermine our own experience and cultural values. Moreover, Africa is itself rich in cultural diversity and the aforementioned must be applied even amongst these different cultures and experiences.

THIRD ELEMENT OF REVOLUTIONARY HUMANISM

Since the second element of revolutionary humanism focuses on the negation of the indigenous people's history and culture, the last element looks into the importance of reclaiming and relearning that very history and culture. As mentioned before, the dominant culture and ideology of a society determines how the social issues are resolved. Evidently, South Africa's dominant Eurocentric ideology misdiagnoses social issues by ignoring indigenous culture. An important part of the revolution of the oppressed is using their knowledge and culture as a basis for resolving cultural issues. To adopt Afrocentric solutions to social issues is to rightly oppose the idea that Western ideology can adequately resolve an issue affecting the African population because European ideology is not tailored for their lived experience.

In order to do this we must recognise as an impediment, the tendency of wanting to "imitate Europe" and the obsessive "desire to catch up with Europe."⁵⁸ The psychological liberation of the oppressed is dependant on unlearning these ideals in order to develop an authentically African revolutionary theory and praxis.⁵⁹ The colonised must immerse

⁵⁸ Fanon (1961[1991]) 311.

⁵⁹ Rabaka (2009) 179.

themselves into the very depths of “indigenous thought, culture and traditions- precolonial, colonial, and neo-colonial”.⁶⁰ According to philosopher Kwasi Wiredu, there seems to be a direct relationship between the advancement in technology of a society and the subsequent depletion of moral insight.⁶¹ The same is true for the inverse, non-industrialised societies tend to hold higher moral insight than industrialised ones.⁶² What this illustrates is that Africana thought can provide important insight that the world can learn from.⁶³ Rabaka articulates that “though Europe may be technically and scientifically overdeveloped when compared to Africa, in many other areas, especially ethics and morality, Africa... is clearly more advanced... it is now the European who must catch up with the African”.⁶⁴ What this also illustrates is that the ethical and moral potency of African culture compels us to use it as a framework for imagining and building a corruption-free society and to afford it the honour and respect it has long been deprived of. We must then embrace the great potential of non-European cultures and knowledges and the impact they could make in local and universal human culture and civilization. Crucially, we must denounce the idea of catching up to Europe and rather focus on developing African societies that reflect a strong African culture, knowledge, morality and ethics suited to the present context.

AN AFROCENTRIC APPROACH: CENTRING THE AFRICAN LIVED EXPERIENCE

What revolutionary humanism aims to do is use the three elements discussed above to create a decolonial liberatory ideology specific to, and centred around the African lived experience. In the process of ideological and subsequently, social transformation, we must also pay attention to some of the issues that often go unaddressed or underrepresented.

⁶⁰ Rabaka (2009) 179.

⁶¹ Rabaka (2009) 180.

⁶² Rabaka (2009) 180.

⁶³ Rabaka (2009) 180.

⁶⁴ Rabaka (2009) 181.

RETURN TO THE SOURCE: AN HONEST APPROACH

Revolutionary humanism is “the practice of teaching people a remembrance of their sovereignty”.⁶⁵ A remembrance that can only be located in Africa’s precolonial past. Aimé Césaire describes this past as being a “beautiful and important civilization”, “worthy of respect”, to be “radically reclaimed and rehabilitated because it contains elements of great value”.⁶⁶ Though it is absolutely necessary to immerse ourselves in African history, culture and knowledge, we must acknowledge *both* the good and the bad. Rabaka warns against the romanticization and selective reading of Africa by wanting to “find Utopia on every page of our hidden history.”⁶⁷ In the remembering of Africa, we are to “[challenge] both whites’ demonization and blacks’ romanticization of Africa”.⁶⁸ An honest review of our past brings awareness to this issue in order to prevent repeating the mistakes of the past. Having an honest memory of the past also makes us more conscious of the bad traditions that are still being perpetuated. A people’s philosophy is what they understand as their tradition. African philosophy is the historicity of the lived experiences, life worlds and struggles of all African people.⁶⁹ Studying traditional African philosophy as well as various forms of modern philosophy is existentially beneficial.⁷⁰ However, recreating African philosophy out of European heritage, will not produce African philosophy. Rabaka warns that if the philosophy of a modern African is not rooted in the experience of African people, it cannot claim to be African philosophy even when it is written by an African philosopher.⁷¹

A STRUGGLE SPECIFIC TO THE 21st CENTURY

It is worth noting that no liberation struggle is a stand alone from the ones that came before it or the ones happening alongside it and in the future. The struggle against colonialism is one shared by all Africans on the continent and in the diaspora. Though

⁶⁵ Sekyi- Otu A *Fanon’s Dialectic of Experience* (1996) 211.

⁶⁶ Rabaka (2009) 127; Césaire A *Discourse On Colonialism* (1992) 92.

⁶⁷ Rabaka (2009) 127.

⁶⁸ Rabaka (2009) 131.

⁶⁹ Rabaka (2009) 154.

⁷⁰ Rabaka (2009) 154.

⁷¹ Rabaka (2009) 155.

each society has an experience specific to them, they all share the common struggle against white supremacy and the corruption of their lived experiences and history. Because of this, it is important for new or current political movements and organisations to use past liberation struggles as a guideline to build. Therefore, previous anti-colonial ideas and philosophies must be consulted as they are still relevant when properly interpreted to the present context. From there, we can modify these anti-colonial political traditions to make them personalised to what the current struggle needs by taking into consideration things such as technological advancements.

It is important to build on from past anti-colonial ideologies. Rabaka cautions that though our “intellectual-activist ancestors” such as Cabral, Fanon and their fellow comrades, have made tremendous contributions to the struggle for liberation, they provided “solutions to the particular problems” of “their specific historical moment”.⁷² Therefore, no matter how much we believe them to articulate the details of our struggle in profound depth and regardless of how much guidance their texts have provided, those intellectual breakthroughs were specific to their era and must be expanded upon to fit our specific narrative.⁷³ Though we must consult anti-colonial texts and theories provided by past intellectual activists, it is our sole responsibility to imagine “concrete and nuanced historical understandings necessary to develop revolutionary movements... aimed at altering the new and novel social and political problems” specific to the twenty-first century.⁷⁴ These revised theories must “be grounded in and growing out of various transethnic traditions of revolutionary decolonization, critical multiculturalism, democratic socialism, racial justice, gender justice, women’s liberation, freedom of sexual orientation, and religious tolerance, among others”.⁷⁵

Grounding contemporary liberation theory in various traditions is crucial given that a major shortcoming of previous liberation movements was the decision to focus mainly on

⁷² Rabaka (2009) 271.

⁷³ Rabaka (2009) 271.

⁷⁴ Rabaka (2009) 271.

⁷⁵ Rabaka (2009) 271.

racism. Many national liberation movements limited their understanding of oppression to race and failed to interrogate the importance of developing a substantive interdisciplinary discourse. What this meant was that all other forms of oppression remained unaddressed, one of them being patriarchy.

A FEMINIST APPROACH TOWARDS THE STRUGGLE FOR LIBERATION

The relevance of adding a gendered approach to the anti-corruption discourse has to do with pointing out and cautioning against perpetuating the masculinist character of many social discourses. Though they all have their roots in colonialism, ideas and philosophies that focus on the struggles of other marginalised groups often come second to the issue of racial subjugation. By undermining the importance of creating a liberation struggle that pays attention to the interconnectedness of different forms of oppression, the struggle will always remain incomplete. This is because the lived experiences and histories of other marginalised groups will continue to be silenced and thus corrupted, which then leaves the blueprints of a corruption-free society defective. Therefore, all social discourse speaking to the lived experiences of oppressed groups must be all-encompassing.

Previous liberation struggles, more specifically mass liberation movements often carried with them strong patriarchal and masculinist sentiments. In an “imperialist white supremacist capitalist patriarchy”,⁷⁶ all Black people are enslaved and deprived of their social status.⁷⁷ However, even then Black men are given a higher status than Black women based solely on them being male.⁷⁸ This meant that of all the Black people who aspired to leadership positions, only men were considered.⁷⁹ So, the leadership of the early black liberation movement was dominated by Black men, they shaped the movement so as to reflect a patriarchal bias.⁸⁰ Because of this sexist discrimination against women, Black women leaders were only seen as exceptional individuals, never

⁷⁶ hooks b *Outlaw Culture* (1994) 116.

⁷⁷ hooks b *Aint I A Woman?* (1952) 88.

⁷⁸ hooks (1952) 88.

⁷⁹ hooks (1952) 89.

⁸⁰ hooks (1952) 89.

to represent the norm.⁸¹ The predominantly male leadership of the movement gave men the confidence to announce their support for patriarchy.⁸² In *Aint I A Woman?* bell hooks explains that men bond over their common belief that a patriarchal social order is the “only viable foundation for society”.⁸³ “Male bonding” maintains patriarchy on the basis of shared sexism. It is a serious political commitment to maintain a male-dominated world.⁸⁴

To quote hooks, “[f]rom their writings and speeches, it is clear that most black political activists of the 60s saw the black liberation movement as a move to gain recognition and support for *an emerging black patriarchy*” [emphasis mine].⁸⁵ When addressing racism and its negation of social equality, Black men tend to speak as though they were not only the sole representatives of the black race, but also racism’s only victims. This successfully perpetuated the idea that only Black men were deprived of their freedom, not women.⁸⁶ Black leaders both male and female have in the past refused to address the oppression of Black women by Black men.⁸⁷ This is motivated by their unwillingness to acknowledge that racism is not the only oppressive force in the black lived experience.⁸⁸ These leaders claimed that acknowledging that Black men can be victims of racism *and* sexist oppressors of Black women might “complicate efforts to resist racism”.⁸⁹ The sexist oppression of Black women then never got acknowledged as a serious problem.⁹⁰ What then happens is that an exaggerated emphasis of how racism impacts Black men is prioritised. The image of the emasculated and crippled Black man becomes the dominant narrative.⁹¹ This dominant narrative overshadows the idea that the “damaging effects of

81 hooks (1952) 89.
82 hooks (1952) 98.
83 hooks (1952) 99.
84 hooks (1952) 99.
85 hooks (1952) 97
86 hooks (1952) 101.
87 hooks (1952) 88.
88 hooks (1952) 88.
89 hooks (1952) 88.
90 hooks (1952) 88.
91 hooks (1952) 88.

racism” neither prevents Black men “from being sexist oppressors nor excuses or justifies their sexist oppression of black women”.⁹²

To drive the point home, in her article on “Blackwomen, Struggle Iconography and Nation in South African Literature”, Pumla Gqola articulates meticulously the lived experiences of the “Blackwomen” in South Africa.⁹³ According to Gqola, an analysis of the discourse on liberation movements shows the link between the ambiguous positioning of Blackwomen and the masculinist language of emancipatory politics.⁹⁴ Mampehla Ramphela expressed in an interview that the sexist language of Black Consciousness (BC) “didn’t have space for women” and was borrowed language from English culture which has never acknowledged women as full citizens.⁹⁵ An uninterrogated masculinist bias, opines Gqola, is prominent in BC literature.⁹⁶ Much like other liberation movements, the Black Consciousness Movement (BCM) prioritised black unity as the main tool for dismantling apartheid.⁹⁷ This meant other aspects of the broader liberation movement were left unacknowledged and unaddressed.⁹⁸

The leadership of the BCM was dominantly educated Black men which influenced the ideology around what blackness and black experience is.⁹⁹ “[C]ertain ways of inhabiting blackness was prioritised over others” and ‘black experience’ was specific only to the “urban, young and male Black experience”.¹⁰⁰ The portrayal of Blackwomen activists as exceptional reinforces the stereotypical imaging of her.¹⁰¹ It maintains the problematic idea that women do not belong in the forefront of the struggle. It paints the image that these women are extraordinary and unique – that not all women can be this way. Female

⁹² hooks (1952) 88.

⁹³ Gqola (2004) 45.

⁹⁴ Gqola (2004) 45.

⁹⁵ Gqola (2004) 46.

⁹⁶ Gqola (2004) 46.

⁹⁷ Gqola (2004) 46.

⁹⁸ Gqola (2004) 46.

⁹⁹ Gqola (2004) 46.

¹⁰⁰ Gqola (2004) 46.

¹⁰¹ Gqola (2004) 50

writers in support of the BCM were not allowed entry into public politics, which left their experiences unheard.¹⁰² There was a conservative politics of gender within the BCM which translated into the “paucity of female activists at the forefront of the movement.”¹⁰³ The refusal to make sense of how gender based oppression played out in the lives of Black South Africans meant that this system of oppression remained unchecked within the ranks of the movement.¹⁰⁴ The unwillingness to acknowledge other forms of oppression weakens the general understanding of the problem and leaves us with an incomplete conception of freedom.¹⁰⁵

In order to work towards social, ideological and cultural change we must be committed to “uncovering new ways of looking, listening and interpreting” our experiences.¹⁰⁶ We must embrace difference in our stories and work towards freeing the imagination as a vital tool to new and interesting developments.¹⁰⁷ Stereotypes only provide false securities for their beneficiaries.¹⁰⁸ Any form of oppression that negates the lived experiences of an oppressed group, is a form of corruption. By acknowledging the lived experiences of all, as opposed to prioritising or amplifying racism over all other issues, the next generation will not only be guaranteed more information, but also more “adequate knowledge of our capacities to comprehend” the past.¹⁰⁹

Lastly, Rabaka speaks on the importance of discourse that encourages men to practice feminism.¹¹⁰ He strongly emphasises the need for anti-sexist men to “consciously and consistently practice sincere self-criticism and self-correction”.¹¹¹ Men have a responsibility to go beyond only committing to women’s decolonization and liberation

102 Gqola (2004) 48.
103 Gqola (2004) 47.
104 Gqola (2004) 49.
105 Gqola (2004) 49.
106 Gqola (2004) 66.
107 Gqola (2004) 66.
108 Gqola (2004) 66.
109 Gqola (2004) 66.
110 Rabaka (2009) 201.
111 Rabaka (2009) 201.

theoretically.¹¹² They must actively work towards learning about women's experiences by reading women's decolonization and liberation ideologies, and must embrace and practice feminism.¹¹³ When this happens, anti-sexist men work towards "epistemically and politically incorporating women's liberation theory into their world views".¹¹⁴ hooks writes in *Feminist Theory*, "men should assume responsibility for actively struggling to end sexist oppression".¹¹⁵

hooks urges, that everyone committed to a feminist revolution must rather focus on ways to help men unlearn sexism.¹¹⁶ Ours cannot be a "women only" struggle. Both women and men must make a conscious effort to work together as equals. In our path to black liberation it is important that Black women and men fight against sexism. For as long as we allow sexism to keep Black women and men divided, we will fail at "concentrating our energies on resisting racism."¹¹⁷ Black men will not experience freedom for as long as they advocate for or participate in the subjugation of Black women and the same applies to men of all races, in relation to all women.¹¹⁸ Our path to revolutionary humanism especially as it affects social, ideological and cultural change, requires us to address *all* oppressive forces that threaten human liberation.¹¹⁹ This in no way weakens or belittles our concerns about racism, rather it acknowledges that human experience is so complex that it cannot be understood fully if viewed only through the lens of racism.¹²⁰ The path to revolutionary humanism requires us to consider all the potential difficulties that our struggle comes with. It is only after considering these issues that we can effectively work towards social, ideological and cultural change. It is imperative that we critically engage all forms of knowledge not for knowledge's sake, but for life and liberation's sake.¹²¹

112 Rabaka (2009) 201.

113 Rabaka (2009) 201.

114 Rabaka (2009) 201.

115 hooks b *Feminist Theory* (1984) 67.

116 hooks (1984) 76.

117 hooks (1952) 116.

118 hooks (1952) 117.

119 hooks (1952) 115.

120 hooks (1952) 115.

121 Rabaka (2009) 273.

REVOLUTIONARY HUMANISM AS AN ALTERNATIVE FRAMING FOR ANTI-CORRUPTION DISCOURSE

In the words of Slavoj Žižek, “[we] feel free because we lack the very language to articulate our unfreedom”.¹²² For revolutionary humanism, freedom is the “supreme goal”.¹²³ Therefore, finding the language to articulate our unfreedom particularly as it relates to the historical experiences and struggles of the African people, should take precedence in all socio-political and economic issues in South Africa. Through political education, we can develop a national decolonial language to help us engage corruption in a manner that always acknowledges its political and historical roots. What makes most dialogue around corruption redundant and unconstructive is the assumption that we possess a sufficient understanding on the full scope and contours of the historical, political, economic and psychological determinants of corruption. The unchanging tropes of most anti-corruption discourses (i.e. moral compass of individuals, poor governance, failing/ stagnant economy, enactment of new legal mechanisms) is a clear indication of our stunted and limited understanding of corruption.¹²⁴

Part of developing a language for our unfreedom involves interrogating what we currently understand freedom to be. Fanon explains that when the colonial master one day convinces his friends to “be nice to the niggers”, and decides to offer the conquered masses freedom in his terms, the oppressed has been acted upon.¹²⁵ When the white master says to the oppressed “from now on, you are free”, the oppressed “sits unmoved” because they see no difference in their life. This is the consequence of freedom that is given. This freedom cost the oppressed nothing and it was not their decision to have it.¹²⁶ Freedom or “liberty” in this scenario is a foreign term that the indigenous masses occasionally fought for but never really understood.¹²⁷ It is a term articulated in the

¹²² Žižek S *Welcome to the Desert of the Real!* (2002) 2.

¹²³ Rabkaka (2009) 216.

¹²⁴ Bukavansky (2006) 182.

¹²⁵ Fanon F *Black Skin White Mask* (1952) 171.

¹²⁶ Fanon (1952) 189.

¹²⁷ Fanon (1952) 189.

language of white liberals. Because of this, their struggle has been for “white liberty and white justice” – values derived from Western ideology.¹²⁸ Revolutionary humanism therefore encourages the colonized indigenous masses to use their own knowledge and history as tools to articulate both the freedom they envision and the reality of their current unfreedom. This again emphasises the importance of political education as it encourages the masses to use their own tools to “dismantle the master’s house”.¹²⁹ The plight of current anti-corruption discourse is the assumption that Western ideology can be used to liberate an African society. By adopting a decolonial ideology centred in African philosophy, the African masses ensure that they use a language they understand to articulate the kind of freedom they want. In this way, they can never be acted upon and are in full control of the narrative of their own lived experiences and liberation struggle.

UBUNTU PHILOSOPHY: REVOLUTIONARY HUMANISM IN THE SOUTH AFRICAN CONTEXT

The specific articulation of revolutionary humanism in the South African context takes the form of ubuntu and understands revolutionary humanism as humanness. Ubuntu offers a viable political imaginary of how individuals and social structures/practices can be fundamentally transformed in their consciousness and ethics, to embrace a just and corruption-free society. Importantly, it centres the history, culture, knowledge and lived experience of Africans as foundational to shifting and reframing the deep-seated, Western cultural mentality that currently dominates anti-corruption discourse, into the more political-ideological understanding.

Ubuntu philosophy holds a political ethics that can be used to fundamentally dismantle the Eurocentric and thus individualistic character of our current society. Ubuntu is an ethical philosophy – it holds ethics as an integral part of its ideology. African philosopher Mogobe Ramose defines ethics as “a science of morality, that is, the study of the meaning

¹²⁸ Fanon (1952) 189.

¹²⁹ I take this phrase from Lorde A *The Masters Tools Will Never Dismantle The Master's House* (2018).

of good and bad with reference to human behaviour”.¹³⁰ Ethics analyse how human moral behaviour manifests itself in practice and pays attention to the specific underlying principles of that moral behaviour.¹³¹ From this we can understand that part of what ubuntu does is engage with and interrogate the morality of human behaviour. Unlike legalism’s expectation to adhere strictly to the law, ubuntu has as one of its principles the “freedom from dogmatism”.¹³² It is “flexibility-orientated” and values balance and harmony in the relationship between human beings.¹³³ Added to this, ubuntu is governed by specific ethical maxims which are an inherent part of African cultural values and ideology. My focus will be on three of those maxims, namely: (1) *Motho ke motho ka batho*;¹³⁴ (2) *Feta kgomo o tshware motho*¹³⁵ and (3) *Molato ga o bole*.¹³⁶

Ramose explains *motho ke motho ka batho* as a maxim underlying the “vital importance of mutual recognition and respect complemented by mutual care and sharing in the construction of human relations”.¹³⁷ Meaning, failure to mutually recognise the lived experiences of all human beings is fundamentally unethical. Therefore, the unwillingness of the South African system to address the social disparities of the indigenous majority indicates a lack of mutual respect, care and sharing in the construction of human relations, rendering it unethical. South Africa’s culture is then in direct contrast with the ubuntu. It values instead, individualism which does not concern itself with the common good of all humans and treats human relations as a competition for survival. More than that, it illustrates the conflicting characteristics of African culture and European culture. *Motho ke motho ka batho* means that the human being affirms be-ing human by recognising, respecting and protecting the humanness of other human beings.¹³⁸ Therefore, to value

¹³⁰ Ramose MB “The ethics of *ubuntu*” in Coetzee PH and Roux APJ *The African Philosophy Reader* (2003) 379.

¹³¹ Ramose (2003) 379.

¹³² Ramose (2003) 382.

¹³³ Ramose (2003) 382.

¹³⁴ Directly translated it means – a human is made human by other humans.

¹³⁵ Directly translated in means – let the cow pass and hold/ save the human instead.

¹³⁶ Directly translated in means – an unlawful or unethical act can never expire.

¹³⁷ Ramose (2003) 385.

¹³⁸ Ramose M “Good governance: another export to Africa” in Obi Oguejiofor J (et al) *Studies in African Philosophy* (2003) 36 51.

the humanness of one individual over another, is to negate the very essence of their humanity. Moreover, Ramose asserts that this maxim also “allow[s] for the construction of a political community”,¹³⁹ where it is extended and modified into the maxim – ‘kgosi ke kgosi ka batho’.¹⁴⁰ It means that “the king acquires status and power of kingship through the recognition, respect and the protection that the people accord to him”.¹⁴¹ Because of the ethical construction of African political philosophy, this extended maxim can be employed as the basis for ethical and community-centred leadership.

Secondly, the maxim, feta kgomo o tshware motho is in direct conflict with the policy of neo-liberal capitalism adopted in South Africa. In essence, it means that if one is “faced with a situation in which a choice must be made for protecting disposable wealth or preserving human life then the choice must always be for the preservation of human life”.¹⁴² In this instance, the value of life supersedes the value of any material possession. On the contrary, South Africa’s policy of neo-liberal capitalism chooses rather to preserve an economic system that places the accumulation of money (disposable wealth), before and above the preservation of human life.¹⁴³ The racial capitalist personality of the system attests to its immoral nature as it disregards the dignity and worth of the black population by treating them as tools for wealth accumulation, not as human beings. This renders the current political and economic system of South Africa immoral. It is therefore bound to clash with African philosophy which is built on the foundation that politics without morality is unethical.¹⁴⁴ Furthermore, Ramose points out that the laws, culture and ideology of the country are not “homegrown” and do not embody the principles of justice and moral convictions of the indigenous African people.¹⁴⁵ The decision to adopt European policies meant that, not much regard was given to the adoption of a system of governance, better understood by the majority of the people it is designed to serve.¹⁴⁶ What then remains is

¹³⁹ Ramose (2003) 56.

¹⁴⁰ Directly translated it means – a king is made king by other humans.

¹⁴¹ Ramose (2003) 56.

¹⁴² Ramose (2003) 51.

¹⁴³ Ramose (2003) 51.

¹⁴⁴ Ramose (2003) 51.

¹⁴⁵ Ramose (2003) 44.

¹⁴⁶ Ramose (2003) 44.

a tension between the quest for autochthonous homegrown political systems and institutions, and the overwhelming dominance of the current governing system that adheres to the epistemological paradigm of the colonial conqueror.¹⁴⁷ African philosophy is then crucial for the realisation of a system that caters to the needs of the African majority, it also brings to light the importance of developing an alternative national ideology that upholds the value that the politics of a country can only be ethical if it is moral.

Lastly, by recognising the negative effects of colonial conquest, ubuntu understands the importance of calling into question the unaddressed historical injustices inflicted upon the African majority. Given that the features of colonial conquest were legalised so as to deny and ignore the “moral imperative of natural and historical justice due to the indigenous conquered peoples of Africa”,¹⁴⁸ ubuntu carries a legal maxim to help counter this legal injustice. The legal maxim of *molato ga o bole*, understands that a “debt or a feud is never extinguished till the equilibrium has been restored, even if several generations elapse”.¹⁴⁹ Prescription is unknown in African law, which makes the Statute of Limitations in the South African legal system incomprehensibly unjust according to African law.¹⁵⁰ This is because it denies the African majority the opportunity to legally contest the historical injustices inflicted upon them on the grounds that it is too old.¹⁵¹ The legal maxim of *molato ga o bole*, takes issue with this because time cannot change the truth, the truth has no expiry date and must be taken into consideration each time it becomes known.¹⁵² Ramose asserts that there is nothing immoral about pursuing justice no matter how long it takes and no obstacle must be placed in the way of the search and discovery of truth.¹⁵³ Therefore, an African legal system places truth as the threshold for justice and refutes the idea that a law can justify compromising the truth.

147 Ramose (2003) 45.
148 Ramose (2003) 46.
149 Ramose (2003) 46.
150 Ramose (2003) 46.
151 Ramose (2003) 46.
152 Ramose (2003) 46.
153 Ramose (2003) 46.

Therefore, by virtue of it being a moral and ethical philosophy, ubuntu disrupts the legitimacy of the current South African system by exposing its corrupt and thus immoral colonial legacy. Ubuntu philosophy as a foundation for decolonial revolutionary discourse automatically reframes the dominant legalistic ideology and recognises its qualities as toxic, irredeemable and irreconcilable with African values and traditions. These three ubuntu maxims illustrate that African philosophy is an essential tool in the struggle for liberation on the journey towards an ethical and corruption-free society.

TOWARDS A CORRUPTION-FREE SOCIETY

Now that we have looked into the importance of finding a language that can articulate the lived experiences of the oppressed majority through African culture and knowledge, we can use this as a framework to envision what a corruption-free society may look like. As a starting point, this society acknowledges the importance of having a holistic account of the past. This helps with understanding both the negative and positive effects of history and ensures that the society does not allow the negative effects of history to be repeated. For example, one of the disadvantages of the selective “official” history of “post” apartheid South Africa is that it often waters down historical events and provides an undetailed account of colonialism and apartheid. As a result, the citizens fail to recognise the root cause of the current social ills because a lot of the important information has been concealed. Therefore, in this envisioned society an honest and holistic history must be made known to everyone because how we understand the past informs the present. After obtaining a solid account of the history of colonialism and apartheid, everyone must be actively involved in creating a new society from the very beginning. Though they should never forget their history, the people must completely dismantle and demolish the current State in order to ensure that they know of every element included in the creation of the new society. Everything implemented in this new society must be understood and decided upon by the whole society.

Given that it is a society in Africa, it must have African philosophy and ideology at the centre of its national culture. African philosophy is the key element that can help us in

imagining an anti-corruption society. By centering ethics and morality as the foundation of its politics, laws and general way of life, this philosophy promotes the idea of a society that is honest, accountable and conscious of how it operates. Having an honest and transparent governing system where everyone knows how everything functions is a hostile environment for corruption to take root. The nature of corruption contradicts the values of African philosophy, which will make it hard for it to infiltrate and take root in this new society. Therefore, creating a society with a strong Africa ideology disrupts the persisting agenda of corruption.

In a society that recognises the ubuntu maxim *motho ke motho ka batho*, both the citizens and public office bearers are to hold each other accountable. When a society shares the values of mutual respect, mutual recognition, mutual care and the importance of sharing, public office bearers cannot conduct themselves in a way that suggests that they are above the law. These officials must act with the understanding that they are not more important than any citizen and that executing their duties in an honest and efficient manner is a way of demonstrating mutual respect to the citizens. Mutual recognition requires officials to treat all citizens equally, which also feeds into the value of sharing. Citizens in this context must also conduct themselves in a manner that aligns with ubuntu ethics both to fellow citizens and to public officials. This citizenry is empowered to call out any form of irregularity and to hold those responsible, accountable for their actions without any fear of being threatened or harmed. They must respect all regulations and policies put in place and realise that bribing an official in order to get favoured over someone else is to the detriment of the entire society. This one act of bribery causes inequality and frustrates the idea of sharing services and resources equally among everyone, it has the potential to disrupt the social order. Therefore, any act that is contrary to the values of this society must be taken seriously, dealt with immediately and should not be concealed. It is important to note here that citizens and office bearers are not the only ones responsible for upholding ethical values. As we have discovered, it is of paramount importance that the institutions and systems created, embody the values and culture of the African society. This ensures that the governing system produces morally grounded, anti-corruption outcomes and makes it easier for public servants to be held accountable.

In this way, corruption does truly become a problem relating to individual behaviour because the system itself is an authentically anti-corruption institution.

Lastly, a corruption-free society must be realistic and acknowledge the inherently imperfect nature of all human beings. Given that any new society will have its flaws, it encourages constructive criticism as a tool for continuous improvement. This society must also prepare for the predatory nature of the West in wanting to exploit its resources and must work constantly towards strengthening economic and cultural resistance against Western States as a way to maintain its post-colonial and anti-capitalist character.¹⁵⁴ From this we begin to realise the possibilities of an alternative way of life. Envisioning this kind of society also encourages us to begin the work of reframing the dominant discourse on corruption. It offers an idea of, what begins as reframing anti-corruption discourse into one that is historically and politically orientated can potentially lead to.

CONCLUSION

Even though there are some benefits of allowing the law to regulate some problematic aspects of society, adopting a dominant legalistic approach in South Africa has done more harm than good. Acknowledging this allows us to understand that the call for an alternative approach is not merely suggestive, it is necessary to prevent the perpetuation these harmful effects. In this chapter I propose revolutionary humanism as the alternative we can use to reframe how we understand corruption in South Africa. I also suggest that this radical political tradition can be used as a framework to envision what an anti-corruption, anti-capitalist, decolonial society could look like. The three elements touched on in the beginning of the chapter lay the foundation of why it is that revolutionary humanism can create a more sustainable and historically responsive alternative to corruption. It reframes the prevalent understanding of corruption from the idea that it is an issue deviant and outside of the norm. And draws from the past to understand that the current dialogue is intentionally disarticulated from historical social structures and practices of corruption during colonialism and apartheid. After giving the historical context

¹⁵⁴ Cabral (1979) 239.

as a way of understanding why a legalistic anti-corruption discourse is problematic, I used ubuntu philosophy to illustrate the importance of developing an anti-colonial political ideology, specific to the African majority in the South African context. One that can also be used as a framework to envision a new society and overall, a new life.

The only way South Africa can begin to re-imagine itself as an ethical society, is by acknowledging that currently, it is governed by an immoral and unjust neo-colonial system. A commitment to adopting an honest review of our unethical past makes it easier to develop an alternative discourse and by so doing, helps us to work towards a value-laden, anti-corruption society, specific to an African society. In conclusion, by understanding our current social ills through a revolutionary humanist approach, we could potentially counter and dismantle the status quo.

CHAPTER 5: CONCLUSION

This research has embarked on a critical analyses of the dominant legalistic perspective of corruption in South Africa. It aims to reframe anti-corruption discourse by proposing as an alternative, a more historically grounded political-ideological approach. In the introductory chapter I give context to the dominant perspective by analysing the faith that was initially placed on President Cyril Ramaphosa by the South African majority in hopes that he would to improve the country's socio-political and economic issues. The context was used as a way to illustrate that corruption in South Africa is generally understood as a problem relating to the behaviour of individuals and often fails to address the issue as it relates to the country's colonial past. Because the concept of corruption is broad and subject to different interpretations, I then explain that the form it should take, for the purpose of this study is that of political corruption. This form of corruption focuses more on the activities of public officials and demonstrates through the examples provided, that corruption is a regular practice in government institutions. All of this is explained in order to provide a substantive background as to why we need to question the dominant perspective of corruption in South Africa in relation to why the problem still persists.

From there, I analyse the characteristics of legalism and point out that the dominant approach stems from Eurocentric Western ideology. Adopting a legal system that has its roots in Europe is misplaced in an African community and I demonstrate this by showing the law's inability to resolve cultural issues relating to the African majority. Furthermore, European ideology was entrenched in South Africa through the violent episode of settler-colonialism and apartheid. It legitimised Western culture through the destruction and subjugation of African lived experiences, traditions and ideology. Ignoring the history of South Africa in anti-corruption discourse thus maintains Western ideology and the racial subjugation and exploitation of the indigenous African majority. This element of legalism that ignores the past, is what I have explained as the concept of 'colonial unknowing', where there is a selective amnesia regarding the major role that colonialism played in

entrenching corruption in South Africa. Crucially, legalism uses the element of 'colonial unknowing' to maintain the vested colonial interests of the white minority by leaving their privileges unquestioned in the "new" democratic State.

The failure to adequately confront past injustices has then led to the country's neo-colonial State which still functions through the political-economic system of racial capitalism. On this point I have also explored the role of the ANC in contributing to the neo-colonial state of South Africa. My assertion here is that the political party lacked a comprehensive and transformative political ideology. During the struggle for liberation, the ANC elite were not focused on creating a society that is radically different from that of the colonial regime. Instead, they aimed to keep the structures and simply replace the colonial bourgeoisie with themselves. As a result, South Africa failed to see a fundamental transformation after the transition to democracy which meant that the socio-political and economic systems of colonialism and apartheid were persevered. It is through this understanding of corruption that we can work towards a more progressive anti-corruption discourse.

Lastly, I suggest revolutionary humanism as a political tradition that can be used to reframe the dominant legalistic perspective into one that is more historically and politically conscious. Revolutionary humanism exposes the colonial roots of corruption and focuses on politically educating the masses to see society for what it is, through a political-ideological lens. It also re-centres the lived experiences of the African majority and emphasises the importance of adopting an Afrocentric national culture given that we are located in Africa. On this point I explored ubuntu philosophy as a form of revolutionary humanism specific to the South African context. Ubuntu exposes the way Western culture has been unethically imposed on the predominantly African society and offers an ethical alternative that can also be used as a framework to imagine what a corruption-free, anti-colonial society could look like.

We deceive only ourselves when we turn our backs from the truth. The success of anti-corruption discourse in South Africa is dependent on addressing its historical roots and

interrogating how this history continues to affect the country's socio-economic, political and cultural landscape today.

In terms of problematizing the legalistic approach and identifying its limitations, the study finds the limited engagement with South African history to be one of the main inhibitors to progression in anti-corruption discourse. The study also finds that reframing the prevailing commonplace understanding of what we understand corruption to be is achievable. First by questioning the efficacy of the measures put in place before gravitating towards the identification of corrupt individual conduct. More specifically, focusing on the legal history that informs the current corruption-combatting measures brings to light the systemic continuities of a phenomenon that dates back to colonialism and apartheid. In using revolutionary humanism as a theoretical framework to situate the political-ideological approach, the study finds a way to centre the lived experiences of the black majority in anti-corruption discourse. By so doing, it demonstrates the limited nature of legalism in considering the historical effects that corruption has had on the indigenous people.

What came as a challenge during the study was the limited literature relating to critical dialogue on anti-corruption law and policy rooted in South Africa's historical past. Though the sources explored contributed meaningfully to different aspects of the study, it was difficult to find ample resources to substantiate the main claims made. This suggests that the topic at hand is an underexplored field which could benefit from further research. More exploration on the critical historiography of anti-corruption law and policy could aid in generating more robust dialogue and subsequently, make a meaningful contribution to anti-corruption discourse.

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